



# BASIC ESTATE PLANNING

---

## PRACTICAL SKILLS SERIES

**2019 Edition**

---

***Written by***

**Lisa M. Butler, Esq.**

Pinto and Butler

Skillman, New Jersey

***and Updated and Revised by***

**Peter J. Bakarich Jr., Esq.**

Winne Banta Basralian & Kahn, P.C.

Hackensack, New Jersey

## ABOUT THE AUTHORS

**Lisa M. Butler** is the owner of the law firm of Pinto & Butler, which specializes in estate planning, probate and estate administration, land preservation and residential real estate. The firm was established in 1972 and Butler has over 30 years of experience in these areas of the law. She is a member of the American, New Jersey, Pennsylvania and Somerset County bar associations as well as the Mercer County Estate Planning Council.

**Peter J. Bakarich Jr.** is a principal/partner in the law firm of Winne Banta Basralian & Kahn P.C. in Hackensack, where he practices in the areas of estate and trust planning and administration; international estate planning; probate; wills, living trusts, powers of attorney, advance directives/living wills; estate, inheritance and gift taxes; federal and state taxation; professional corporations; and pension and profit-sharing plans. Admitted to practice in New Jersey and New York, and before the United States Tax Court, he is a member of the American, New Jersey State, New York State, Passaic County and Bergen County bar associations. He has been president of the Estate Planning Council of Bergen County and the Greater New Jersey Estate Planning Council, and has been elected as a fellow of the American College of Trust and Estate Counsel (ACTEC).

©2019 New Jersey State Bar Association. All rights reserved. Any copying of material herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission should be sent to NJICLE, a division of the New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520.

# CONTENTS

## INTRODUCTION 9

### CHAPTER 1

## INITIAL INTERVIEW 10

---

### INFORMATION GATHERING 11

---

### REGISTRATION OF ASSETS 12

---

### EXECUTORS, TRUSTEES AND GUARDIANS 13

#### EXECUTORS 13

#### TRUSTEES 15

#### GUARDIANS 16

---

### DISCUSSION OF TAX CONSEQUENCES 16

#### FEDERAL ESTATE TAX 17

#### NEW JERSEY ESTATE TAX 20

#### NEW JERSEY INHERITANCE TAX 23

---

### ENGAGEMENT LETTER 25

#### SAMPLE ENGAGEMENT LETTER WITH PRIVACY STATEMENT 26

### CHAPTER 2

## ESTATE PLAN SUMMARY 31

---

### GENERAL CONSIDERATIONS 32

---

### OUTRIGHT DISTRIBUTION WILL 33

---

<b>DISCLAIMER TRUST WILL</b>	<b>36</b>
OUTRIGHT DISTRIBUTION APPROACH	37
DISCLAIMER TRUST WILL APPROACH	39
SAMPLE LETTER AND ESTATE PLAN SUMMARY FOR DISCLAIMER TRUST WILLS	43
ESTATE PLAN SUMMARY UTILIZING RECIPROCAL DISCLAIMER TRUST WILLS	44
POWERS OF ATTORNEY	47

---

<b>MARITAL DEDUCTION WILL</b>	<b>51</b>
OUTRIGHT DISTRIBUTION APPROACH	51
MARITAL DEDUCTION WILL APPROACH	53
QTIP TRUSTS	54
SAMPLE LETTER AND ESTATE PLAN SUMMARY FOR RECIPROCAL MARITAL DEDUCTION WILL	57
ESTATE PLAN SUMMARY UTILIZING RECIPROCAL MARITAL DEDUCTION WILLS	58

---

<b>MECHANICS OF ESTABLISHING A TRUST UNDER A WILL</b>	<b>65</b>
THE SINGLE CLIENT	66
SPECIAL NEEDS TRUST	66
REVOCABLE LIVING TRUST	67
OTHER ESTATE TAX PLANNING TECHNIQUES	68
OTHER ESTATE PLANNING DOCUMENTS	75

**CHAPTER 3**  
**DRAFTING DOCUMENTS** **81**

---

**DRAFTING THE WILL** **82**

---

**CLAUSES** **82**

TESTATOR CLAUSE/EXORDIUM CLAUSE 82

PAYMENT OF DEBTS CLAUSE 83

PAYMENT OF TAXES CLAUSE 83

DISPOSITION OF TANGIBLE PERSONAL PROPERTY CLAUSE 84

MEMORANDUM CLAUSE 85

BEQUEST CLAUSE 86

CHARITABLE BEQUESTS CLAUSE 87

DISTRIBUTION OF REAL PROPERTY CLAUSE 87

RESIDUARY CLAUSE 88

TOTAL DISASTER CLAUSE 88

FIDUCIARIES 89

POWERS CLAUSE 89

TESTIMONIUM CLAUSE 92

---

**SELF-PROVING WILLS** **93**

ACKNOWLEDGMENT AND AFFIDAVIT RELATING TO EXECUTION OF WILL 94

**CHAPTER 4**  
**EXECUTION AND FINAL MEETING** **95**

---

**EXECUTION OF THE WILL** **96**

---

**RETENTION OF THE WILL** **96**

---

**CONTINUING RESPONSIBILITY TO THE CLIENT** **96**

<b>REVIEWING THE WILL</b>	<b>97</b>
<b>LETTER OF INSTRUCTION</b>	<b>97</b>
SAMPLE LETTER OF INSTRUCTION	99
SAMPLE CODICILS	100
<b>APPENDIX A</b>	<b>103</b>
<b>FINANCIAL PLANNING WORKFORM</b>	<b>104</b>
<b>PROPERTY LIST</b>	<b>106</b>
<b>CONSIDERATIONS WHEN MAKING OR REVISING A WILL</b>	<b>110</b>
<b>LETTER OF INSTRUCTION TO HEIRS</b>	<b>112</b>
<b>APPENDIX B</b>	<b>115</b>
OUTRIGHT DISTRIBUTION WILL WITH CONTINGENT TRUST FOR DESCENDANTS UNDER AGE X*	116
DISCLAIMER TRUST WILL OUTRIGHT TO SPOUSE WITH TRUST FOR CHILDREN AND COMMON DISASTER PROVISIONS*	132
POUR OVER WILL TO REVOCABLE TRUST	160
SAMPLE WILL CLAUSES	174
ENTIRE ESTATE IN TRUST FOR SPOUSE	184
QTIP MARITAL DEDUCTION PECUNIARY FORMULA WILL SEPARATE TRUST FOR NJ ESTATE TAX EXEMPTION AND MARITAL (QTIP) AND GENERATION-SKIPPING TRUSTS (GST) FOR OTHER ASSETS*	208
FORM FOR DISPOSING OF TANGIBLE PERSONAL PROPERTY	239
FORM FOR DISPOSING OF TANGIBLE PERSONAL PROPERTY	240

NEW JERSEY ESTATE TAX PLANNING-I-A	241
NEW JERSEY ESTATE TAX PLANNING-I-B	242
NEW JERSEY ESTATE TAX PLANNING-II-A	243
NEW JERSEY ESTATE TAX PLANNING-II-B	244
<b>APPENDIX C</b>	<b>245</b>
DURABLE POWER OF ATTORNEY*	246
“LIVING WILL”*	250
HEALTH CARE PROXY DIRECTIVE	253
INSTRUMENT OF ANATOMICAL GIFT <sup>1</sup>	257
REVOCABLE LIVING TRUST*	259
IRREVOCABLE LIFE INSURANCE TRUST FOR SINGLE LIFE POLICIES*	291
IRREVOCABLE LIFE INSURANCE TRUST FOR JOINT AND SURVIVOR (LAST TO DIE) POLICIES	326
SAMPLE NOTICE LETTER TO BE USED WITH IRREVOCABLE INSURANCE TRUSTS	355
<b>DOCUMENTS AND DEFINITIONS</b>	<b>356</b>





# INTRODUCTION

What is an estate plan? An estate plan is the orderly disposition of one's probate and non-probate assets in accordance with an individual's wishes and desires. An estate plan includes the preparation of a last will and testament, and may include a power of attorney, living will, irrevocable insurance trust or more sophisticated documents, as well as analysis of asset ownership and tax consequences, all of which are discussed in more detail in this book.

Without an estate plan (*i.e.*, a will) an individual's assets will pass by the laws of intestacy (*see* N.J.S.A. 3B:5-1 *et seq.*). No matter how large or small one's estate is, it is unlikely that a client would not want control over the distribution of his or her assets. Furthermore, in this day and age of blended families, it is more important than ever to set forth a clear plan of distribution.

The format in this book is based on the process practitioners go through with almost every client who comes through the office: the initial interview, the discussion of the estate plan summary, drafting documents and execution of the documents at the final meeting.

# INITIAL INTERVIEW

CHAPTER

# 1

## INFORMATION GATHERING

The attorney's first goal in an initial interview is to put the client at ease. The attorney, during this interview, must obtain information about the client's family and assets and determine the fair market value of each of those assets, as well as how the assets are owned. If the client is uncomfortable discussing his or her personal affairs with the attorney, the attorney cannot effectively prepare an estate plan.

Where does one begin with respect to estate planning or the drafting of a will? Before the attorney can begin the project, he or she must have all the facts. Insofar as the preparation of a will is concerned, this means gathering as much information as possible about the client's intent, the nature and value of the assets and how the assets are registered.

To assist in gathering the information concerning the client's background, the size of the estate, and the quality of the assets, the attorney should use some type of information-gathering form, so important information is not overlooked. The attorney may prepare his or her own form or use forms that are often available through financial planning companies, trust companies and online. Some estate planning attorneys have their information-gathering forms online for all to view and utilize. Regardless of the form, it is imperative to assure the client that the information is *not* being gathered to determine what the attorney's fees will be, but to determine whether any significant tax problems exist from a federal estate tax, New Jersey estate tax or New Jersey inheritance tax standpoint.

The usual information-gathering forms include the names of the testator, spouse, children, parents and siblings, and their respective ages and addresses. Other necessary background information includes the citizenship of all parties, any relevant disabilities, names of minors or dependents, children attending college or who will be attending college, etc.

The forms usually break down the testator's assets into several categories: real estate, investments (including stocks, bonds, Series E Savings Bonds, etc.), business investments (both group and personal) and employee benefits (pension and profit-sharing plans, stock option plans, and

savings plans). In addition, the form should list miscellaneous assets, such as boats, airplanes, antiques, jewelry, and other personal effects.

Conducting a detailed interview with the client will help determine the complexity of the will required for maximum estate tax savings. In many cases, the client may feel reluctant to give a true and total picture of his or her assets, but the attorney must convey to the client that it is important to know the size of the estate in order to draw the proper will.

Based on the initial information, the following issues should be discussed with the client:

- Registration of assets
- Executors, trustees and guardians
- Tax consequences
- Retainer letter

## REGISTRATION OF ASSETS

How the assets are registered (*i.e.*, individually, jointly, in trust for, tenants-by-the-entirety, tenants-in-common, payable on death (POD), etc.) is important because the attorney must determine which assets are going to be controlled by the client's will. There are two estates: the non-probate estate, which passes outside the control of the will, and the probate estate, which is controlled by the will. The attorney must emphasize to the client that a will controls only the property in his or her *individual* name and any interest held as tenants-in-common (*i.e.*, probate assets). In contrast, property held as joint tenants with the right of survivorship (JTWRROS) pass outside the control of the will to the surviving joint owner at the time of death by operation of law. In addition, assets with a designated beneficiary, such as an insurance policy or retirement account (*i.e.*, IRAs, 401Ks, etc.) pass outside the control of the will to the named beneficiary.

For estate planning purposes, the attorney should encourage the clients to divide ownership of all property so 50 percent is in the husband's name and 50 percent is in the wife's name or, at the very least, to change the ownership to tenants-in-common. This will enable each spouse to take maximum advantage of the applicable exclusion amount. At the death of the first spouse, property that is registered as joint tenants with the right of survivorship will pass automatically to the surviving spouse completely outside the control of the will. If it is a tax-planned will with a tax-exempt 'bypass trust,' there will be no assets to fund the trust under the will unless the assets are registered in the testator's name individually, or as tenants-in-common with another individual. Without assets being re-registered as outlined above, there may be a greater tax at the surviving spouse's subsequent death. The re-registration of assets applies to real estate as well as bank and brokerage accounts. There are no adverse tax consequences to these re-registrations.

The designation of a beneficiary and owner on a life insurance policy will largely depend on the ultimate estate plan the attorney recommends for the client. However, generally, if the existing insurance is not being transferred into an irrevocable insurance trust (discussed in more detail later in this book), the beneficiary of the policy should be named individuals, with an appropriate contingent beneficiary such as a trust under the will for children. As a last resort, the beneficiary of the policy may be the insured's estate (*i.e.*, life insurance on the life of Jane Doe should be made payable to the "Estate of Jane Doe"). This means that the life insurance proceeds become a probate asset and, therefore, will be controlled by the will, but will also be subject to the creditors of the decedent. It should also be remembered that life insurance proceeds payable to a named beneficiary are not subject to the New Jersey inheritance tax, but life insurance policies paid to the estate and then to a beneficiary who is subject to the inheritance tax will also be subject to that tax.

Generally, it is not advisable or possible in some cases to re-register the ownership of retirement assets such as IRAs and 401K plans. However, it is possible to change the beneficiary designation on these types of assets. Unlike life insurance, in most cases it is not advisable to have retirement assets become probate assets and controlled by the will. The reason the retirement money should remain a non-probate asset (*i.e.*, payable to a named beneficiary) is that if an estate is named the beneficiary of retirement assets there will be significant income tax consequences. If the surviving spouse is named as the beneficiary, the spouse (and only the spouse) will have the opportunity to rollover the retirement asset and delay the income taxes until mandatory withdrawal is required after age 70 1/2. If there is no surviving spouse, as long as there is a designated beneficiary other than the estate, the beneficiary will have the option of taking the retirement money over his or her life expectancy and, therefore, pay the income tax liability in installments. There is also an option of naming a qualifying trust as a beneficiary of retirement assets, but this is beyond the scope of this book.

## **EXECUTORS, TRUSTEES AND GUARDIANS**

After obtaining a complete inventory of the client's assets and determining how they are held, an attorney should discuss the responsibilities of the fiduciaries named in the will. These fiduciaries include executors, trustees and guardians. All too often, attorneys accept what they know to be the functions of these fiduciaries without fully explaining them to the client. In practice, however, the attorney must make every attempt to put into layman's terms the functions of the fiduciaries.

### **Executors**

Under the New Jersey Probate Statutes, an executor, executrix, administrator and administratrix are all "personal representatives," and are so designated by the letters testamentary (if a will exists) or letters of administration (if the decedent died intestate) issued by the surrogate. In either event, the duties of the executor and administrator are similar. The letters testamentary/executor's short certificate documents are evidence of the executor's appointment as personal representative of the estate, and give him or her the authority to act on behalf of the estate.

The executor has the duty of winding up the decedent's affairs. This involves the assembly, collection and valuation of the decedent's assets, the payment of debts, expenses of administration and taxes, and the distribution of the remaining assets to the entitled persons under the decedent's last will and testament. This is generally described as administering or settling the estate.

It will be necessary for the executor to open an estate checking account through which assets should be passed and from which bills should be paid. This will allow the executor to maintain accurate records with regard to the administration of the estate.

The executor must assemble, collect and value all of the decedent's assets, and prepare a cash flow projection so he or she can anticipate the cash needs of the estate to pay bills and debts and anticipate all tax liabilities and needs of the beneficiaries. All of the income of the estate and accounts receivable must be collected and accounted for.

In addition, the executor has the job of filing all tax returns in connection with the estate. This can include the decedent's final income tax returns (IRS and NJ Forms 1040), federal and New Jersey fiduciary income tax returns for the decedent's estate (IRS and NJ Form 1041), as well as a New Jersey inheritance tax return, if applicable, and a federal estate tax return (Form 706) for estates over the then-current applicable exclusion amount. Currently, no New Jersey estate tax return is required for any decedent who died on or after Jan. 1, 2018.

Frequently, a husband will name his wife as executrix and the wife will name her husband as executor. Although this type of decision should be left to the testator, the attorney's responsibility is to set forth the duties of the executor (executrix). The testator should understand that a spouse may or may not be qualified to carry out the duties of the executor (executrix). Once the client names an executor (executrix), the attorney should indicate the importance of naming a contingent executor (executrix) should the first named person predecease the testator or be unable or unwilling to act.

Depending on the complexity and size of the estate's assets, the importance of impartiality and financial expertise and consideration of who the beneficiaries of the estate are, the client may want to designate a corporate executor. For example, if the estate is relatively small, or perhaps the sole beneficiary is the spouse or an only child, a corporate executor may not be warranted. However, in situations where the estate is large and may consist of closely held businesses or other difficult to manage/value assets, or a situation where there are multiple beneficiaries who may or may not have an amicable relationship, a corporate executor may well be advised. These issues should be discussed with the client.

The client should also be made aware that co-executors are an option. The testator can designate two or more individuals, or an individual and a corporate executor, to share the duties.

## Trustees

The trustee's duties consist of the management of assets, as well as, in some cases, discretionary distributions to beneficiaries based upon an ascertainable standard set forth in the will, and the filing of the appropriate fiduciary income tax returns for the trust. Record keeping, financial expertise, sensitivity to the needs and circumstances of the beneficiaries and trustworthiness are all attributes of a trustee.

In most outright distribution wills, the need for a trustee arises only in the event that the husband and wife both die, leaving minor children. Under these circumstances, a trustee comes into being for the benefit of the minor children. The trustee has the function of managing the trust assets and making distributions of income and principal to or for the benefit of the minor children, in accordance with the provisions of the last will and testament.

For a husband and wife with tax-planned wills that have tax-exempt bypass trusts, the trustee is required to manage trust assets for the benefit of the surviving spouse until his or her subsequent death. At that time, the trust is distributed to the ultimate beneficiaries, either outright or continued in trust for their benefit.

Clients often question whether or not a surviving spouse should be named as the trustee or co-trustee of a trust for his or her benefit under a will. First and foremost, it should be explained to the client that the establishment of a trust for the benefit of the surviving spouse is more often than not a technique for saving estate taxes, and not a means to financially control the surviving spouse. If the clients are still concerned about the 'loss of control,' a surviving spouse can be named as co-trustee with a provision that principal distributions to the surviving spouse only be made by the non-beneficiary trustee. In the alternative, some practitioners have designated the surviving spouse as co-trustee or sole trustee with an ascertainable standard being applied to the distribution of principal to the surviving spouse.

This concept does pose some concerns. While Internal Revenue Code Section 2041 does refer to the "ascertainable standard relating to health, education, support or maintenance," the concern is that notwithstanding this "standard," the surviving spouse as sole trustee may treat the trust assets as his or her own. The Internal Revenue Service may view this arrangement as a sham or 'window dressing,' and subsequently include the trust assets in the surviving spouse's taxable estate. Why expose the estate to this risk? Further, the doctrine of merger of estates states that there can be no trust where a sole trustee is the sole beneficiary, and an ascertainable standard may not save the day. By way of example, the surviving spouse as trustee may be under the impression that support and maintenance includes lavish vacations, support of a gambling habit and large purchases from the local jeweler. Not only might this not be deemed acceptable by the Internal Revenue Service, but the contingent beneficiaries of the trust may have a cause of action. To maintain objectivity and no appearance of impropriety or control over the trust assets, it may be wise to designate a surviving spouse as co-trustee with no right to distribute principal to himself or herself or, better yet, not name the surviving spouse as a trustee at all.

## Guardians

A testamentary guardian is one appointed by the last will and testament of a minor child's father or mother. The guardian is charged with the duty of taking care of the minor child of the testator. In many instances the trustee and the guardian are the same person. Their functions, however, are quite different. The guardian should be chosen for the purpose of providing a home life consistent with the home life the children enjoyed while their parents were alive. The trustee should be chosen for the purpose of managing money. The client must understand this distinction so he or she can select the trustee for money management and the guardian for the proper ethical and moral standards similar to those of the testator.

Some clients prefer a checks and balances system and wish to name different individuals as trustee and guardian, while others prefer to have the guardian and trustee be the same person. There is no right or wrong answer, only the client's preference.

At the death of the first spouse, the surviving spouse or parent (in the event they are divorced) is the legal guardian of the minor children. Only when the testator and the testator's spouse die in a common disaster, or the spouse has already predeceased the testator, does the guardian appointed under the will become applicable. In the case of divorced parents, do not assume that one parent will want to leave guardianship with the other. Even though the law greatly favors the natural rights of parents, there may be some situations where a client can name a guardian in lieu of the other parent. As usual, find out what the client wishes and proceed accordingly.

The client may want to compensate the guardian for his or her services, and this may be provided for under the terms of the will. A number of ways exist by which a testator may compensate a guardian. The first is to provide for an annual sum to be paid to the guardian by the executor. Alternatively, the guardian may receive a specific bequest under the will. Other alternatives may include a provision in the will directing the executor to use estate assets to assist the guardian in building an addition to the home in order to have sufficient space for the testator's children, or directing the executor to permit the guardian to live in the testator's home during the children's minority, with all expenses being paid by a trust.

## DISCUSSION OF TAX CONSEQUENCES

Estate and inheritance taxes, historically, created tremendous burdens on surviving spouses and heirs. In 1981, however, Congress passed the Economic Recovery Tax Act, which included significant reforms to the unlimited marital deduction and the unified credit. The unlimited marital deduction enables a spouse to pass his or her entire estate to the surviving spouse free of any gift or estate taxes, thus eliminating the burden on the surviving spouse of having to liquidate assets (*e.g.*, selling the business from which the surviving spouse receives his or her sole source of income) in order to pay the estate taxes.



# Federal Estate Tax

## A. Historical Background

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) introduced significant changes to the Internal Revenue Code, many of which were scheduled to be phased in during the 10 years following the enactment of the act. In connection with the federal estate tax, EGTRRA effectively revised the amount each person was permitted to transfer to a non-spouse without the imposition of a federal estate tax (i.e., the applicable exclusion amount) and decreased the maximum estate tax rate over time.

The schedule of changes in EGTRRA is set forth below:

Year	Applicable Exclusion Amount	Applicable Credit	Lowest Estate Tax Rate	Maximum Estate Tax Rate
2001	675,000	220,550	37%	55%
2002	1,000,000	345,800	41%	50%
2003	1,000,000	345,800	41%	49%
2004	1,500,000	555,800	45%	48%
2005	1,500,000	555,800	45%	47%
2006	2,000,000	780,800	46%	46%
2007	2,000,000	780,800	45%	45%
2008	2,000,000	780,800	45%	45%
2009	3,500,000	1,455,800	45%	45%
2010	Repeal	n/a	n/a	n/a
2011	1,000,000	345,800	41%	55%

However, on Dec. 17, 2010, President Barack Obama signed the Tax Relief Unemployment Insurance Authorization and Job Creation Act of 2010 (TRA 2010). Generally, TRA 2010 set forth various tax provisions that applied for two years, and effectively extended and amended EGTRRA. For estate planning purposes, it is significant to know that TRA 2010 set the federal estate, gift and generation-skipping tax exemption at \$5,000,000 for 2011 and 2012 with the tax rate on the excess over the \$5,000,000 at 35 percent.

Another interesting provision of TRA 2010 was portability. This provided that the executor of a deceased spouse's estate may transfer any unused federal estate tax exemption to the surviving spouse. For example, if the first spouse to die in 2011 has an estate valued at \$1,000,000, and bequeaths \$500,000 to the children and \$500,000 to the surviving spouse, the deceased spouse, based on TRA 2010, has an unused federal estate tax exemption of \$4,500,000, which is now portable to the surviving spouse, and if the surviving spouse has an independent estate of \$6,000,000 under this example, the survivor will have a total gross estate of \$6,500,000 (\$500,000 inherited from the deceased spouse plus \$6,000,000 from the surviving spouse's independent estate). However, no federal estate tax would be due at the death of the second spouse, also later in 2011 under TRA 2010, as the surviving spouse now has a \$9,500,000 exemption from federal estate tax (i.e., the surviving spouse's \$5,000,000 exemption plus \$4,500,000 unused portability exemption received from the estate of the first spouse to die).

Portability is not automatic. This means that even if the estate does not owe any tax, the executor must file a federal estate tax return to take advantage of portability. Issues concerning the use of portability in the context of multiple marriages, divorces and multiple deceased spouses are not covered in this book.

On Dec. 31, 2012, the extension/amendment of EGTRRA was scheduled to sunset and the exemption from federal estate, gift and generation-skipping tax was to revert back to \$1,000,000, with the top estate tax rate of 55 percent.

The American Taxpayer Relief Act of 2012 (ATRA) was signed on Jan. 2, 2013. In part, it provided that in 2013 each individual had a lifetime exemption from federal estate, gift and generation-skipping tax (GST) in the amount of \$5,250,000. This amount is now indexed for inflation from the \$5,000,000 exclusion amount in 2011. Congress has indicated that ATRA is now permanent, meaning that this current law has no expiration date. Any amount over the exemption is taxed at a flat 40 percent rate.

In addition, portability is now permanent, and allows the surviving spouse to use the deceased spouse's unused lifetime exemption from federal estate and gift tax (not GST) in his or her own estate, provided a timely election is made by the surviving spouse. This election is made by filing a timely federal estate tax return (Form 706).

## **B. Current Federal Estate Tax**

The Tax Cuts and Jobs Creation Act of 2017 (TCJA 2017) was signed into law on Dec. 22, 2017. In part, it provides that in 2018 each individual has a lifetime exemption (applicable exclusion amount) from federal estate, gift and generation-skipping transfer (GST) tax in the amount of \$11,180,000, which will be indexed for inflation after 2018. Any amount over the exemption is taxed at a flat rate of 40 percent. However, the new applicable exclusion amount reverts back to

the 2017 \$5,000,000 applicable exclusion amount, as adjusted for inflation, for decedents dying, and gifts made after, Dec. 31, 2025.

The portability provisions allowing the surviving spouse to use the decedent's unused lifetime exemption from federal estate and gift tax (not GST tax) in his or her estate is still applicable provided the timely election is made by the surviving spouse by filing a timely federal estate tax return (Form 706) for the deceased spouse.

The citizenship of the testator's spouse is important with respect to the applicable exclusion amount and the marital deduction. There is no applicable exclusion amount or applicable credit available to a non-resident alien decedent. Instead, there is an estate tax credit of \$13,000 that is effectively the tax on \$60,000 of assets. However, a resident alien is entitled to the then-current applicable exclusion amount. In addition, both resident and non-resident alien surviving spouses are not eligible for the unlimited marital deduction. There is an immediate tax at the death of the first spouse if the estate exceeds the exclusion, unless the property is transferred to a qualified domestic trust (QDOT).

The client should be advised of these distinctions so that appropriate steps may be taken to establish citizenship or modify the estate plan (*i.e.*, establish a qualified domestic trust under the will). This trust is a more sophisticated estate planning technique beyond the scope of this book, which should be investigated fully if the client's spouse is not a United States citizen.

### **Federal Estate Tax Exemptions and Rates from 2010 to 2019**

<b>Year of Death</b>	<b>Estate Tax Exemption/ Applicable Exclusion Amount</b>
2010	\$5,000,000 or 0
2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000
2016	\$5,450,000
2017	\$5,490,000
2018	\$11,180,000
2019	\$11,400,000

## New Jersey Estate Tax

Prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the federal government permitted a dollar-for-dollar credit against the federal estate tax for death taxes paid to the states, up to a certain limit. At the same time, New Jersey imposed a state estate tax that was equal to the maximum credit allowed against the federal estate tax for the payment of state death taxes. New Jersey's estate tax was considered a 'sponge tax' because it 'soaked up' the maximum state death tax credit permitted by the federal government.

However, to compensate for the loss of revenue due to the increase in the federal applicable exclusion amount under EGTRRA, the act also reduced the available state death tax credit over the early years after the act and then eliminated the state death tax credit entirely in 2005. In 2005, the credit was replaced by an estate tax deduction for state death taxes paid. More specifically, the credit is calculated but reduced by 25 percent in 2002, reduced by 50 percent in 2003 and reduced by 75 percent in 2004. EGTRRA created the potential for a significant loss of revenue for the states that were taking advantage of the sponge tax. Therefore, New Jersey, like many other states, has changed its estate tax laws to prevent the loss of revenue.

The New Jersey statute, which was signed into law on July 1, 2002, provides that the estate of every resident decedent dying after Dec. 31, 2001, shall be taxed as if the death occurred under the federal laws in effect on Dec. 31, 2001. The New Jersey estate tax law was imposed on a retroactive basis. Estates of decedents who died after Dec. 31, 2001, may be liable for the New Jersey estate tax even though the law was not passed until July 1, 2002.

Pursuant to the 2001 New Jersey law, the New Jersey estate tax is calculated on estates that have a taxable estate, plus adjusted taxable gifts, over \$675,000. However, a New Jersey estate tax return must be filed if the resident decedent's gross estate, plus adjusted taxable gifts, exceeds \$675,000. The tax is based on the credit for state inheritance, estate, succession, or legacy taxes allowable under the provisions of the Internal Revenue Code in effect on Dec. 1, 2001 (*i.e.*, \$675,000), rather than the actual amount in effect at the time of death. The New Jersey estate tax is effectively 'decoupled' from the state death tax credit previously available under the Internal Revenue Code.

Following is the worksheet for calculating the New Jersey estate tax for decedents who died before Jan. 1, 2017.

**Worksheet for New Jersey Simplified Form — Column A — Line 10(a)**

1. Taxable Value from Line 7(a) of Return	1.	
2. Exemption Amount	2.	\$60,000.00
3. Line 1 minus Line 2	3.	
4. From table below, determine tax on Line 3 above and enter here and on Line 10(a) of IT-Estate Return	4.	

<b>TAX TABLE</b>				
AMOUNT FROM LINE 3 ABOVE				
AT LEAST	BUT LESS THAN	TAX ON AMOUNT IN FIRST COLUMN	+ %	OF EXCESS OVER
\$ 0	\$ 615,000	\$ 0	0	\$ 0
615,000	667,175	0	37.0	615,000
667,175	840,000	19,304	4.8	667,175
840,000	1,040,000	27,600	5.6	840,000
1,040,000	1,540,000	38,800	6.4	1,040,000
1,540,000	2,040,000	70,800	7.2	1,540,000
2,040,000	2,540,000	106,800	8.0	2,040,000
2,540,000	3,040,000	146,800	8.8	2,540,000
3,040,000	3,540,000	190,800	9.6	3,040,000
3,540,000	4,040,000	238,800	10.4	3,540,000
4,040,000	5,040,000	290,800	11.2	4,040,000
5,040,000	6,040,000	402,800	12	5,040,000
6,040,000	7,040,000	522,800	12.8	6,040,000
7,040,000	8,040,000	650,800	13.6	7,040,000
8,040,000	9,040,000	786,800	14.4	8,040,000
9,040,000	10,040,000	930,800	15.2	9,040,000
10,040,000		1,082,800	16.0	10,040,000

The amount of New Jersey estate tax has increased as the federal estate tax decreases.  
For example:

<b>Year of Death</b>	<b>Taxable Estate</b>	<b>Federal Estate Tax</b>	<b>New Jersey Estate Tax</b>
2008	2,000,000	0	99,600
2009	3,500,000	0	229,200
2010-2011	5,000,000	0	391,600
2012	5,120,000	0	405,200
2013	5,250,000	0	420,800
2014	5,340,000	0	431,600
2015	5,430,000	0	442,400
2016	5,450,000	0	444,800
2017	5,490,000	0	312,500
2018	11,140,000	0	0

It should be noted that any New Jersey inheritance tax or tax paid in any other state will offset the amount of New Jersey estate tax liability.

P.L. 2016, c. 57, signed into law on Oct. 14, 2016, provides that the New Jersey estate tax exemption increased from \$675,000 to \$2 million for the estates of resident decedents who die on or after Jan. 1, 2017, but before Jan. 1, 2018.

The New Jersey estate tax is calculated on estates that have a taxable estate that exceeds \$2 million as determined by the provisions of the Internal Revenue Code in effect on Jan. 1, 2017, even though the federal applicable exclusion amount is significantly higher (*i.e.*, \$5,490,000 in 2017).

The estate tax is calculated using a progressive rate schedule with rates ranging from zero percent to 16 percent. Estates must use the website of the New Jersey Division of Taxation and their estate tax calculator to determine the tentative tax. The calculator performs the circular calculation created by application of the New Jersey portion of the federal state death tax deduction to the taxable estate, in accordance with Section 2058 of the federal Internal Revenue Code.

For the estates of resident decedents who die on or after Jan. 1, 2018, the New Jersey estate tax will not be imposed.

It is also important to note that portability has not been adopted by New Jersey for estate tax purposes.

## **New Jersey Inheritance Tax**

The New Jersey inheritance tax is based on the classification of the estate's beneficiaries (*i.e.*, the relationship between the decedent and the beneficiaries). New Jersey recognizes four beneficiary classes, and each class has its own tax rate. Class A beneficiaries, such as spouses, children, grandchildren, parents, grandparents, adopted children, issue of legally adopted children and step children (lineal descendants), are exempt. Class C (after an exemption of \$25,000) are taxed at rates between 11 and 16 percent, inclusive. Class C beneficiaries are brothers or sisters of the decedent, including half brothers and sisters, a wife or widow of a son of the decedent, or a husband or widower of a daughter of the decedent, and Class D beneficiaries are every other transferee not herein classified. In connection with Class D beneficiaries, if the bequest is less than \$500 there is no tax. However, if the transfer is \$500 or more there is no exemption and the tax rate begins at 15 percent and increases to 16 percent if the transfer is over \$700,000. Class E beneficiaries, such as educational institutions, churches, hospitals, public libraries and certain other nonprofit organizations are exempt from tax.

## NEW JERSEY TRANSFER INHERITANCE TAX RATES

**A SURVIVING SPOUSE IS ENTIRELY EXEMPT  
EFFECTIVE IN ESTATES OF DECEDENTS DYING ON OR  
AFTER JANUARY 1, 1985**

**REMAINING CLASS "A" TRANSFEREES ARE ENTIRELY EXEMPT  
EFFECTIVE IN ESTATES OF DECEDENTS DYING ON OR AFTER JULY 1, 1988**

		Rates applicable to class A transferees in estates of decedents dying prior to dates indicated above				
		7-1-87 thru 6-30-88	7-1-86 thru 6-30-87	7-1-85 thru 6-30-86	7-1-78 thru 6-30-85	3-29-62 thru 6-30-78
First	\$5,000	Exempt	Exempt	Exempt	Exempt	Exempt
Next	10,000	Exempt	Exempt	Exempt	Exempt	1%
Next	35,000	Exempt	Exempt	Exempt	2%	2%
Next	50,000	Exempt	Exempt	3%	3%	3%
Next	50,000	Exempt	Exempt	4%	4%	4%
Next	50,000	Exempt	5%	5%	5%	5%
Next	50,000	Exempt	6%	6%	6%	6%
Next	50,000	6%	6%	6%	6%	6%
Next	200,000	7%	7%	7%	7%	7%
Next	200,000	8%	8%	8%	8%	8%
Next	200,000	9%	9%	9E/o	9%	9%
Next	200,000	10%	10%	10%	10%	10%
Next	300,000	11%	11%	11%	11%	11%
Next	300,000	12%	12%	12%	12%	12%
Next	500,000	13%	13%	13%	13%	13%
Next	500,000	14%	14%	14%	14%	14%
Next	500,000	15%	15%	15%	15%	15%
Over	3,200,000	16%	16%	16%	16%	16%



When assets are payable to a trust, the New Jersey Division of Taxation looks to both the current beneficiary of the trust and the successor beneficiaries (remaindermen) of the trust to determine their respective relationships to the decedent and to the amount potentially receivable by each to determine the amount of the tax. For example, if the trust is for the beneficiary of the decedent's spouse and the remaindermen are nieces and nephews of the decedent, there would be no tax if all trust assets are expended for the benefit of the spouse, but there would be tax if assets are ultimately paid to the nieces and nephews. To determine the amount of the tax, the Division of Taxation looks to actuarial tables and other factors and offers the decedent's estate a 'compromise tax' to close the inheritance tax proceedings. As an alternative to accepting the Division of Taxation's offer, the estate may wait and see until the contingency (death of spouse) occurs to determine the amount of the tax. In that case, the estate would be required to post a bond to guarantee payment of the tax.

In the past, when New Jersey estate tax was payable, any New Jersey inheritance tax paid operated as a credit against the New Jersey estate tax. Therefore, when the New Jersey estate tax was significantly higher than any New Jersey inheritance tax that might be payable, practitioners generally disregarded the inheritance tax and did not draft to avoid it. Now that there is no New Jersey estate tax, practitioners must pay more attention to the New Jersey inheritance tax in their drafting of estate planning documents for New Jersey residents. Also, it can now be expected that the New Jersey Division of Taxation will be paying more attention to the New Jersey inheritance tax and will be looking for ways to maximize the inheritance tax payable, such as by looking closer at trusts that could have potential remainder beneficiaries who are not Class A beneficiaries or at transfers made by a decedent within three years of death (the in contemplation of death rule).

After reviewing the client's assets, the registration of the assets, his or her family background information, intentions regarding distribution and the tax consequences of the distribution pattern, the attorney will be able to determine what type of will best fits the client's needs.

## **ENGAGEMENT LETTER**

At the end of the initial meeting with the client, the attorney should be able to inform the client of the fee for preparing an estate plan summary, tax analysis and drafting of the appropriate documents. After this meeting, a retainer letter should be sent to the client indicating what services the attorney will provide, the fee for those services and a request that a check for a portion of the fee be sent to the attorney's office with a signed copy of the retainer letter indicating the client's agreement to this arrangement. When the executed engagement letter with the partial payment has been received, the work begins.

While the retainer fee is not mandatory, it does provide motivation for the client to complete the process. Sometimes there are many difficult questions to be answered by the client during the estate planning process, and subsequently the process is not always complete, with or without a retainer fee. A sample engagement letter with privacy statement follows.

## SAMPLE ENGAGEMENT LETTER WITH PRIVACY STATEMENT

November 5, 2018

Mr. and Mrs. John Smith  
123 Main Street  
Boonton, NJ 07005

Dear John and Jane:

I enjoyed meeting with both of you on September 1. I appreciate your decision to have me assist you with your estate planning. The purpose of this letter is to set forth the work that you will be engaging me and others at my firm to perform for you and the fee arrangement for our services.

I will be preparing for each of you a Durable Power of Attorney, a Living Will with Designation of Healthcare Representative and a Will, as well as various beneficiary designations to accord with your new estate plan, if necessary. The fee for our services will be \$-----. This fee will include all correspondence, conversations and additional meetings to explain and execute the documents. As agreed, I enclose a retainer bill for \$----.

It is common for a husband and wife to employ the same lawyer to assist them in planning their estates. You have taken this approach by asking me to represent both of you in your planning. It is important that you understand that because I will be representing both of you, you will be considered my client, collectively. Ethical considerations prohibit me from agreeing with either of you to withhold information from the other. Accordingly, in agreeing to this form of representation, each of you is authorizing me to disclose to the other any matters related to the representation that one of you might discuss with me or that I might acquire from any other source. In this representation, I will not give legal advice to either of you or make any changes in any of your estate planning documents without your mutual knowledge and consent. Of course, anything either of you discusses with me is privileged from disclosure to third parties, except (a) with your consent, (b) for communication with other advisors, or (c) as otherwise required or permitted by law or the rules governing professional conduct.

If a conflict of interest arises between you during the course of your planning, or if the two of you have a difference of opinion concerning the proposed plan for disposition of your property or on any other subject, I can point out the pros and cons of your respective positions or differing opinions. However,

Sample retainer letter:398149\_1

ethical considerations prohibit me, as the lawyer for both of you, from advocating one of your positions over the other. Furthermore, I would not be able to advocate one of your positions versus the other if there is a dispute at any time as to your respective property rights or interests or as to other legal issues between you. If actual conflicts of interest do arise between you of such a nature that, in my judgment, it is impossible for me to perform my ethical obligations to both of you, it would become necessary for me to cease acting as your joint attorney.

In the ordinary course of business, we often communicate with clients and other parties by means of electronic mail via the Internet and similar methods. This practice may allow us to provide services more quickly and efficiently. While we believe that such communications are not likely to be intercepted by third parties, we cannot guarantee that e-mailed messages and attachments that we receive or send will be completely confidential. If you would prefer that we do not use e-mail for our communications in general or for any specific communications, please let us know by checking the appropriate line below. Otherwise, we will expect to communicate with you and other parties by e-mail from time to time, as appropriate, and will assume that you have consented to such communications. Also, while we believe our e-mail communications are free from viruses, it is the responsibility of the recipient to take appropriate steps to protect against e-mail viruses.

For John:

**E-Mail:** (please select the appropriate option(s) and initial)

- E-mail is acceptable for all communications concerning my representation. \* \_\_\_\_\_
- Do *not* use e-mail for any communications concerning my representation. \* \_\_\_\_\_
- E-mail is acceptable for all communications concerning my representation Except \_\_\_\_\_ \* \_\_\_\_\_
- E-mail address: \_\_\_\_\_

With respect to telephone and written communications, I wish to be contacted in the following manner (check all that apply):

- \_\_\_\_\_ Home telephone \_\_\_\_\_
  - \_\_\_\_\_ OK to leave message with detailed information
  - \_\_\_\_\_ Leave message with call-back number only
- \_\_\_\_\_ Work telephone \_\_\_\_\_
  - \_\_\_\_\_ OK to leave message with detailed information
  - \_\_\_\_\_ Leave message with call-back number only
- \_\_\_\_\_ Written Communication
  - \_\_\_\_\_ OK to mail to my home address
  - \_\_\_\_\_ OK to mail to my work/office address
  - \_\_\_\_\_ Please provide: \_\_\_\_\_
  - \_\_\_\_\_ OK to fax to this number \_\_\_\_\_
- \_\_\_\_\_ Other \_\_\_\_\_

For Jane

**E-Mail:** (please select the appropriate option(s) and initial)

E-mail is acceptable for all communications concerning my representation.

\* \_\_\_\_\_

Do not use e-mail for any communications concerning my representation.

\* \_\_\_\_\_

E-mail is acceptable for all communications concerning my representation

Except \_\_\_\_\_.

\* \_\_\_\_\_

E-mail address: \_\_\_\_\_.

With respect to telephone and written communications, I wish to be contacted in the following manner (check all that apply):

\_\_\_\_\_ Home telephone \_\_\_\_\_

\_\_\_\_\_ OK to leave message with detailed information

\_\_\_\_\_ Leave message with call-back number only

\_\_\_\_\_ Work telephone \_\_\_\_\_

\_\_\_\_\_ OK to leave message with detailed information

\_\_\_\_\_ Leave message with call-back number only

\_\_\_\_\_ Written Communication

\_\_\_\_\_ OK to mail to my home address

\_\_\_\_\_ OK to mail to my work/office address

\_\_\_\_\_ Please provide: \_\_\_\_\_

\_\_\_\_\_ OK to fax to this number \_\_\_\_\_

\_\_\_\_\_ Other \_\_\_\_\_

After considering the foregoing, if you consent to my firm and me representing both of you jointly, I would appreciate your signing and dating the enclosed copy of this letter and returning it to me, together with your check in payment of the retainer.

Upon receipt of the signed engagement letter and check, I will prepare a letter summarizing the decisions reached at our meeting.

If you have any questions about anything discussed in this letter, please let me know. In addition, you should feel free to consult with another lawyer about the effect of signing this letter.

Best regards.

Sincerely,

Peter J. Bakarich, Jr.

Enclosures

Sample retainer letter:398149\_1

CONSENT

Each of us has read the foregoing letter and understands its contents. We consent to having Winne Banta Basralian & Kahn, P. C. and Peter J. Bakarich Jr., Esq. represent both of us jointly on the terms and conditions set forth. Each of us authorizes you to disclose to the other of us and to our advisors any information regarding the representation that you receive from either of us or any other source.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
John Smith

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Jane Smith

PINTO AND BUTLER  
ATTORNEYS AT LAW

120 MONTGOMERY KNOLL P.O. BOX 7144  
PRINCETON, NEW JERSEY 08543

ROBERT J. PINTO (1972-1999)  
LISA M. BUTLER

AREA CODE 609  
TELEPHONE 924-2000  
FACSIMILE 924-2557

**NOTICE OF PRIVACY POLICY<sup>1</sup>**

In the course of advising our clients, our law firm necessarily collects and retains non-public personal and financial information to enable us to address their particular needs in a professional and thorough manner. As the legal issues facing each client are unique, the type and quantity of information gathered varies greatly. For example, our estate planning clients may disclose to us personal family history, medical conditions, individual net worth statements, and past tax returns for both themselves and any closely held businesses they own.

We will not disclose the personal and financial information you share with us to anyone outside of our firm unless you ask us to do so. Not only do ethical rules applicable to the practice of law in New Jersey prohibit such disclosure, but we realize that to do so would be a breach of the trust each of you has placed in me as your attorney.

To help ensure that any information you provide us will not be disclosed to an outside party inadvertently, it is our standard office practice to keep such information in a separate file pertaining to your representation only, and to contact you personally prior to releasing any information to a person outside of our firm.

If you have any questions about the confidentiality and security of your personal and financial information, please feel free to contact me.

---

<sup>1</sup> Required by the Federal Trade Commission under the Gramm-Leach-Bliley Financial Modernization Act, P.L. 106-102 (Nov. 12, 1999).

# ESTATE PLAN SUMMARY

CHAPTER

# 2

# GENERAL CONSIDERATIONS

The attorney should explain to the client the advantages of planning an estate. Although many attorneys include this explanation in the letter accompanying the drafts of the documents sent to the client for approval, prudent practice dictates sending an outline of the proposed will (*i.e.*, estate plan summary) to the client prior to drafting the will. The outline should be written in clear, concise language that will be easily understood by the client.

After receiving the client's approval with respect to the contents of the outline, the next step is to prepare a draft of the will, which also should be sent to the client for approval. If the will is complex, the attorney may need to meet with the client to discuss the provisions of the draft, and to explain the more technical areas of the will itself.

The last step is to schedule an appointment for the execution of the will. Many studies conducted by bar associations throughout the United States indicate that procrastination looms as the single biggest client complaint. The will, like any piece of legal business or legal advice an attorney dispenses, should be handled in a professional and expedient manner. Deadlines should be set by the attorney, and followed, to insure that a will does not languish in the attorney's office for an undue period of time.

The estate plan summary is an effective tool to keep both the attorney and the client on track. It clearly explains to the client all the documents the attorney will be preparing for the client. It is a 'road map' for both the attorney and the client to follow as the process of document preparation begins. The estate plan summary is an outline the client can refer to, even after executing his or her will and other estate planning documents, to quickly review his or her estate plan. The estate plan summary avoids having to read through the lengthy legal documents themselves.

Given (i) the large federal estate tax exemption in 2019 (\$11,400,000 for each spouse), (ii) the ability of spouses to make the portability election and transfer \$22,800,000 free of federal estate tax to the children, (iii) the current repeal of the New Jersey estate tax (iv) that assets placed in a trust will not receive a step up in basis for income tax purposes on the life beneficiary's death, serious consideration has to be given to whether trusts are appropriate for estate planning purposes.

Although trusts may not be warranted for tax savings purposes, trusts serve other purposes, such as: (i) to protect assets from a subsequent second spouse, (ii) to manage assets for a minor or imprudent child, (iii) to shelter assets in the event of divorce.

While the following estate plan summaries, charts and explanations for outright distribution wills, reciprocal disclaimer trust wills and marital deduction wills focus on the tax savings aspects of these documents, consideration should also be given to the non-tax benefits of trusts.



## Estate Plan Summaries, Charts and Explanations

Given the increase of the federal estate tax exemption to \$11,400,000 per individual (\$22,800,000 for spouses in 2019) and the elimination of the New Jersey estate tax in 2018, the following summaries, charts and explanation of tax savings opportunities for estate plans are of less significance. Nevertheless, because the increase in the federal estate tax exemption will revert back to the 2017 rates in 2026 and the New Jersey estate tax may be reinstated with an exemption higher than the \$675,000 exemption available in 2016 and perhaps equal to the \$2 million exemption in 2017, the following summaries, charts and explanations are presented to illustrate how estate plans can be structured to facilitate tax savings, based on 2016 laws.

To follow are basic estate plan summaries, charts and explanations for outright distribution wills, reciprocal disclaimer trust wills and marital deduction wills.

## OUTRIGHT DISTRIBUTION WILL

As a general rule, an outright distribution will is best used for estates of moderate size or, if the New Jersey estate tax should again become applicable, less than the then-current New Jersey estate tax exemption.

An attorney, however, should be aware that certain particularities, such as a young couple with obvious potential for upward mobility, may not warrant using an outright distribution will, despite the fact that their combined estates are under the then-current exemption.

For example: A couple has an estate of \$600,000, \$400,000 of which is in the husband's name and \$200,000 of which is in the wife's name. At the time of the husband's death, estate settlement costs of eight percent are incurred by his estate, thereby creating an adjusted gross estate of \$368,000. The national average of estate settlement costs is eight percent, and such costs cover five basic areas: 1) executor's fees, which are set by law, 2) attorney's fees, 3) an average amount of debts and expenses due and owing at the time of death, 4) an average amount of expenses incurred as a result of the last illness, and 5) legal fees to defend against any dissident individual who makes a claim against the estate. Any New Jersey inheritance tax, New Jersey estate and federal estate tax is then deducted from the adjusted gross estate. Assuming the husband's entire estate passes to the surviving wife, the state inheritance tax is zero, because the wife is a Class A beneficiary. Similarly, as a result of the 100 percent marital deduction, the federal and New Jersey estate taxes are also zero. Thus, the net estate that passes to the wife is \$368,000.

Upon the wife's subsequent death, the eight percent estate settlement costs are subtracted from the wife's gross estate, which includes her independent estate of \$200,000 and the amount received from her husband's estate (\$368,000). The wife's adjusted gross estate is \$522,560, from which

the state and federal taxes must be subtracted. Assuming the children are the beneficiaries of the estate, no state inheritance tax is due because the children are also Class A beneficiaries. Furthermore, because the estate is less than the current federal exemption and less than the 2016 New Jersey estate tax exemption of \$675,000, it is exempt from both the federal and New Jersey estate tax. Thus, \$522,560 is available to the children upon the death of the surviving spouse.

As described, the estate passed tax free upon the death of each parent, and the only diminution in value was due to estate settlement costs. However, had the estate been greater than the then-current federal or New Jersey estate tax exemption, some estate tax would have been levied at the death of the surviving spouse.

Another situation in which outright distribution wills might be considered, even though the client's assets exceed the exemption amount, is a situation where the client may have significant amounts of insurance. For example, if a couple's gross estate totals \$1,500,000 but \$1,000,000 of this total is attributable to life insurance on the husband's life, it might be wise to suggest outright distribution wills together with an irrevocable insurance trust funded by the \$1,000,000 policy on the husband's life. The irrevocable life insurance trust is discussed later in this book but, in general, the assets in the irrevocable life insurance trust will pass free from New Jersey estate tax, federal estate tax and New Jersey inheritance tax to the ultimate beneficiaries of the trust. In this case, the \$1,000,000 life insurance policy is not part of the decedent's taxable estate when he dies, and, therefore, the couple's remaining \$500,000 estate will also pass tax-free to their children with the use of the outright distribution wills.

### Outright Distribution Will

Total estate = \$600,000

Wife's estate = \$200,000

Husband's estate = \$400,000

\$400,000	GROSS ESTATE (H, at time of death)
\$32,000	ESTATE SETTLEMENT COSTS (8%)
\$368,000	ADJUSTED GROSS ESTATE
-0-	NEW JERSEY INHERITANCE TAX
-0-	NEW JERSEY ESTATE TAX (100% Marital Deduction)
-0-	FEDERAL ESTATE TAX (100% Marital Deduction)
\$368,000	NET ESTATE TO WIFE
\$200,000	WIFE'S ESTATE
\$568,000	WIFE'S GROSS ESTATE (at W's death)
\$45,440	ESTATE SETTLEMENT COSTS (8%)
\$522,560	ADJUSTED GROSS ESTATE
-0-	NEW JERSEY INHERITANCE TAX
-0-	NEW JERSEY ESTATE TAX
-0-	FEDERAL ESTATE TAX
\$522,560	AVAILABLE TO CHILDREN

# DISCLAIMER TRUST WILL

Larger estates often dictate more complex wills (*i.e.*, tax-planned wills). In light of changes in the New Jersey estate tax law and the rising federal estate tax applicable exclusion amount, flexibility in drafting tax-planned wills is key. Prior to the recent change in both the New Jersey estate tax and federal estate tax laws, it was not uncommon to have what were known as ‘formula wills.’ These wills were rigidly drawn, in that they would provide that whatever the federal estate tax exemption was at the time of death would be placed in trust for the benefit of the surviving spouse, with the remainder of the estate passing outright or in trust to the surviving spouse tax free, due to the 100 percent marital deduction. Prior to the 2018 changes in the New Jersey estate tax law, this type of will formula would have caused a New Jersey estate tax liability at the death of the first spouse.

For example, if a husband has an estate valued at \$6,000,000 in 2016, and had a formula will, at his death \$550,000 would have passed to the surviving spouse tax free, in accordance with the 100 percent marital deduction. However, the \$5,450,000 required to be placed in trust (as this is the amount exempt from federal estate tax in 2016), will cause a New Jersey estate tax, as it exceeds the \$675,000 exemption in 2016 from New Jersey estate tax. The New Jersey estate tax on this amount would have been \$444,800.

As an additional example: If a husband has an estate valued at \$6,000,000 in 2017, and had a formula will, at his death \$510,000 would have passed to the surviving spouse tax free, in accordance with the 100 percent marital deduction. However, the \$5,490,000 required to be placed in trust (as this is the amount exempt from federal estate tax in 2017) will cause a New Jersey estate tax, as it exceeds the \$2,000,000 exemption in 2017 from New Jersey estate tax. The New Jersey estate tax on this amount would have been \$312,900.

Should the New Jersey estate tax be reinstated with an exemption amount less than the federal applicable exclusion amount, the above scenarios could be repeated. Such scenarios do not always produce the desired results, for several reasons.

First, the surviving spouse may be unwilling or unable to pay the New Jersey estate tax liability. If the estate of the first spouse to die is largely illiquid and does not consist of readily saleable assets, this could create difficulty in paying the tax, which is due nine months after the date of death.

Second, the married couple’s combined estates may not be subject to federal estate tax liability at the death of the second spouse for a number reasons: 1) the surviving spouse could spend down the estate or gift it during his or her lifetime, bringing the value of the estate below the applicable exclusion amount; 2) the applicable exclusion amount could increase to a level where the surviving spouse’s estate is no longer taxable; or 3) the surviving spouse could take advantage of the current portability provisions.

Therefore, when drafting tax-planned wills for clients or reviewing their existing wills, the practitioner will want to consider flexibility in all aspects of drafting.

**For example:** A couple has a combined estate of \$5,500,000 in 2017. The estate is owned equally by each spouse. An estate of this size would not benefit from outright distribution wills but, rather, by tax-planned disclaimer trust wills. As an aside, if the estate is not divided equally between the spouses, a prudent attorney would recommend that, to the extent it is possible, the client register the assets in such a way as to take full advantage of the exemptions of both the husband and the wife (*i.e.*, 50 percent of the assets in each spouse's individual name or registration of all joint assets as tenants-in-common). To follow is an analysis of the tax consequences of utilizing an outright distribution will versus a disclaimer trust will, highlighting the more desirable results of the latter type of will.

## **Outright Distribution Approach**

Using the above example, the husband's gross estate at his death in 2017 is \$2,750,000. First, the estate settlement costs of eight percent must be deducted, leaving an adjusted gross estate of \$2,530,000. Assuming the estate passes to the wife, the New Jersey inheritance tax is zero because the spouse is a Class A beneficiary, and due to the 100 percent marital deduction there is no federal or New Jersey estate tax.

Thus, the net estate that passes to the wife is \$2,530,000. Since the wife has her own estate of \$2,750,000, her gross estate, upon her death, is \$5,280,000. Once again, at the wife's death, the estate settlement costs are eight percent of her gross estate, which is \$422,400, leaving an adjusted gross estate of \$4,857,600. From the adjusted gross estate, the state inheritance tax is subtracted. Assuming the children (Class A beneficiaries) are the beneficiaries, the state inheritance tax is zero. The New Jersey estate tax is also subtracted from the adjusted gross estate, and is \$248,247. Due to the fact that the size of the estate at the death of the surviving spouse is less than the \$5,490,000 applicable exclusion amount in 2017, there will be no federal estate tax. Note that the New Jersey estate tax liability is reflected as a deduction against the gross estate, and is no longer a credit against the federal estate tax liability. Thus, the estate, which passes to the children under an outright distribution will, is \$4,609,353. A greater tax savings is achieved through the use of a disclaimer trust will, as described on the pages that follow.

## OUTRIGHT DISTRIBUTION WILL IN 2017

(as Compared to Disclaimer Trust Will)

Chart 1

Total Estate	\$5,500,000
Wife's Estate	\$2,750,000
Husband's Estate	\$2,750,000
\$2,750,000	Gross Estate (H, at time of death)
\$220,000	Estate Settlement Costs (8%)
\$2,530,000	Adjusted Gross Estate
0	New Jersey Inheritance Tax
0	New Jersey Estate Tax (100% Marital Deduction)
0	Federal Estate Tax (100% Marital Deduction)
\$2,530,000	Net Estate to Wife
\$2,750,000	Wife's Estate
\$5,280,000	Wife's Gross Estate (at W's death)
\$422,400	Estate Settlement Costs (8%)
\$4,857,600	Adjusted Gross Estate
0	New Jersey Inheritance Tax
\$248,247	New Jersey Estate Tax
0	Federal Estate Tax
\$4,609,353	Available to Children

## Disclaimer Trust Will Approach

Continuing with the example of a \$5,500,000 estate divided equally between the husband and wife, at the time of the husband's death in 2017, he has a gross estate of \$2,750,000. The estate settlement costs of eight percent are subtracted from his gross estate, leaving an adjusted gross estate of \$2,530,000.

The provisions of the disclaimer trust will provide that the testator's entire estate is distributed to the surviving spouse. The wife, however, has the power to disclaim, or not accept, any or all of the assets in the estate, with any disclaimed assets going into a disclaimer trust, as described in the will. The wife receives the income from this trust, as well as any principal she may need for emergency expenses. In this example, \$2,000,000 is disclaimed by the wife (*i.e.*, an amount that is exempt from both New Jersey and federal estate tax in 2017), and thus is distributed into the disclaimer trust. The wife, of course, has her own estate of \$2,750,000, which is one reason she may feel financially comfortable to disclaim this amount.

Under this type of will, the surviving spouse has the option of disclaiming all or a portion of the estate, or taking the entire estate. Upon the wife's subsequent death, any assets in the trust would not be taxed federally or by the state of New Jersey. Rather, they would pass tax free to the children upon the wife's death. A surviving spouse may wish to disclaim up to the then-current exemption from New Jersey estate tax to take advantage of the tax savings. While there is no limit on the amount of assets that can be disclaimed, only the New Jersey estate tax exemption amount at the time of the death of the first spouse will pass completely tax free at the death of the first spouse.

**DISCLAIMER TRUST WILL IN 2017**  
(as Compared to Outright Distribution Will)

Chart 2

Total Estate	\$5,500,000
Wife's Estate	\$2,750,000
Husband's Estate	\$2,750,000
\$2,750,000	Gross Estate (H, at time of death)
\$220,000	Estate Settlement Costs (8%)
\$2,530,000	Adjusted Gross Estate
\$2,000,000	Disclaimer Trust for Wife
0	New Jersey Inheritance Tax
0	New Jersey Estate Tax (100% Marital Deduction)
0	Federal Estate Tax (100% Marital Deduction)
\$530,000	Net Estate to Wife
\$2,750,000	Wife's Estate
\$3,280,000	Wife's Gross Estate (at W's death)
\$262,800	Estate Settlement Costs (8%)
\$3,017,600	Adjusted Gross Estate
0	New Jersey Inheritance Tax
\$77,159	New Jersey Estate Tax
0	Federal Estate Tax
\$2,940,441	Net Estate Available to Children
\$2,000,000	Disclaimer Trust Available to Children
\$4,940,441	Total Available to Children



At the time of the wife's subsequent death (assuming this also occurred in 2017, or in a year when the 2017 tax exemption still applies), her gross estate includes her independent estate of \$2,750,000, together with what she received from her deceased spouse's estate (\$530,000), which gives her a total gross estate of \$3,280,000. This amount is reduced by the estate settlement costs, leaving an adjusted gross estate of \$3,017,600. State inheritance taxes are zero because children are lineal heirs, or Class A beneficiaries. Federal estate taxes are also zero because of the \$5,490,000 applicable exclusion amount for 2017, and the New Jersey estate tax is \$77,159, as the taxable estate is more than the \$2,000,000 exemption for 2017. Thus, upon the surviving spouse's subsequent death, the disclaimer trust's assets equaling \$2,000,000 pass to the children free of all taxes, and the wife's net estate of \$2,940,441 (\$3,017,600 less \$77,159) passes to the children, for a total of \$4,940,441 passing to the children. Comparing this result to the result achieved under an outright distribution will, the reciprocal disclaimer trust will result in a tax savings of \$171,088.

A disclaimer requires the filing of a written document within nine months of the date of death with the surrogate, the taxing authority and the county clerk, if real estate is being disclaimed.

The advantages and disadvantages of a flexible disclaimer trust will be as follows: The benefits of the disclaimer trust will include the fact that the surviving spouse has nine months from the date of death to decide what, if anything, he or she wants to disclaim from the deceased spouse's estate. And, most importantly, the decision to establish this tax-saving disclaimer trust is not made at the time the will is signed, but at the death of the first spouse, when the decision can be made based upon the relevant factors at the time.

Some of the factors that should be considered when making these post-mortem decisions include: 1) what is the tax law at the time of the death of the first spouse; 2) does the federal applicable exclusion exceed the value of the couple's combined estates; 3) has the couple's estate increased or decreased in value since the tax-planned wills were drafted; 4) what are the surviving spouse's personal circumstances at the time of the first spouse's death; 5) are there significant medical expenses, college tuitions, other debts due and owing that will significantly reduce the size of the estate; 6) does the estate have the potential to increase in value or will the survivor be using the principal to live on; 7) what are the surviving spouse's financial circumstances and future plans; and 8) does the surviving spouse plan to remain a New Jersey resident. All these considerations and more should be reviewed with the client when deciding whether or not to disclaim the assets.

While flexibility can be a good option, the client should be made aware that the decision to disclaim must be made within nine months of the date of death of the first spouse for federal estate tax purposes, and no control can be exercised over the assets the surviving spouse intends to disclaim in order for the disclaimer to be valid. For example, the surviving spouse could not collect insurance proceeds and deposit them in his or her personal account, or transfer

ownership of an account in the deceased spouse's individual name into his or her account and then later elect to disclaim these assets. At that point, it would be too late, as he or she has already exercised control over the assets. During the estate planning process, it is important to inform the client that within three to four weeks of the death of the first spouse, the survivor should meet with an attorney to review his or her options prior to taking control of any of the decedent's assets. Therein lies the potential downside of the disclaimer trust will in some cases.

Due to the fact that the establishment of the disclaimer trust under the will of the first spouse to die requires a proactive decision on the part of the surviving spouse and the establishment of the trust is not automatic, inherently problems can arise. For example, at the death of the first spouse, the surviving spouse may not be emotionally capable of making the decision to disclaim or not disclaim. And, in some cases, the decision may be made too late (*i.e.*, after the nine-month time limit), and, therefore, the disclaimer trust cannot be established. Or, in some circumstances, the surviving spouse does not seek the timely advice of counsel and collects all of the decedent's assets before being advised of his or her option to disclaim.

In addition, the decision to fund or not to fund the disclaimer trust and how much to disclaim is not an easy one given today's law. Due to the current elimination of the New Jersey estate tax and the current large federal applicable exclusion amount, the surviving spouse may have to decide whether to fully fund the disclaimer trust at all.

Generally, there are several reasons why funding the disclaimer trust continues to be a good idea, despite the current portability provisions, some of which include the following: 1) the unused federal estate tax exemption from a predeceased spouse will not be available/portable if the surviving spouse remarries and survives his or her next spouse; 2) the appreciation that occurs on the inherited (portable) assets is not excluded from the surviving spouse's estate, but the appreciation on the assets in the disclaimer trust are excluded, and pass New Jersey and federal estate tax free to the ultimate beneficiaries of the trust. However, assets in the disclaimer trust will not receive a step-up basis for income tax purposes on the surviving spouse's death.

In situations where the client is concerned that the surviving spouse may not be able to make the appropriate decision, there are wills that can be drafted that allow a certain amount of flexibility and can also insure some tax savings. These wills are referred to herein generally as marital deduction wills, and are discussed later in the book.

The following is a sample letter and estate plan summary that would be sent to the client explaining the disclaimer trust wills and other standard estate planning documents (*i.e.*, power of attorney, healthcare proxy directive and living will).

**SAMPLE LETTER AND ESTATE PLAN SUMMARY FOR  
DISCLAIMER TRUST WILLS**

Mr. and Mrs. R. Ryan  
1 Rudy Avenue  
Belle Mead, New Jersey

June 30, 2018

Re: RYAN ESTATE PLAN

Dear Mr. and Mrs. Ryan

As we discussed, I am enclosing an Estate Plan Summary together with the tax computations covering estimated Federal estate taxes under various plans of distribution.

After you have had an opportunity to review the enclosures, may I suggest that you come to my office on Monday, July 15, 2018, at 9:00 a.m., to discuss any questions you may have.

Please call to confirm this appointment.

Very truly yours,

---

Lisa M. Butler

## ESTATE PLAN SUMMARY UTILIZING RECIPROCAL DISCLAIMER TRUST WILLS

May 2018  
Ryan Estate Plan

The following estate program is based on financial information furnished to me at our conference. Your stated objectives and the object of saving as much as possible in federal estate tax have been incorporated into this program. The approximate value of Mr. Ryan's estate is \$2,750,000 and that of Mrs. Ryan is \$2,750,000 from a tax standpoint.

This estate plan summary sets forth various issues that should be considered in order to fulfill your estate plan objectives. This summary is divided into subsections for your convenience.

- 1) Charts/Explanations—demonstrates the advantage of Reciprocal Disclaimer Trust Wills
- 2) Disclaimer Trust Will—explains the provisions of the Will
- 3) Distribution at Death of Survivor—explains the distribution pattern that will occur upon the death of both you and your wife
- 4) Spouse's Will—explains the benefit of both you and your wife having reciprocal or identical Wills
- 5) Jointly Owned Property—proper registration of assets is essential to an effective estate plan
- 6) Living Wills—explains the option of executing a Living Will
- 7) Power of Attorney—details the importance of executing Powers of Attorney
- 8) Letter of Instruction—recommends that you draw up a Letter of Instruction
- 9) Fiduciaries—requests a list of your chosen fiduciaries
- 10) Summary—briefly summarizes what our office will be doing for you and what you need to do to complete your estate plan

## Charts and Explanations

For purpose of illustration, several computations have been made as follows:

### CHART 1: Outright Distribution Approach

Chart 1 demonstrates the tax consequences of an unplanned outright distribution will by both you and Mrs. Ryan. This program assumes that the \$5,500,000 estate is equally divided between the two of you (\$2,750,000 properly registered in your name and \$2,750,000 in Mrs. Ryan's name). Under this program, the total estate available to your ultimate beneficiaries (*i.e.*, your children) at the death of the survivor of you would be \$4,609,353.

### CHART 2: Disclaimer Trust Will

Chart 2 demonstrates the tax consequences of reciprocal disclaimer trust wills, assuming that the assets are equally divided between the spouses and that you predecease Mrs. Ryan. Under these circumstances the tax savings to the ultimate beneficiaries is substantial because, at the death of the survivor, your beneficiaries would receive a total of \$4,940,441. This amount represents a savings of \$331,088 over what the children would receive (\$4,609,353) by using the outright distribution approach described above.

### Disclaimer Trust Will

Chart 2 demonstrates the tax savings attained through the preparation of a Disclaimer Trust Will. Under this plan your Will would first provide for the disposition of tangible personal property. The personal property would be distributed to your spouse, if she survives you. In the event that she does not survive you, your personal property could be distributed in accordance with a memorandum found with your Will and, if no memo is found, then the personal property would be distributed to your children equally. The memo is very beneficial, as it may be modified or destroyed at any time without having to draft a new Will. The memorandum should be written in your own hand and kept with your Last Will and Testament. It is incorporated into your Will by reference.

Thereafter, the remaining estate is distributed to your wife. However, she would have the power to disclaim, or not accept, all of the assets or a portion of the assets she received from your estate. With respect to any assets your wife disclaims, these assets would go into a trust described under your Will (the Disclaimer Trust). Your wife would receive the income from this trust, plus as much of the principal as was necessary for health, maintenance and support. Upon your wife's subsequent death, any assets remaining in this trust would not be taxable federally in her estate or by the State of New Jersey; Chart 2 assumes that your wife disclaimed an amount equal to the New Jersey estate tax exemption available in 2017 (\$2,000,000). Note, the decision of how much to disclaim and whether or not to disclaim assets at all must be made within nine (9) months of the date of death.

It is important to note that Mrs. Ryan has the option of disclaiming assets into this trust and, therefore, the trust may or may not be funded. The assets in the trust, if any, will pass Federal and New Jersey estate tax free to your children.

## **Distribution at the Death of the Survivor**

Distribution to your children will occur at the death of the survivor of you. The payment could be distributed outright or in stages (e.g., one-third at age 21, one-half of the balance at age 25, and the balance at age 30, or any other specific ages you may choose). In addition, you may want to consider giving the Trustee of the Children's Trust a power of appointment, which means that the Trustee could change the amount of distribution and the age of distribution. Absent the Trustee exercising such a power, the trust would be distributed as indicated in your Will.

## **Spouse's Will**

With respect to Mrs. Ryan's estate, her Will would be a mirror image of your Will. She would leave her entire estate outright to you, with a provision for you to disclaim all or a portion of her estate and place those assets in a Disclaimer Trust. You would receive the income from the trust and principal at the trustee's discretion for your health, maintenance and support and, at your subsequent death, the principal of the trust would escape taxation in your estate and be distributed to your children as outlined above.

## **Jointly Owned Property**

In order for the Disclaimer Trusts to operate more effectively, it is recommended to change all assets that are registered as joint tenants with the right of survivorship (JTWROS) to tenants-in-common. This would apply to your real estate as well as all bank and brokerage accounts. There would be no adverse tax consequences to these re-registrations. The reason for this suggestion is that under the present joint ownership, at the first spouse's death the funds go directly to the surviving spouse, completely outside the control of the Will, and would cause greater tax at the surviving spouse's subsequent death.

## **Living Will**

New Jersey has made an important decision affecting the quality of life for its citizens by enacting legislation that gives adults control over their medical treatment through Living Wills. The New Jersey Advance Directive for Health Care Act provides individuals with a choice, allowing them to specify whether they wish to have or refuse certain medical treatments and life-sustaining measures. It also gives competent adults (18 and older) the right to appoint a trusted friend or relative to make medical decisions for them, if they lose the ability to decide for themselves. Such an individual is known as a Healthcare Representative. In addition, you may change or revoke your Living Will at any time.

The legislation sets out the rights and duties of patients, families and caregivers, freeing them from some of the legal, emotional and financial uncertainties of dealing with terminal illness, mental incompetence and medical conditions resulting in permanent unconsciousness. New Jersey is the 48th state to give legal recognition to Living Wills.

Please let me know at our next meeting if you are interested in having Living Wills prepared.

## **Powers of Attorney**

### **A. Financial**

As an emergency measure, I would also suggest preparation of general Powers of Attorney. These documents enable you to appoint someone to act on your behalf if you are away on a trip or become disabled. The person appointed, your attorney-in-fact, can be authorized to act at any time or restricted to such time as you become disabled. These documents can avoid the necessity of possible guardianship proceedings or simply save time in the event you are unable to act.

### **B. Medical**

Medical Powers of Attorney (also known as Health Care Proxy Directives) permit you to designate someone to act on your behalf when making everyday decisions regarding medical treatment. This is equally important as both the Living Will and the Financial Power of Attorney.

## **Letter of Instruction**

In addition to your Will, another helpful but less formal document that can be drafted by you, or may be drafted by us on your behalf, is a Letter of Instruction. The Letter of Instruction can provide the Executor of your estate and the beneficiaries with some additional and more personal information regarding your estate. One of the most important—and easily overlooked—estate planning steps is to document the location of important personal and financial records and to identify your advisors. By organizing this information, you will simplify the duties of your family or personal representative at a time when he or she may be under severe emotional and physical stress. Keep a copy in a safe location at your home or office. Let a family member or advisor know where this letter is located. Update the letter at least yearly. Here is what should be documented:

1. All bank accounts, their locations, numbers and maturity dates.
2. Location of safe deposit boxes and keys, home safes, private vaults, and combinations that may be needed.
3. Location of your Will (and any codicils) and any trust agreements.
4. Location of your spouse's Will (and codicils and any trust agreements).

5. Location of all your insurance policies—type and policy numbers.
6. Location of stock certificates and bonds.
7. Location of pension, IRA, and Keogh documents.
8. Location of real estate records (including deeds, mortgages, title insurance, closing statements and leases).
9. Location of automobile titles.
10. Amount due on loans and names of lenders.
11. Location of your income tax returns.
12. Your accountant's name, address and phone number.
13. Your attorney's name, address and phone number.
14. Your insurance agent's name, address and phone number.
15. Burial instructions.

I enclose a sample Letter of Instruction.



## Fiduciaries

Please provide the names of the individuals/institutions you wish to use in the following capacities:

### Mr. Ryan's Will

Executor \_\_\_\_\_

Contingent Executor \_\_\_\_\_

#### Disclaimer Trust

Trustee \_\_\_\_\_

Contingent Trustee \_\_\_\_\_

#### Children's Trust

Trustee \_\_\_\_\_

Contingent Trustee \_\_\_\_\_

Guardian \_\_\_\_\_

Contingent Guardian \_\_\_\_\_

### Mrs. Ryan's Will

Executor \_\_\_\_\_

Contingent Executor \_\_\_\_\_

#### Disclaimer Trust

Trustee \_\_\_\_\_

Contingent Trustee \_\_\_\_\_

#### Children's Trust

Trustee \_\_\_\_\_

Contingent Trustee \_\_\_\_\_

Guardian \_\_\_\_\_

Contingent Guardian \_\_\_\_\_

**Mr. Ryan's Power of Attorney**

Attorney-in-Fact \_\_\_\_\_

Contingent Attorney-in-Fact \_\_\_\_\_

**Mrs. Ryan's Power of Attorney**

Attorney-in-Fact \_\_\_\_\_

Contingent Attorney-in-Fact \_\_\_\_\_

**Mr. Ryan's Living Will/Healthcare Proxy Directive**

Healthcare Representative \_\_\_\_\_

Contingent Healthcare Representative \_\_\_\_\_

**Mrs. Ryan's Living Will/Healthcare Proxy Directive**

Healthcare Representative \_\_\_\_\_

Contingent Healthcare Representative \_\_\_\_\_

**SUMMARY**

In summary, the following steps will be taken by our office to complete your estate:

1. Prepare Reciprocal Disclaimer Trust Wills for both Mr. and Mrs. Ryan.
2. Prepare Powers of Attorney for both Mr. and Mrs. Ryan.
3. Prepare Living Wills for Mr. and Mrs. Ryan.
4. Prepare Healthcare Proxy Directives for Mr. and Mrs. Ryan.
5. Change deed to your present residence from tenants-by-the-entirety (or joint tenancy with right of survivorship) to tenants-in-common.

The following steps should be taken by you and your wife to complete your estate:

1. Re-register bank and brokerage accounts to tenants-in-common.
2. Provide my office with the deed to your residence so that I can re-register the deed to tenants-in-common.
3. Provide me with the proper names of each of your fiduciaries.

Please review this estate plan summary and we can discuss it at our next meeting.

## MARITAL DEDUCTION WILL

A marital deduction will is a little less flexible than a disclaimer trust will, but assures a tax-savings trust will be established at the death of the first spouse.

For years prior to 2018 (*i.e.*, prior to the repeal of the New Jersey estate tax), the will under this scenario would have been used to provide that upon the death of the first spouse an amount equal to the New Jersey estate tax exemption (\$2,000,000 in 2017 and \$675,000 for prior years back to 2002) be used to fund a non-marital/bypass trust. This amount will be sheltered from both federal estate and New Jersey estate tax liability. There is no disadvantage from a tax standpoint of having the ‘bypass’ trust automatically funded at the death of the first spouse. Contrary to the disclaimer trust will, this type of will reduces any concern the testator may have about the surviving spouse not making the right decision or timely decision in funding the bypass trust.

The remaining estate could then pass outright or via a QTIP trust (*i.e.*, a qualified terminable interest property trust) to the surviving spouse. In either event, these assets pass tax free to the surviving spouse based on the 100 percent marital deduction discussed earlier in this book. To provide additional flexibility, the surviving spouse, or the executor of the estate with regard to the QTIP trust, can elect to have a portion of the remaining estate (not transferred to the non-marital/bypass trust) disclaimed. Any assets that are disclaimed will ultimately be added to the existing non-marital/bypass trust. This technique provides flexibility and at the same time guarantees the testator that a minimum equal to the New Jersey estate tax exemption (\$2,000,000 or \$675,000) will pass tax free to his or her heirs at the death of the survivor.

Generally, this type of will might be considered in connection with a larger estate. Below is an analysis of the tax consequences of utilizing an outright distribution will versus a marital deduction will, highlighting the more desirable results of the latter type of will. This illustration also uses the federal applicable exclusion amount for 2018.

### Outright Distribution Approach

Assume that a couple in 2018 has an estate of \$22,800,000. Assume further that the estate’s assets are properly registered and \$11,400,000 is in the name of the husband and \$11,400,000 is in the name of the wife. Upon the wife’s death, assuming she passes away first, the estate settlement costs of \$220,000 are subtracted from the gross estate of \$11,400,000. The resulting adjusted gross estate is \$11,180,000. Thereafter, state and federal taxes are subtracted. New Jersey state inheritance taxes, as in the previous approaches, are zero, as the ultimate beneficiaries of the estate are the children. Similarly, the New Jersey estate taxes are also zero, because there is no New Jersey estate tax for decedents dying in 2018. There are also no federal estate taxes due to the 100 percent marital deduction. Thus, the net estate passing to the surviving husband is \$11,200,000.

Adding the net estate to the husband’s independent estate of \$11,400,000 gives the husband a gross estate of \$22,580,000. Upon the husband’s subsequent death, the estate settlement costs of \$220,000 are subtracted from the husband’s gross estate, leaving an adjusted gross estate of \$22,360,000. Assuming the husband’s estate then passes to the children, state inheritance taxes on the adjusted gross estate are, again, zero. In the event that portability provisions are relied on and a timely election has been made, there will be no federal estate tax. There would also be no New Jersey estate tax liability. However, if a timely portability election is not made at the death of the first spouse, the federal estate tax liability would be \$4,472,000 ( $\$11,180,000 \times 40$  percent). After the federal estate taxes are subtracted from the adjusted gross estate of \$22,360,000, \$17,888,000 remains available for the children. If portability had been elected, the full \$22,360,000 would pass to the children.

**Outright Distribution Will in 2018**  
(as Compared to Marital Deduction Will)

Chart 1

Total Estate	\$22,800,000
Wife’s Estate	\$11,400,000
Husband’s Estate	\$11,400,000
\$11,400,000	Gross Estate (W at time of death)
\$220,000	Estate Settlement Costs
\$11,180,000	Adjusted Gross Estate
0	New Jersey Inheritance Tax
0	New Jersey Estate Tax (100% Marital Deduction)
0	Federal Estate Tax (100% Marital Deduction)
\$11,180,000	Net Estate to Husband
\$11,400,000	Husband’s Estate
\$22,580,000	Husband’s Gross Estate (at H’s death)
\$220,000	Estate Settlement Costs
\$22,360,000	Adjusted Gross Estate
0	New Jersey Inheritance Tax
0	New Jersey Estate Tax
\$4,472,000	Federal Estate Tax w/o portability
0	Federal Estate Tax with portability
\$17,888,000	Available To Children w/o portability
\$22,360,000	Available To Children with portability

## Marital Deduction Will Approach

Using the same numbers as in the outright distribution example, \$22,800,000 combined estate, and \$11,400,000 in each of the wife's and husband's respective names and the same estate settlement costs of \$220,000 in each estate, the marital deduction will approach will achieve the same estate tax results.

Each will provides that assets valued at \$11,180,000 (the current federal estate tax applicable exemption for 2018) are to be placed in a non-marital/bypass trust. The will also provides that the surviving spouse has the option to disclaim any of the remaining assets passing to him outright under the will. The will further states that any assets so disclaimed shall be added to and become part of the non-marital/bypass trust.

The non-marital/bypass trust usually designates the children as the ultimate beneficiaries, after the death of the surviving spouse. However, during the surviving spouse's lifetime, he receives the income from this trust plus as much of the principal that, in the trustee's discretion, is needed to keep him living in the manner to which he is accustomed.

Under this example, there are no assets distributed to the husband via the marital deduction. At the subsequent death of the husband, his gross estate is comprised of his independent estate of \$11,400,000. After subtracting the estate settlement costs of \$220,000, the adjusted gross estate is \$11,180,000, which is not subject to the New Jersey inheritance tax, the New Jersey estate tax and the federal estate tax. The result is that the net estate of \$11,180,000 passes to the children, together with the non-marital/bypass trust of \$11,180,000, which also passes tax free to the children. Thus, the total amount passing to the children is \$22,360,000.

This illustration assumes that portability is not taken into account, because the wife's exemption of \$11,180,000 would be used in creating the non-marital/bypass trust.

If, for any reason, federal or state estate or inheritance taxes were payable on the wife's death, such taxes should be paid from the non-marital/bypass trust. The reason the will directs it be paid from the non-marital/bypass trust and not from the marital share is that payment of the tax from the marital share could create an additional tax liability, since those moneys used to pay the tax liability will not qualify for the 100 percent marital deduction.

Although the results of using the outright distribution approach and the marital deduction approach are the same as far as the federal estate tax is concerned, there would be a difference with regard to the generation-skipping transfer (GST) tax, particularly if the assets on the death of both spouses do not pass to the children outright, but are held in trust for them, either for distribution at certain ages or the lifetime of a child, and the child dies before the assets in his or her trust are fully distributed. Upon the death of the child, the assets in the trust are potentially subject to the GST tax.

Each spouse in 2018 has an \$11,180,000 GST exemption that can be allocated by the spouse to transfers that may be subject to the GST tax, such as a transfer in trust for the benefit of the child. The GST exemption, however, is not subject to the portability election as is the estate tax exemption.

Using the outright distribution approach, upon the death of the husband, the \$22,360,000 of assets that pass to the trusts for the children would not be subject to the federal estate tax, nor would they be subject to the GST tax upon the husband's death. The executor of the husband's estate would be able to allocate the husband's \$11,180,000 GST exemption to trusts, but that would leave \$11,180,000 of assets without any GST exemption. Upon the deaths of the children, assuming the full \$22,360,000 of assets are still in trusts, \$11,180,000 of assets would be subject to the GST tax at the rate of 40 percent.

Using the marital deduction approach, upon the wife's death only \$11,180,000 of assets are placed in trust, first for the husband and then for the children. The executor of the wife's estate could allocate the wife's GST exemption of \$11,180,000 to the trust, thereby making it exempt from the GST tax both on the death of the husband and on the subsequent deaths of the children.

Upon the death of the husband, his \$11,180,000 of assets would also be placed in the trust for the children and his executor could allocate his \$11,180,000 GST exemption to his trust, thereby making that trust also exempt from the GST tax when the children die.

Assuming a husband and wife have a combined estate of \$22,400,000, the risks and benefits of fully funding the non-marital/bypass trust should be discussed with each client based on their particular facts and circumstances.

There are tax reasons to fund the non-marital/bypass trust. For example, the appreciation on the trust assets is not included in the estate of the surviving spouse and will pass free of federal estate taxes and New Jersey inheritance and estate taxes. In addition, portability is not applicable to generation-skipping tax, and this means that some or all of the first spouse to die's GST exemption may be wasted unless the trust is funded. The surviving spouse may not use the deceased spouse's unused GST exemption.

There are also non-tax reasons to fund the non-marital/bypass trust, including protecting the assets from the potential second marriage of the surviving spouse and creditor protection as the trust assets are not 100 percent available to the surviving spouse and could protect against circumstances including divorce and other liabilities.

## **QTIP Trusts**

Another useful tool that may be incorporated into the marital deduction will is the QTIP (qualified terminable interest property) trust. This type of trust is used in several situations. It may be used in a situation where the husband and wife both have children from previous marriages. The trust

insures that each spouse's children will receive part of their parents' estate, regardless of which spouse dies first. A QTIP trust is achieved by placing the marital share in trust.

Under the federal estate tax law, a QTIP trust will not be taxed in the estate of the first spouse to die but will be included in the taxable estate of the surviving spouse. Note that the executor, similar to the surviving spouse in the situation above, can be given the flexibility to make a partial QTIP election. This is an election to have the trust assets qualify for the marital deduction pursuant to the terms of the will. Any assets for which no election is made would be used to fund the non-marital/bypass trust. This has the same effect as the surviving spouse's disclaimer. The technique was based on a Fifth Circuit Court of Appeals case, *Clayton v. Commissioner*, 976 F. 2d 1486 (5th Cir 1992), *rev'g* 97 T.C. 327 (1991).

Under this technique, at the death of the first spouse the non-marital/bypass trust is initially funded with the then-current federal estate tax exemption (\$11,180,000). Any excess assets will fund the QTIP trust. The decision whether to qualify this excess exemption for QTIP treatment, and the amount to qualify, is made by the executor of the estate of the first spouse to die. It is recommended that the executor not be the surviving spouse, so as to avoid some of the same concerns expressed with regard to the surviving spouse's ability to disclaim assets into the disclaimer trust. The election to qualify a portion of the excess exemption amount for QTIP treatment is made on the federal estate tax return on Schedule M. Unlike a disclaimer, there are no other documents to be prepared or filed other than the federal estate tax return that the executor would be required to file in any event if the estate is over the exemption amount.

The QTIP election can be made up to 15 months after the death of the first spouse. This would require the filing of an automatic six-month extension of the time to file the federal estate tax return, which is normally due within nine months of the date of death. No extension is permitted for a disclaimer for federal estate tax purposes, and it must be filed within nine months of the date of death or the option to disclaim is terminated.

Similar to the non-marital/bypass trust, under the QTIP trust the surviving spouse could receive all of the income and as much of the principal as the trustee believes is needed to keep the surviving spouse living in the style to which he or she is accustomed. Upon the death of the surviving spouse, the entire trust could be paid to the children of the testator, and not to the children of the income beneficiary (*i.e.*, a second wife).

Another situation where a QTIP trust may be warranted is when the surviving spouse is not capable of managing the assets in the decedent's estate. The testator, therefore, provides that the portion of his or her estate that qualifies for the marital deduction be held in trust and managed by the trustee. Upon the death of the surviving spouse, the remainder of the trust, if anything, is distributed to their children.

Note that in both situations, no one other than the surviving spouse may receive any income or principal during the life of the surviving spouse pursuant to the terms of the QTIP trust. This is necessary to insure the QTIP trust qualifies for the marital deduction.

**Marital Deduction Will in 2018**  
(as Compared to Outright Distribution Will)

Chart 2

Total Estate	\$22,800,000
Wife's Estate	\$11,400,000
Husband's Estate	\$11,400,000
\$11,400,000	Gross Estate (W at time of death)
\$220,000	Estate Settlement Costs
\$11,180,000	Adjusted Gross Estate
0	New Jersey Inheritance Tax
0	New Jersey Estate Tax (100% Marital Deduction)
0	Federal Estate Tax (100% Marital Deduction)
\$11,180,000	Credit Shelter/Bypass Trust for Husband
0	Net Estate to Husband
\$11,400,000	Husband's Estate
\$220,000	Estate Settlement Costs
\$11,180,000	Adjusted Gross Estate
0	New Jersey Inheritance Tax
0	New Jersey Estate Tax
0	Federal Estate Tax (w/o portability)
\$11,180,000	Net Estate Available To Children
\$11,180,000	Credit Shelter/Bypass Trust Available To Children
\$22,360,000	Total Available To Children

The following is a sample letter and estate plan summary that would be sent to a client explaining the marital deduction will and other standard estate planning documents (*i.e.*, power of attorney, healthcare proxy directive and living will).



**SAMPLE LETTER AND ESTATE PLAN SUMMARY FOR RECIPROCAL  
MARITAL DEDUCTION WILL**

June 30, 2018

Mr. and Mrs. J. Smith  
2 Olive Drive  
Princeton, New Jersey

Re: Smith Estate Plan

Dear Mr. and Mrs. Smith:

Enclosed is an estate plan summary, together with tax computations covering the estimated Federal estate taxes under various plans of distribution. This plan takes into consideration the value of your combined estates (*i.e.*, approximately \$22,400,000) and your objective of saving as much in Federal estate taxes as possible.

After you have had the opportunity to review the enclosures, may I suggest that you come to my office on Monday, July 15, 2018, at 9:00 a.m., to discuss any questions you may have.

Please call to confirm this appointment.

Very truly yours,

---

Lisa M. Butler

## ESTATE PLAN SUMMARY UTILIZING RECIPROCAL MARITAL DEDUCTION WILLS

June 2018  
Smith Estate Plan

The following estate program is based on financial information furnished to me at our conference, your stated objectives and the object of saving as much as possible in Federal estate tax have been incorporated into this program. The approximate value of Mr. Smith's estate is \$11,200,000 and that of Mrs. Smith is \$11,200,000 from a tax standpoint.

This estate plan summary sets forth various issues that should be considered in order to fulfill your estate planning objectives. This summary is divided into subsections for your convenience.

- 1) Charts/Explanations—demonstrates the advantage of Reciprocal Marital Deduction Wills
- 2) Reciprocal Marital Deduction Will—explains the pertinent provisions of the Will
- 3) Distribution at Death of Survivor—explains the distribution pattern that occurs upon the death of both you and your husband
- 4) Spouse's Will—explains the benefits of both you and your husband having reciprocal or identical Wills
- 5) Jointly Owned Property—proper registration of assets is essential to an effective estate plan
- 6) Living Wills—explains the option of executing a Living Will
- 7) Power of Attorney—details the importance of executing Powers of Attorney
- 8) Letter of Instruction—recommends that you draw up a Letter of Instruction
- 9) Fiduciaries—requests a list of your chosen fiduciaries
- 10) Summary—briefly summarizes what our office will be doing for you and what you need to do to complete your estate plan

## CHARTS AND EXPLANATIONS

For purposes of illustration, several computations have been made as follows:

### **Chart 1: Outright Distribution Approach**

Chart 1 demonstrates the tax consequences of an unplanned Outright Distribution Will by both you and your husband. Under this program, the total estate available to your ultimate beneficiaries (i.e., your children) at the death of the survivor of you would be \$17,888,000, not taking into account portability, and \$22,360,000 taking into account portability.

### **Chart 2: Marital Deduction Will**

Chart 2 demonstrates the tax consequences of a Marital Deduction Will. This computation presumes that your estate is valued at \$11,400,000, while your husband's estate is valued at \$11,400,000. Furthermore, the chart presumes that you predecease your husband. Under these circumstances, the tax savings to your ultimate beneficiaries is the same as under the Outright Distribution Will assuming the portability election is made by the executor of your estate with the Outright Distribution Will. The advantage of the Marital Deduction Will is with regard to the generation-skipping transfer tax, as we discussed.

### **Marital Deduction Will**

Obviously, the latter approach is the most beneficial from a tax savings standpoint. Under this program your Will would first provide for the disposition of personal property. Thereafter, the remaining estate would be divided into two parts, Part A, the so-called Marital Deduction, and Part B, the Non-Marital Trust, or Bypass Trust, an amount equal to the Federal applicable exclusion amount, currently \$11,180,000, plus any additional assets which are disclaimed or not selected for QTIP treatment). Part A could pass outright or in trust to Mr. Smith completely Federal estate tax free under the Marital Deduction. Mr. Smith could also be given the power to disclaim any portion of the assets passing to him under the Will and, if disclaimed, said assets would be added to and become part of the Non-Marital/Bypass Trust and administered in accordance with the trust provisions.

Under your Will, Part A, the Marital Deduction can be distributed outright to your husband upon your death or it can be distributed to him via a trust known as a QTIP (Qualified Terminable Interest Property) Trust. Under the trust, your husband will receive all of the income plus as much of the principal as the Trustee of the trust believes your husband needs to keep him in the style to which he has been accustomed. Further, if it was needed, the entire trust principal could be used for his benefit. Upon Mr. Smith's subsequent death, the entire trust could be paid one-half to Mr. Smith's daughter from his previous marriage and one-half to your children, or any other plan of distribution of your choice.

Part B, the Bypass Trust, would be placed in trust and would not be taxed if it were funded with \$11,180,000 or less. However, in your circumstances I am assuming your Executor made

a partial QTIP election for certain assets and, therefore, the remaining additional assets will be used to fund the Non-Marital/Bypass Trust. As you are aware, this trust can be funded up to the Federal Applicable Exclusion Amount without incurring Federal estate tax liability.

Mr. Smith would receive all of the income from the Non-Marital/Bypass trust, plus as much of the principal as was necessary to keep him in the style to which he is accustomed to living and for any emergency expenses. This trust would be funded with the income-producing assets in your estate represented by your investments and other assets. The invasionary power over the principal of this trust for Mr. Smith may only be exercised by the corporate or non-beneficiary trustee to insure that the trust would not be taxed at Mr. Smith's subsequent death. In addition, Mr. Smith may invade the principal of this trust for any reason to the extent of \$5,000 or 5% of the trust, whichever amount is greater, under a special provision of the Federal Estate Tax Law on an annual non-cumulative basis. At Mr. Smith's death, whatever amount is left in the trust would pass to your children free of any Federal estate tax. It is important to recognize that this trust may be used totally for Mr. Smith's benefit, and your children and Mr. Smith's child from his previous marriage are merely entitled to what is left in the trust, if anything.

### **Distribution at Death of Survivor**

Distribution of Part A and B (*i.e.*, the QTIP Trust and Non-Marital/Bypass Trust) to your children and Mr. Smith's children will occur at the death of the survivor of you. Fifty percent (50%) of your estate could be distributed to your children and fifty percent (50%) to Mr. Smith's children. The payment could be made to them in stages (*i.e.*, one-third at the death of the survivor of you, one-half of the balance 5 years after the first distribution, and the balance 10 years after the first distribution), or outright at the death of the survivor of you or in any other manner you may choose.

### **Spouse's Will**

With respect to Mr. Smith's estate, his Will could be a mirror image of your Will. We could prepare a QTIP Marital Deduction Will for Mr. Smith that would provide for a Non-Marital/Bypass Trust for your benefit and the remainder of his estate would be distributed to you by means of the Qualified Terminable Interest Property (QTIP) Trust.

### **Jointly Owned Property**

In order for the Marital Deduction Wills to operate effectively, it is necessary to change all assets that are registered as joint tenants with the right of survivorship (JTWROS) to tenants-in-common. This would apply to your real estate as well as all bank and brokerage accounts. There would be no adverse tax consequences to these re-registrations. The reason for this suggestion is that under the present joint ownership, at the first spouse's death the funds go directly to the surviving spouse completely outside the control of the Non-Marital/Bypass Trust and QTIP Trust, and could cause greater tax at the surviving spouse's subsequent death. The other alternative would be to maintain accounts in your individual names.

## **Living Will**

New Jersey has made an important decision affecting the quality of life for its citizens by enacting legislation that gives adults control over their medical treatment through living wills. The New Jersey Advance Directives for Health Care Act provides individuals with a choice, allowing them to specify whether they wish to have or refuse certain medical treatments and life-sustaining measures. It also gives competent adults (18 and older) the right to appoint a trusted friend or relative to make medical decisions for them, if they lose the ability to decide for themselves. Such an individual is known as a Healthcare Representative. In addition, you may change or revoke your living will at any time.

The legislation sets out the rights and duties of patients, families and caregivers, freeing them from some of the legal, emotional and financial uncertainties of dealing with terminal illness, mental incompetence and medical conditions resulting in permanent unconsciousness. New Jersey is the 48th state to give legal recognition to living wills. Please let me know at our next meeting if you are interested in having living wills prepared.

## **Powers of Attorney**

### **A. Financial**

As an emergency measure, I would also suggest preparation of general powers of attorney. These documents enable you to appoint someone to act on your behalf if you are away on a trip or become disabled. The person appointed, your attorney-in-fact, can be authorized to act at any time or restricted to such time as you become disabled. These documents can avoid the necessity of possible guardianship proceedings or simply save time in the event you are unable to act.

### **B. Medical**

Medical Powers of Attorney (also known as Health Care Proxy Directives) permit you to designate someone to act on your behalf when making everyday decisions regarding medical treatment. This is equally as important as both the Living Will and the Financial Power of Attorney.

## **Letter of Instruction**

In addition to your Will, another helpful but less formal document that can be drafted by you or may be drafted by us on your behalf is a Letter of Instruction. The Letter of Instruction can provide the Executor of your estate and the beneficiaries with some additional and more personal information regarding your estate. One of the most important—and easily overlooked—estate planning steps is to document the location of important personal and financial records and to identify who your advisors are. By organizing this information, you will simplify the duties of your family or personal representative at a time when he or she may be under severe emotional and physical stress. Keep a copy in a safe location at your home or office. Let a family member or advisor know where this letter is located. Update the letter at least yearly. Here is what should be documented.

1. All bank accounts, their locations, numbers and maturity dates
2. Location of safe deposit boxes and keys, home safes, private vaults, and combinations that may be needed
3. Location of your Will (and any codicils) and any trust agreements
4. Location of your spouse's Will (and codicils) and any trust agreements
5. Location of all your insurance policies—type and policy numbers
6. Location of stock certificates and bonds
7. Location of pension, IRA, and Keogh documents
8. Location of real estate records (including deeds, mortgages, title insurance, closing statements and leases)
9. Location of automobile titles
10. Amount due on loans and names of lenders
11. Location of your income tax returns
12. Your accountant's name, address and phone number
13. Your attorney's name, address and phone number
14. Your insurance agent's name, address and phone number
15. Burial instructions

I also enclose a sample Letter of Instruction.

**Fiduciaries**

Please provide the names of the individuals/institutions you wish to use in the following capacities:

**Mrs. Smith's Will**

Executor \_\_\_\_\_

Contingent Executor \_\_\_\_\_

Trustee \_\_\_\_\_

Contingent Trustee \_\_\_\_\_

Guardian \_\_\_\_\_

Contingent Guardian \_\_\_\_\_

**Mr. Smith's Will**

Executor \_\_\_\_\_

Contingent Executor \_\_\_\_\_

Trustee \_\_\_\_\_

Contingent Trustee \_\_\_\_\_

Guardian \_\_\_\_\_

Contingent Guardian \_\_\_\_\_

**Mrs. Smith's Power of Attorney**

Attorney-in-Fact \_\_\_\_\_

Contingent Attorney-in-Fact \_\_\_\_\_

**Mr. Smith's Power of Attorney**

Attorney-in-Fact \_\_\_\_\_

Contingent Attorney-in-Fact \_\_\_\_\_

**Mrs. Smith's Living Will/Healthcare Proxy Directive**

Healthcare Representative \_\_\_\_\_

Contingent Healthcare Representative \_\_\_\_\_

## **Mr. Smith's Living Will/Healthcare Proxy Directive**

Healthcare Representative \_\_\_\_\_

Contingent Healthcare Representative \_\_\_\_\_

### **SUMMARY**

In summary, the following steps will be taken by our office to complete your estate:

1. Prepare QTIP Marital Deduction Wills for Mr. and Mrs. Smith.
2. Prepare Powers of Attorney for both Mr. and Mrs. Smith.
3. Prepare Living Wills for Mr. and Mrs. Smith.
4. Prepare Healthcare Proxy Directives for Mr. and Mrs. Smith.
5. Change deed to your present residence from Tenants-by-the-Entirety (or Joint Tenancy with Right of Survivorship) to Tenants-in-Common.

The following steps should be taken by you and your wife to complete your estate:

1. Re-register bank and brokerage accounts to Tenants-in-Common.
2. Provide my office with the deed to your residence so that I can re-register the deed to Tenants-in-Common.
3. Provide me with the proper names of each of your fiduciaries.

Please review this estate plan summary and we can discuss it at our next meeting.



# MECHANICS OF ESTABLISHING A TRUST UNDER A WILL

It is of importance to point out to the client that their will is not effective until they pass away. Therefore, any trusts established under the will need not be funded, created or administered until after the death of the testator.

For example, while a disclaimer trust will sets forth trust provisions for the disclaimer trust, or, perhaps a trust for minor children, it is possible that neither trust will be funded (*i.e.*, the surviving spouse elects not to disclaim or minor children are no longer minors at the death of both parents).

However, when the testator dies, if the will provides for a trust and the decision is made to fund the trust either because the spouse has disclaimed or the terms of the will explicitly provide that a trust be established, the trust must now be created.

By definition a trust is “a right of property, real or personal, held by one party for the benefit of another....Any arrangement whereby property is transferred with intention that it be administered by trustee for another’s benefit.” *Blacks Law Dictionary*, Fifth Edition, West Publishing Co. (1979) p. 1,352.

When creating a trust, a new taxable entity is being established, and, therefore, it is necessary to obtain an employer identification number (EIN). The trustee completes a Form SS-4 application to obtain the EIN from the Internal Revenue Service. The application can be mailed or faxed to the IRS, or can be applied for over the telephone or online. Once the EIN is obtained, this number is used to open a trust account at a financial institution of the trustee’s choice. The account will be used to receive the assets transferred from the estate into the trust. For ease of management, one trust account may be advisable. However, there is no reason why several trust accounts could not be established. The name of the account could be “Trust under the Last Will and Testament of John Doe, Lisa M. Butler, Trustee.” In the event real estate is being transferred into a trust, it will be necessary to prepare a new deed re-registering the real property from the decedent’s name into the name of the trust.

Once the trust is established, the trustee is bound by the terms of the trust described under the will. The trustee may have to distribute all the income to the surviving spouse not less frequently than quarter annually, and also distribute principal in accordance with an ascertainable standard (*i.e.*, the beneficiary’s health, support and maintenance). While there is often a standard, these payments are at the trustee’s discretion.

If the trust is for a child, the provisions may require the trustee to pay for educational expenses. In this event, it is as simple as the trustee writing a check from the trust account to the

educational institution. The trust may require direct distribution to the child when he or she attains a certain age, in which event the trust will transfer the trust assets, either in kind or in cash, to the child when he or she reaches the specified age. If there is more than one child and the will prescribes separate trusts for each child, it is advisable for the trustees to obtain separate tax identification numbers for the trusts and open a separate account for each trust (*i.e.*, “Trust under the Last Will and Testament of John Doe FBO (for the benefit of) Jane Doe” and “Trust under the Last Will and Testament of John Doe FBO Susan Doe”).

The trustee will be required to file an annual Fiduciary Income Tax Return (Form 1041). This return reports all the income earned by the trust as well as the name(s) of the income recipient(s). A Schedule K-1 is attached to the Form 1041 return for each trust beneficiary. The Schedule K-1 reports each beneficiary’s share of income, deductions, credits, etc. received during the taxable year. The beneficiary of the trust then attaches the Schedule K-1 to their personal income tax return and reports the trust income tax consequences on their personal return.

## **THE SINGLE CLIENT**

Thus far, this book has discussed estate planning for spouses.

An estate plan can be established for a single client as well. However, in most instances federal and New Jersey estate tax savings cannot be accomplished via a last will and testament unless there is a charitable beneficiary. A common estate plan for a single client will include an outright distribution will, a power of attorney and a living will. If the individual has a taxable estate, other more sophisticated estate planning techniques would be considered, such as an irrevocable insurance trust, qualified personal residence trust, family limited partnership and other gifting methods, all of which are discussed in more detail later in this book.

## **SPECIAL NEEDS TRUST**

In the event a client has a disabled or dysfunctional child, it is necessary to consider the possibility of establishing an *inter vivos* special needs trust, which can be used during his or her lifetime to hold the assets of the disabled child as well as any inheritance received from his or her parents or other family members. Under the parents’ will, it provides that the share of the disabled child be poured over into the *inter vivos* special needs trust. The special needs trust can assist a parent in providing for a disabled son or daughter without risking disqualification from receiving government benefits. The objective of the special needs trust is to insure that the disabled child’s healthcare costs are paid, first from available government programs and, only after these funds have been exhausted, from the discretionary special needs trust. The parent’s intent is to use the income and principal from the special needs trust as a supplement to the benefits provided by government programs, and that the trust assets not be used as a primary means of support for the disabled child. This type of trust can be very detailed, in that it can

designate, in the parent's absence, who will take on the parent's role, and provide housing and personal support. It is essential to carefully draft such trusts and take into consideration each family's circumstances. The details of such a trust are beyond the scope of this book.

## **REVOCABLE LIVING TRUST**

A revocable living trust is created during an individual's lifetime and, to the extent possible, all the individual's assets are transferred to the trust. In most cases, the client is both the trustee and grantor at inception of the agreement. Upon the death of the grantor, the assets held in such a trust pass directly to the beneficiaries designated in the trust, and are not included in the distribution under a last will and testament. The grantor, during his or her lifetime, retains the right to revoke the trust, change its terms or regain possession of the trust assets.

In New Jersey, living trusts are beneficial for a limited number of clients and do not accomplish much for most individuals. Proper registration of a client's assets, the preparation of tax-planned last wills and testaments and powers of attorney can often have the same results as a living trust.

Living trusts do avoid probate. Probate is the process of proving the authenticity of the will and administering the will (*i.e.*, making sure that the testator's property is distributed to the beneficiaries designated in the will). The question is, why should an individual try to avoid probate?

First, rarely can someone avoid probate altogether, because certain assets cannot be transferred to the trust (*e.g.*, accounts receivable from a business, an individual's last pay check, title to an automobile).

For smaller estates, the legal fees for establishing the trust could be more than the cost of probate itself. In New Jersey, the probate process is usually inexpensive and expeditious. Letters testamentary are often issued by some surrogate offices the same day the will is probated. Other offices will usually mail the letters testamentary within a two-week time period. New Jersey has informal, unsupervised probate, which means the executor can pay off creditors and distribute the remaining property with virtually no oversight by the court. Further, the actual costs of probate are greatly reduced if a family member is designated as executor and agrees to serve without taking an executor's commission or, conversely, is perhaps the sole beneficiary, in which case taking a commission is a potential deduction against federal estate tax or New Jersey estate and inheritance taxes.

Living trusts do have some advantages. For instance, if a client owns real estate in more than one state, the trust may allow the grantor to avoid ancillary probate in states other than his or her state of residence. A living trust is also useful if a grantor would like someone else to manage his or her assets during his or her lifetime by designating a trustee other than himself or herself. In

addition, if a testator anticipates a will contest, it may be wise to establish a living trust, which may be more difficult to challenge on theories such as incompetence and undue influence.

Assets that have been placed in a living trust are not ‘frozen’ for New Jersey inheritance and estate tax purposes when the creator (grantor) of the trust dies and are not subject to the waiver procedures. The successor trustee will have immediate access to 100 percent of the trust assets. That is not the case with assets in the decedent’s own name, only 50 percent of which can be accessed by the personal representative without an inheritance and estate tax waiver.

While living trusts have a place in some estate plans, they are not a necessary technique for many people, and should not be used without careful consideration of the client’s circumstances.

## **OTHER ESTATE TAX PLANNING TECHNIQUES**

In the simplest terms, the smaller the size of a client’s estate, the smaller the liability is for the federal and New Jersey estate tax. Gifting can reduce the size of a client’s estate. The client should be informed of basic gifting techniques, as well as more sophisticated gifting, which will reduce the ultimate tax liability. This section of the book is intended to provide a brief overview of more complex estate planning techniques.

### **Reducing the Size of the Estate Through Gifting**

Under the gift tax laws, there are several ways to make non-taxable gifts by using: the annual exclusion, I.R.C. 2503(b) (\$15,000 in 2019); the unlimited gift tax marital deduction, I.R.C. 2523; and the gift tax exemption, I.R.C. 2505. In order to be valid gifts, however, the donor must relinquish all control over the gift. Treas. Reg. 25.25.11-1(b). For example, a father may not give stock to his son but retain dividends for his own use.

#### **Annual Exclusion**

The annual exclusion provides an individual with the opportunity to give any number of people the annual exclusion amount (currently \$15,000) each year, without incurring gift tax liability. A common misconception is that this exclusion applies only to gifts to family members. The exclusion applies to any transfer from one person to another.

One must remember that the gift tax, if any, is payable by the donor, the person making the gift, and not the donee, the person receiving the gift, I.R.C. 2502(c), Treas. Reg. 25.2502-2. The donee is not required to pay income tax on the amount of the gift, I.R.C. 1 02; however, the donor is not permitted to claim an income tax deduction for the amount of the gift.

In addition to his or her own annual exclusion, an individual may use his or her spouse's annual exclusion with the spouse's consent. If an individual's gift is \$15,000 or less, the individual is not required to file a gift tax return. However, if one spouse makes a gift and uses the other spouse's exemption, a gift tax return must be filed to memorialize the spouse's consent. See I.R.C. 6019 and Treas. Reg. 25.6019-2.

Gifts may be made with anything of value; cash is by no means the only medium. Real estate or partial interests in real estate, stocks, bonds, life insurance, annuities, income from a trust, creation of a joint bank account, and articles of personal value are just a few examples of gifts.

The Taxpayer Relief Act of 1997 (TRA97) provides that annual exclusion gifts will be adjusted for inflation but must be rounded to the next lowest multiple of \$1,000. Currently the annual exclusion is \$15,000.

### Unlimited Gift Tax Marital Deduction

The second important gift tax provision is the unlimited gift tax marital deduction. Under the Economic Recovery Tax Act of 1981, any gifts from one spouse to another are completely tax free. I.R.C. 2523. Neither spouse needs to file a tax return for a transfer by gift with respect to which a marital deduction is allowed under I.R.C. 2523 or I.R.C. 6019. Note that the unlimited marital deduction is not available for gifts made to a spouse who is not a U.S. citizen.

### Gift Tax Exemption

The third important gift tax provision is the gift tax exemption. See the current gift tax rate table below:

**Gift Tax**

<b>Year</b>	<b>Exemption</b>	<b>Max. Rate</b>
2010	\$1,000,000	35%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$5,250,000	40%
2014	\$5,340,000	40%
2015	\$5,430,000	40%
2016	\$5,450,000	40%
2017	\$5,490,000	40%
2018	\$11,180,000	40%
2019	\$11,400,000	40%

## Death Bed Gifts

The federal law provides that, generally, gifts made as “death bed gifts” will not be subject to the three-year contemplation of death rule for decedents dying after 1981. I.R.C. 2035. However, pursuant to I.R.C. 2035, a transfer of an interest in property that is included in the value of the decedent’s gross estate under I.R.C. 2036, 2037, 2038 or 2042 or would have been included under any of these sections had such interest been retained by the decedent, will continue to be subject to the three-year contemplation of death rule. This property is includable whether or not the value of the interest is less than the gift tax annual exclusion amount.

For example, in the event a decedent transfers ownership of his or her life insurance policy to an irrevocable insurance trust or to an individual, the proceeds of this life insurance policy will be included in his or her gross estate if he or she dies within three years of the transfer date. The reason it is included in the decedent’s gross estate is that had he or she not transferred the ownership of the policy prior to his or her death, the policy proceeds would have been included in his or her gross estate under I.R.C. 2042.

It is important to note that New Jersey state law remains unchanged. A rebuttable presumption exists that gifts made within three years of death are in contemplation of death and, therefore, taxable for New Jersey inheritance tax purposes. The presumption under state law is very difficult to rebut.

## School Tuition and Medical Expenses

Under Internal Revenue Code 2503(e), a gift tax exclusion exists for gifts made on behalf of an individual for educational or medical expenses. These gifts will not be subject to gift tax as long as the payments are made directly to the educational institution or the medical services provider. Reimbursement of these payments to the donee, however, will not qualify for this gift tax exclusion.

## Irrevocable Insurance Trust

An irrevocable insurance trust employs gifting and can remove assets from a testator’s taxable estate. This technique requires that insurance policies owned by a testator be transferred to an irrevocable insurance trust. In the alternative, a new policy can be purchased on the life of the grantor of the trust by the trustee. This method will avoid the previously discussed three-year contemplation of death rule. The trust is named as both the owner and beneficiary of the policies. When the testator dies, the proceeds of the insurance policies are payable to the trust and not included as part of the testator’s taxable estate. The income from the trust is payable to the surviving spouse and upon his or her death, to the children. When the surviving spouse subsequently dies, the trust also escapes taxation in his or her estate. Distribution of the trust usually occurs in the same manner as provided for under the will of the first spouse to die.

Once the testator transfers ownership of the insurance policies, the trust, as owner, becomes responsible for the premiums on the policy. The grantor (*i.e.*, insured) makes a gift of the premium

payable to the trustee of the trust, and the trustee, in turn, pays the premium. To insure that the gift of the premium qualifies as part of the annual exclusion, it must be a gift of a present interest. This means that the donees (*i.e.*, the ultimate beneficiaries of the irrevocable insurance trust) must be able to take the gift. Therefore, the trustee sends out what is known as a ‘Crummey notice.’ *Crummey v. Comr.*, 397 F.2d 82 (9th Cir. 1968) is a famous tax case upon which the notice requirement is based. In *Crummey*, the court held that transfers to a trust qualified as annual exclusion gifts as long as the beneficiaries of the trust had the immediate right to withdraw the gifted amount. Notice to the beneficiary that a gift had been made states that the beneficiaries have a right to withdraw the gift over a 30-day period based upon their proportionate share in the trust, and if they do not exercise the right the moneys will be used to pay the premium.

Often, the proceeds of an insurance trust are used to help the beneficiaries of the estate pay any estate taxes and settlement costs due at the death of the surviving parent.

The client may also consider establishing a last-to-die irrevocable insurance trust that could provide an additional fund for the payment of federal estate taxes and possibly additional assets to their children. This trust is funded by a last-to-die insurance policy. This policy is on the lives of both the husband and wife, and is payable at the death of the survivor. Each year, the client would make a cash gift of the premiums on the policy to the trustee of the trust who would, in turn, pay the premiums. At the death of the survivor, the proceeds are payable to the trust and not included as part of their taxable estates.

## **Qualified Personal Residence Trust (QPRT)**

This type of trust-gifting technique does not utilize the annual exclusion because it is not a gift of a present interest. The client must use a portion of their lifetime exemption from gift tax (\$11,400,000 in 2019).

In summary, the QPRT would require both the client and his or her spouse to transfer their respective 50 percent interests in their home and/or vacation property to the trustee of the QPRT for a specific term of years. One reason for creating two QPRTs for the same property is that the value of the property may be discounted. By virtue of the fact that each grantor of a 50 percent interest has a minority interest, such interest can be discounted “due to lack of marketability.” For example, a reasonable discount could be 15-20 percent. Another reason for creating two trusts has to do with the fact that for the QPRT to be effective, the grantor must survive the trust term. If only one spouse survives the trust term, at least 50 percent of the value of the property is removed from their combined estates.

The client would retain the right to live in the home/use the vacation property, and if the client were alive at the end of the term, the client’s rights would cease and he or she would have to rent the property from the trust if he or she wished to continue to use the property. If the clients

have survived to the end of the trust's term, the trust property will not be taxed in their respective estates. For gift tax purposes, a gift occurs at the time the deed is transferred. However, the gift made by using the QPRT is much less than if the client gifted the property outright. An appraisal by a qualified appraiser is necessary, as well as a gift tax return.

With regard to the QPRT, the amount of the gift will vary depending on the term of the trust. The client will have to use a portion of their exemption from gift tax. Although there will be no tax due because the client is using a portion of their gift tax exemption, it will still be necessary to file a gift tax return to report the use of the portion of their exemption.

The establishment of the QPRT will serve to remove the client's primary residence and/or vacation property from their estates, including any appreciation. The IRS permits the establishment of no more than two QPRTs, and the property is limited to a primary residence and a vacation property used by the grantors. Generally, the trust will hold no other asset than the interest in the real estate used or held for use by the grantor. Note, the grantor is responsible for paying the real estate taxes during the term of the trust.

The grantor can also be the sole trustee of the QPRT, having complete control of the trust property during the term of the trust. The property may be sold during the trust term. The proceeds may be reinvested in a new residence within two years, or the trust will cease to be a QPRT at the end of the two-year period. At this point, the trust would provide for a conversion to a qualified annuity trust. The grantor would then receive a pre-determined annuity amount on an annual basis for the remainder of the trust term.

As previously stated, the creation of these trusts results in a gift. For illustration purposes, the gift is calculated based on the values of the client's residence (\$800,000), their ages (55 and 60), the term of the trust and an IRS monthly \$7520 interest rate (in this case the rate of 3.0 percent was used). In addition, a 20 percent discount was factored into this calculation because two QPRTs are being established. The following are a few of the many scenarios that are possible.

<b>TRUST TERM 5 YEARS</b>	<b>TRUST TERM 10 YEARS</b>	<b>TRUST TERM 15 YEARS</b>
Amount of Gift: \$519,962	Amount of Gift: \$409,821	Amount of Gift: \$308,624

The client can live in his or her residence for the specified term of years and, at the end of the trust term, the client can continue to live there if he or she pays fair market value rent to the trust beneficiaries, usually their children.

In order to realize the tax savings of a QPRT, the grantor must survive the trust term. If the grantor dies before the end of the trust term, the interest in the property will be included in their estate, as if the trust was never created. But, nothing ventured, nothing gained. The client's estate will not be any worse off if the grantor does not survive.



Note, with the QPRT the ultimate beneficiaries (i.e., the children) will receive the client's costs basis in the property, as opposed to receiving a stepped-up basis (fair market value as of the date of death) if they received the property under the client's will.

In the event the client decides to go forward with the QPRTs, inform the client that an appraisal of the real estate, as well as their birth dates, must be provided to correctly calculate the gifts made through the QPRTS.

## **Family Limited Partnership**

A family limited partnership is an estate planning technique that provides a method of giving away assets at a discounted value. Due to recent IRS rulings and tax court decisions, the discounts have been limited and the limited partners who would be making the gifts cannot be general partners.

The family limited partnership is established by drafting two documents: the certificate of limited partnership, which is signed by the general and limited partners and is recorded with the New Jersey secretary of state, and the family limited partnership agreement, which sets forth the duties, rights and obligations of the general and limited partners. A husband and wife can hold a 99 percent (49.5 percent each) limited partnership interest and an entity, such as a limited liability company, holds the one percent general partnership interest. Note that with recent changes in New Jersey law, many clients are considering forming partnerships in states where fees and income tax consequences are less onerous.

The partnership should be funded by an asset or assets that do not necessarily produce income but have the potential of appreciation in value. Assets that may meet this criterion are various real estate holdings, security accounts and/or a family business. Note that recently the IRS is carefully scrutinizing whether or not a legitimate business purpose is in existence.

Interests in these assets are transferred to the limited partnership by creating new deeds from the client to the family limited partnership, or re-registering security accounts into the name of the family limited partnership. By doing this, the client is then able to make gifts of limited partnership interests to their children, grandchildren and any other individuals chosen by the client.

Each spouse has the ability to give away the annual exclusion amount (\$15,000 in 2019) to any number of people during each calendar year. Under the limited partnership, the husband and wife would begin to give a total of \$30,000 in limited partnership interest to each of their children each year until they have gifted the entire 99 percent of limited partnership interest.

Advise the client that they can accelerate the gift program by each of them using a part or all of their gift tax exemption. The client should recognize, however, that by using their respective exemptions, the only value that will escape taxation in their estate is the appreciation that occurs between the time of the gift and the time of their respective deaths.

Prior to establishing the family limited partnership, it is necessary to obtain appraisals of the partnership assets. Thereafter, each time a gift is made via the family limited partnership, new appraisals should be obtained. Also, be advised that even though the gift does not exceed the annual exclusion amount per donee/child each year, a gift tax return should be filed not only to memorialize the gift, but to begin the three-year statute of limitations. If there has been full disclosure of the gift, then once the statute of limitations expires, the amount of the gift as reported on the return may not be adjusted for purposes of determining future gift and estate tax liability.

The advantages of the family limited partnership as an estate-planning technique are as follows:

1. It allows the client to transfer out of his or her estate substantial amount of assets at a discount.
2. The limited partnership agreement can contain many variations, such as that the limited partners may sell their interest without the general partners' approval. In the alternative, the family limited partnership agreement could provide the general partners or other limited partners with a right of first refusal of any limited partner's sale of his or her interest.
3. Additional assets may be assigned to the partnership or new partnerships created.
4. Due to IRS Revenue Ruling 93-12, 1993-7 I.R.S. 13, when making gifts of limited partnership interest, such gifts may be discounted (e.g., due to a lack of marketability and a gift of a minority interest). Discounts can vary depending on the family limited partnership asset and the current circumstances. For example, a 25 percent discount means that one can gift \$20,000 worth of limited partnership interest each year, and have the gift qualify for the annual exclusion of \$15,000, provided the limited partnership agreement contains provisions allowing the recipient of the limited partnership interest to obtain current value for that interest, thereby qualifying the gift as a "present interest" for purposes of the gift tax annual exclusion.

The disadvantages of a family limited partnership are as follows:

1. The limited partners have no control over the management of the partnership and the distribution of funds or assets from the partnership to the partners. This is determined by the general partners.
2. The limited partnership gifts the client makes are irrevocable, and the client should be aware that they may never get the asset back into their ownership.
3. In the event of the liquidation of the partnership, the limited partners would be entitled to their interest in the partnership.
4. In the event the partnership sold its assets and then reinvested but created an income tax liability, each of the limited partners (i.e., usually children) would have to pay his or her proportionate share of the tax. However, the partnership could distribute enough to each partner to cover his or her respective income tax liability.
5. The partnerships would have to maintain a separate set of books and checking account, and also file an annual income tax return, both state and federal.

## OTHER ESTATE PLANNING DOCUMENTS

Estate planning encompasses more than simply preparing a will for the client. The attorney should advise the client of various other documents that are integral aspects of a final estate plan. A power of attorney and a living will assist with the estate plan prior to the client's death and a letter of instruction is valuable immediately after the client's death.

### Power of Attorney

In establishing an estate plan for a client, the attorney should suggest that a general power of attorney be prepared on the client's behalf. This document will save the client and the client's family time in the event the client is unavailable or unable to act, and may avoid the necessity of guardianship proceedings.

The designation of a power of attorney requires a written instrument whereby the principal appoints an agent, also known as an attorney-in-fact, and authorizes the agent to perform certain specified acts on the principal's behalf. The authorization may be general or limited in nature. The agent's power is revoked on the death of the principal by operation of law.

A power of attorney may be 'springing' or 'durable.' A springing power of attorney permits the attorney-in-fact to act in the event of the disability of the principal. In the alternative, a durable power of attorney becomes effective the moment the principal signs the power of attorney documents and remains effective in the event the principal becomes disabled.

There is also a distinction between 'special' and 'general' powers of attorney. A special power of attorney is executed by the principal designating the attorney-in-fact to act for one specific transaction. For example, the principal is buying a home and cannot attend the closing. In this case the principal would sign a special or limited power of attorney so the attorney-in-fact can attend the closing in the principal's absence. In contrast, the general power of attorney is significantly broader in scope. It appoints an attorney-in-fact, authorizing him or her to carry out any and all acts the principal could have performed (*i.e.*, banking, litigation, buying and selling real estate, stock transactions, making gifts, loans, filing tax returns, etc.).

If the power of attorney is used for banking purposes, it should make specific reference to N.J.S.A. 46:28-10 *et seq.*, which authorizes the use of powers of attorney for banking purposes. Also, if the principal intends for his or her agent to be able to make gifts on behalf of the principal, a power to gift should specifically be included in the document, along with any limitations on said gifts.

Effective Dec. 8, 2000, New Jersey enacted the Revised Durable Power of Attorney Act, N.J.S.A. 46:23-8-1 *et seq.* Some noteworthy revisions include the principal or court's ability to compensate the attorney-in-fact for acting under the power of attorney. A principal can direct compensation be paid to the attorney-in-fact in the power of attorney document or in a separate written

agreement. In the absence of any such direction, a court may award reasonable compensation to the attorney-in-fact if application is made for same.

The act also states that the attorney-in-fact has a fiduciary responsibility to the principal and must maintain books and records for all transactions. Another important aspect of the revised act is the definition of ‘disability’ for both the principal and the attorney-in-fact, as well as a statement that the durable power of attorney may not be affected by the lapse of time, disability or incapacity of the principal, unless the power of attorney states otherwise.

## **The Living Will**

The attorney preparing an estate plan should insure that the client is aware of his or her right to make a living will. A living will is, in essence, a set of directions instructing others as to medical treatment in the event the declarant is incapable of communicating his or her own wishes or decisions.

The New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-57 *et seq.*, effective Jan. 7, 1992, recognizes the constitutional fundamental right of competent adults to control decisions regarding their own healthcare. The act further stipulates that because an event may occur in which an adult loses his or her decision-making capabilities regarding his or her own healthcare, such adults may plan ahead for healthcare decisions by means of advance directives.

The act provides for three different kinds of advance directives: proxy directives, instructive directives and combined directives.

## **Proxy Directive**

The first type of directive appoints a healthcare representative. This type of directive is also referred to as a healthcare proxy or a durable power of attorney for healthcare. If the client elects to execute a proxy directive, or a combined directive, he or she appoints a healthcare representative who will have the legal authority to make healthcare decisions on the client’s behalf in the event the advance directive becomes operative. The representative must abide by the terms (if any) of the advance directive. For instance, if the document is a combined directive, the directive will contain instructions regarding healthcare and, in addition, will designate a healthcare representative. The representative must follow the instructions in good faith. The healthcare representative exercises the same rights the client would have, had the client been capable of such decisions regarding his or her healthcare. Thus, the healthcare representative will be informed of the client’s medical condition, prognosis, and options for treatment. The representative then has the right to give or refuse informed consent to treatment decisions.

In preparing a proxy directive, the attorney should emphasize to the client the need for choosing a healthcare representative who knows the client very well. The representative should be familiar

with the client's feelings about the various medical treatment options and the conditions under which the client would choose to accept or refuse any or all treatment. The representative must understand that it is his or her duty to implement the client's wishes, regardless of whether the representative agrees with those wishes.

## **Instruction Directive**

The second type of advance directive is an instruction directive, also referred to as a living will, which expressly describes in advance what medical treatment the client wishes to accept or refuse, and under what circumstances such wishes should be carried out.

If the client prepared an instruction directive but did not designate a healthcare representative, the terms of the directive will be honored by the healthcare professional. If no specific term of the directive applies to the decision at hand, the healthcare professional and the family will use reasonable judgment to carry out the client's wishes.

When drafting an instruction directive, the attorney should include more than just general language indicating the client's desire to terminate life-sustaining procedures that serve only to prolong the dying process. Specifics regarding the unacceptable level of impaired functioning and forms of acceptable medical treatment should be included to maximize the effectiveness of the advance directive in aiding the surrogate decision-maker to determine the client's actual wishes.

Two specific life-sustaining measures should be explicitly addressed in the advance directive. The first measure is artificially provided fluids and nutrition (food and water). The client's wishes regarding this measure should be explicitly indicated so as to avoid any uncertainty or disagreements. Similarly, the consent to or refusal of cardiopulmonary resuscitation (CPR) should also be explicitly stated.

When drafting an advance directive, some other optional clauses should be considered. A temporary suspension of the refusal of life-sustaining measures may be desired to cover the possibility that the patient is pregnant at the time the advance directive becomes operative. To avoid uncertainty, a clause should be included indicating consent or refusal of treatment in such a situation.

Additionally, a religious exemption to the modern neurological criteria for declaring death should be included, if applicable. This exemption is recognized by the New Jersey Declaration of Death Act, which established a statutory basis for declaring death on the grounds of neurological criteria (total and irreversible loss of all functions of the entire brain, despite the possible fact that circulatory and respiratory functions can be maintained by artificial means). When utilized, the exemption permits the client, whose personal religious beliefs would be violated by the neurological criteria standard of declaring death, to use the traditional cardio-respiratory standard. To insure the preferred standard is used, a clause should be included in the advance directive.

## Combined Directive

The third type of advance directive, a combined directive, is a combination of the proxy directive and the instruction directive. Generally, an attorney should recommend that the client execute this type of directive. The combined directive gives specific instructions and appoints someone close to the client to make further decisions; it will ensure that the client's wishes are understood and fulfilled.

## Required Formalities

The Advance Directives for Health Care Act dictates the formalities necessary for the legal execution of advance directives. To prepare an advance directive, the client must be at least 18 years old and of sound mind. The advance directive must be in writing and must be signed and dated in the presence of two adult witnesses (neither of whom may be the client's designated healthcare proxy). These witnesses must also affirm in writing that the client is of sound mind and free from duress and undue influence. As an alternative to the requirement of two witnesses, the advance directive may be signed in the presence of a notary public or attorney.

Once the client executes an advance directive, he or she should give a copy to the healthcare representative (if one has been appointed), family members, close friends, and his or her physician. Any healthcare institution to which the client is admitted should also be given a copy of the directive.

The formalities required to execute an advance directive must be followed for the client to reaffirm and/or change the advance directive. However, to revoke an advance directive, the client need only notify, either orally or in writing, the healthcare representative or any other reliable witness. Furthermore, any act indicating the client's intent to revoke also will suffice.

## Requirements of Operation

The act specifies that an advance directive, after being legally executed, becomes operative when it is given to the physician or healthcare institution *and* the client *lacks* the requisite decision-making capacity. If the patient regains the ability to make decisions, the advance directive will no longer be operative and the patient may resume making his or her own decisions.

Decision-making capacity is defined as a patient's ability to comprehend the potential risks and benefits of medical treatment options as well as the ability to make an informed decision (whether consent or refusal). Determining whether a patient has the requisite decision-making capacity requires consideration of the particular healthcare question. An inability to make one decision does not necessarily mean a lack of decision-making capacity to make a different healthcare decision.

Generally, the attending physician is responsible for determining lack of capacity. Unless the patient's lack of decision-making capacity is clear, a physician's determination of lack of capacity

shall be confirmed by another physician. If the primary physician has any doubts about the patient's ability to make the decision as a result of mental or psychological impairment, a physician with training and experience in these fields will be consulted.

## **Circumstances Where Instructions Will Be Honored**

While a constitutional fundamental right of competent adults to make decisions regarding their own healthcare exists, this right is not absolute. If the patient decides that life-sustaining treatment should be withheld or withdrawn, the situation must fall into one of the following circumstances: 1) the treatment is experimental, unlikely to be effective, or merely prolongs the dying process; 2) the patient is permanently unconscious; 3) the patient is in a terminal condition; 4) the patient has a serious and irreversible illness or condition and the likely risks and burdens of treatment may reasonably be judged to outweigh the likely benefit; 5) the imposition of treatment on an unwilling patient would be inhumane.

## **Role of Healthcare Institutions**

The New Jersey Advance Directives for Health Care Act requires that healthcare institutions provide information concerning advance directives to interested patients, families, and healthcare representatives, as well as assist patients in executing advance directives.

In addition, the facility must maintain, in writing, policies and procedures regarding advance directives and inform its patients of these policies. The facility is also required to document in the patient's medical record whether the patient has an advance directive.

Healthcare institutions must insure compliance with the state law regarding advance directives. Furthermore, the institutions must educate their staffs on issues related to advance directives. Institutions and professionals are prohibited from conditioning healthcare or discriminating in any way based upon whether an individual has an advance directive.

The act permits healthcare professionals to decline to participate in following an advance directive on the basis of the professional's moral or religious convictions. In this situation, however, the professional must transfer care of the patient in a timely fashion to assure that the patient's wishes are not abandoned.

Similarly, private, religious-affiliated institutions have the right to adopt policies defining situations in which the institution will decline to participate in advance directives. These policies must be in writing and communicated to the interested parties in a timely manner. As in the situation where the healthcare professional chooses not to participate due to personal convictions, the institution must transfer care in a timely manner to assure the patient's documented wishes are fulfilled.

Healthcare professionals, institutions and representatives, acting in good faith in accordance with the requirements of the law, are immune from legal liability regarding the implementation of advance directives.

The attorney preparing an advance directive should remind the client of his or her right to make a gift of all or part of his or her body, as dictated by the New Jersey Uniform Anatomical Gift Act, N.J.S.A. 26:6-57 *et seq.*

### **Patient's Self-Determining Act**

The Patient Self-Determination Act, 42 U.S.C.A. 1395cc(a)(1), mandates that all Medicare and Medicaid provider organizations provide written information to patients upon admission regarding the patient's rights under state law to make various healthcare decisions, including the right to execute an advance directive, and how these rights may be implemented.

### **Practitioner Orders for Life-Sustaining Treatment**

A practitioner order for life-sustaining treatment (POLST) form is a set of medical orders that give seriously ill or elderly patients more control over their end-of-life care. Produced on a distinctive green form and signed by both the doctor and the patient, a POLST form specifies the types of medical treatment a patient wishes to receive toward the end of life. As a result, a POLST form can prevent unwanted or medically ineffective treatment, reduce patient and family suffering, and help ensure that patients' wishes are honored.

Documentation on the POLST form includes: goals of care for the patient; preferences regarding cardiopulmonary resuscitation attempts; preferences regarding use of intubation and mechanical ventilation for respiratory failure; preferences for artificially administered nutrition and hydration; and other specific preferences regarding medical interventions that are desired or declined. The POLST form complements an advance directive and is not intended to replace that document. An advance directive may still be necessary to appoint a legal healthcare decision maker and is recommended for all adults, regardless of their health status.



# DRAFTING DOCUMENTS

CHAPTER

# 3

# DRAFTING THE WILL

All too often, laymen and attorneys demean a will by calling it a ‘simple will.’ The so-called simple will is better described as an uncomplicated will or outright distribution will. The attorney must emphasize to the client that a will has real significance. The fact that it may call for an outright distribution does not lessen its significance. The outright distribution will is the least complicated of estate plans, the bottom rung on the ladder of estate planning.

In preparing wills, the great temptation to go to a form book and use the form that most closely resembles the client’s set of facts must be avoided at all costs. If an attorney is going to be drafting wills as a regular part of his or her practice, the attorney should develop his or her own form book over a period of time. Assuming that has been done, the preparation of wills and/or trust agreements, regardless of their simplicity or complexity, can be aided through the use of forms.

The attorney, after reviewing the facts and considering the client’s objectives, may check off those clauses that are to be included in the will, being careful to draft original clauses where necessary. At the point where the executor, trustee and guardian are to be named, the attorney indicates the names of the respective fiduciaries in the appropriate place. The will or trust agreement may now be prepared simply by selecting the appropriate clauses from the attorney’s book.

Below is an explanation of clauses in an outright distribution will. Sample will clauses can be found in Appendix B in this book.

## CLAUSES

### **Testator Clause/Exordium Clause**

A will, like anything else, must have a definite pattern. It begins by identifying the testator and indicating the testator’s address in order to establish his or her domicile. The will’s validity is not affected by a change in the testator’s domicile. However, if a client moves to another state after the execution of his or her will in New Jersey, an attorney in that state should review the will to make sure it complies with the laws of the client’s new residence.

This first clause usually also declares the instrument as the testator’s last will, revoking any and all previous wills and/or codicils. Various ways of revoking a will exist, perhaps the most clear cut being the will’s destruction by tearing or burning. A statement in the exordium clause as to the revocation of previous wills, however, resolves all doubt.

## Payment of Debts Clause

The next paragraph in a will usually directs the payment of debts, funeral expenses, and the costs of administering the estate. Funeral expenses include the costs of a headstone, a cemetery lot, perpetual care of the lot and the cost of transporting the decedent's body to another state for burial.

The general payment of debts clause normally does not provide for paying off the entire balance of a real estate mortgage. The obligation to pay any mortgage generally falls on the person to whom the real estate has been devised (*i.e.*, the beneficiary of the real estate takes the property subject to secured debts). Furthermore, whether the mortgage should be paid immediately will depend on a variety of factors, which can only be determined at the time of the testator's death.

For example, a testator dies leaving a home encumbered by a mortgage bearing an interest rate of four percent and a remaining balance of \$30,000. It would not make sense for his widow to immediately pay off the mortgage if she had the opportunity to invest the \$30,000 in certificates of deposit or money market funds paying an interest rate of substantially more than four percent.

Often the testator wants to include elaborate instructions regarding funeral arrangements in this section of the will. The debts clause is the wrong place for such instructions, since the will may not be found or reviewed until after interment, thereby making it difficult or impossible to carry out the decedent's intentions, especially if one of those intentions was cremation. The attorney should advise the testator that directions regarding burial are best listed in a letter of instruction addressed to the family.

## Payment of Taxes Clause

One of the main functions of this clause is to set forth a source of funds for the payment of whatever death taxes are due and owing by reason of specific and general bequests and devises, residuary bequests, life insurance, jointly owned property, *inter vivos* trusts, taxable *inter vivos* transfers and property passing under a power of appointment.

The source of funds for the payment of taxes will depend on the size of the estate, the impact of the federal estate tax, New Jersey estate tax, New Jersey inheritance tax and the testator's objective. If the objective is to give the surviving spouse a marital deduction, a specific provision should be included in the will directing that all taxes be paid out of the property passing to the beneficiaries, other than the surviving spouse, as opposed to the property passing to the surviving spouse. If the will does not contain a tax payment clause, state law will govern the allocation of the estate tax burden, except in certain circumstances where federal law would prevail.

---

Examples:

“All expenses and claims and all estate, inheritance, and death taxes, excluding any generation-skipping transfer tax, resulting from my death and which are incurred as a result of property passing through my probate estate shall be paid by my residuary probate estate without apportionment and without reimbursement from any person. However, expenses and claims, and all estate, inheritance, and death taxes assessed with regard to property passing outside of my probate estate, but included in my gross estate for federal estate tax purposes, shall be chargeable against the persons receiving such property.”

“All expenses and claims and all estate, inheritance, and death taxes, excluding any generation-skipping transfer tax, resulting from my death shall be paid without apportionment and without reimbursement from any person.”

---

## **Disposition of Tangible Personal Property Clause**

The next few sections of most wills are referred to as the dispositive provisions. The first section disposes of tangible personal property. Tangible personal property includes clothing, jewelry, household goods, personal effects, automobiles and books, etc. The tangible personal property clause names the beneficiaries of the property and then provides for alternative dispositions in the event the primary beneficiaries do not survive the testator. A clause of this general nature is employed unless the testator has items of special value, from either a monetary or sentimental standpoint, and wishes that a particular individual receive one or more of those items.

It is wise to always include a specific disposition of “tangible personal property,” even though the Wills and Probate Reform Act defines ‘estate’ as including both real and personal property. Without a specific disposition clause, the executor may be required to spend a substantial amount of time selling items of personal property at nominal value.

The tangible personal property clause also directs whether gifts of tangible personal property should be delivered to the beneficiaries at the expense of the estate or at the expense of the beneficiary. A clause directing who is to bear the costs of storing and transporting the property clears up any misunderstanding that might otherwise arise during the administration of the estate.

The problem of establishing ownership of household effects between husband and wife is an age-old one. An effective method of establishing ownership does not exist because legal papers transferring title between a husband and wife normally are not used. One method of establishing ownership that has been suggested is to include in the will a clause that confirms the household effects are owned by one of the spouses. These clauses typically disclaim ownership of all of the household effects, thereby confirming complete ownership by the other spouse. Some attorneys will have both spouses include this clause in their wills, although the validity of such a technique is questionable.

---

The usual tangible personal property clause reads something like the following:

“I give all my tangible personal property to my wife, Marianna, including all clothing, jewelry, household effects and personal effects. If she does not survive me, I leave the above-described property to my children who survive me, to be divided equally among them. I further direct that any expenses incurred in either the safekeeping or delivery of the above-described assets are to be paid out of my estate as an expense of general administration.”

---

Another helpful provision to consider would be to add that the division of the tangible personal property shall be determined by the beneficiaries, except that a minor shall be represented by an appointee of the executor. In addition, if there is no agreement among the beneficiaries, the division shall be made solely by the executor whose decision shall be final. This is an attempt to avoid prolonged arguments over the division of the tangible personal property.

## **Memorandum Clause**

An alternative to including a tangible personal property clause similar to the above clause is to include in the will a reference to a memorandum disposing of personal property. Prior to the New Jersey Wills and Probate Reform Act, effective Sept. 1, 1978, the incorporation-by-reference doctrine did not exist. Hence, no legal effect was given to a statement in a will that personal property was to be distributed in accordance with a separate letter or document. With the adoption of the Wills and Probate Reform Act, it is legal to provide that a document other than the will shall direct the distribution of one's assets. N.J.S.A. 38:3-10 and 38:3-11.

A memorandum can be very beneficial in that it may be modified or destroyed at any time without having to draft a new will. To be admissible, the memorandum should be written in the testator's own hand or signed by him or her, and must describe the items of personalty and the beneficiaries of same with reasonable certainty. The memorandum should be kept with his or her last will and testament. The memorandum is incorporated into the will by reference.

---

The following is an example of a typical memorandum clause:

“I give all my tangible personal property wherever located, together with any insurance policies related thereto, to my spouse, Jane Doe. If my spouse, Jane Doe, shall not survive me, all of my said personal property together with any insurance policies relating thereto, shall be distributed in accordance with a memorandum which will be found with my original Will. Any items not specifically mentioned in the memorandum, or, if no memorandum is found, said items shall be distributed to my children, in equal shares; the share of any child who does not survive me is to be distributed to his or her children.”

---

## Bequest Clause

Following the disposition of tangible personal property, the will usually deals with bequests. The words ‘bequeath’ and ‘bequest’ refer to the transfer of personal property in a will as compared to the word ‘devise,’ which refers to the transfer of real property. This distinction was eliminated by N.J.S.A. 38:1-1, which defines devise as a testamentary disposition of either real or personal property. Prior to the effective date of N.J.S.A. 3B:1-1, the use of the word bequest rather than devise to describe a transfer of real property would be effective if the will, read in light of the surrounding circumstances, established that the wrong word was used.

The purpose of the bequest clause is to make special distributions of cash or other assets to persons or institutions. A cash gift, without naming a specific source, is considered a general bequest while a gift of specific assets, or cash from a specific source, is a specific bequest. When the testator makes a gift of specific property, the will should describe all items as specifically and accurately as possible.

---

Example: Describe stock bequests in detail. Be specific with phrases such as “if owned by me at death” and “all shares including stock splits and stock dividends,” and “stock of said corporation or of its successor (whether by change of name, consolidation or merger).”

---

This clause also attempts to cover the ademption or lapse of any bequest. Simply stated, ademption occurs when a specific item is left to someone in a will, but the testator sells, loses, gives away or destroys the article before he or she dies.

---

For example, a will states: “I give and devise any car which I own at my death to my son, John.” If no car is owned by the Testator the bequest is said to have been adeemed and John will receive nothing. Usually the problem is avoided by adding a clause after any specific bequest such as the following: “If owned by me at the time of my death.”

---

The word ‘lapse’ is used to describe the situation when the testator leaves something specific to someone, but the recipient fails to survive the testator and the property automatically becomes part of the testator’s residuary estate. New Jersey, however, has enacted an anti-lapse statute providing that, in some situations, an heir of the deceased legatee is to receive the bequest, unless an alternate disposition is made. N.J.S.A. 38:3-35. The attorney drafting a will should always provide for a contingent beneficiary to prevent the anti-lapse statute from taking effect and disposing of property in a manner inconsistent with the testator’s desires. The contingent beneficiary may be another individual or the residuary estate.

## Charitable Bequests Clause

Many times, a will at this point will also provide for charitable bequests. In making these bequests, the correct name and address of the charity must be included in the will to avoid confusion and possible misdirection of the charitable gift. A charitable bequest may be given to the charity without specifying any particular use within the charity, or may be given with the direction that the gift be used for a specific purpose. If the gift is to be used for a specific purpose, the attorney should inquire of the charity as to the exact language required to meet the testator's objective.

In order to insure the deductibility of the charitable bequest for estate tax purposes, the attorney should check the Internal Revenue Code to confirm that the organization receiving the gift qualifies under I.R.C. 501(c). The attorney also should be careful when drafting a will to qualify any charitable trusts under the charitable annuity trust and unit trust provisions of I.R.C. 664.

A testator may wish to include in this clause provisions for the perpetual care of a cemetery plot or for the saying of masses or other forms of worship. With respect to both these objectives, the attorney should review the requirements of the particular cemetery and the religious order before making provisions in the will.

## Distribution of Real Property Clause

The next order of business is for the will to provide for the distribution of real property. As in the case of personal property, the will must clearly identify the real property with respect to its location and exact address. The will also must be specific in describing the beneficiaries who are to receive the real property. The following is a sample of a typical clause:

---

“I give and devise my real estate located at 3 Belmont Road, Nicetown, Wonderful County, New Jersey, also known as Lot 3 in Block 29 of Nicetown Township, to my nephew, Charles Nelson Reilly.”

---

Note that the description of the real property includes the street address, town, county and state. In some situations, a lot and block description or a metes and bounds description may be necessary to accurately describe the property. The relationship between the testator and beneficiary is also described. A devise to two or more people creates a tenancy-in-common, not a joint tenancy.

## Residuary Clause

With the disposition of all real and personal property in the estate, the final step is to cover any lapsed legacies (resulting from the death of the primary beneficiary) or personal property and real estate not already specifically distributed. This disposition is handled by the residuary clause, which usually takes the following form:

---

“All the rest, residue, and remainder of my estate, both real property and personal property, and any property over which I may have a previously unexercised power of appointment, I give, devise and bequeath to....”

---

This catchall clause insures that no property will remain in the estate that has not been effectively distributed by the will.

In the event a will is being prepared for a husband or wife with minor children, provision should be made for a contingent trust. This contingent trust, generally, arises only if both the husband and wife are killed in a common disaster, or if they both pass away before the children attain the age of majority. The 120-hour survival rule in N.J.S.A. 3B:6-6 eliminates difficult questions of proof raised by simultaneous death and common disasters. When the contingent trust provision in a will becomes effective, the trustee will manage the property until the youngest child reaches the age of majority. In most circumstances, the trustee pays the trust income to the children’s guardian named in the will, and can invade the trust principal for any emergency or extraordinary expenses incurred by the minor children, including the “health, support, maintenance and education” of the children. Education may include college and/or professional schools.

The trust terminates when the youngest child reaches the age of majority, or as otherwise provided in the will. Distribution of the trust principal will be made outright when the trust terminates. Another alternative is a staggered distribution of the trust principal. For example, the trust terms may provide that the beneficiaries of the trust are to receive one-third of the principal at the age of 21, one-half of the balance at the age of 25, and final distribution at the age of 30.

## Total Disaster Clause

In the event the testator is not survived by his or her spouse, children and grandchildren, he or she may want to make his intentions regarding an alternate distribution plan clear in a total disaster clause. In the event there is no total disaster clause, his or her estate will be distributed by the laws of intestacy. This clause will give the testator the ability to benefit family members of his or her choice, or perhaps benefit a charity (*i.e.*, his *alma mater*, church or nonprofit organization).



## Fiduciaries

After disposition of the residuary estate, the next paragraph usually names the fiduciaries under the will: executor, trustee and guardian. This paragraph may contain a provision whereby all fiduciaries named in the will are to serve without bond. In the absence of such a provision, the surrogate's court may require the fiduciary to post bond prior to qualifying for the position.

The executor and trustee named in the will should be qualified for the positions. These fiduciaries usually are clothed with certain powers to deal with the decedent's estate, or the trust established by the will. Although the executor's and trustee's powers are defined in N.J.S.A. 38:14-23, many attorneys prefer to set out at length the broad powers under which the executor or trustee may function to avoid uncertainty in the event the statute is revised. If the executor or trustee is to have any special powers, such as the power to continue a business, these powers should be included specifically in the will. A sample powers clause for both an executor and trustee follows.

## Powers Clause

In addition to the powers conferred by law, my Executor and Trustee shall have the following additional powers:

- (a) To make, without prior court order, any division or distribution of my estate required by this Will or by any trust created herein, in money, in kind, or partly in money and partly in kind, and to that end to allot specific securities or other property, or any undivided interest therein, to any person, share or part, although it may differ in kind from securities or property allotted to any other person, share or part;
- (b) To retain, transfer, sell, convey, exchange, partition, lease, mortgage, pledge, give options upon, or otherwise dispose of all or any portion of my estate, real or personal, at public or private sale or otherwise, for such price or prices, on such terms, for cash or other consideration, or on credit, with or without security, to such person or persons, firm or firms, corporation or corporations, and at such time or times as they may deem to be to the best interests of my estate and the trusts created herein;
- (c) To determine whether and to what extent receipts should be deemed income or principal, whether and to what extent expenditures should be charged against income or principal, and what other adjustment should be made between income and principal, and their decision on these matters shall be final and conclusive upon all parties;
- (d) To retain all or any part of my estate or any trust created herein in the form in which such property may be at the time of my death, or at the time of its receipt by my Trustee from my Executor;
- (e) To pay, extend, renew, modify, settle, adjust, or compromise, upon such terms as they may determine, and upon such evidence as they may deem sufficient, any obligation, or claim, including taxes, either in favor of or against my estate or any trust created herein;

- (f)** To join in, become a party to, oppose, or otherwise participate in, any protective plan or agreement of reorganization, consolidation, merger, or other capital readjustment, or dissolution of any corporation, the stocks, bonds, or other securities of which may at any time constitute a part of my estate or any trust created herein, to the same extent and as fully as though they were the absolute and individual owners of such stocks, bonds, or other securities, and, without limiting the generality of the foregoing, to deposit with any committee or depository, pursuant to such plan or agreement, any stocks, bonds, or other securities which may at any time constitute a part of my estate or any trust created herein, to make payment of any charges or assessments imposed by the terms of any such plan or agreement, to exercise rights to subscribe to new securities and pay any sums that may be required thereby, and to receive and continue to hold any property allotted to my Executor or Trustee by reason of their participation therein.
- (g)** In case a specific bequest, income or any discretionary payments of principal becomes payable to a minor or to a person under legal disability or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is in the opinion of the Executor or Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Executor or Trustee in such of the following ways as it deems best: (a) directly to such beneficiary; (b) to the legally appointed guardian or conservator of such beneficiary; (c) to some relative or friend for the care, support and education of such beneficiary; (d) by the Executor or Trustee, using such amounts directly for such beneficiary's care, support and education; (e) to a person designated by the Executor or Trustee as Custodian for the person under age twenty-one (21) pursuant to the New Jersey Uniform Transfers to Minors Act, as though the Executor or Trustee were a donor making a gift under the Act pursuant to its terms.

The receipt of the person or persons to whom any such payment or distribution is so made shall be sufficient discharge therefor.

- (h)** To take any action with respect to conserving or realizing upon the value of any property, and with respect to foreclosures, reorganizations or other changes affecting the trust property; to collect, pay, contest, compromise or abandon demands of or against the trust estate, wherever situated; and to execute contracts, notes, conveyances and other instruments, including instruments containing covenants and warranties binding upon and creating a charge against my estate, and containing provisions excluding personal liability.
- (i)** To retain any property or undivided interests in property received from any other source, including residential property, regardless of any lack of diversification, risk or non-productivity.
- (j)** To make loans or terms satisfactory to my Executor or Trustee for any purpose consistent with the orderly administration of my estate.
- (k)** To operate, maintain, repair, rehabilitate, alter, improve or remove any improvements on real estate; to make leases and subleases for terms of any length, even though the terms may

extend beyond the termination of the trust; to subdivide real estate; to grant easements, give consents and make contracts relating to real estate or its use; to release or dedicate any interest in real estate.

- (l)** To borrow money for any purpose, either from a banking department of an Executor or Trustee, or from others, and to mortgage or pledge any property.
- (m)** To employ attorneys, auditors, depositories, proxies and agents with or without discretionary powers; and to keep any property in the name of a trustee or a nominee, with or without disclosure of any fiduciary relationship, or in bearer form.
- (n)** To make such elections under tax laws as such Executor deems advisable.
- (o)** To allocate my generation-skipping tax exemption in such manner as my Executor determines. My Trustee may divide any trust into separate fractional share trusts, one to have an inclusion ratio of one for generation-skipping tax purposes and the other to have an inclusion ratio of zero. However, no power to expend principal of an exempt trust for a beneficiary who is a “non-skip person” as defined in Section 2613(b) of the Internal Revenue Code may be exercised by the Trustee so long as there is any principal held in a non-exempt trust and in which the Trustee has a similar power to expend principal for such beneficiary.

Such allocations shall be made without regard to the relative interests of the beneficiaries. No adjustments shall be made between principal and income, or in the interests of the beneficiaries, to compensate for the effects of such allocation. Any decision made by my Executor with respect to the foregoing shall be binding and conclusive on all persons and not subject to questions by any beneficiary or court, and my Executor shall have no liability as a result of any such decision.

- (p)** Among the circumstances that the fiduciary shall consider in investing and managing trust assets are those of the following as are relevant to the trust and its beneficiaries:
  - (1) general economic conditions;
  - (2) the possible effect of inflation or deflation;
  - (3) the expected tax consequences of investment decisions or strategies;
  - (4) the role that each investment or course of action plans within the overall trust portfolio;
  - (5) the expected total return from income and the appreciation of capital;
  - (6) other resources of the beneficiaries;
  - (7) the need for liquidity, for regularity of income, and for preservation or appreciation of capital; and
  - (8) an asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries as, for example, an interest in a closely-held enterprise, tangible and intangible personalty, or real estate.

Please note that paragraph (p) is a recitation of the Prudent Investor Act, N.J.S.A. 3B:20-11.3(d).

## Testimonium Clause

There now remains the concluding portion of the will—the testimonium. This clause establishes that the testator signed the will with full knowledge of its importance and its contents and ends showing the date and place of execution. In New Jersey, two witnesses must also sign the will at the time it is executed by the testator.

One form of a testimonium clause is as follows:

IN WITNESS WHEREOF, I subscribe my name, this \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand and Nineteen, at Princeton, New Jersey

\_\_\_\_\_ (L.S.)

The foregoing instrument, consisting of this and 10 preceding typewritten pages, was signed, sealed, published and declared by the above-named Testator as and for his Last Will and Testament, in the presence of each of us, all being present at the same time, and we, at his request and in his presence and the presence of each other, have hereunto subscribed our names as witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, Two Thousand and Nineteen.

\_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ residing at \_\_\_\_\_

# SELF-PROVING WILLS

The affidavit of execution is necessary to make the will self-proving. By allowing self-proved wills, the New Jersey Wills and Probate Reform Act eliminated the problems of finding a witness who has moved, and of proving the signature of a deceased witness. The provisions regarding self-proved wills, N.J.S.A. 3B:3-4 and 3B:3-5, provide that an attested will may, at the time of its execution or at any time subsequent to its execution, be made self-proved.

In order to satisfy the requirements for a self-proved will, the will first must be executed in compliance with the formalities contained in N.J.S.A. 3B:3-2. N.J.S.A. 3B:3-4 and 3B:3-6 then require acknowledgement by the testator and affidavits of the witnesses, each made before an officer authorized by N.J.S.A. 46:14-6, 46:14-7 or 46:14-8. The affidavit of execution is attached to the will and eliminates the need to present any witnesses to the will in the surrogate's court. Unless wills are updated by this affidavit of execution, they will be probated under the law as it existed prior to Sept. 1, 1978.

It is important to note that the statute does not require the officer's authorization by certificate under official seal, thereby enabling an attorney to self-prove a will without the necessity of a notary.

## ACKNOWLEDGMENT AND AFFIDAVIT RELATING TO EXECUTION OF WILL

STATE OF NEW JERSEY:

ss:

COUNTY OF SOMERSET:

We, the testator and the witnesses, respectively, whose names are signed to the attached instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his Last Will and that he had signed willingly and that he executed it as his free and voluntary act for the purposes expressed and that each witness states that he or she signed the Will as witness in the presence and hearing of the testator, and that to the best of his or her knowledge the testator was at the time eighteen or more years of age, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
John Doe, Testator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed, sworn to and acknowledged before me by, John Doe, the testator, and subscribed and sworn to before me by \_\_\_\_\_ (witness #1) and \_\_\_\_\_ (witness#2) witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, Two Thousand and Nineteen.

\_\_\_\_\_  
Lisa M. Butler  
An Attorney at Law of the  
State of New Jersey

# EXECUTION AND FINAL MEETING

CHAPTER

# 4

## **EXECUTION OF THE WILL**

The final meeting is when the client executes the will. The attorney should follow the same procedure every time, and indicate the seriousness of the execution. Avoid mailing the will to the client and having him or her execute and witness it without the attorney's supervision. Only execute one original will. If more than one will is executed and the testator later decides to revoke the will, one of the ways to revoke it is to physically destroy the will. However, what if all the originals cannot be found for destruction at the time the newer will is executed? Later, at the time of the testator's death, it is possible that more than one original will may be presented for probate, which will bring to issue the testator's intent. In an effort to prevent an otherwise revoked will being presented for probate, it is recommended that only one original will be signed.

The attorney would be wise in preparing a memorandum detailing the events of the execution of each will. In the event that it becomes necessary for the attorney to testify regarding the formalities of the will and its execution in a will contest, the memorandum will enable the attorney to testify accurately.

The attorney should also have disinterested witnesses who will later be available to attest to the details of the signing of the will in the event of a will contest.

## **RETENTION OF THE WILL**

With respect to the retention of the original will, it is wise to advise the client to keep it in a fireproof place (i.e., either a safe deposit box, fireproof box in their home, or in a fireproof filing cabinet in the attorney's offices). In any event, in addition to the original will, the client should be given a conformed copy of the will. While the conformed copy has no legal effect as the names of the testator and witnesses have been printed or typed in, it does give the client easy access to review the contents of the will document if the original is kept at a bank or attorney's office. Safe deposit boxes are no longer inventoried by the state of New Jersey and, therefore, are not 'frozen.' Thus, the contents of the safe deposit box are easily accessible after someone passes away, as long as the client knows where the key is located. However, even without a key a safe deposit box can be drilled open by the bank for a fee.

## **CONTINUING RESPONSIBILITY TO THE CLIENT**

After the initial estate plan is completed and the will and trust documents are executed, the attorney should decide whether his or her responsibility has ended. Generally, the attorney would wish to maintain a relationship with the clients but not undertake any obligation to specifically remind the clients to review their estate plan in the future or to advise clients of



changes in the law. When the attorney sends the executed estate planning documents to the clients, he or she should remind the clients to advise the attorney if there are any changes in their personal lives or economic situations. It is uncertain whether the attorney has a continuing responsibility to advise the clients of substantial changes in the law that may affect their estate planning. Notwithstanding the uncertainty, it is good practice for the attorney to send a letter to all estate planning clients advising them of such changes, such as the Tax Cuts and Jobs Creation Act of 2017.

## REVIEWING THE WILL

Naturally, the frequency with which a will is reviewed depends on the complexity and susceptibility to change of the estate plan. A recommendation that a will be reviewed at least every two years would not be inappropriate with the following considerations in mind: 1) changes in personal circumstances; 2) changes in economic conditions; and 3) changes in the tax laws, both federal and state.

The client should be advised to consider whether he or she still owns any articles of property, which he or she specifically bequeathed under the will, and whether there have been any changes in the family with regard to marriages and divorces or the birth of children that would substantially effect the various provisions of the will. The provision naming the executor and trustee is also important and should be reviewed.

## LETTER OF INSTRUCTION

The attorney should point out to the client that in addition to the will, another helpful, but less formal, document is the letter of instruction. The letter's purpose is to provide the executor of the estate and the beneficiaries with additional and more personal information regarding the testator's estate. It may be drafted by the client or by the client's attorney. The letter usually includes the following information:

1. A statement as to the location of the will.
2. Burial instructions, name of a cemetery and location of a plot, and information regarding the location of the cemetery plot deed. If the testator's desire is to be cremated, instructions as to the care and placement or disbursement of the ashes are included. If the client is a veteran, he or she may wish to take advantage of the opportunity to be buried in a national cemetery.
3. A list, including the addresses of all the people who should be notified of the client's death and the relationship of these people to the client. This will also be helpful in probating the will because the court will usually require a listing of all immediate family members.
4. The location of all important legal documents, including Social Security and Medicare cards, automobile title papers, real property deeds, armed services discharge papers, marriage

and/or divorce papers, copies of separation or settlement agreements, birth certificate or baptismal certificate and any other papers of a legal nature.

5. Whether the client is a member of any society or lodge that has as part of its membership some death benefit or insurance coverage at the death of a member, and any information regarding the procedure for collecting this benefit and the location of the certificate of insurance.
6. The location and listing of all life insurance policies, including the name of the company, policy number, beneficiary designation and the amount of coverage. This list should also include any casualty and homeowner's insurance policies and their location and any policies on which the client has been paying the premiums but are insuring other members of the family.
7. The name of the bank and account number of all savings and checking accounts in the client's name individually or in his or her name with another jointly. The location of all checkbooks, passbook accounts or certificates of deposit should be included.
8. A list of all U.S. Savings Bonds, in whose name the bonds are registered, and their denominations and serial numbers.
9. A list of all stocks and bonds and their locations.
10. The location of any safe deposit box or boxes, in whose name the boxes are registered and the location of the key or keys.
11. A listing of any pension or profit sharing plans of which the client is a participant including the location of any explanatory booklets.
12. The location of recent income tax returns, both state and federal.
13. A statement regarding the disposition of any tangible personal property having sentimental value and an explanation of the reasons for any unusual distributions made under the will.
14. Armed service information.

## SAMPLE LETTER OF INSTRUCTION

An example of a letter of instruction, including some of the foregoing information, is as follows:

To My Executor and Beneficiaries:

The following are items of a personal nature, which I would ask my Executor in the administration of my estate to carry out.

It is my wish and desire that my body be cremated and my ashes cast upon the sea. I wish no funeral service of any kind to be conducted and no monies expended for any memorial or gravestone.

With respect to my personal effects, I wish them to be distributed among my children as they may agree. To the extent that they cannot reach agreement, I direct my Executor to dispose of them at public sale and add the proceeds to my residuary estate.

All my important papers will be found in my safe deposit box 4922 at the Meadville Branch of the Prudent Trust Company. The key to this box is located in the top middle drawer of my desk in my bedroom at home. The safe deposit box contains all my insurance policies, a list of which is as follows:

Metropolitan Life Ins. Co., Pol. #12451 \$10,000

Home Life Ins. Co., Pol #1377 \$50,000

Prudential Life Ins. Co., Pol. #27592 \$30,000

The box also contains my service discharge papers and my Last Will and Testament, information on my Social Security benefits, and a list of my stock holdings. My savings account passbooks will be found in the lower right hand drawer of my desk, in a small green strong box.

I have made only a nominal bequest under my Will for my son, John, because he has been very successful financially and it was my judgment that my other children were in greater need financially of the proceeds of my estate. I hope that you, John, will understand that my love and affection for you is as great as for your brothers and sisters.

Sincerely,

The foregoing letter of instruction is merely a sample. The exact contents of such a letter will depend upon the client's objectives and requirements. In any event, a letter of this type can be of significant value to the attorney for the estate, executor and beneficiaries.

## SAMPLE CODICILS

I, MARY ROE, of the Town of West Orange, in the County of Essex and State of New Jersey, still being of sound and disposing mind, memory and understanding, do make, publish and declare this as and for a Codicil to my Last Will and Testament dated the 22nd day of March, Two Thousand Nineteen (2019).

FIRST: I hereby revoke and annul the legacy of Five Thousand Dollars (\$5,000.00) bequeathed to JOHN DOE under paragraph FIFTH, section (c), of my said Last Will and Testament.

SECOND: In all other respects I ratify and affirm my said Last Will and Testament dated the 22nd day of March, Two Thousand Nineteen (2019).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, Two Thousand Nineteen (2019).

\_\_\_\_\_ (LS.)

The foregoing Codicil to the Will of MARY ROE was signed, sealed, published and declared by the said MARY ROE as and for a Codicil to her said Last Will and Testament dated March 22, 2019, in the presence of us, who were present at the same time and who, thereupon, at her request, in her presence and in the presence of each other, have hereunto subscribed our names as witnesses.

\_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ residing at \_\_\_\_\_

\*

\*\*\*\*\*

I, MARY ROE, of the Town of Montclair, in the County of Essex and State of New Jersey, being of sound and disposing mind, memory and understanding, do make, publish and declare this as and for a Third Codicil to my Last Will and Testament dated the 31st day of March, Nineteen Hundred and Seventy-Seven (1977), as amended by Codicils thereto dated the 17th day of June, Nineteen Hundred and Seventy-Eight (1978) and the 22nd day of January, Nineteen Hundred and Seventy-Nine (1979).

FIRST: I hereby revoke and annul the legacy of Five Thousand Dollars (\$5,000.00) bequeathed to John Doe under paragraph FIFTH, section (c), of my said Last Will and Testament.

SECOND: In all other respects I ratify and affirm my Last Will and Testament dated the 31st day of March, Nineteen Hundred and Seventy-Seven (1977), as amended by Codicils thereto dated the 17th day of June, Nineteen Hundred and Seventy-Eight (1978) and the 22nd day of January, Nineteen Hundred and Seventy-Nine (1979).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, Two Thousand Nineteen (2019).

\_\_\_\_\_ (LS.)

The foregoing Codicil to the Will of MARY ROE, consisting of two (2) typewritten pages, including this page was signed, sealed, published and declared by the said MARY ROE as and for a Third Codicil to her said Last Will and Testament dated March 31, 1977, as amended by Codicils thereto dated June 17, 1978 and January 22, 1979, in the presence of us, who were present at the same time and who, thereupon, at her request, in her presence and in the presence of each other have hereunto subscribed our names as witnesses.

\_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ residing at \_\_\_\_\_



**APPENDIX**

**A**

# FINANCIAL PLANNING WORKFORM

**Principal** \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

**Spouse** \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

## **Family (include children and grandchildren)**

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

## **Parents**

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_



Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

**Brothers, Sisters and Other Dependents**

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

**Insurance Counselor**

Name \_\_\_\_\_

Address \_\_\_\_\_

**Tax Advisor**

Name \_\_\_\_\_

Address \_\_\_\_\_

# PROPERTY LIST

## Real Estate

	Residence	Business Property	Summer	Rental
Market Value	\$	\$	\$	\$
Mortgage	\$	\$	\$	\$
Equity	\$	\$	\$	\$
Owner (Indiv., or Joint)	\$	\$	\$	\$
<b>Total Equity</b>	\$			

## Investments

	Stocks	Mutual Funds	Bonds	Loans
Market Value	\$	\$	\$	\$
Mortgage	\$	\$	\$	\$
Equity	\$	\$	\$	\$
Owner (Indiv., or Joint)	\$	\$	\$	\$
<b>Total</b>	\$			

## Business Interests

	Close Corporation	Partnership	Proprietorship
Total Market Value	\$	\$	\$
Percentage of Interest	\$	\$	\$
Value of Interest	\$	\$	\$
<b>Total</b>	\$		

### Life Insurance and Employee Benefits

	Face Value	Beneficiary	Owner (Indiv. or Joint)
Group Insurance	\$		
Personal Insurance	\$		
Fraternal Assoc. Ins.	\$		
Profit Sharing	\$		
Pension Benefits	\$		
Stock Options	\$		
<b>Total</b>	\$		

### Miscellaneous

	Market Value	Owner (Indiv. or Joint)
Savings Accounts	\$	
Cash (checking acct., etc)	\$	
Works of Art/Jewelry	\$	
Furniture	\$	
Automobiles	\$	
Personal Effects	\$	
<b>Total</b>	\$	
<b>GRAND TOTAL</b>	\$	

**STOCKS**

<b>Name</b>	<b>No. of Shares</b>	<b>Approximate Market Value</b>	<b>Cost Basis</b>
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

**MUTUAL FUNDS**

<b>Name</b>	<b>No. of Shares</b>	<b>Approximate Market Value</b>	<b>Cost Basis</b>
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

**BONDS**

<b>Name</b>	<b>No. of Units</b>	<b>Approximate Market Value</b>	<b>Cost Basis</b>
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

**LIFE INSURANCE**

<b>Name of Company</b>	<b>Face Value</b>	<b>Cash Surrender Value</b>
	\$	\$
	\$	\$
	\$	\$

# CONSIDERATIONS WHEN MAKING OR REVISING A WILL

1. Inventory your property.
2. Any items (*e.g.*, antiques, etc.) that you might want to specifically devise
3. Other specific bequests to relatives, friends and charities
4. Executor/trustee
  - A. Individual (relative, etc.)
    - Does he or she live nearby? How reliable is he or she?
    - Is he or she willing?
  - B. Institution
    - How large is the estate? What is the bank's policy?
    - What are the fees for serving in this capacity?
  - C. Attorney
  - D. Contingent executors
5. Advising executor/trustee about your property, etc.—Letter to executor/trustee
6. Testamentary guardians and trustees for children; not always same person. Consider relationship between children and guardian
7. Distribution to children
  - A. Is 18 old enough?
  - B. Physically or mentally disabled adults
  - C. Spendthrift trust
8. Tax consequences of gifts to non-lineal beneficiaries
9. Joint ownership vs. individual ownership
  - A. Between spouses
  - B. Between other joint owners
10. Need for a power of attorney/living will
11. Review will
  - A. Every two years
  - B. Change in marital status
  - C. Death or disability of executor/trustee or contingent executor/trustee
  - D. Birth of children
  - E. Death of a beneficiary
  - F. Change in financial status
  - G. Death of witnesses (if not self-proving will)
12. Codicils—pros and cons
13. Are there any existing trusts in which the client is either a beneficiary or trustee, and are these trusts revocable or irrevocable?
14. Is the client a U.S. citizen?

### CLASS "C" TRANSFEREES

		On or after 7-1-88	3-29-62 thru 6-30-88 If less than \$500: no tax if \$500 or more: no exemption
First	\$ 25,000	Exempt	11%
Next	1,075,000	11%	11%
Next	300,000	13%	13%
Next	300,000	14%	14%
Next	1,700,000	16%	16%

### CLASS "D" TRANSFEREES ON OR AFTER 3-29-62

If less than \$500: no tax If more than \$500: no exemption		
First	\$700,000	15%
Over	\$700,000	16%

# LETTER OF INSTRUCTION TO HEIRS

Name \_\_\_\_\_

Residence \_\_\_\_\_

City \_\_\_\_\_

County \_\_\_\_\_ State \_\_\_\_\_

Birthdate \_\_\_\_\_ Birthplace \_\_\_\_\_

Occupation \_\_\_\_\_

Social Security # \_\_\_\_\_

Employer \_\_\_\_\_

Address \_\_\_\_\_

Spouse \_\_\_\_\_ Birthplace \_\_\_\_\_

Father \_\_\_\_\_ Birthplace \_\_\_\_\_

Mother \_\_\_\_\_ Birthdate \_\_\_\_\_

Dates \_\_\_\_\_

If ever in Armed Services, Service Serial # \_\_\_\_\_

Dates \_\_\_\_\_

I have executed a will. It is dated \_\_\_\_\_ and can be found at:

\_\_\_\_\_

My executor is \_\_\_\_\_

My banks are

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Safety deposit box # \_\_\_\_\_

in \_\_\_\_\_ bank, to which the

key can be found at \_\_\_\_\_

Valuables not found in box will be found

\_\_\_\_\_

\_\_\_\_\_



I have the following outstanding loans

---

---

I have the following insurance policies:

Company	Policy#	Type	Amount
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

My stockbroker is 

---

Address 

---

I keep stock in my name or in street name 

---

Funeral: I have made funeral arrangements with 

---

Address 

---

I would prefer service at (house of worship) 

---

Home 

---

 Clergy 

---

I prefer earth burial 

---

 Cremation 

---

My cemetery plot is located at (address) 

---

The plot certificate can be found 

---

The following persons should be notified

---

---

---

---

---

---

---

---



**B**

# OUTRIGHT DISTRIBUTION WILL WITH CONTINGENT TRUST FOR DESCENDANTS UNDER AGE X\*

LAST WILL AND TESTAMENT OF  
JANE A. DOE

I, JANE A. DOE, residing at 523 Main Street, Mayberry, New Jersey 07123, being of sound mind, memory and understanding, do make, publish and declare the following to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me:

## ARTICLE I

- A. I appoint my husband, JOHN M. DOE, as executor of this my Last Will and Testament. If JOHN shall fail to qualify, or having qualified shall cease to serve, as executor, due to his death or any other reason whatsoever, I appoint my sister, ETHEL SMITH, as his successor.

The last serving executor shall have the right, by an instrument in writing or by Last Will and Testament, to appoint any individual(s) and/or trust institution of his or her choice as successor executor(s).

- B. I appoint my sister and brother-in-law, ETHEL and FRED SMITH, or the survivor of them, as trustees of the trusts created hereunder.

The last serving trustee of a trust created hereunder shall have the right, by an instrument in writing or by Last Will and Testament, to appoint any individual(s) and/or trust institution of his or her choice as successor trustee(s) of such trust.

- C. If my husband, JOHN M. DOE, shall predecease me, and I shall die during the minority of any child or children of mine, I appoint my sister and brother-in-law, ETHEL and FRED SMITH, as guardians of any such child or children during the remainder of their minority. If both ETHEL and FRED shall fail to qualify as guardians, or having qualified shall cease to serve, due to death or any other reason whatsoever, during the minority of any child or children of mine, I appoint my sister-in-law and her husband, LUCY and RICKY JONES, as their successors.

Anything in the foregoing paragraph of this subarticle C to the contrary notwithstanding, (i) if FRED shall not be married to ETHEL at the time when they are to serve as guardians, or shall thereafter cease to be married to her, either through divorce or death, then FRED shall not serve, or shall cease to serve, as a guardian, whichever shall be applicable, and ETHEL, if living, shall serve alone, and (ii) if RICKY shall not be married to LUCY at the time when they are to serve as guardians, or shall thereafter cease to be married to her, either through divorce or death, then RICKY shall not serve, or shall cease to serve, as a guardian, whichever shall be applicable, and LUCY, if living, shall serve alone.

\*Provided by Peter J. Bakarich, Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey 07601

The last serving guardian shall have the right, by an instrument in writing or by Last Will and Testament, to appoint successor guardian(s) of his or her choosing. In making such appointment, such guardian shall give due consideration to my belief that it will be in the best interests of my children for a married couple to serve together as guardians.

- D. I direct that no bond or other security shall be required of my executor, trustees or guardians, or any of them, or any successors thereto, in any jurisdiction in which they may be called upon to act.
- E. The written instruments referred to in subarticles A, B and C hereof shall be executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey.

Any trust institution being appointed pursuant to subarticle A or B hereof by anyone other than me shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.

## **ARTICLE II**

I direct my executor to pay, as soon as convenient after my death, all of my debts, the expenses of my last illness, my funeral and related expenses and the expenses of administering my estate. Notwithstanding the foregoing, my executor shall not pay any debt of mine secured by property owned by me (including a life insurance policy), it being my intention either that said property shall pass subject to such indebtedness or, if the property shall be a life insurance policy, that any such debt shall first be satisfied out of the proceeds of such policy.

## **ARTICLE III**

- A. I bequeath all of my personal effects, jewelry and automobiles, and all of my household furnishings, equipment and bric-a-brac, to my husband, JOHN M. DOE, if he shall survive me.
- B. It is my intention to prepare a written statement, to be dated and signed by me, disposing of certain of my personal effects, jewelry and other items of tangible personal property, which statement (i) will be effective if my husband, JOHN M. DOE, shall predecease me and (ii) may be revised and/or superseded from time to time. All items listed in the statement last signed by me prior to my death I hereby bequeath to the beneficiaries, as specified therein, who shall survive me.
- C. If my husband, JOHN M. DOE, shall predecease me, I bequeath all of my personal effects, jewelry, automobiles, household furnishings, equipment and bric-a-brac not disposed of pursuant to the written statement referred to in subarticle B hereof to those of my children who shall survive me, in as nearly equal shares as feasible, to be allocated among them as they shall mutually agree, or in the absence of such agreement, as my executor, in his discretion, shall determine, giving due regard to the preferences of such children.

If any such child of mine shall not then be of legal age, my executor shall set aside so much of such child's share of such property as he shall determine I would wish to have preserved for such child, and shall dispose of the balance as he shall deem advisable, adding the proceeds thereof to such child's share of my residuary estate, or, if applicable, to the trust into which such child's share of my residuary estate shall be converted, to be treated as part of the initial principal thereof. The portion of such property so set aside for any minor child may, in the discretion of my executor, be placed in storage until such child shall attain legal age, and/or delivered to his or her legal guardians, and/or preserved for him or her in such other manner as my executor, in his discretion, shall deem advisable.

- D. If neither my husband, JOHN M. DOE, nor any of my children, shall survive me, then the bequests in subarticles A and C hereof shall lapse, and the aforesaid property bequeathed thereunder shall be added to my residuary estate and distributed as hereinafter provided.

#### **ARTICLE IV**

All of the rest, residue and remainder of my estate, of every nature and description, real, personal and mixed, wheresoever situated, remaining after payment of the debts and expenses specified in Article II hereof (referred to herein as my "residuary estate"), I bequeath as follows:

- A. If my husband, JOHN M. DOE, shall survive me, I bequeath my residuary estate to him.
- B. If my husband, JOHN M. DOE, shall predecease me, I bequeath my residuary estate to those of my children who shall survive me and to the descendants surviving me of any child of mine who shall predecease me, per stirpes; provided, however, that any sums thus payable to any descendant of mine who shall be under the age of twenty-five (25) years at the time of my death, shall be held by my trustees, hereinabove named, as a separate trust for the benefit of such person, and my trustees shall hold the same; shall manage, administer, invest and reinvest the principal of the trust; shall collect and receive the income thereof; shall pay any and all expenses incident to the operation of such trust; and shall distribute the net income and principal thereof in accordance with the provisions of paragraphs 1 through 4 of this subarticle B.

Any life insurance proceeds, or other death benefits, received by my trustees shall also be paid over and distributed as set forth in this subarticle B, unless otherwise specified in the appropriate beneficiary designation.

1. Until the termination of the trust, my trustees, at any time or times that they shall deem it advisable, may apply for the benefit of the beneficiary, or pay over to him or her, so much, all or none of the net income of the trust, and/or such sum or sums out of the principal of the trust (including the whole thereof), as my trustees, in their discretion, shall deem reasonably necessary to provide for the beneficiary's health, maintenance, support and education (including undergraduate and postgraduate education). In the

case of income, my trustees shall add to the principal of the trust any such net income not so expended in any fiscal year of the trust.

2. Upon the attainment of the age of twenty-five (25) years by the beneficiary of the trust, my trustees shall then pay over and distribute to him or her all of the then remaining principal of the trust (together with all undistributed income), whereupon the trust shall terminate.
  3. If the beneficiary of the trust shall die before attaining the age of twenty-five (25) years, then upon his or her death the then remaining principal of the trust (together with all undistributed income) shall be paid over and distributed to his or her then living descendants, per stirpes, and in default of such descendants, the same shall be paid over and distributed to those of the beneficiary's siblings who shall then be living and to the then living descendants of any sibling of the beneficiary who shall then be deceased, per stirpes; and in default of such siblings and descendants of a deceased sibling, to the then living descendants of that child of mine who shall be the ancestor of the beneficiary, per stirpes, and in default of such ancestor's descendants, to those of my children who shall then be living and to the then living descendants of any child of mine who shall then be deceased, per stirpes; provided, however, that: (i) any sums thus payable to any descendant of mine for whose benefit a trust created hereunder shall then still be in existence shall be added to the principal of such trust, and shall be held and distributed as part thereof, and (ii) any sums thus payable to any descendant of mine who shall then be under the age of twenty-five (25) years and for whose benefit there shall not then be in existence a trust created hereunder, shall be held in trust for the benefit of such person in accordance with the provisions of paragraphs 1 through 4 of this subarticle B; and provided, further, that if none of my children, and no descendant of any deceased child of mine, shall then be living, the then remaining principal and undistributed income of the trust shall be paid over and distributed as set forth in subarticle C hereof, as if (i) the same were part of my residuary estate, (ii) my husband, JOHN M. DOE, and all of my descendants had predeceased me and (iii) I had died at the time of the death of the beneficiary of the trust.
- C. If neither my husband, JOHN M. DOE, nor any descendant of mine, shall survive me, I bequeath my residuary estate as follows:
1. One-half (1/2) thereof to those of my nieces and nephews who shall survive me, in equal shares or all to the survivor of them.
  2. One-half (1/2) thereof to those of JOHN's nieces and nephews who shall survive me, in equal shares or all to the survivor of them.

Any life insurance proceeds, or other death benefits, received by my trustees shall also be paid over and distributed as provided in this subarticle C, unless otherwise specified in the appropriate beneficiary designation.

## **ARTICLE V**

Anything in this Will to the contrary notwithstanding:

- A. Any trust created hereunder which shall be or become subject to a rule against perpetuities and which, by its terms, shall not have terminated on or before the date which is twenty-one (21) years after the death of the last survivor of myself, my husband, JOHN M. DOE, and those of my descendants who shall survive me, shall nevertheless terminate on such date, and the principal and undistributed income thereof shall thereupon be paid over and distributed free of trust to the then current income beneficiary thereof, or the current income beneficiaries thereof, in equal shares, if more than one.
- B. If I and my husband, JOHN M. DOE, shall die at the same time, within one hundred twenty (120) hours of each other or under such circumstances that the order of our deaths cannot be determined with certainty, then for all purposes of this trust agreement, or otherwise, he shall be deemed to have predeceased me.

## **ARTICLE VI**

Whenever, pursuant to the terms of this Will, my trustees are given discretion to pay or to apply income or principal of a trust to or for the benefit of a minor, my trustees may, in their discretion, make such payment or application by expending the same directly for the benefit of such minor, or by paying the amount so to be paid or applied to the parent or legal guardian of such minor, or to the person with whom such minor may reside, or to a person standing in the place of a parent to such minor, or to a Custodian for such minor designated by my trustees under an applicable Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, or directly to such minor, or otherwise, as my trustees may, from time to time deem expedient, and the receipt of such minor or such other payee shall be a full acquittance to my trustees to the extent of such payments.

The provisions of this Article VI shall also apply, to the extent applicable, whenever my trustees are given discretion to pay or apply income or principal of a trust to or for the benefit of a person who, in their judgment, is incapable of adequately managing such income or principal.

## **ARTICLE VII**

- A. All transfer taxes payable with respect to property passing under this Will shall be paid out of my residuary estate, without apportionment, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and shall not be paid out of my residuary estate. For purposes of this subarticle A, property received by my trustees other than from my executor shall not be considered to have passed under this Will.



- B. It is my intention that all transfer taxes payable with respect to property passing other than under this Will shall be paid by the recipient thereof, and, if paid by my executor, shall be recovered from such recipient if my executor shall deem it reasonably feasible to do so. My executor shall not be liable to my estate or to any person interested therein if my executor shall not deem it reasonably feasible to recover such taxes, and my executor shall have no obligation to pursue recovery under such circumstances. If my executor shall come into possession of any property distributable to a beneficiary from whom my executor shall have a right of recovery pursuant to this subarticle B, my executor may pay, on behalf of the beneficiary, the amount of recoverable taxes and charge the same to such property or sell any part of such property to produce cash to satisfy the recovery right.

If an asset of my estate is valued for transfer tax purposes higher than the amount received by my estate due to the application of Code Section 2703 or otherwise, and if the purchaser or purchasers of such asset, or the owner or owners of the purchaser, receive any bequest under this Will, then to the extent such person or persons are benefitted, directly or indirectly, by the purchase, such benefit shall be deemed to be property passing other than under this Will for purposes of this subarticle B. The same principle shall apply if any gift tax is included in my gross estate pursuant to Code Section 2035(b), with the recipient of the gift being treated as a purchaser.

- C. The transfer taxes attributable to the property referred to in subarticle B hereof shall be the amount by which the total of such taxes payable exceeds the total of such taxes which would have been payable had such property not been subject to transfer taxes, the same to be allocated among the various interests in such property pro rata, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- D. Whenever transfer taxes with respect to property passing under this Will are payable from specified property, or by the recipient thereof, in accordance with the provisions of this Article VII, my executor may withhold distribution of a portion of such property to secure payment thereof, and may make payment on behalf of the recipient or make whatever other arrangements my executor shall deem advisable to assure that the taxes are paid. If the recipient also receives property other than under this Will, the foregoing authority to withhold distribution of property passing under this Will shall extend to the transfer taxes payable with respect to such property passing outside of this Will.
- E. When used in this Will, the term “transfer taxes” shall be deemed to include all taxes payable by reason of property passing upon my death, whether labeled estate taxes, inheritance taxes, death taxes, succession taxes, transfer taxes, or otherwise, and whether imposed by the Federal government, any state, city or municipality, or otherwise, including interest and penalties thereon. Such term shall not be deemed to include taxes imposed on generation-skipping transfers pursuant to Code Section 2601 et seq. or any other statute of similar import, whether imposed by the Federal government, any state, city or municipality, or otherwise, which taxes, including interest and penalties thereon, shall be paid as provided in Section 2603 of the Code, or in any other statute of similar import.

- F. Nothing contained in this Article VII shall be deemed to be a direction that my estate recover or not recover from the recipient of property included in my gross estate by reason of Section 2044 of the Code the amount specified in Section 2207A of the Code, it being my intention that my executor shall make such decision in accordance with such criteria, as he, in his discretion, shall deem appropriate.
- G. A person (the “payor”) receiving assets as a result of my death (whether or not received pursuant to this Will) may be obligated to pay a transfer tax (often called, and referred to herein as, an “inheritance tax”) and also may be charged with a portion of another transfer tax (often called, and referred to herein as, an “estate tax”). Such inheritance tax payment may reduce the estate tax liability of my estate, a portion of which reduction could, in the absence of this subarticle G, inure to the benefit of beneficiaries other than the payor. Anything in this Article VII to the contrary notwithstanding, any such reduction shall be applied first to reduce (but not below zero) the amount of estate tax charged to the payor, with any balance being applied as it would have been had this subarticle G not existed.
- H. To the extent possible, no transfer taxes shall be paid from any property, whether passing (i) under this Will or otherwise or (ii) outright or in trust, which shall qualify for the Federal estate tax marital or charitable deduction.
- I. My executor shall not be liable to any person or persons as a result of the exercise by him of any discretion granted pursuant to this Article VII, and any discretionary decisions made by my executor shall be conclusive and binding upon all persons interested therein.

### **ARTICLE VIII**

The interest of any beneficiary or remainderman in any trust created hereunder, either in income or in principal, or in both, shall not be subject to sale, assignment, pledge or transfer in any manner, and such interest shall not be liable or subject in any manner while in the possession of my trustees for the debts, contracts, obligations, liabilities, engagements, undertakings or torts of any such beneficiary or remainderman. No beneficiary or remainderman shall have the power in any manner to anticipate, charge or encumber his or her interest, either in income or in principal, or in both.

### **ARTICLE IX**

Any portion of my estate or of any trust created hereunder vesting in absolute ownership in a person who is a minor and/or who, in the judgment of my fiduciaries, is incapable of adequately managing such assets, may be held for the benefit of such person by my fiduciaries until such minor shall attain majority and/or, in the judgment of my fiduciaries, such incapacity shall cease to exist. During such period, my fiduciaries so holding such property shall have all the powers and authority hereinafter granted to them with respect to my estate or any trust created hereunder; shall not be required to furnish bond or other security; and may pay or apply to or for

the benefit of such person, in any applicable manner set forth in Article VI hereof, such portions, or all, of the property so held, and/or the income earned thereon, as they shall deem to be in the best interest of such person, accumulating as principal any income not so expended in any year. The authority granted to my fiduciaries hereunder shall be in addition to, and not in lieu of, any other alternative available to them with respect to the administration and distribution of such portion of my estate or of such trust, and it shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property, or of such accumulations of income, if any, by such person, nor shall it prevent the absolute vesting thereof in such person.

## **ARTICLE X**

- A. Each adult beneficiary, with respect to the trust created hereunder for his or her own benefit, shall have the right, from time to time, but in no event more than once during any five (5) year period, to remove any then serving trustee(s) and, if no trust institution shall then be serving, appoint any trust institution of his or her choice as successor; provided, however, that such trust institution (i) shall, at the time of appointment, be administering trust assets valued at no less than two hundred fifty million (\$250,000,000) dollars and (ii) may not be related or subordinate [within the meaning of Section 672(c) of the Code] to such beneficiary.
- B. The rights granted in subarticle A hereof may be exercised by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered to the then acting trustee(s), either in person or by prepaid, registered or certified mail, which instrument shall advise such trustee(s) of the appointed successor, if any, and shall state the effective date of removal, to be not less than thirty (30) days and not more than sixty (60) days after delivery. On such effective date, or as soon thereafter as may be reasonably feasible, the trustee(s) being removed shall then turn over to the remaining co-trustee(s) and/or appointed successor, if any, all funds then held by such trustee(s) in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the trustee(s) being removed, reserving therefrom such amount as such trustee(s) shall deem reasonably necessary to cover the expenses of such removal, including any applicable termination commissions. The trustee(s) being removed shall have the right to demand and receive, prior to releasing any funds to the remaining co-trustee(s) and/or appointed successor, if any, written approval of such trustee's or trustees' statements or final accounting by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect as an approved accounting pursuant to Article XIII hereof. In lieu thereof, such trustee(s) may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining co-trustee(s) and/or appointed successor, if any, until such statements or account, judicial or otherwise, shall have been approved.

- C. Any trustee of any trust created hereunder shall have the right to resign at any time, without approval of the Court having jurisdiction of this Will, by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and (i) delivered, either in person or by prepaid, registered or certified mail, to the co-trustee(s), or, if none, to the eldest beneficiary then entitled to receive income distributions from the trust [or in the event that such beneficiary is incapacitated or is a minor, to such beneficiary and the guardian(s) or personal representative(s) of such beneficiary] and (ii) filed with the Court having jurisdiction over said trust. Such resignation shall be effective upon the qualification of the resigning trustee's successor(s) but in no event earlier than thirty (30) days after delivery and filing of the aforesaid written instrument of resignation.
- D. On the effective date of the resignation of a trustee pursuant to subarticle C hereof, or as soon thereafter as may be reasonably feasible, the resigning trustee shall then turn over to the remaining trustee(s) and/or appointed successor(s), all funds then held by the resigning trustee in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the resigning trustee, reserving therefrom such amount as such trustee shall deem reasonably necessary to cover the expenses of such resignation, including any applicable termination commissions. The resigning trustee shall have the right to demand and receive, prior to releasing any funds to the remaining trustee(s) and/or appointed successor(s), written approval of the statements or final accounting of the resigning trustee by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect of an approved accounting pursuant to Article XIII hereof. In lieu thereof, the resigning trustee may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining trustee(s) and/or appointed successor(s) until such statements or accounting, judicial or otherwise, shall have been approved.
- E. For purposes of subarticle C hereof, any individual trustee shall be deemed to have resigned when it is determined that he or she is under a medical infirmity or physical incapacity (an "Incapacity"), which shall be deemed to exist when the same has been declared by a court of competent jurisdiction or when a conservator or guardian for such trustee has been appointed based upon such Incapacity. Furthermore, such Incapacity shall be deemed to exist upon presentation to the then serving co-trustee(s), or, if none, to the next succeeding successor trustee(s), and to the Court having jurisdiction of this Will, of a certificate executed by a licensed physician which states that (i) he or she is the attending physician for the trustee; (ii) that the trustee is incapable of caring for himself or herself; and (iii) that the trustee is physically or mentally incapable of managing his or her financial affairs and attending properly to the normal duties and responsibilities required for the prudent management and protection of property. The effective date of such Incapacity shall be the date of the order or decree adjudicating the Incapacity, the date of the order or decree appointing the guardian or conservator, or the date of the certificate of such attending physician described above, whichever shall first occur.

For purposes of determining a serving trustee's Incapacity, such trustee (hereinafter the "Consenting" Trustee) hereby consents to the disclosure to the then serving co-trustee(s), or, if none, to the next succeeding successor trustee(s) [hereinafter the "Requesting" Trustee] of all of the Protected Health Information (PHI) and medical records of the Consenting Trustee and the Requesting Trustee shall be treated as the Consenting Trustee would be with regard to the use and dissemination of his or her PHI and medical records, including, but not limited to, any written opinion relating to the Consenting Trustee's Incapacity. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164. The Consenting Trustee hereby intends that the Requesting Trustee be treated as the personal representative of the Consenting Trustee for all purposes, as provided in 45 CFR 164.502(g)(2), relating to any inquiry relating to his or her PHI, and the Consenting Trustee therefore specifically authorizes the Requesting Trustee to request, obtain, receive and inspect any and all information bearing upon the Consenting Trustee's health, including PHI relevant to the determination of the Consenting Trustee's ability to perform his or her duties as a trustee hereunder, to sign whatever authorizations for release of information required by providers or others, and to waive any rights the Consenting Trustee may have for breach of confidentiality for the release of such information to the Requesting Trustee. The authority given to the Requesting Trustee shall supersede any prior agreement that the Consenting Trustee may have made with his or her health care providers to restrict access to, or disclosure of, his or her PHI.

In addition, the Consenting Trustee specifically authorizes any physician, dentist, health care provider, any insurance company and the Medical Information Bureau Inc., or any other health care organization that has provided treatment or services to the Consenting Trustee to give, disclose and release to the Requesting Trustee all of the Consenting Trustee's PHI and medical records regarding any past, present or future medical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The foregoing authority given to the Requesting Trustee shall apply to a successor trustee even though he or she has not yet assumed his or her duties and shall have no expiration date. Said authority shall expire only in the event that the Consenting Trustee shall permanently cease to serve as a trustee hereunder.

Each initial trustee and each successor trustee, upon qualifying as such, hereby accepts, and agrees to be bound by, the provisions of this subarticle E.

## **ARTICLE XI**

In the administration of my estate, and any trust created hereunder, my fiduciaries shall have all of the powers vested in fiduciaries by law, including, but not limited to, (i) the unrestricted power to sell any or all of the property constituting my estate or such trust, whether real or personal, upon such terms and conditions (including credit) as they shall deem advisable; (ii) the power

to distribute my estate or such trust in cash or in kind or partly in cash and partly in kind, even though shares be composed differently; (iii) the power to elect or not to elect to disclaim all or part of transfers or bequests made to me prior to my death by other persons, and (iv) the power to make and retain investments so long as the requirements (other than diversification) of any applicable Prudent Investor Act (or equivalent) are satisfied.

Each and all of the aforesaid powers may be exercisable by my fiduciaries without prior court permission or approval, at such times (if at all), in such manner, and in accordance with such criteria, as my fiduciaries, in their discretion, shall deem appropriate and my fiduciaries may make their decision regarding diversification based upon such criteria as they, in their sole discretion, shall deem advisable, including, but not limited to, tax considerations, and my fiduciaries shall incur no liability of any kind as a result of their decision whether or not to diversify.

## **ARTICLE XII**

- A. Wherever in this Will the words “executor,” “trustees” and “fiduciaries” are used, they shall be construed to mean “executor, executors, executrix, executrices, personal representative, personal representatives, trustee, trustees and the survivor or survivors of them and their successor or successors in office.”
- B. Wherever in this Will the word “bequeath” is used, it shall be construed to mean “give, devise and bequeath.”
- C. Wherever in this Will the words “descendant” and “descendants” are used, they shall be construed to be synonymous with the word “issue.”
- D. Wherever in this Will the words “per stirpes” are used with reference to the descendants of any individual, they shall be construed to mean that the determination of such descendants begins with the children of such individual and that no distribution at any generational level shall be per capita.
- E. Wherever in this Will the words “sibling” and “siblings” are used, they shall be construed to mean “brother(s) and sister(s)” (of the whole blood or of the half blood, but only if I or a descendant of mine shall be the natural or adoptive parent of the latter), but not “step-brother(s) and step-sister(s)”, unless the same shall have been adopted by me or a descendant of mine.
- F. For all purposes under this Will, whether for the determination of relationships or otherwise, (i) adopted children of mine shall be considered to have, and shall be given, the same status as natural-born children and (ii) adopted children of any other person shall be considered to have, and shall be given, the same status as natural-born children only if the child was a minor when adopted and lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent. All references in this Will to children or descendants of mine or any other person shall include, and it is my intention that this Will shall be effective

notwithstanding the fact that there shall be, any child, children, descendant or descendants of mine or any other person born or adopted after the date of execution hereof.

No one claiming to be a natural-born descendant of another person shall be considered as such unless the claimant and the purported parent had established a child-parent relationship prior to the time in question and they had lived together, while the claimant was a minor, as child and parent in the same household. The purpose of this paragraph is to prevent someone from successfully claiming to be a person's child although never acknowledged to be such and it shall apply notwithstanding any provision of law to the contrary.

- G. All references made, and all nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- H. Wherever in this Will the word "Code" is used, it shall be construed to mean the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to refer to such section or to any section of similar import.
- I. Wherever in this Will the words "trust institution" are used, they shall be construed to mean a corporation or other organization authorized to act as trustee of both lifetime and testamentary trusts.

### **ARTICLE XIII**

My fiduciaries, upon request, but not more often than annually, shall provide to each beneficiary of my estate and of any trust administered by them, statements setting forth the receipts and disbursements of principal and income and the assets on hand at the commencement and expiration of the period covered by such statements. The written approval of such statements by the then living adult income beneficiary or beneficiaries, whichever shall be applicable, shall be final and binding upon all who are then or may thereafter become entitled to any part of the assets, as to all matters and transactions shown on the statements. Anything herein contained shall not preclude my fiduciaries, from time to time, from rendering an accounting or from submitting an accounting to a court for settlement, as they shall deem advisable.

### **ARTICLE XIV**

With respect to any trust created hereunder which shall have a single current income beneficiary, if at any time after taking into account the age, maturity and competence of such beneficiary, my trustees (other than such beneficiary) shall determine it to be in his or her best interest to terminate such trust and distribute to him or her, outright and free of trust, the entire remaining principal thereof, my trustees may do so, whereupon such trust shall terminate and the rights of any other beneficiaries or remaindermen in such trust shall cease. In making such decision: (i) my trustees shall take into account the relationship of commissions and expenses to the value of the principal of such trust, and if they shall decide that the value of the trust does

not warrant the incurring of such commissions and expenses said decision shall be considered a proper reason for termination pursuant to this Article; and (ii) my trustees shall take into account the then existing and anticipated future status of the Federal estate and generation-skipping transfer taxes, and any applicable State estate, generation-skipping transfer and inheritance taxes, and if they shall conclude that the existence of any such tax probably was, but probably is no longer, a principal reason for the existence of the trust, said conclusion also shall be considered a proper reason for termination pursuant to this Article.

#### **ARTICLE XV**

Any trust created hereunder which shall be substantially identical to any other trust created hereunder, or to a trust created under the Last Will and Testament of my husband, JOHN M. DOE, or under any trust created by either of us prior to death, may, in the discretion of my trustees, be merged into such other trust, or they may accept a merger of such other trust into the substantially identical trust created hereunder, if my trustees shall determine the same advisable to facilitate the administration thereof, to reduce the expense of operation thereof, or any other reason they shall deem to be in the best interests of the beneficiary thereof.

#### **ARTICLE XVI**

To the extent permitted by law, if any beneficiary or remainderman under this Will, or any person who would succeed to any of my property by intestate succession, shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, (i) any bequest to, or other provision for, that beneficiary or remainderman under this Will shall be revoked and shall be disposed of in the same manner as if the contesting beneficiary or remainderman, his or her spouse and all of his or her descendants had predeceased me and (ii) such beneficiary, remainderman or person otherwise entitled to succeed to any of my property by intestate succession, his or her spouse and all of his or her descendants shall also be deemed to have predeceased me and shall not succeed to any of my property by intestate succession.

I also direct that no portion of my estate shall be used to pay the legal fees and other expenses incurred by any of the aforesaid persons who shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, whether or not any such action shall be successful. In addition, to the extent permitted by law, it is also my wish that the legal fees and other expenses incurred by my estate in successfully defending any such action be paid by the person bringing such action.



## **ARTICLE XVII**

My trustees shall have the right to collect and receive, for the benefit of any trust created hereunder, the proceeds of any policies of insurance on my life made payable to my testamentary trustees, as well as the proceeds of any other death benefits, of whatsoever nature, made so payable, and any other money or property, or interest therein, receivable by them as a result of my death, or otherwise, and my trustees may execute appropriate proofs of death and claims for such assets, as well as receipts and releases therefor. To the extent permitted by law, all such assets shall be exempt from, and shall not be used in payment of, any of my debts, funeral costs, estate administration expenses and transfer taxes. All such assets shall be held as part of the principal of the trust or trusts created hereunder, and, unless otherwise specified in the appropriate beneficiary designation, shall be administered pursuant to subarticle B or C of Article IV hereof, whichever shall be applicable.

## **ARTICLE XVIII**

My executor may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; (iv) any user account of mine; and (v) any domain name of mine. My executor may obtain copies of any electronically stored information of mine from any person or entity that possesses, custodies, or controls that information. I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my executor: (i) any electronically stored information of mine; (ii) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (iii) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. My executor may employ any consultants or agents to advise or assist my executor in decrypting any encrypted electronically stored information of mine or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and I hereby authorize my executor to take any of these actions to access: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; and (iv) any user account of mine. The terms used in this paragraph are to be construed as broadly as possible, and the term 'user account' includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this of \_\_\_\_\_, day \_\_\_\_\_ 2019.

\_\_\_\_\_  
JANE A. DOE (L.S.)

The foregoing Will, consisting of \_\_\_\_\_ (\_\_\_\_\_) pages, was signed, sealed, published and declared by the said Testatrix, JANE A. DOE, as and for her Last Will and Testament, in the presence of us, who, in her presence, at her request, and in the presence of each other, all being present at the same time, have hereunto subscribed our names as witnesses.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_

STATE OF NEW JERSEY)

ss:

COUNTY OF \_\_\_\_\_ )

We, JANE A. DOE, the testatrix, and \_\_\_\_\_ and \_\_\_\_\_, the witnesses, whose names are signed to the attached or foregoing instrument, being duly sworn, do hereby declare to the undersigned authority that the testatrix signed and executed the instrument as her Last Will and that she had signed willingly, and that she executed it as her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testatrix, signed the Will as witness and that to the best of his or her knowledge the testatrix was at that time 18 years of age or older, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
JANE A. DOE, Testatrix

\_\_\_\_\_  
, Witness

\_\_\_\_\_  
, Witness

Subscribed, sworn to and acknowledged before me by JANE A. DOE, the testatrix, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

**DISCLAIMER TRUST WILL  
OUTRIGHT TO SPOUSE WITH TRUST FOR CHILDREN  
AND COMMON DISASTER PROVISIONS\***

LAST WILL AND TESTAMENT  
OF AMY GREENSLEEVE

I, AMY GREENSLEEVE, residing at 90 Penny Lane, Changewater, New Jersey 08826, being of sound mind, memory and understanding, do make, publish and declare the following to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me:

**ARTICLE I**

I appoint my husband, STEVE GREENSLEEVE, as the person to control my funeral and burial arrangements. If STEVE shall predecease me, or shall be unable or unavailable to act, for any reason whatsoever, I appoint my sister, HEATHER STEELE, as his successor.

**ARTICLE II**

A. I appoint my husband, STEVE GREENSLEEVE, as executor of this my Last Will and Testament. If STEVE shall fail to qualify, or having qualified shall cease to serve, as executor, due to his death or any other reason whatsoever, I appoint my sister, HEATHER STEELE, as his successor. If HEATHER also shall fail to qualify, or having qualified shall cease to serve, as executor, due to her death or any other reason whatsoever, I appoint my brother-in-law, DONALD GREENSLEEVE, as her successor.

The last serving executor shall have the right, by an instrument in writing or by Last Will and Testament, to appoint any individual(s) and/or trust institution of his or her choice as successor executor(s).

B. I appoint my husband, STEVE GREENSLEEVE, and my brother-in-law, DONALD GREENSLEEVE, as trustees of the trusts created hereunder. If STEVE shall fail to qualify, or having qualified shall cease to serve, as a trustee due to his death or any other reason whatsoever, I appoint my sister, HEATHER STEELE, as his successor. If HEATHER also shall fail to qualify, or having qualified shall cease to serve, as a trustee, due to her death or any other reason whatsoever (other than removal pursuant to Article XI hereof), I appoint my brother, KEVIN LYNCH, as her successor. If DONALD also shall fail to qualify, or having qualified shall cease to serve, as a trustee, due to his death or any other reason (other than removal pursuant to Article XI hereof), I appoint my sister-in-law, LESLIE STEVENS, as his successor.

If at any time STEVE shall be serving as sole trustee of any trust created hereunder, he, by an instrument in writing, shall appoint any individual(s) and/or trust institution of his choice as co-trustee(s) of such trust, to serve together with him.

\*Provided by Peter J. Bakarich, Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey.

If at any time there shall be no “Disinterested Trustee” (as hereinafter defined) of a trust created hereunder, my other trustees of such trust shall have the right, by majority vote and by an instrument in writing, to appoint any individual(s) and/or trust institution of their, his or her choice as Disinterested Trustee(s) of such trust, to serve with such other trustees.

The last serving trustee of a trust created hereunder shall have the right, by an instrument in writing or by Last Will and Testament, to appoint any individual(s) and/or trust institution of his or her choice as successor trustee(s) of such trust.

- C. If my husband, STEVE GREENSLEEVE, shall predecease me, and I shall die during the minority of any child or children of mine, I appoint my sister and brother-in-law, HEATHER and JIM STEELE, as guardians of any such child or children during the remainder of their minority. If both HEATHER and JIM shall fail to qualify as guardians, or having qualified shall cease to serve, due to death or any other reason whatsoever, during the minority of any child or children of mine, I appoint my cousin and her husband, STACY and CRAIG NORTON, as their successors.

Anything in the foregoing paragraph of this subarticle C to the contrary notwithstanding, (i) if JIM shall not be married to HEATHER at the time when they are to serve as guardians, or shall thereafter cease to be married to her, either through divorce or death, then JIM shall not serve, or shall cease to serve, as a guardian, whichever shall be applicable, and HEATHER, if living, shall serve alone, and (ii) if CRAIG shall not be married to STACY at the time when they are to serve as guardians, or shall thereafter cease to be married to her, either through divorce or death, then CRAIG shall not serve, or shall cease to serve, as a guardian, whichever shall be applicable, and STACY, if living, shall serve alone.

The last serving guardian shall have the right, by an instrument in writing or by Last Will and Testament, to appoint successor guardian(s) of his or her choosing.

- D. I direct that no bond or other security shall be required of my executor, trustees or guardians, or any of them, or any successors thereto, in any jurisdiction in which they may be called upon to act.
- E. The written instruments referred to in subarticles A, B and C hereof shall be executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey.

### **ARTICLE III**

I direct my executor to pay, as soon as convenient after my death, all of my debts, the expenses of my last illness, my funeral and related expenses and the expenses of administering my estate. Notwithstanding the foregoing, my executor shall not pay any debt of mine secured by property owned by me (including a life insurance policy), it being my intention either that said property shall pass subject to such indebtedness or, if the property shall be a life insurance policy, that any such debt shall first be satisfied out of the proceeds of such policy.

## **ARTICLE IV**

- A. It is my intention to prepare a written statement, to be dated and signed by me, disposing of certain of my personal effects, jewelry and other items of tangible personal property, which statement may be revised and/or superseded from time to time. All items listed in the statement last signed by me prior to my death I hereby bequeath to the beneficiaries, as specified therein, who shall survive me.
- B. I bequeath all of my personal effects, jewelry, automobiles, household furnishings, equipment and bric-a-brac not disposed of pursuant to the written statement referred to in subarticle A above, to my husband, STEVE GREENSLEEVE, if he shall survive me, or if he shall predecease me, I bequeath the same to those of my children who shall survive me, in as nearly equal shares as feasible, to be allocated among them as they shall mutually agree, or in the absence of such agreement, as my executor, in his discretion, shall determine, giving due regard to the preferences of such children.

If any such child of mine shall not then be of legal age, my executor shall set aside so much of such child's share of such property as he shall determine I would wish to have preserved for such child, and shall dispose of the balance as he shall deem advisable, adding the proceeds thereof to such child's share of my residuary estate, or, if applicable, to the trust into which such child's share of my residuary estate shall be converted, to be treated as part of the initial principal thereof. The portion of such property so set aside for any minor child may, in the discretion of my executor, be placed in storage until such child shall attain legal age, and/or delivered to his or her legal guardians, and/or preserved for him or her in such other manner as my executor, in his discretion, shall deem advisable.

- C. If neither my husband, STEVE GREENSLEEVE, nor any of my children, shall survive me, the bequest in subarticle B hereof shall lapse, and the aforesaid property shall be added to my residuary estate and distributed as hereinafter provided.
- D. If my husband, STEVE GREENSLEEVE, shall survive me, I bequeath all of my interests in the New Jersey Pick-6 Lotto Prize from the drawing held on July 4, 2016, to him. If STEVE shall predecease me, I bequeath all of my interests in the New Jersey Pick-6 Lotto Prize from the drawing held on July 4, 2016, to my trustees, hereinabove named, to be administered by such trustees pursuant to subarticle B or C of Article V hereof, whichever shall be applicable.

## **ARTICLE V**

All of the rest, residue and remainder of my estate, of every nature and description, real, personal and mixed, wheresoever situated, remaining after payment of the debts and expenses specified in Article III hereof (referred to herein as my "residuary estate"), I bequeath as follows:

- A. If my husband, STEVE GREENSLEEVE, shall survive me, I bequeath my residuary estate to him.

- B. If my husband, STEVE GREENSLEEVE, shall predecease me, and any descendant of mine shall survive me, I bequeath my residuary estate to my trustees, hereinabove named, who shall add the same to any life insurance proceeds or other death benefits, and any other money or property, or interest therein, received by them as a result of my death, or otherwise, and my trustees shall divide such assets into a sufficient number of equal shares so that there shall be set aside one such share for the benefit of each child of mine who shall survive me, and one such share for the benefit of the descendants surviving me collectively of each child of mine who shall predecease me, to be allocated among them per stirpes.

Each share allocated to a child of mine, and each portion of a share allocated to a descendant of a deceased child of mine, shall be held by my trustees as a separate trust for the benefit of the person for whom it shall have been allocated, for the following uses and purposes:

1. Until the attainment of the age of twenty-one (21) years by the beneficiary of the trust, my trustees, at any time or times that they shall deem it advisable, may apply for the benefit of the beneficiary, or pay over to him or her, so much, all or none of the net income of the trust as my trustees, in their discretion, shall deem advisable, as set forth in subarticle B of Article VIII hereof.
2. From and after the attainment of the age of twenty-one (21) years by the beneficiary of the trust, and until the termination thereof, my trustees shall apply for the benefit of the beneficiary, or pay over to him or her, all of the net income of the trust, at convenient intervals, but not less often than quarter-annually.
3. Prior to the distribution of all of the principal of the trust, my trustees, at any time or times that they shall deem it advisable, may apply for the benefit of the beneficiary thereof, or pay over to him or her, such sum or sums out of the principal of the trust (including the whole thereof) as my trustees, in their discretion, shall deem advisable, as set forth in subarticle B of Article VIII hereof.
4. Upon the attainment of the age of twenty-five (25) years by the beneficiary of the trust, my trustees shall pay over and distribute to him or her one-third (1/3) of the then remaining principal of the trust; upon the attainment of the age of thirty (30) years by the beneficiary, my trustees shall pay over and distribute to him or her one-half (1/2) of the then remaining principal thereof; and upon the attainment of the age of thirty-five (35) years by the beneficiary, my trustees shall pay over and distribute to him or her all of the then remaining principal thereof, together with all undistributed income, whereupon the trust shall terminate. If upon the establishment of the trust the beneficiary thereof shall then have either (i) attained age twenty-five (25) but not age thirty (30), or (ii) attained age thirty (30) but not age thirty-five (35), my trustees shall pay over and distribute to him or her either (i) one-third (1/3) or (ii) two-thirds (2/3) of the initial principal thereof, respectively, and only the balance shall be held in trust pursuant hereto; and if upon the establishment of the trust the beneficiary shall then have attained age thirty-five (35), the entire principal thereof shall then be paid over and distributed to him or her, and no portion thereof shall be held in trust hereunder.

5. If the beneficiary of the trust shall die before attaining the age of thirty-five (35) years, the principal of the trust remaining at his or her death (together with all undistributed income) shall be paid over and distributed
- (i) to his or her then living descendants, per stirpes, and in default of such descendants, the same shall be paid over and distributed
  - (ii) to those of the beneficiary's siblings who shall then be living and to the then living descendants of any sibling of the beneficiary who shall then be deceased, per stirpes; and in default of such siblings and descendants of a deceased sibling,
  - (iv) to the then living descendants of that child of mine who shall be the ancestor of the beneficiary, per stirpes, and in default of such ancestor's descendants,
  - (v) to those of my children who shall then be living and to the then living descendants of any child of mine who shall then be deceased, per stirpes;

provided, however, that: (i) any sums thus payable to any person for whose benefit a trust created hereunder shall then still be in existence shall be added to the principal of such trust, and shall be held and distributed as part thereof, and (ii) any sums thus payable to any person who shall then be under the age of thirty-five (35) years and for whose benefit there shall not then be in existence a trust created hereunder, shall be held in trust for the benefit of such person in accordance with the provisions of paragraphs 1 through 5 of this subarticle B; and provided, further, that if none of my children, and no descendant of any deceased child of mine, shall then be living, the then remaining principal and undistributed income of the trust shall be paid over and distributed as set forth in subarticle C hereof, as if (i) the same were part of my residuary estate, (ii) my husband, STEVE GREENSLEEVE, and all of my descendants had predeceased me and (iii) I had died at the time of the death of the beneficiary of the trust.

- C. If neither my husband, STEVE GREENSLEEVE, nor any descendant of mine, shall survive me, I bequeath my residuary estate to those of my nieces and nephews and those of STEVE's nieces and nephews who shall survive me, in equal shares. At the time of execution of this Will, such nieces and nephews are: JOHN STEVENS, HENRY STEVENS, LOUIS STEELE, GREG STEELE and TRACY LYNCH.

Any life insurance proceeds, or other death benefits, received by my trustees shall also be paid over and distributed as provided in this subarticle C, unless otherwise specified in the appropriate beneficiary designation.

- D. If I and my husband, STEVE GREENSLEEVE, shall die at the same time, within one hundred twenty (120) hours of each other or under such circumstances that the order of our deaths cannot be determined with certainty, then for all purposes of this trust agreement, or otherwise, he shall be deemed to have predeceased me.



E. If my husband, STEVE GREENSLEEVE, shall survive me, he shall have the right to disclaim distribution to him of all or part of my residuary estate. This right may be exercised by STEVE by delivering to my executor, either in person or by certified mail, not later than nine (9) months after the date of my death, an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, setting forth the amount so disclaimed, and if the same shall be less than the whole of my residuary estate, then it may be expressed either as a fraction thereof or as a monetary amount, or any combination thereof. Any exercise of such right shall be irrevocable and shall also comply with the requirements of applicable Federal and State laws. Any amount so disclaimed, and any other money or property, or interest therein (including life insurance proceeds and other death benefits) which would have been paid to STEVE but, as a result of disclaimer by him, is paid to the trustees herein named, shall be held in trust, to be administered as if STEVE survived me, notwithstanding any contrary statutory provisions governing the distribution of disclaimed property, for the following uses and purposes:

1. Until the death of my husband, STEVE GREENSLEEVE, my trustees shall pay to him, or apply for his benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, STEVE shall have the right, exercisable at any time and from time to time, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as he shall deem reasonably necessary to provide for his health, maintenance and support. If, in the judgment of my trustees, other than STEVE, he is incapable of exercising such right, such trustees may exercise such right on STEVE's behalf while such incapacity shall exist. In the exercise of such right by my trustees, they shall consider that it is my primary intention that STEVE, for as long as he shall live, shall continue to enjoy the same standard of living that he enjoyed at the time of my death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, STEVE shall have the absolute right, exercisable only during the last ten (10) days of each calendar year, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as he shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year.

2. Upon the death of my husband, STEVE GREENSLEEVE, the then remaining principal of the trust (together with any undistributed income thereof) shall be paid over and distributed as set forth in subarticle B or C hereof, whichever shall be applicable, as if the same were part of my residuary estate, STEVE had predeceased me and I had died at the time of his death.

## ARTICLE VI

Anything in this Will to the contrary notwithstanding, any trust created hereunder which shall be or become subject to a rule against perpetuities and which, by its terms, shall not have terminated on or before the date which is twenty-one (21) years after the death of the last survivor of myself, my husband, STEVE GREENSLEEVE, and those of my descendants who shall survive me, shall nevertheless terminate on such date, and the principal and undistributed income thereof shall thereupon be paid over and distributed free of trust to the then current income beneficiary thereof, or the current income beneficiaries thereof, in equal shares, if more than one.

## ARTICLE VII

- A. Except as specifically provided to the contrary in this subarticle A, all transfer taxes payable with respect to property passing under this Will shall be paid out of my residuary estate, without apportionment, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and shall not be paid out of my residuary estate. For purposes of this subarticle A, property received by my trustees other than from my executor shall not be considered to have passed under this Will.

Pursuant to the provisions of subarticle E of Article V hereof, a certain trust may be established for the benefit of my husband, STEVE GREENSLEEVE. If any portion of such trust shall be subject to transfer taxes, the taxes attributable to such portion shall be paid therefrom.

- B. It is my intention that all transfer taxes payable with respect to property passing other than under this Will shall be paid by the recipient thereof, and, if paid by my executor, shall be recovered from such recipient if my executor shall deem it reasonably feasible to do so. My executor shall not be liable to my estate or to any person interested therein if my executor shall not deem it reasonably feasible to recover such taxes, and my executor shall have no obligation to pursue recovery under such circumstances. If my executor shall come into possession of any property distributable to a beneficiary from whom my executor shall have a right of recovery pursuant to this subarticle B, my executor may pay, on behalf of the beneficiary, the amount of recoverable taxes and charge the same to such property or sell any part of such property to produce cash to satisfy the recovery right.

If an asset of my estate is valued for transfer tax purposes higher than the amount received by my estate due to the application of Code Section 2703 or otherwise, and if the purchaser or purchasers of such asset, or the owner or owners of the purchaser, receive any bequest under this Will, then to the extent such person or persons are benefitted, directly or indirectly, by the purchase, such benefit shall be deemed to be property passing other than under this Will for purposes of this subarticle B. The same principle shall apply if any gift tax

is included in my gross estate pursuant to Code Section 2035(b), with the recipient of the gift being treated as a purchaser.

- C. If any transfer taxes are to be paid out of, or by the recipient of, specifically identified property pursuant to subarticle A hereof, the taxes attributable to each such property shall be a pro rata portion of the total transfer taxes payable with respect to all property subject to such taxes passing under this Will, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- D. The transfer taxes attributable to the property referred to in subarticle B hereof shall be the amount by which the total of such taxes payable exceeds the total of such taxes which would have been payable had such property not been subject to transfer taxes, the same to be allocated among the various interests in such property pro rata, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- E. Whenever transfer taxes with respect to property passing under this Will are payable from specified property, or by the recipient thereof, in accordance with the provisions of this Article VII, my executor may withhold distribution of a portion of such property to secure payment thereof, and may make payment on behalf of the recipient or make whatever other arrangements my executor shall deem advisable to assure that the taxes are paid. If the recipient also receives property other than under this Will, the foregoing authority to withhold distribution of property passing under this Will shall extend to the transfer taxes payable with respect to such property passing outside of this Will.
- F. When used in this Will, the term “transfer taxes” shall be deemed to include all taxes payable by reason of property passing upon my death, whether labeled estate taxes, inheritance taxes, death taxes, succession taxes, transfer taxes, or otherwise, and whether imposed by the Federal government, any state, city or municipality, or otherwise, including interest and penalties thereon. Such term shall not be deemed to include taxes imposed on generation-skipping transfers pursuant to Code Section 2601 et seq. or any other statute of similar import, whether imposed by the Federal government, any state, city or municipality, or otherwise, which taxes, including interest and penalties thereon, shall be paid as provided in Section 2603 of the Code, or in any other statute of similar import.
- G. Nothing contained in this Article VII shall be deemed to be a direction that my estate recover or not recover from the recipient of property included in my gross estate by reason of Section 2044 of the Code the amount specified in Section 2207A of the Code, it being my intention that my executor shall make such decision in accordance with such criteria, as he, in his discretion, shall deem appropriate.

- H. A person (the “payor”) receiving assets as a result of my death (whether or not received pursuant to this Will) may be obligated to pay a transfer tax (often called, and referred to herein as, an “inheritance tax”) and also may be charged with a portion of another transfer tax (often called, and referred to herein as, an “estate tax”). Such inheritance tax payment may reduce the estate tax liability of my estate, a portion of which reduction could, in the absence of this subarticle H, inure to the benefit of beneficiaries other than the payor. Anything in this Article VII to the contrary notwithstanding, any such reduction shall be applied first to reduce (but not below zero) the amount of estate tax charged to the payor, with any balance being applied as it would have been had this subarticle H not existed.
- I. To the extent possible, no transfer taxes shall be paid from any property, whether passing (i) under this Will or otherwise or (ii) outright or in trust, which shall qualify for the Federal estate tax marital or charitable deduction.
- J. My executor shall not be liable to any person or persons as a result of the exercise by him of any discretion granted pursuant to this Article VII, and any discretionary decisions made by my executor shall be conclusive and binding upon all persons interested therein.

### **ARTICLE VIII**

- A. Whenever, pursuant to the terms of this Will, my trustees are directed to hold any property in trust, my trustees shall hold the same; shall manage, administer, invest and reinvest the principal of the trust; shall collect and receive the income thereof; shall pay any and all expenses incident to the operation of such trust; and shall distribute the net income and principal thereof in the manner set forth.
- B. Whenever, pursuant to the terms of this Will, my trustees are given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, such portions of the income of the trust, and/or such sums out of the principal of the trust, as my trustees shall deem advisable, my trustees may make such payment or application solely to provide for such beneficiary’s health, maintenance, support and education (including undergraduate and postgraduate education); provided, however, that in addition to the foregoing, an “Independent Trustee” (as hereinafter defined) may pay or apply net income and/or principal of the trust for any or no reason at all, with no standards or guides relative to the exercise of such discretion being provided, except that no payment or application of trust income or principal shall be made which shall have the purpose or effect of discharging a legal obligation (whether for support or any other purpose) of the Independent Trustee or which shall be for his, her or its pecuniary benefit. In the case of income, my trustees shall add to the principal of the trust any such net income not so expended in any fiscal year of the trust.
- C. Whenever, pursuant to the terms of this Will, my trustees are given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, portions of the income and/or principal of the trust, (i) my trustees may take into consideration, but shall not

be required to do so, any other income or property which may be available to such beneficiary, including the support which a spouse or parent does provide, or is obligated to provide, and (ii) in the case of a trust created for the benefit of a child or descendant of a deceased child of mine, my trustees shall consider that it is my desire and expectation that discretionary distributions from such trust shall be made in a manner designed to provide incentive to the beneficiary to seek and maintain employment and not be dependent upon the trust.

- D. Whenever, pursuant to the terms of this Will, my trustees are given discretion to pay or to apply income or principal of a trust to or for the benefit of a minor, my trustees may, in their discretion, make such payment or application by expending the same directly for the benefit of such minor, or by paying the amount so to be paid or applied to the parent or legal guardian of such minor, or to the person with whom such minor may reside, or to a person standing in the place of a parent to such minor, or to a Custodian for such minor designated by my trustees under an applicable Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, or directly to such minor, or otherwise, as my trustees may, from time to time deem expedient, and the receipt of such minor or such other payee shall be a full acquittance to my trustees to the extent of such payments.

The provisions of this subarticle D shall also apply, to the extent applicable, whenever my trustees are given discretion to pay or apply income or principal of a trust to or for the benefit of a person who, in their judgment, is incapable of adequately managing such income or principal.

- E. Whenever, pursuant to the terms of this Will, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to himself or herself or for his or her own benefit, and the purposes for which such payment or application can be made are not limited to such person's reasonable needs relating to health, maintenance, support and education, such purposes shall be deemed to be so limited, anything contained in this Will to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person to, or on whose behalf, income and/or principal can be so paid or applied, such other person or persons may exercise the discretion granted without reference to the limitations herein set forth. This subarticle shall not apply, however, to a right of withdrawal if the amount which could be withdrawn is limited so that it does not exceed the greater of the dollar or percentage limitation contained in Section 2514(e) of the Code.
- F. Whenever, pursuant to the terms of this Will, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to or for the benefit of any other person, then the purposes for which such payment or application can be made shall be limited to those which do not relieve the person having such discretion of a legal obligation, whether for support or any other purpose, anything contained in this Will to the contrary notwithstanding. If such discretion is held by more than one person, any of whom

is not a person whose legal obligation could be relieved by such payment or application, such other person or persons may exercise the discretion granted without reference to the limitation herein set forth.

### **ARTICLE IX**

The interest of any beneficiary or remainderman in any trust created hereunder, either in income or in principal, or in both, shall not be subject to sale, assignment, pledge or transfer in any manner, and such interest shall not be liable or subject in any manner while in the possession of my trustees for the debts, contracts, obligations, liabilities, engagements, undertakings or torts of any such beneficiary or remainderman. No beneficiary or remainderman shall have the power in any manner to anticipate, charge or encumber his or her interest, either in income or in principal, or in both.

### **ARTICLE X**

Any portion of my estate or of any trust created hereunder vesting in absolute ownership in a person who is a minor and/or who, in the judgment of my fiduciaries, is incapable of adequately managing such assets, may be held for the benefit of such person by my fiduciaries until such minor shall attain majority and/or, in the judgment of my fiduciaries, such incapacity shall cease to exist. During such period, my fiduciaries so holding such property shall have all the powers and authority herein granted to them with respect to my estate or any trust created hereunder; shall not be required to furnish bond or other security; and may pay or apply to or for the benefit of such person, in any applicable manner set forth in subarticle D of Article VIII hereof, such portions, or all, of the property so held, and/or the income earned thereon, as they shall deem to be in the best interest of such person, accumulating as principal any income not so expended in any year. The authority granted to my fiduciaries hereunder shall be in addition to, and not in lieu of, any other alternative available to them with respect to the administration and distribution of such portion of my estate or of such trust, and it shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property, or of such accumulations of income, if any, by such person, nor shall it prevent the absolute vesting thereof in such person.

### **ARTICLE XI**

- A. If my husband, STEVE GREENSLEEVE, shall survive me and if a trust shall be created for his benefit pursuant to subarticle E of Article V hereof:
1. He shall have the right, at any time and from time to time, to remove any initial and/or successor trustee specifically named in subarticle B of Article II hereof as a co-trustee of such trust and either (i) allow the successor trustee(s), appointed in said subarticle B, to serve or (ii) appoint any individual(s) and/or, if no trust institution shall then be serving, any trust institution of his choice as successor co-trustee(s).

2. He shall have the right, from time to time, but in no event more than once during any five (5) year period, to remove any then serving trustee(s) of such trust (other than the initial and successor trustees specifically named in subarticle B of Article II hereof) and appoint any individual(s) and/or, if no trust institution shall then be serving, any trust institution of his choice as successor(s).
- B. After the death of my husband, STEVE GREENSLEEVE, each adult beneficiary, with respect to the trust created hereunder for his or her own benefit, shall have the right, from time to time, but in no event more than once during any five (5) year period, to remove any then serving trustee(s) (other than the initial and successor trustees specifically named in subarticle B of Article II hereof) and, if no trust institution shall then be serving, appoint any trust institution of his or her choice as successor.
  - C. Any successor trustee (other than the successor trustees specifically named in subarticle B of Article II hereof) being appointed pursuant to subarticle A or B hereof must be an “Independent Trustee,” which is an individual or trust institution not related or subordinate [within the meaning of Section 672(c) of the Code] to the person making such appointment. In addition any trust institution being appointed, shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.
  - D. The rights granted in subarticles A and B hereof may be exercised by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered to the then acting trustee(s), either in person or by prepaid, registered or certified mail, which instrument shall advise such trustee(s) of the appointed successor(s), if any, and shall state the effective date of removal, to be not less than thirty (30) days and not more than sixty (60) days after delivery. On such effective date, or as soon thereafter as may be reasonably feasible, the trustee(s) being removed shall then turn over to the remaining co-trustee(s) and/or appointed successor(s), if any, all funds then held by such trustee(s) in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the trustee(s) being removed, reserving therefrom such amount as such trustee(s) shall deem reasonably necessary to cover the expenses of such removal, including any applicable termination commissions. The trustee(s) being removed shall have the right to demand and receive, prior to releasing any funds to the remaining co-trustee(s) and/or appointed successor(s), if any, written approval of such trustee’s or trustees’ statements or final accounting by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect as an approved accounting pursuant to Article XV hereof. In lieu thereof, such trustee(s) may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining co-trustee(s) and/or appointed successor(s), if any, until such statements or account, judicial or otherwise, shall have been approved.

- E. Any trustee of any trust created hereunder shall have the right to resign at any time, without approval of the Court having jurisdiction of this Will, by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and (i) delivered, either in person or by prepaid, registered or certified mail, to the co-trustee(s), or, if none, to the eldest beneficiary then entitled to receive income distributions from the trust [or in the event that such beneficiary is incapacitated or is a minor, to such beneficiary and the guardian(s) or personal representative(s) of such beneficiary] and (ii) filed with the Court having jurisdiction over said trust. Such resignation shall be effective upon the qualification of the resigning trustee's successor(s) but in no event earlier than thirty (30) days after delivery and filing of the aforesaid written instrument of resignation.
- F. On the effective date of the resignation of a trustee pursuant to subarticle E hereof, or as soon thereafter as may be reasonably feasible, the resigning trustee shall then turn over to the remaining trustee(s) and/or appointed successor(s), all funds then held by the resigning trustee in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the resigning trustee, reserving therefrom such amount as such trustee shall deem reasonably necessary to cover the expenses of such resignation, including any applicable termination commissions. The resigning trustee shall have the right to demand and receive, prior to releasing any funds to the remaining trustee(s) and/or appointed successor(s), written approval of the statements or final accounting of the resigning trustee by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect of an approved accounting pursuant to Article XV hereof. In lieu thereof, the resigning trustee may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining trustee(s) and/or appointed successor(s) until such statements or accounting, judicial or otherwise, shall have been approved.
- G. For purposes of subarticle E hereof, any individual trustee shall be deemed to have resigned when it is determined that he or she is under a medical infirmity or physical incapacity (an "Incapacity"), which shall be deemed to exist when the same has been declared by a court of competent jurisdiction or when a conservator or guardian for such trustee has been appointed based upon such Incapacity. Furthermore, such Incapacity shall be deemed to exist upon presentation to the then serving co-trustee(s), or, if none, to the next succeeding successor trustee(s), and to the Court having jurisdiction of this Will, of a certificate executed by a licensed physician which states that (i) he or she is the attending physician for the trustee; (ii) that the trustee is incapable of caring for himself or herself; and (iii) that the trustee is physically or mentally incapable of managing his or her financial affairs and attending properly to the normal duties and responsibilities required for the prudent management and protection of property. The effective date of such Incapacity shall be the date of the order or decree adjudicating the Incapacity, the date of the order or decree appointing the guardian or conservator, or the date of the certificate of such attending physician described above, whichever shall first occur.



For purposes of determining a serving trustee's Incapacity, such trustee (hereinafter the "Consenting" Trustee) hereby consents to the disclosure to the then serving co-trustee(s), or, if none, to the next succeeding successor trustee(s) [hereinafter the "Requesting" Trustee] of all of the Protected Health Information (PHI) and medical records of the Consenting Trustee and the Requesting Trustee shall be treated as the Consenting Trustee would be with regard to the use and dissemination of his or her PHI and medical records, including, but not limited to, any written opinion relating to the Consenting Trustee's Incapacity. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164. The Consenting Trustee hereby intends that the Requesting Trustee be treated as the personal representative of the Consenting Trustee for all purposes, as provided in 45 CFR 164.502(g)(2), relating to any inquiry relating to his or her PHI, and the Consenting Trustee therefore specifically authorizes the Requesting Trustee to request, obtain, receive and inspect any and all information bearing upon the Consenting Trustee's health, including PHI relevant to the determination of the Consenting Trustee's ability to perform his or her duties as a trustee hereunder, to sign whatever authorizations for release of information required by providers or others, and to waive any rights the Consenting Trustee may have for breach of confidentiality for the release of such information to the Requesting Trustee. The authority given to the Requesting Trustee shall supersede any prior agreement that the Consenting Trustee may have made with his or her health care providers to restrict access to, or disclosure of, his or her PHI.

In addition, the Consenting Trustee specifically authorizes any physician, dentist, health care provider, any insurance company and the Medical Information Bureau Inc., or any other health care organization that has provided treatment or services to the Consenting Trustee to give, disclose and release to the Requesting Trustee all of the Consenting Trustee's PHI and medical records regarding any past, present or future medical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The foregoing authority given to the Requesting Trustee shall apply to a successor trustee even though he or she has not yet assumed his or her duties and shall have no expiration date. Said authority shall expire only in the event that the Consenting Trustee shall permanently cease to serve as a trustee hereunder.

Each initial trustee and each successor trustee, upon qualifying as such, hereby accepts, and agrees to be bound by, the provisions of this subarticle G.

## **ARTICLE XII**

In the administration of my estate, and any trust created hereunder, my fiduciaries shall have the following powers, in addition to the powers vested in them by law, which in each and every instance may be exercisable by them at such times (if at all), in such manner, and in accordance with such criteria, as they, in their discretion, shall deem appropriate:

- A. To retain any property, real, personal or mixed, whether owned by me at the time of my death or subsequently purchased or acquired by my fiduciaries, for such length of time as they shall deem proper, regardless of the nature of such property and regardless of whether the same shall be productive of income, and to receive and accept, at any time and from time to time, from any person or persons, including the fiduciary of any other estate or trust, any additions to my estate or any trust created hereunder in the form of cash, stock, securities or other property, real, personal or mixed, provided that such additions are acceptable to my fiduciaries.
- B. To make such investments and reinvestments of principal and accumulated income as they may consider proper, and to retain cash or the proceeds from the sale of any assets until such time or times as they deem it appropriate to invest such funds, so long as the requirements (other than diversification) of any applicable Prudent Investor Act (or equivalent) are satisfied. My fiduciaries may make their decision regarding diversification based upon such criteria as they, in their sole discretion, shall deem advisable, including, but not limited to, tax considerations, and my trustees shall incur no liability of any kind as a result of their decision whether or not to diversify.
- C. To purchase or otherwise acquire, and to sell, exchange, mortgage, lease, grant and accept options and easements with respect to and otherwise deal with, any property, real, personal and mixed, improved or unimproved, at public or private sale, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions as they may deem proper. No purchaser, upon any sale or other disposition, shall be bound to see to the application of monies or property arising therefrom or to inquire into the validity, expediency or propriety of any such sale or other disposition. Any leases or options entered into or granted with respect to real or personal property held hereunder may be for such period (whether or not the same extends beyond the actual or probable duration of my estate or of any trust created hereunder) as my fiduciaries shall deem advisable.
- D. To manage, maintain, alter, develop, improve, abandon and otherwise deal with all property held by them, whether real, personal or mixed, and to do all such acts and to exercise all rights, powers and privileges, although not specifically mentioned herein, with respect to such property as may be legally done or exercised by any person owning similar property in his own right.
- E. To pay, extend, renew, modify, compromise, assign, litigate, alter, release or forgive, upon such terms and conditions, with or without consideration, as they shall deem advisable, or submit to arbitration or any other form of alternate dispute resolution, any obligation or claim, including taxes, either in favor of or against my estate, or any trust created hereunder.
- F. To borrow money or property, either upon the security of any or all of the assets of my estate or of any trust created hereunder, or without security or otherwise, upon such terms and conditions and for such purposes in connection with the administration of my estate or of any trust created hereunder, including not by way of limitation the purchase of improved or unimproved real or personal property, as to them shall seem proper, and to make any loans,

in such amounts, upon such terms, and to such individuals or entities, as may be deemed advisable, provided such loans bear reasonable interest and are adequately secured.

- G. To invest in, and/or to participate in the formation of, any corporation, partnership (general or limited), joint venture, limited liability company or other business organization, for such purposes, and for such periods of time, as they shall deem advisable, and to purchase shares of stock or other ownership interests therein, and to contribute to the capital thereof, and lend thereto, any assets of my estate or of any trust created hereunder; and to enter into or refuse to enter into any dissolution, liquidation, merger, consolidation, recapitalization, reorganization or other change with respect to any corporation or other such business venture the stock or other ownership interest in which is held by them, and to make exchanges of securities or other interest therein; and to exercise all voting rights with respect to such investment, in person or by proxy, and to enter into voting trusts and other agreements regulating the ownership and disposition thereof, whether or not the same extends beyond the actual or probable duration of my estate or of any trust created hereunder, all upon such terms and conditions as they shall deem advisable.
- H. To continue the operation of any business which I shall own or in which I shall be engaged at the time of my death, and to engage in and operate any other business, whether as a shareholder, partner, member, sole proprietor or otherwise, and to apply to the conduct of any such business any assets of my estate or of any trust created hereunder; and to dissolve, sell (for cash or on credit or partly for cash and partly on credit) or otherwise terminate any such business, all upon such terms and conditions as they shall deem advisable. No loss whatever resulting to my estate or to any trust created hereunder, through the ownership or operation by my fiduciaries of any business, whether the same be carried on as a corporation, partnership, proprietorship, limited liability company or otherwise, shall be chargeable against my fiduciaries personally. Nothing contained herein shall relieve my fiduciaries from the obligation to comply with any agreement entered into by me prior to my death regarding the sale or disposition of any interest in any business held by me at the time of my death.
- I. To engage attorneys, accountants, agents, investment counsel and other advisers in connection with the administration of my estate and any trust created hereunder, and to pay expenses incurred thereby.
- J. To hold investments in the name of my fiduciaries, or in bearer form, or in the name of a nominee without disclosing a fiduciary relationship, and, with respect to any acting corporate fiduciary, to hold and administer any property in a common trust fund.
- K. To set up reasonable reserves for depreciation and/or depletion.
- L. To postpone the distribution of income earned during the administration of my estate for such period of time (not to extend beyond the period reasonably required for such administration) as they shall deem proper.

- M. To make partial distributions of the principal of my estate, subject to adjustments resulting from the conclusion of any tax proceedings affecting my estate, and to divide and distribute my estate or any trust created hereunder in cash or in kind or partly in cash and partly in kind, without regard to differences in the composition of the shares or the tax bases of the assets distributed.
- N. To hold the interest of two or more trusts, parts or shares created under this Will in consolidated funds, without any physical division of the investments, but such consolidation of investments shall not operate to merge the legal or beneficial interests in such separate trusts, parts or shares.
- O. To make whatever elections or choices as shall be available to them respecting my last income tax return and any gift tax returns, including the filing of joint returns and consenting to gifts made by my spouse being treated as made one-half by me, and to pay all tax liabilities incurred thereby.
- P. To execute and deliver all documents, contracts and instruments necessary or advisable in connection with the administration of my estate and any trust created hereunder.
- Q. To retain within my estate, or within any trust created hereunder, beyond the date it otherwise would have terminated, such assets as they shall deem appropriate to allow my estate, or any such trust, to be deemed not to have terminated for the purpose of petitioning the United States Tax Court with respect to any assessed Federal tax deficiency. Such action can be taken with respect to my estate only if consented to in writing by the beneficiaries receiving at least half of the value of my residuary estate, and can be taken with respect to any trust created hereunder only if consented to in writing by the remainderman thereof (or both of them if there shall be two, or a majority of them if there shall be more than two).
- R. To treat or not to treat as an expense of administering my estate, the costs of any ancillary or similar proceedings with respect to my estate and any costs incurred in connection with the preservation, protection and delivery of assets of my estate, including assets specifically bequeathed.
- S. To allocate receipts and disbursements of my estate or any trust created hereunder between income and principal thereof in such a manner as my fiduciaries shall deem advisable, so long as the requirements of any applicable Principal and Income Act or equivalent are satisfied, except that during the lifetime of my husband, STEVE GREENSLEEVE, no allocation or allocations shall be made with respect to any portion of my estate or of any trust created hereunder which could prevent the same from qualifying for the Federal estate tax marital deduction.

### **ARTICLE XIII**

In the administration of my estate, and any trust created hereunder, I direct that:

- A. My fiduciaries shall not personally be liable for any loss which may occur to my estate or to any trust herein created as a result of the exercise of, or the refusal to exercise, any of the powers or discretions vested in them, so long as such exercise or refusal to exercise is made in good faith.

- B. My fiduciaries shall not be disqualified from acting hereunder or from exercising any power granted herein because they may hold an interest in property in which my estate or any trust created hereunder shall also hold an interest, or be a creditor of my estate, or be an employee or agent of, or the holder of an interest in, any business, sole proprietorship, partnership, joint venture, association, corporation, limited liability company or otherwise, in which my estate or any trust created hereunder may hold an interest, or by reason of the fact that they may also be serving as the trustees of any trust established by me during my lifetime.
- C. If my fiduciaries decide in good faith that there is uncertainty as to the necessity for including particular items in my estate for transfer tax purposes, or particular items in any income or gift tax returns, they may exclude such items. My fiduciaries shall not be personally liable for any tax, interest or penalty imposed, or for any loss incurred, as a result of such decision.
- D. If applicable, my fiduciaries are authorized in their discretion:
- (i) to consent to the election or revocation of the election by any corporation to be an S corporation for Federal, State and other income tax purposes;
  - (ii) to make or refrain from making the election provided for in Section 1361(e) of the Code, so that a trust will be treated as an “electing small business trust” even if, as a result thereof, the income taxes payable by the trust and/or any beneficiary thereof are increased;
  - (iii) to make or refrain from making the election provided for in Section 2056(b)(7) of the Code, so that all or a portion of qualified terminable interest property shall qualify for the Federal estate tax marital deduction;
  - (iv) to elect or not to elect an installment payment of Federal estate taxes pursuant to Section 6166 of the Code, and to post bond and/or create liens on assets of my estate as required in connection therewith, and to distribute assets of my estate so encumbered;
  - (v) to elect or not to elect to deduct all or part of the expenses of administration of my estate and losses incurred during the settlement of my estate in the computation of the Federal or state income tax liability of my estate;
  - (vi) to elect or not to elect to value my estate for transfer tax purposes as of a date other than the date of my death;
  - (vii) to elect or not to elect the application of Section 2032A of the Code with respect to qualified real property;
  - (viii) to elect or not to elect to disclaim all or part of transfers or bequests made to me prior to my death by other persons;
  - (ix) to exercise or refrain from exercising any right, election or option in connection with the generation-skipping transfer tax provided for in Chapter 13 (Section 2601 et seq.) of the Code, including, but not limited to, the right to allocate or not to allocate the GST

exemption provided for in Sections 2631 and 2632 of the Code to any applicable property or disposition, including dispositions made by me prior to death, and to make disparate allocations thereof to similar properties or dispositions;

- (x) to elect or not to elect to treat any portion of a payment of estimated tax made with respect to any trust created hereunder as a payment made by a beneficiary of such trust (in equal or unequal shares if there shall be more than one) and to consider any amount so treated as a distribution to such beneficiary;
- (xi) to elect or not to elect, in whole or in part, the application of Section 2057 of the Code (or any section of similar import) in respect to any qualified family-owned business interest, and they shall not be required to elect a larger amount under said Section in order to pay a smaller tax to the extent the election reduces the applicable exclusion amount under Section 2010 of the Code;
- (xii) to elect or not to elect to treat a qualified revocable trust as part of my estate pursuant to Section 645 of the Code;
- (xiii) to elect or not to elect to disclaim all or part of any power or discretion held by my fiduciaries in a fiduciary capacity, and to determine whether or not such disclaimer shall be binding upon, and shall constitute a disclaimer by, any or all successor or substitute fiduciaries;
- (xiv) to exercise or refrain from exercising any other election or option in connection with the computation of the transfer tax and income tax liabilities of my estate.

In the exercise of the discretion in clauses (i) through (xiv) hereof, my fiduciaries are to be guided by their opinion of what action will serve the best interests of my estate, and one or more of the beneficiaries thereof, and such discretion can be exercised without prior permission or approval of the court having jurisdiction of this Will. Furthermore, such consent and elections and options can be granted, made or exercised, or not, even though the result may be (i) the creation of liabilities; (ii) the shifting of interests in property between or among beneficiaries; and/or (iii) the fact that certain of the beneficiaries of my estate may incur a gain, while other beneficiaries of my estate may suffer a loss, but my fiduciaries may, if they deem it equitable, require adjustment among the various bequests contained herein and among the various beneficiaries of my estate, as a result of, or as a condition precedent to, the exercise of such discretion.

- E. If pursuant to any provisions of this Will a trust would be established to which any part of my GST exemption [provided for in Section 2631(a) of the Code] would be allocated (hereinafter referred to as a “GST Trust”), and if after such allocation the inclusion ratio of such trust for generation-skipping transfer tax purposes would not be zero, my fiduciaries may, but shall not be required to, establish two separate trusts, each to be administered in accordance with the provisions applicable to the GST Trust, with one trust having an inclusion ratio of one and the other trust having an inclusion ratio of zero. Assets that would have constituted the GST Trust shall be allocated between the two separate trusts as necessary to establish the prescribed inclusion ratios, and shall be valued for such purpose as of the date of allocation.

In addition, if pursuant to any provisions of this Will any portion of any trust created hereunder is required to be added to the principal of any other trust created hereunder (such latter trust being hereinafter referred to as the “recipient trust”) and if the inclusion ratios (for generation-skipping transfer tax purposes) of such trusts are not identical, my fiduciaries, in lieu of making such addition, may, but shall not be required to, hold such portion in a separate trust, to be administered in accordance with the provisions applicable to the recipient trust.

In further addition, if pursuant to any provision of this Will a trust has been established that has an inclusion ratio of greater than zero and less than one, my fiduciaries may, but shall not be required to, divide such trust into two separate trusts, provided that such division meets the definition of a “qualified severance” contained in Section 2642(a)(3) of the Code or Regulations promulgated pursuant thereto.

- F. My fiduciaries may be employed and/or engaged in any capacity by, or render services to, my estate or any trust created hereunder, and/or may be employed and/or engaged by any corporation, joint venture, sole proprietorship, limited liability company or other entity in which my estate or any such trust may have an interest, and shall be entitled to receive and to retain (in addition to their remuneration for their services as fiduciaries herein) such compensation, perquisites and reimbursement of expenses in connection with such services, in such manner and upon such terms and conditions, as they, in their discretion, shall deem proper.
- G. My fiduciaries may delegate discretion relating to the investment and management of estate or trust assets to an agent (including an entity affiliated with any trust institution serving as an executor or a trustee) and may do so without liability for the decisions, actions, omissions, neglect, misconduct or default of such agent, provided that such agent was selected and retained with reasonable care, skill and caution. My fiduciaries may pay such agent reasonable compensation for his, her or its services. Notwithstanding any statute or rule of law to the contrary, such compensation (other than of a fiduciary serving hereunder) shall not reduce any statutory commissions or other fees payable to my fiduciaries.
- H. Any individual fiduciary shall have the right, at any time and from time to time, to delegate to the other fiduciaries any or all of his or her powers as a fiduciary hereunder, and to revoke such delegation, in whole or in part, except that an Independent Trustee or a an Independent Trustee or Disinterested Trustee may not delegate his or her powers to a fiduciary who would not qualify as a Disinterested Trustee, whichever shall be applicable. Such delegation or revocation thereof shall be by a written instrument delivered to such other fiduciaries and shall specify the extent of such delegation or revocation. The written statement of the other fiduciaries as to whether any fiduciary is acting or has delegated any or all of his or her powers to such other fiduciaries shall fully protect all persons dealing with my estate or any trust created hereunder, whichever shall be applicable.

In addition, my fiduciaries may agree among themselves, in writing, to have any or all of the documents required to be signed by them in connection with the administration of my estate or any trust created hereunder signed by less than all of them.

## ARTICLE XIV

- A. Wherever in this Will the words “executor,” “trustees” and “fiduciaries” are used, they shall be construed to mean “executor, executors, executrix, executrices, personal representative, personal representatives, trustee, trustees and the survivor or survivors of them and their successor or successors in office.”
- B. Wherever in this Will the word “bequeath” is used, it shall be construed to mean “give, devise and bequeath.”
- C. Wherever in this Will the words “descendant” and “descendants” are used, they shall be construed to be synonymous with the word “issue.”
- D. Wherever in this Will the words “per stirpes” are used with reference to the descendants of any individual, they shall be construed to mean that the determination of such descendants begins with the children of such individual and that no distribution at any generational level shall be per capita.
- E. For all purposes under this Will, whether for the determination of relationships or otherwise, (i) adopted children of mine shall be considered to have, and shall be given, the same status as natural-born children and (ii) adopted children of any other person shall be considered to have, and shall be given, the same status as natural-born children only if the child was a minor when adopted and lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent. All references in this Will to children or descendants of mine or any other person shall include, and it is my intention that this Will shall be effective notwithstanding the fact that there shall be, any child, children, descendant or descendants of mine or any other person born or adopted after the date of execution hereof.

No one claiming to be a natural-born descendant of another person shall be considered as such unless the claimant and the purported parent had established a child-parent relationship prior to the time in question and they had lived together, while the claimant was a minor, as child and parent in the same household. The purpose of this paragraph is to prevent someone from successfully claiming to be a person’s child although never acknowledged to be such and it shall apply notwithstanding any provision of law to the contrary.

- F. All references made, and all nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- G. Wherever in this Will the word “Code” is used, it shall be construed to mean the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to refer to such section or to any section of similar import.
- H. Wherever in this Will the words “trust institution” are used, they shall be construed to mean a corporation or other organization which is authorized to act as trustee of both lifetime and testamentary trusts and which shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.



## **ARTICLE XV**

My fiduciaries, upon request, but not more often than annually, shall provide to each beneficiary of my estate and of any trust administered by them, statements setting forth the receipts and disbursements of principal and income and the assets on hand at the commencement and expiration of the period covered by such statements. The written approval of such statements by the then living adult income beneficiary or beneficiaries thereof, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], shall be final and binding upon all who are then or may thereafter become entitled to any part of the assets, as to all matters and transactions shown on the statements. Anything herein contained shall not preclude my fiduciaries, from time to time, from rendering an accounting or from submitting an accounting to a court for settlement, as they shall deem advisable. All of my fiduciaries' reasonable expenses (including reasonable attorney's fees) attributable to any such accounting and approval shall be paid by my estate or such trust, whichever shall be applicable.

## **ARTICLE XVI**

With respect to any trust created hereunder which shall have a single current income beneficiary, if at any time after the death of my husband, STEVE GREENSLEEVE, and after taking into account the age, maturity and competence of such beneficiary, my trustees (other than such beneficiary) shall determine it to be in his or her best interest to terminate such trust and distribute to him or her, outright and free of trust, the entire remaining principal thereof, my trustees may do so, whereupon such trust shall terminate and the rights of any other beneficiaries or remaindermen in such trust shall cease. In making such decision: (i) my trustees shall take into account the relationship of commissions and expenses to the value of the principal of such trust, and if they shall decide that the value of the trust does not warrant the incurring of such commissions and expenses said decision shall be considered a proper reason for termination pursuant to this Article; and (ii) my trustees shall take into account the then existing and anticipated future status of the Federal estate and generation-skipping transfer taxes, and any applicable State estate, generation-skipping transfer and inheritance taxes, and if they shall conclude that the existence of any such tax probably was, but probably is no longer, a principal reason for the existence of the trust, said conclusion also shall be considered a proper reason for termination pursuant to this Article.

## **ARTICLE XVII**

Any trust created hereunder which shall be substantially identical to any other trust created hereunder, or to any trust created under the Last Will and Testament of my husband, STEVE GREENSLEEVE, or to any trust created by either of us prior to death, may, in the discretion of my trustees, be merged into such other trust, or they may accept a merger of such other trust into the substantially identical trust created hereunder, if my trustees shall determine the same advisable to facilitate the administration thereof, to reduce the expense of operation thereof, or any other reason they shall deem to be in the best interests of the beneficiary thereof.

## **ARTICLE XVIII**

To the extent permitted by law, if any beneficiary or remainderman under this Will, or any person who would succeed to any of my property by intestate succession, shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, (i) any bequest to, or other provision for, that beneficiary or remainderman under this Will shall be revoked and shall be disposed of in the same manner as if the contesting beneficiary or remainderman, his or her spouse and all of his or her descendants had predeceased me and (ii) such beneficiary, remainderman or person otherwise entitled to succeed to any of my property by intestate succession, his or her spouse and all of his or her descendants shall also be deemed to have predeceased me and shall not succeed to any of my property by intestate succession.

I also direct that no portion of my estate shall be used to pay the legal fees and other expenses incurred by any of the aforesaid persons who shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, whether or not any such action shall be successful. In addition, to the extent permitted by law, it is also my wish that the legal fees and other expenses incurred by my estate in successfully defending any such action be paid by the person bringing such action.

## **ARTICLE XIX**

If at the time of my death I shall have any power of appointment over any property, I hereby exercise such power and direct that such property be disposed of in the same manner as my residuary estate.

## **ARTICLE XX**

My trustees shall have the right to collect and receive, for the benefit of any trust created hereunder, the proceeds of any policies of insurance on my life made payable to my

testamentary trustees, as well as the proceeds of any other death benefits, of whatsoever nature, made so payable, and any other money or property, or interest therein, receivable by them as a result of my death, or otherwise, and my trustees may execute appropriate proofs of death and claims for such assets, as well as receipts and releases therefor. To the extent permitted by law, all such assets shall be exempt from, and shall not be used in payment of, any of my debts, funeral costs, estate administration expenses and transfer taxes. All such assets shall be held as part of the principal of the trust or trusts created hereunder, and, unless otherwise specified in the appropriate beneficiary designation, shall be administered pursuant to subarticle B or C of Article V hereof, whichever shall be applicable; provided, however, that any such assets which would have been paid to my husband, STEVE GREENSLEEVE, but as a result of disclaimer by him, are paid to my trustees, shall be held and administered as part of the principal of the trust created under subarticle E of said Article V.

## **ARTICLE XXI**

In the event of the death of both my husband, STEVE GREENSLEEVE, and myself during the minority of any child or children of mine, if the guardians of such minor child or children, hereinabove appointed or appointed pursuant to the Last Will and Testament of STEVE, either (i) shall deem it advisable to take up residence in the residence owned and occupied by the survivor of STEVE and myself prior to his or my death (the “prior residence”), or (ii) shall deem it necessary to obtain larger living quarters in order to accommodate my minor children in the guardians’ household without discomfort to all members of such household, then my trustees either (i) shall hold such prior residence as an asset of the several trusts administered pursuant to subarticle B of Article V hereof for the benefit of my children, in equal shares, until my youngest surviving child shall attain legal age, or until such earlier time as said guardians shall no longer deem it advisable to reside therein or (ii) shall pay a portion of the expenses of acquiring such larger living quarters, whether the same shall consist of a new house or an addition to the guardians’ present house. The decision as to whether to take up residence in the prior residence or to obtain larger quarters shall be made solely by said guardians.

My trustees shall pay all expenses of maintenance and upkeep incurred in connection with such prior residence, including, but not limited to, taxes, insurance, repairs, mortgage interest and amortization, utilities, etc. The decision as to the portion of the expenses of acquiring and maintaining such larger living quarters to be paid by my trustees shall be made solely by said trustees, based upon my intention that the cost thereof fairly attributable to the need created by the acceptance of my minor children in the guardians’ household shall be borne by my trustees. Such expenses and, if requested by said guardians, expenses for a housekeeper, shall be paid from and charged solely to the trusts administered pursuant to subarticle B of Article V hereof, for the benefit of my children, in equal shares, whether or not all of them shall be minors or shall reside with said guardians.

## **ARTICLE XXII**

My executor may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; (iv) any user account of mine; and (v) any domain name of mine. My executor may obtain copies of any electronically stored information of mine from any person or entity that possesses, custodies, or controls that information. I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my executor: (i) any electronically stored information of mine; (ii) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (iii) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. My executor may employ any consultants or agents to advise or assist my executor in decrypting any encrypted electronically stored information of mine or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and I hereby authorize my executor to take any of these actions to access: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; and (iv) any user account of mine. The terms used in this paragraph are to be construed as broadly as possible, and the term “user account” includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

## **ARTICLE XXIII**

Anything in this Will to the contrary notwithstanding:

- A. “Interested Trustee” means for any trust a Trustee who is (i) a transferor of property to the trust, including a person whose qualified disclaimer resulted in property passing to the trust; or (ii) a person who is, or in the future may be, eligible to receive income or principal pursuant to the terms of the trust. A Trustee described in (i) is an Interested Trustee only with respect to the transferred property (including income and gain on, and reinvestment of, such property). A person is described in (ii) even if he or she has a remote contingent remainder interest, but is not described in (ii) if the person’s only interest is as a potential appointee under a non-fiduciary power of appointment held by another person, the exercise of which will take effect only in the future, such as a testamentary power held by a living person. A Trustee who is not an Interested Trustee is a “Disinterested Trustee.”

- B. The Disinterested Trustee(s) may, at any time prior to the death of the income beneficiary of the trust administered pursuant to Subarticle E of Article V hereof, by an instrument in writing (1) confer upon the income beneficiary of such trust a non-fiduciary power exercisable only by Will to appoint all or part of the applicable trust administered pursuant to said Article to the creditors of such beneficiary's estate (other than any taxing authority), and the instrument conferring power may require consent of any other trustee (other than any Interested Trustee), (2) revoke any such instrument previously executed, with or without executing a replacement instrument and/or (3) irrevocably relinquish the powers conferred under (1) and/or (2).

The Disinterested Trustee(s) shall have the same right with respect to the income beneficiary of any trust administered pursuant to subarticle B of Article V hereof prior to the death of such income beneficiary.

Without limiting the Disinterested Trustee(s)' discretion, such Trustee(s) may use the authority conferred by this subarticle to subject the trust property to estate tax when it appears that to do so may reduce overall taxes (income, gift, estate, inheritance, transfer and generation-skipping transfer).

- C. The aforesaid powers of appointment may be exercised by the applicable income beneficiary by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey and delivered to my trustees, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise, as said income beneficiary shall desire, and my trustees shall transfer and set over the appointed principal of the trust in accordance with any exercise of such power. That portion of the principal of the trust over which the applicable income beneficiary has not exercised his or her power of appointment shall be paid over and distributed in accordance with the applicable provisions of Article V hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
AMY GREENSLEEVE (L.S.)

The foregoing Will, consisting of twenty-three (23) pages, was signed, sealed, published and declared by the said Testatrix, AMY GREENSLEEVE, as and for her Last Will and Testament, in the presence of us, who, in her presence, at her request, and in the presence of each other, all being present at the same time, have hereunto subscribed our names as witnesses.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_

STATE OF NEW JERSEY)

ss:

COUNTY OF \_\_\_\_\_ )

We, AMY GREENSLEEVE, the testatrix, and \_\_\_\_\_ and \_\_\_\_\_, the witnesses, whose names are signed to the attached or foregoing instrument, being duly sworn, do hereby declare to the undersigned authority that the testatrix signed and executed the instrument as her Last Will and that she had signed willingly, and that she executed it as her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testatrix, signed the Will as witness and that to the best of his or her knowledge the testatrix was at that time 18 years of age or older, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
AMY GREENSLEEVE, Testatrix

\_\_\_\_\_  
, Witness

\_\_\_\_\_  
, Witness

Subscribed, sworn to and acknowledged before me by AMY GREENSLEEVE, the testatrix, and subscribed and sworn to before me by \_\_\_\_\_ and witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

# POUR OVER WILL TO REVOCABLE TRUST

## LAST WILL AND TESTAMENT OF JOHN SMITH

I, JOHN SMITH, residing at 123 Main Street, Paramus, New Jersey, being of sound mind, memory and understanding, do make, publish and declare the following to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me:

### ARTICLE I

A. I appoint my wife, JANE SMITH, and my brother-in-law, MICHAEL JAMES, as executors of this my Last Will and Testament. If MICHAEL shall fail to qualify, or having qualified shall cease to serve, as an executor, due to his death or any other reason whatsoever, I appoint my father-in-law, PAUL JAMES, as his successor. If PAUL also shall fail to qualify, or having qualified shall cease to serve, as an executor, due to his death or any other reason whatsoever, I appoint my brother-in-law, FRANK JAMES, as his successor.

The last serving executor shall have the right, by an instrument in writing or by Last Will and Testament, to appoint any individual(s) and/or trust institution of his or her choice as successor executor(s).

If at any time JANE shall be serving as sole executor of this my Last Will and Testament, she, by an instrument in writing, shall appoint any individual(s) and/or trust institution of her choice as co-executor, to serve together with her.

B. If my wife, JANE SMITH, shall predecease me, I appoint my brother-in-law, FRANK JAMES, as guardian of any minor child of mine. If FRANK shall fail to qualify, or having qualified shall cease to serve, as guardian, due to his death or any other reason whatsoever, I appoint my father-in-law, PAUL JAMES, as guardian of any minor child of mine. If PAUL also shall fail to qualify, or having qualified shall cease to serve, as guardian, due to his death or any other reason whatsoever, I appoint my brother-in-law, MICHAEL JAMES, as guardian of any minor child of mine.

C. I direct that no bond or other security shall be required of my executors or guardian, or any successors thereto whether appointed by me or any other person, in any jurisdiction in which they may be called upon to act.

D. The written instrument referred to in subarticle A hereof shall be executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey.

Any trust institution being appointed pursuant to subarticle A hereof shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.

\*Provided by Peter J. Bakarich, Jr., Esq., Winne, Banta Basralian & Kahn, P.C., Hackensack, NJ



## **ARTICLE II**

- A. I direct my executors to pay, as soon as convenient after my death, all of my debts, the expenses of my last illness, my funeral and related expenses and the expenses of administering my estate. Notwithstanding the foregoing, my executors shall not pay any debt of mine secured by property owned by me (including a life insurance policy), it being my intention either that said property shall pass subject to such indebtedness or, if the property shall be a life insurance policy, that any such debt shall first be satisfied out of the proceeds of such policy.
- B. In the event that my estate is insufficient for the payment of all of the debts and expenses specified in subarticle A hereof, my executors are hereby authorized, from time to time, to request in writing from the Trustee of the trust agreement referred to in Article IV hereof such sum or sums as my executors shall deem necessary, in order to permit the payment of such debts and expenses. Payment of any sums requested hereunder shall be in the discretion of said Trustee, who shall not be required to honor any such request.

## **ARTICLE III**

- A. I bequeath all of my personal effects, jewelry and automobiles, and all of my household furnishings, equipment and bric-a-brac, to my wife, JANE SMITH, if she shall survive me, or if she shall predecease me, to those of my children who shall survive me, in as nearly equal shares as feasible, to be allocated among them as they shall mutually agree, or in the absence of such agreement, as my executors, in their discretion, shall determine, giving due regard to the preferences of such children.

If any such child of mine shall not then be of legal age, my executors shall set aside so much of such child's share of such property as they shall determine I would wish to have preserved for such child, and shall dispose of the balance as they shall deem advisable, adding the proceeds thereof to the trust into which such child's share of my residuary estate shall be converted, to be treated as part of the initial principal thereof. The portion of such property so set aside for any minor child may, in the discretion of my executors, be placed in storage until such child shall attain legal age, and/or delivered to his or her legal guardians, and/or preserved for him or her in such other manner as my executors, in their discretion, shall deem advisable.

- B. If neither my wife, JANE SMITH, nor any of my children shall survive me, the bequest in subarticle A hereof shall lapse, and the aforesaid property shall be added to my residuary estate and distributed as hereinafter provided.

## **ARTICLE IV**

- A. All of the rest, residue and remainder of my estate, of every nature and description, real, personal and mixed, wheresoever situated, remaining after payment of the debts

and expenses specified in Article II hereof (referred to herein as my “residuary estate”), I bequeath to the Trustee of the JOHN SMITH REVOCABLE TRUST executed on \_\_\_\_\_, 2019, by and between myself as Grantor and myself as Trustee, to be added to the principal of the trust fund created thereunder, and thereafter to be administered as provided in said trust agreement, as amended from time to time prior to my death, it being my intention that my residuary estate, upon being added to the aforesaid trust fund, shall be treated in all respects as if it were a component part of the principal thereof.

- B. If for any reason the aforesaid JOHN SMITH REVOCABLE TRUST shall not be in existence at the time of my death, or if for any reason a court of competent jurisdiction shall declare this testamentary transfer to be invalid, then I direct that my residuary estate be held, managed, invested and reinvested by the same Trustee or the successor Trustee named in said trust, in exactly the same manner described in said trust, as such trust now exists or may be amended from time to time, as if the trust had been created in this Will and as if the terms of such trust had been set out in full in this Will.

## **ARTICLE V**

- A. All transfer taxes payable with respect to property passing under this Will shall be paid out of my residuary estate, without apportionment, including any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax. For purposes of this subarticle A, my residuary estate passing to the Trustee of the JOHN SMITH REVOCABLE TRUST referred to in Article IV hereof shall not be considered to have passed under this Will.
- B. All transfer taxes payable with respect to property owned by, payable to, or received by, the Trustee of the aforesaid JOHN SMITH REVOCABLE TRUST shall be payable as set forth in said Trust and the transfer taxes attributable to such property shall be determined as set forth therein.
- C. Except as provided in subarticle B hereof, it is my intention that all transfer taxes payable with respect to property passing other than under this Will shall be payable by the recipient thereof, and, if paid by my executors, shall be recovered from such recipient if my executors shall deem it reasonably feasible to do so. My executors shall not be liable to my estate or to any person interested therein if my executors do not deem it reasonably feasible to recover such taxes, and my executors shall have no obligation to pursue recovery under such circumstances. If my executors shall come into possession of any property distributable to a beneficiary from whom my executors has a right of recovery pursuant to this subarticle C, my executors shall pay, on behalf of the beneficiary, the amount of recoverable taxes and charge the same to such property or sell any part of such property to produce cash to satisfy the recovery right.

If an asset of my estate is valued for transfer tax purposes higher than the amount received by my estate due to the application of Code Section 2703 or otherwise, and if the

purchaser or purchasers of such asset, or the owner or owners of the purchaser, receive any bequest under this Will, then to the extent such person or persons are benefitted, directly or indirectly, by the purchase, such benefit shall be deemed to be property passing other than under this Will for purposes of this subarticle C. The same principle shall apply if any gift tax is included in my gross estate pursuant to Code Section 2035(b), with the recipient of the gift being treated as a purchaser.

- D. The transfer taxes attributable to the property referred to in subarticle C hereof shall be the amount by which the total of such taxes payable exceeds the total of such taxes which would have been payable had such property not been subject to transfer taxes, the same to be allocated among the various interests in such property pro rata, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- E. Whenever transfer taxes with respect to property passing under this Will are payable from specified property, or by the recipient thereof, in accordance with the provisions of this Article V, my executors may withhold distribution of a portion of such property to secure payment thereof, and may make payment on behalf of the recipient or make whatever other arrangements they shall deem advisable to assure that the taxes are paid. If the recipient also receives property other than under this Will, the foregoing authority to withhold distribution of property passing under this Will shall extend to the taxes payable with respect to such property passing outside of this Will.
- F. When used in this Will, the term “transfer taxes” shall be deemed to include all taxes payable by reason of property passing upon my death, whether labeled estate taxes, inheritance taxes, death taxes, succession taxes, transfer taxes, or otherwise, and whether imposed by the Federal government, any state, city or municipality, or otherwise, including interest and penalties thereon.

Such term shall not be deemed to include taxes imposed on generation-skipping transfers pursuant to Code Section 2601 et seq., whether imposed by the Federal government, any state, city or municipality, or otherwise, which taxes, including interest and penalties thereon, shall be paid as provided in Section 2603 of the Code, or in any other statute of similar import.

- G. Nothing contained in this Article V shall be deemed to be a direction that my estate recover or not recover from the recipient of property included in my gross estate by reason of Section 2044 of the Code the amount specified in Section 2207A of the Code, it being my intention that my executors shall make such decision in accordance with such criteria as they, in their discretion, shall deem appropriate.
- H. A person (the “payor”) receiving assets as a result of my death (whether or not received pursuant to this Will) may be obligated to pay a transfer tax (often called, and referred to herein as, an “inheritance tax”) and also may be charged with a portion of another transfer tax (often called, and referred to herein as, an “estate tax”). Such inheritance tax payment may reduce the estate tax liability of my estate, a portion of which reduction could, in the absence of this

subarticle H, inure to the benefit of beneficiaries other than the payor. Anything in this Article V to the contrary notwithstanding, any such reduction shall be applied first to reduce (but not below zero) the amount of estate tax charged to the payor, with any balance being applied as it would have been had this subarticle H not existed.

- I. To the extent possible, no transfer taxes shall be paid from any property, whether passing (i) under this Will or otherwise or (ii) outright or in trust, which shall qualify for the Federal estate tax marital or charitable deduction.
- J. My executors shall not be liable to any person or persons as a result of the exercise by them of any discretion granted pursuant to this Article V, and any discretionary decisions made by them closely shall be conclusive and binding upon all persons interested therein.

## **ARTICLE VI**

Any portion of my estate vesting in absolute ownership in a person who is a minor and/or who, in the judgment of my executors, is incapable of adequately managing such assets, may be held for the benefit of such person by my executors until such person shall attain majority and/or, in the judgment of my executors, such incapacity shall cease to exist. During such period, my executors so holding such property shall have all the powers and authority herein granted to them with respect to my estate; shall not be required to furnish bond or other security; and may pay or apply to or for the benefit of such person such portions, or all, of the property so held, and/or the income earned thereon, as they shall deem to be in the best interest of such person, accumulating as principal any income not so expended in any year. To the extent applicable, my executors may, in their discretion, make such payment or application by expending the same directly for the benefit of such person or by paying the amount so to be paid or applied to the parent or legal guardian of such person, or to another individual with whom such person may reside, or to an individual standing in the place of a parent to such person, or to a Custodian for such person designated by my executors under an applicable Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, or directly to such person, or otherwise, as my executors may, from time to time deem expedient, and the receipt of such person or such other payee shall be a full acquittance to my executors to the extent of such payments. The authority granted to my executors hereunder shall be in addition to, and not in lieu of, any other alternative available to them with respect to the administration and distribution of such portion of my estate, and it shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property, or of such accumulations of income, if any, by such person, nor shall it prevent the absolute vesting thereof in such person.

## **ARTICLE VII**

In the administration of my estate, my executors shall have the following powers, in addition to the powers vested in them by law, which in each and every instance may be exercisable by them at such times (if at all), in such manner, and in accordance with such criteria, as they, in their discretion, shall deem appropriate:

- A. To retain any property, real, personal or mixed, whether owned by me at the time of my death or subsequently purchased or acquired by my executors, for such length of time as they shall deem proper, regardless of the nature of such property and regardless of whether the same shall be productive of income, and to receive and accept, at any time and from time to time, from any person or persons, including the fiduciary of any other estate or trust, any additions to my estate in the form of cash, stock, securities or other property, real, personal or mixed, provided that such additions are acceptable to my executors.
- B. To make such investments and reinvestments of principal and accumulated income as they may consider proper, and to retain cash or the proceeds from the sale of any assets until such time or times as they shall deem it appropriate to invest such funds, so long as the requirements (other than diversification) of any applicable Prudent Investor Act (or equivalent) are satisfied. My executors may make their decision regarding diversification based upon such criteria as they, in their sole discretion, shall deem advisable, including, but not limited to, tax considerations, and my executors shall incur no liability of any kind as a result of their decision whether or not to diversify.
- C. To purchase or otherwise acquire, and to sell, exchange, mortgage, lease, grant and accept options and easements with respect to and otherwise deal with, any property, real, personal and mixed, improved or unimproved, at public or private sale, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions as they may deem proper. No purchaser, upon any sale or other disposition, shall be bound to see to the application of monies or property arising therefrom or to inquire into the validity, expediency or propriety of any such sale or other disposition. Any leases or options entered into or granted with respect to real or personal property held hereunder may be for such period (whether or not the same extends beyond the actual or probable duration of my estate) as my executors shall deem advisable.
- D. To manage, maintain, alter, develop, improve, abandon and otherwise deal with all property held by them, whether real, personal or mixed, and to do all such acts and to exercise all rights, powers and privileges, although not specifically mentioned herein, with respect to such property as may be legally done or exercised by any person owning similar property in his own right.
- E. To pay, extend, renew, modify, compromise, assign, litigate, alter, release or forgive, upon such terms and conditions, with or without consideration, as they shall deem advisable, or submit to arbitration, any obligation or claim, including taxes, either in favor of or against my estate.
- F. To borrow money or property, either upon the security of any or all of the assets of my estate, or without security or otherwise, upon such terms and conditions and for such purposes in connection with the administration of my estate, including not by way of limitation the purchase of improved or unimproved real or personal property, as to them shall seem proper, and to make any loans, in such amounts, upon such terms, and to such

individuals or entities, as may be deemed advisable, provided such loans bear reasonable interest and are adequately secured.

- G. To invest in, and/or to participate in the formation of, any corporation, partnership (general or limited), joint venture, limited liability company or other business organization, for such purposes, and for such periods of time, as they shall deem advisable, and to purchase shares of stock or other ownership interests therein, and to contribute to the capital thereof, and lend thereto, any assets of my estate; and to enter into or refuse to enter into any dissolution, liquidation, merger, consolidation, recapitalization, reorganization or other change with respect to any corporation or other such business venture the stock or other ownership interest in which is held by them, and to make exchanges of securities or other interest therein; and to exercise all voting rights with respect to such investment, in person or by proxy, and to enter into voting trusts and other agreements regulating the ownership and disposition thereof, whether or not the same extends beyond the actual or probable duration of my estate, all upon such terms and conditions as they shall deem advisable.
- H. To continue the operation of any business which I shall own or in which I shall be engaged at the time of my death, and to engage in and operate any other business, whether as a shareholder, partner, member, sole proprietor or otherwise, and to apply to the conduct of any such business any assets of my estate; and to dissolve, sell (for cash or on credit or partly for cash and partly on credit) or otherwise terminate any such business, all upon such terms and conditions as they shall deem advisable. No loss whatever resulting to my estate, through the ownership or operation by my executors of any business, whether the same be carried on as a corporation, partnership, proprietorship, limited liability company or otherwise, shall be chargeable against my executors personally. Nothing contained herein shall relieve my executors from the obligation to comply with any agreement entered into by me prior to my death regarding the sale or disposition of any interest in any business held by me at the time of my death.
- I. To engage attorneys, accountants, agents, investment counsel and other advisers in connection with the administration of my estate, and to pay expenses incurred thereby.
- J. To hold investments in the name of my executors, or in bearer form, or in the name of a nominee without disclosing a fiduciary relationship, and with respect to any trust institution serving as a fiduciary, to hold and administer any property in a common trust fund.
- K. To set up reasonable reserves for depreciation and/or depletion.
- L. To postpone the distribution of income earned during the administration of my estate for such period of time (not to extend beyond the period reasonably required for such administration) as they shall deem proper.
- M. To make partial distributions of the principal of my estate, subject to adjustments resulting from the conclusion of any tax proceedings affecting my estate, and to divide and distribute my estate in cash or in kind or partly in cash and partly in kind, without regard to differences in the composition of the shares or the tax bases of the assets distributed.

- N. To hold the interest of two or more parts or shares created under this Will in consolidated funds, without any physical division of the investments, but such consolidation of investments shall not operate to merge the legal or beneficial interests in such separate parts or shares.
- O. To make whatever elections or choices as shall be available to them respecting my last income tax return and any gift tax returns, including the filing of joint returns and consenting to gifts made by my spouse being treated as made one-half by me, and to pay all tax liabilities incurred thereby.
- P. To execute and deliver all documents, contracts and instruments necessary or advisable in connection with the administration of my estate.
- Q. To retain within my estate beyond the date it otherwise would have terminated, such assets as they shall deem appropriate to allow my estate to be deemed not to have terminated for the purpose of petitioning the United States Tax Court with respect to any assessed Federal tax deficiency. Such action can be taken with respect to my estate only if consented to in writing by the beneficiaries receiving at least half of the value of my residuary estate.
- R. To treat or not to treat as an expense of administering my estate, the costs of any ancillary or similar proceedings with respect to my estate and any costs incurred in connection with the preservation, protection and delivery of assets of my estate, including assets specifically bequeathed.
- S. To allocate receipts and disbursements of my estate between income and principal thereof in such a manner as my executors shall deem advisable, so long as the requirements of any applicable Principal and Income Act or equivalent are satisfied, except that during the lifetime of my wife, JANE SMITH, no allocation or allocations shall be made with respect to any portion of my estate which could prevent the same from qualifying for the Federal estate tax marital deduction.

## **ARTICLE VIII**

In the administration of my estate I direct that:

- A. My executors shall not be personally liable for any loss which may occur to my estate as a result of the exercise of, or the refusal to exercise, any of the powers or discretions vested in them, so long as such exercise or refusal to exercise is made in good faith.
- B. My executors shall not be disqualified from acting hereunder or from exercising any power granted herein because they may hold an interest in property in which my estate shall also hold an interest, or be a creditor of my estate, or be an employee or agent of, or the holder of an interest in, any business, sole proprietorship, partnership, joint venture, association, corporation, limited liability company or otherwise, in which my estate may hold an interest, or by reason of the fact that they may also be serving as the trustees of any trust established by me during my lifetime.

- C. If my executors decide in good faith that there is uncertainty as to the necessity for including particular items in my estate for death tax purposes, or particular items in any income or gift tax returns, they may exclude such items. My executors shall not be personally liable for any tax, interest or penalty imposed, or for any loss incurred, as a result of such decision.
- D. If applicable, my executors are authorized in their discretion:
- (i) to consent to the election or revocation of the election by any corporation to be an S corporation for Federal, State and other income tax purposes;
  - (ii) to elect to treat a trust as an electing small business trust, as defined in Section 1361 of the Code, even if the election results in increased income tax liability for such trust;
  - (iii) to make or refrain from making the election provided for in Section 2056(b)(7) of the Code, so that all or a portion of qualified terminable interest property shall qualify for the Federal estate tax marital deduction; provided, however, that the decision and power to make or refrain from making said election may only be made and exercised by my executor(s) other than my wife, JANE SMITH;
  - (iv) to elect or not to elect an installment payment of Federal estate taxes pursuant to Section 6166 of the Code, and to post bond and/or create liens on assets of my estate as required in connection therewith, and to distribute assets of my estate so encumbered;
  - (v) to elect or not to elect to deduct all or part of the expenses of administration of my estate and losses incurred during the settlement of my estate in the computation of the Federal or state income tax liability of my estate;
  - (vi) to elect or not to elect to value my estate for transfer tax purposes as of a date other than the date of my death;
  - (vii) to elect or not to elect the application of Section 2032A of the Code with respect to qualified real property;
  - (viii) to elect or not to elect to disclaim all or part of transfers or bequests made to me prior to my death by other persons;
  - (ix) to exercise or refrain from exercising any right, election or option in connection with the generation-skipping transfer tax provided for in Chapter 13 (Section 2601 et seq.) of the Code, including, but not limited to, the right to allocate or not to allocate the GST exemption provided for in Sections 2631 and 2632 of the Code to any applicable property or disposition, including dispositions made by me prior to death, and to make disparate allocations thereof to similar properties or dispositions;
  - (x) to elect or not to elect to treat any portion of a payment of estimated tax made with respect to any trust created hereunder as a payment made by a beneficiary of such trust (in equal or unequal shares if there shall be more than one) and to consider any amount so treated as a distribution to such beneficiary;



- (xi) to elect or not to elect, in whole or in part, the application of Section 2057 of the Code with respect to any qualified family-owned business interest, and they shall not be required to elect a larger amount under said Section in order to pay a smaller tax to the extent the election reduces the applicable exclusion amount under Section 2010 of the Code;
- (xii) to elect or not to elect to treat a qualified revocable trust as part of my estate pursuant to Section 645 of the Code;
- (xiii) to elect or not to elect to disclaim all or part of any power or discretion held by my executors in a fiduciary capacity, and to determine whether or not such disclaimer shall be binding upon, and shall constitute a disclaimer by, any or all successor or substitute executors and
- (xiv) to exercise or refrain from exercising any other election or option in connection with the computation of the transfer tax and income tax liabilities of my estate.

In the exercise of the discretion in clauses (i) through (xiv) hereof, my executors are to be guided by their opinion of what action will serve the best interests of my estate, and one or more of the beneficiaries thereof, and such discretion can be exercised without prior permission or approval of the court having jurisdiction of this Will. Furthermore, such consent and elections and options can be granted, made or exercised, or not, even though the result may be (i) the creation of liabilities; (ii) the shifting of interests in property between or among beneficiaries; and/or (iii) the fact that certain of the beneficiaries of my estate may incur a gain, while other beneficiaries of my estate may suffer a loss, but my executors may, if they deem it equitable, require adjustment among the various bequests contained herein and among the various beneficiaries of my estate, as a result of, or as a condition precedent to, the exercise of such discretion.

- E. My executors may be employed and/or engaged in any capacity by, or render services to, my estate, and/or may be employed and/or engaged by any corporation, proprietorship, joint venture, sole proprietorship, limited liability company or other entity in which my estate may have an interest, and shall be entitled to receive and to retain (in addition to their remuneration for their services as executors herein) such compensation, perquisites and reimbursement of expenses in connection with such services, in such manner and upon such terms and conditions, as they, in their discretion, shall deem proper.
- F. My executors may delegate discretion relating to the investment and management of estate assets to an agent (including an entity affiliated with any trust institution serving as a personal representative) and may do so without liability for the decisions, actions, omissions, neglect, misconduct or default of such agent, provided that such agent was selected and retained with reasonable care, skill and caution. My executors may pay such agent reasonable compensation for his, her or its services. Notwithstanding any statute or rule of law to the contrary, such compensation (other than of a fiduciary serving hereunder) shall not reduce any statutory commissions or other fees payable to my executors.

- G. If more than one executor shall be serving, then any individual executor shall have the right, at any time and from time to time, to delegate to the other executors any or all of his or her powers as executor hereunder, and to revoke such delegation, in whole or in part. Such delegation or revocation thereof shall be by a written instrument delivered to such other executors and shall specify the extent of such delegation or revocation. The written statement of the other executors as to whether any executor is acting or has delegated any or all of his or her powers to such other executors shall fully protect all persons dealing with my estate.

In addition, my executors may agree among themselves, in writing, to have any or all of the documents required to be signed by them in connection with the administration of my estate signed by less than all of them.

## **ARTICLE IX**

- A. Wherever in this Will the word “executors” is used, it shall be construed to mean “executor, executors, executrix, executrices, personal representative, personal representatives, and the survivor or survivors of them and their successor or successors in office.”
- B. Wherever in this Will the word “bequeath” is used, it shall be construed to mean “give, devise and bequeath.”
- C. For all purposes under this Will, whether for the determination of relationships or otherwise, (i) adopted children of mine shall be considered to have, and shall be given, the same status as natural-born children and (ii) adopted children of any other person shall be considered to have, and shall be given, the same status as natural-born children only if the child was a minor when adopted and lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent. All references in this Will to children or descendants of mine or any other person shall include, and it is my intention that this Will shall be effective notwithstanding the fact that there shall be, any child, children, descendant or descendants of mine or any other person born or adopted after the date of execution hereof.

No one claiming to be a natural-born descendant of another person shall be considered as such unless the claimant and the purported parent had established a child-parent relationship prior to the time in question and they had lived together, while the claimant was a minor, as child and parent in the same household. The purpose of this paragraph is to prevent someone from successfully claiming to be a person’s child although never acknowledged to be such and it shall apply notwithstanding any provision of law to the contrary.

- D. All references made, and all nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.

- E. Wherever in this Will the word “Code” is used, it shall be construed to mean the Internal Revenue Code of 1986, as amended.
- F. Wherever in this Will the words “trust institution” are used, they shall be construed to mean a corporation or other organization authorized to act as trustee of both lifetime and testamentary trusts.

## **ARTICLE X**

My executors, upon request, but not more often than annually, shall provide to each beneficiary of my residuary estate statements setting forth the receipts and disbursements of principal and income and the assets on hand at the commencement and expiration of the periods covered by the statements. The written approval of such statements by the then living income beneficiary or beneficiaries under the JOHN SMITH REVOCABLE TRUST referred to in Article IV hereof, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) beneficiary], shall be final and binding upon all who are then or may thereafter become entitled to any part of the assets, as to all matters and transactions shown on the statements. Anything herein contained shall not preclude my executors, from time to time, from rendering an accounting or from submitting an accounting to a court for settlement, as they shall deem advisable. All of my executors’ reasonable expenses (including reasonable attorneys’ fees) attributable to any such accounting and approval shall be paid out of my residuary estate.

## **ARTICLE XI**

To the extent permitted by law, if any beneficiary under this Will, or any person who would succeed to any of my property by intestate succession, shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, (i) any bequest to, or other provision for, that beneficiary under this Will shall be revoked and shall be disposed of in the same manner as if the contesting beneficiary, his or her spouse and all of his or her descendants had predeceased me and (ii) such beneficiary or person otherwise be entitled to succeed to any of my property by intestate succession, his or her spouse and all of his or her descendants, shall also be deemed to have predeceased me and shall not succeed to any of my property by intestate succession.

I also direct that no portion of my estate shall be used to pay the legal fees and other expenses incurred by any of the aforesaid persons who shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, whether or not any such action shall be successful. In addition, to the extent permitted by law, it is also my wish that the legal fees and other expenses incurred by my estate in successfully defending any such action be paid by the person bringing such action.

## ARTICLE XII

If at the time of my death I shall have any power of appointment over any property, then I hereby exercise such power and direct that such property be disposed of in the same manner as my residuary estate.

## ARTICLE XIII

My executors may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; (iv) any user account of mine; and (v) any domain name of mine. My executors may obtain copies of any electronically stored information of mine from any person or entity that possesses, custodies, or controls that information. I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my executors: (i) any electronically stored information of mine; (ii) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (iii) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. My executors may employ any consultants or agents to advise or assist my personal representative in decrypting any encrypted electronically stored information of mine or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and I hereby authorize my executors to take any of these actions to access: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; and (iv) any user account of mine. The terms used in this paragraph are to be construed as broadly as possible, and the term “user account” includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOHN SMITH (L.S.)

The foregoing Will, consisting of thirteen (13) pages, was signed, sealed, published and declared by the said Testator, JOHN SMITH, as and for his Last Will and Testament, in the presence of us, who, in his presence, at his request, and in the presence of each other, all being present at the same time, have hereunto subscribed our names as witnesses.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address  
\_\_\_\_\_

STATE OF NEW JERSEY)

ss:

COUNTY OF BERGEN)

We, JOHN SMITH, the testator, and \_\_\_\_\_ and \_\_\_\_\_, the witnesses, whose names are signed to the attached or foregoing instrument, being duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his Last Will and that he had signed willingly, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the Will as witness and that to the best of his or her knowledge the testator was at that time 18 years of age or older, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
JOHN SMITH, Testator

\_\_\_\_\_  
, Witness

\_\_\_\_\_  
, Witness

Subscribed, sworn to and acknowledged before me by JOHN SMITH, the testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_ day of \_\_\_\_\_, 2019.

## SAMPLE WILL CLAUSES

### NAME AND ADDRESS

IN THE NAME OF GOD, AMEN

I, \_\_\_\_\_, now residing at \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of New Jersey, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

### PAY DEBTS

I order and direct my Executor (Executrix), hereinafter named, to pay my debts, funeral and testamentary expenses as soon after my decease as may be convenient. I also direct my Executor (Executrix) to pay any and all inheritance taxes that may be assessed against any beneficiary or beneficiaries in connection with my Will or my Estate.

### CLAUSES CONCERNING MORTGAGED OR PLEDGED PROPERTY

I direct that any debt owned by me at the time of my death secured by a mortgage on any real property which I may own at the time, either individually or as a tenant by the entirety, or any debt secured by a pledge against any life insurance or other personal property owned by me, shall be treated and considered:

Either

- (1) As a debt of my estate and shall be paid from my residuary personal property and shall not be charged to the person receiving such real estate or life insurance or other personal property;
- (2) Not as a debt of my estate but shall be a charge on the beneficiary or surviving tenant taking such property and such person shall take the same subject to such mortgage, lien or other pledge existing at the time of my death.

### TAX CLAUSES

I direct that all inheritance, succession, legacy and estate taxes and duties, state, federal, or otherwise, which may be assessed or imposed in any way by reason of my death with respect to any and all property taxable as, or as if, a part of my estate, be paid out of the residue of my estate as expenses of administration, and not as a charge on the beneficiary or beneficiaries of such property.

\*\*\*\*\*

I direct that all inheritance, succession, legacy and estate taxes and duties, state, federal or otherwise, which may be assessed or imposed in any way by reason of my death with respect to any and all property taxable as, or as if, a part of my estate, be paid out of that one-half (1/2) portion of the residue of my estate, hereinbefore given in trust by paragraph NINTH of this Will, as expenses of administration and not as a charge on the beneficiary or beneficiaries of such property, provided, however, that each of the legatees named in paragraph FIFTH of this Will shall pay to my Executor his or her pro rata share of all federal and state taxes and duties of every kind levied or imposed on such legacy.

\*\*\*\*\*

I direct that all inheritance, succession, legacy and estate taxes and duties, state, federal or otherwise, which may be assessed or imposed in any way by reason of my death with respect to any and all property taxable as, or as if, a part of my estate, other than any federal estate tax as described in Section 2032A of the Internal Revenue Code, as amended from time to time, be paid out of that portion of the residue of my estate, SHARE B, heretofore given, in trust, by paragraph of this Will, or the entire residue of my estate if my wife, Susan Baxter, predeceases me, as expenses of administration and not as a charge on the beneficiary or beneficiaries of such property.

### **BEQUEST OF PERSONAL EFFECTS**

I give, devise and bequeath to my wife, \_\_\_\_\_, if she shall survive me, all of my personal effects, jewelry, automobiles, household furnishings, equipment, bric-a-brac and any interest I may have in the residence property occupied by me at the time of my death. If my said wife shall not survive me, then this devise and bequest shall lapse and the said personal effects, jewelry, automobiles, household furnishings, equipment, bric-a-brac and interest in the residence property shall be added to my residuary estate and distributed as hereinafter provided.

### **BEQUEST OF TANGIBLE PERSONAL PROPERTY**

I give and bequeath my tangible personal property, other than cash, to my surviving children, the division of the same to be in as nearly equal shares as is practicable as they may agree among or between themselves. If my said children are unable to agree upon a division of such property, then I direct my Executor to make division among or between my surviving children in as nearly equal shares as is practicable giving due regard to the personal preferences of my children. Such division by my Executor shall be in its absolute discretion and shall be conclusive and binding upon my surviving children. If any child or children of mine be a minor at the time for distribution of such tangible personal property then I authorize and empower my Executor to distribute to my husband, JOHN DOE, or to the guardian of such minor child, his or

her respective share of such property and the delivery to my Executor of a refunding bond and release from my husband or the guardian of my child or children acknowledging the receipt on behalf of such minor child of his or her distributive share of such property shall be sufficient discharge therefor, shall be binding upon all persons including such minor child and shall exonerate my Executor from all responsibility, liability or accountability with respect thereto. I direct that all expenses in protecting such property and delivering the same be paid from my residuary estate as an administration expense thereof.

### **SPECIFIC BEQUEST OF CORPORATE STOCK**

I give and bequeath to MARY ROE, Newark, New Jersey, if she survives me, 900 shares of General Motors Corp., \$ 1.66-2/3 par value common stock, if owned by me at the time of my death. If there be any change in the capital structure of the said General Motors Corp. after the execution of this Will and prior to my death, then I bequeath such number of shares of stock of said General Motors Corp., or of its successor, as shall, in the sole judgment of my Executor, then be the equivalent of 900 shares of the present stock including, but not by way of limitation, any stock dividends accruing thereto, any stock purchased by me by the exercise of any rights thereon, or any stock received by me from said General Motors Corp. of any other corporation in exchange therefor upon the reorganization of said General Motors Corp. or upon its merger or consolidation with or acquisition by any other corporation. I direct that said shares of stock be delivered to the said MARY ROE as soon after my death as is practicable. If the said MARY ROE predeceases me, then the bequest herein given shall lapse and fall into and become part of my residuary estate.

### **BEQUEST TO GRANDCHILDREN**

I give and bequeath the sum of One Thousand Dollars (\$1,000.00) to each of my grandchildren who shall survive me. If any of my surviving grandchildren be a minor at the time for payment of his or her legacy, then I authorize and empower my Executor to pay to the parents, or either of them, or to the guardian of such minor, his or her legacy and the delivery to my Executor of a refunding bond and release from such parents, parent or guardian, acknowledging the receipt on behalf of such minor of his or her legacy, shall be a sufficient discharge therefor, shall be binding upon all persons, including said minor, and shall exonerate my Executor from all responsibility, liability and accountability with respect thereto.

### **OUTRIGHT BEQUEST**

I give and bequeath the sum of Five Hundred Dollars (\$500.00) to my daughter, \_\_\_\_\_, in the event that she survives me. In the event that my said daughter, \_\_\_\_\_ does not survive me, I give and bequeath the said sum of Five Hundred Dollars (\$500.00) to my niece, \_\_\_\_\_, in the event that she survives me.



## RESIDUARY

All the rest, residue and remainder of my estate, real, personal or mixed, of whatsoever kind and wheresoever the same may be situate, of which I may die seized or possessed, or to which I may be entitled at the time of my death, over which I have a power of appointment or any interest, I give, devise and bequeath to my wife, \_\_\_\_\_, in the event that she survives me for a period of ten days. In the event that my wife, \_\_\_\_\_, does not survive me for a period of ten days, I give, devise and bequeath my said residuary estate to my son, or to his issue in equal shares, per stirpes, in the event that my son does not survive me.

\*\*\*\*\*

All the rest, residue and remainder of my estate, real, personal or mixed, of whatsoever kind and wheresoever the same may be situate, of which I may die seized or possessed, or to which I may be entitled at the time of my death, I give, devise and bequeath to my son, \_\_\_\_\_ and to my daughter, \_\_\_\_\_, share and share alike, or all to the survivor in the event that they do not both survive me, provided that if either or both of my children die before me leaving issue, him, her or them surviving, I give, devise and bequeath to the issue, per stirpes, the share or shares of my residuary estate which my said children or child would have received if living.

## DISCLAIMER

All the rest of my estate, both real and personal, and wherever located, of which I may die seized or possessed, I give and appoint to my wife, \_\_\_\_\_, if she survives.

Provided, however, I empower my wife at any time, and from time to time, to disclaim or release any or all of her interest under this Will, and any interest so disclaimed or released shall be held in trust for her benefit, upon the terms set forth below. In addition, if my spouse disclaims her interest in any property passing outside my Will, with the result that the property then passes to my Trustee, such property shall be held in this same trust. The terms of this trust shall be:

- (a) My Trustee shall pay to, or expend for the benefit of my wife the income of the trust in convenient installments, not less frequent than quarter-annually.
- (b) My Trustee also shall pay to, or expend for the benefit of my wife such amounts from the principal of this trust as my Trustee, in its absolute discretion, may deem appropriate to provide for her maintenance, health (including medical, dental, hospital and nursing home expenses) and reasonable comfort in her accustomed manner of living.
- (c) Upon the death of my wife, the principal of this trust as then constituted shall be distributed pursuant to Article of this Will, as if my wife had not survived me, and I had died immediately after her death.

## **MINORS TRUST**

In the event that either one or both (any one or more) of my said beneficiaries (is/are) under the age of eighteen (18) years at the time of my death, I give, devise and bequeath (his/hers/their) share(s) to my Executor, hereinafter named, IN TRUST NEVERTHELESS, for the following uses and purposes: to invest and reinvest the same and to collect the rents, issues and profits and to accumulate the income and to pay so much of the net income as may seem best to it in its absolute discretion toward the support, maintenance and education of my said beneficiary or beneficiaries, until they respectively attain the age of eighteen (18) years, at which time or times the balance remaining in said trust fund or funds shall be paid and transferred to said beneficiary or beneficiaries.

## **HAVING IN MIND**

I am making this disposition of my estate having in mind my children, \_\_\_\_\_ and \_\_\_\_\_, and notwithstanding the birth of any other child or children.

## **ISSUE**

In the event that any one or more of my children die before me leaving issue, (him/her/them) surviving, I give, devise and bequeath to the issue, in equal shares, per stirpes, the same share or shares which the parent or parents would have received if living.

## **CLAUSES REGARDING GUARDIANSHIP**

If my wife, MARY ROE, predeceases me, or if we die as a result of the same common accident or disaster, or otherwise, under such circumstances as to render it doubtful whether she or I died first, then I nominate, constitute and appoint my son, JOHN ROE, the Testamentary Guardian of the person and property of my son, ROBERT ROE, and any other child or children born hereafter to me, during their respective minorities. I give to the said JOHN ROE, as Testamentary Guardian, full power and authority to sell and dispose of any and all property, real or personal, which may become part of said guardianship, either at public or private sale, and upon such terms and conditions as he shall deem for the best interests of the said guardianship and to make good and sufficient conveyances in the law therefor; and further, I direct that no bond shall be required of JOHN ROE for the administration of said guardianship in any jurisdiction.

In the event that any one or more of the beneficiaries hereunder are under the age of eighteen (18) years, I hereby empower my Executor to pay the legacies, hereinbefore bequeathed to them, to their natural guardian or guardians, or legal guardian or guardians, whose receipt shall be a sufficient discharge for the same, and I exonerate my Executor from all responsibility with respect to the application thereof.

## **CLAUSES INVOLVING SIMULTANEOUS DEATH**

If my wife, MARY ROE, and I die as a result of the same common accident or disaster, or otherwise, under such circumstances as to render it doubtful whether my said wife or I died first, it shall be conclusively presumed, for the purpose of this Will, that my said wife survived me.

\*\*\*\*\*

If any legatee, devisee or other beneficiary named or referred to in this Will and I die as a result of the same common accident or disaster, or otherwise, under such circumstances that it is difficult or impossible to determine who predeceased the other, then I direct that the terms and provisions of this Will shall be construed as though I had survived such person and that my estate shall be administered and distributed in all respects accordingly.

\*\*\*\*\*

I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, of or to which I am now or may hereafter become seized, possessed or entitled, to my wife, MARY ROE, if she be living thirty days after my death.

If my wife, MARY ROE, predeceases me or dies within thirty days after my death, then I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, of or to which I am now or may hereafter become seized, possessed or entitled, to my hereinafter named Trustee, IN TRUST NEVERTHELESS, for the following uses and purposes:

## **CLAUSES CONCERNING CONTINUANCE OF TESTATOR'S BUSINESS**

To continue or to permit the continuance of any business, incorporated or unincorporated, which I may own or in which I may have any interest at the time of my death, for such period as they shall deem advisable (including but without limitation the power to organize a corporation to carry on such business, by themselves or with others, to contribute all or part of the property of said business as capital to such corporation and to accept stock in the corporation in payment thereof, and to hold such stock for such period as they shall deem advisable); without limiting the generality of the foregoing, my fiduciaries are authorized to invest additional sums in any such business (even to the extent that my estate or any trust hereunder may be invested largely in such business), to act as or to select other persons to act as directors, officers or other employees of any such business (such persons to be compensated without regard to their being fiduciaries hereunder), and to make such other arrangements and exercise such powers in respect thereof as they shall deem advisable (including but without limitation the power to obtain or to refrain from obtaining patents on any invention of mine or to which I or they may have acquired the right of patent, and to license any person or corporation to use any such patent); and, if they shall deem it advisable, to liquidate any such business in such manner and upon such terms as they in their discretion shall deem advisable. My fiduciaries shall be entitled to reasonable compensation for any services rendered by them in respect of the operation of any such business, which compensation shall be in addition to the commissions allowed to them by law.

I give to my Executor and my Trustee, with respect to any business interests which I may own at the time of my death or which shall at any time constitute a part of my estate or any trust created hereunder, whether any such business interest is organized as a sole proprietorship, partnership or corporation, the following powers, in addition to those granted elsewhere in this Will:

- A. To retain and continue any such business for such time as my Executor or my Trustee may deem advisable and to enlarge, diminish or change the scope or nature of the activities of any such business.
- B. To direct, control, supervise, manage, operate or participate in the operation of any such business and to determine the manner and degree of its active participation in the management of any such business and to that end to delegate all or any of such powers to such persons as it may select, including, without limitation, any associate, director, officer or employee of such business.
- C. To engage, compensate and discharge or, as the stockholders owning the stock of any such corporations, to vote to engage, compensate and discharge such managers, employees, agent, attorneys, accountants, consultants, or other representatives as it may deem advisable, including, without limitation, any person who is a beneficiary or individual fiduciary under this Will.
- D. To sell, dissolve or liquidate all or any part of any such business at such time or times and upon such terms and conditions as it may deem advisable, and in connection therewith to make any such sale to any person who is a beneficiary or individual fiduciary under this Will.
- E. To incorporate any such business and hold the stock as an asset of my estate or the trust in which such business interest was held.
- F. With respect to the retention, continuance and disposition of any such business, to exercise all the rights and powers, although not herein specifically mentioned, which I would have were I to make the decision at the time of such exercise.

### **POWER OF SALE**

I authorize and empower my Executor (Executrix), hereinafter named, to sell, mortgage, lease or otherwise dispose of or encumber any and all of the real estate of which I may die seized or possessed, at such terms and conditions as he/she/it shall deem in his/hers/its uncontrolled discretion, and to execute, acknowledge and deliver all proper writings, deeds, mortgages, conveyances and transfers therefor.

### **POWER OF SALE— EXECUTOR AND TRUSTEE**

I authorize and empower my Executor(s) (and Trustee(s)), hereinafter named, to sell, mortgage, lease or otherwise dispose of or encumber any and all of the real estate of which I may die

seized or possessed, at such times and on such terms and conditions as (they/it) shall deem best in (their/its) uncontrolled discretion without reference to necessity (either) for administrative purposes (or for support, maintenance or education of any beneficiary or beneficiaries), and to execute, acknowledge and deliver all proper writings, deeds, mortgages, conveyances and transfers therefor.

### **POWER TO DISTRIBUTE WITHOUT DUTY OF IMPARTIALITY**

To make division, partition and distribution of my estate or trusts in cash or kind, or partly in each, and for the purpose of making such division, partition and distribution in kind, the assets selected by my Executor and Trustee shall be valued at their respective values on the date or dates of division, partition and distribution, and in making distribution in kind, to make such distribution in shares which may be composed of different kinds of property and to allocate equal or unequal, pro rata or non-pro rata, interests in specific property to such shares without regard to differences in the tax bases of such property.

### **SPENDTHRIFT CLAUSE**

The interest of any beneficiary or remainderman in any trust created hereunder, either in income or in principal, or in both, shall not be subject to sale, assignment, pledge or transfer in any manner, and such interest shall not be liable or subject in any manner while in the possession of my trustees for the debts, contracts, obligations, liabilities, engagements, undertakings or torts of any such beneficiary or remainderman. No beneficiary or remainderman shall have the power in any manner to anticipate, charge or encumber his or her interest, either in income or in principal, or in both.

### **IN TERROREM CLAUSE**

To the extent permitted by law, if any beneficiary under this Will shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, any bequest to, or other provision for, that beneficiary under this Will shall be revoked and shall be disposed of in the same manner as if the contesting beneficiary had predeceased me.

### **APPOINT EXECUTOR CORPORATION**

I nominate, constitute and appoint, \_\_\_\_\_, a corporation organized under the laws of the State of New Jersey, having its principal office in the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of New Jersey, Executor of (and Trustee under) this my Will, and I direct that no bond be required of it for the faithful performance of its duties.

### **APPOINT EXECUTOR/EXECUTRIX INDIVIDUALS**

I nominate, constitute and appoint my wife, \_\_\_\_\_, Executrix of this my Will, and I direct that no bond be required of her for the faithful performance of her duties.

In the event that my said wife does not survive me, or qualify, I nominate, constitute and appoint my son, \_\_\_\_\_, Executor of this my Will, and I direct that no bond be required of him for the faithful performance of his duties.

### **APPOINT TRUSTEE**

I nominate and appoint \_\_\_\_\_, Trustee of the trusts created in this my Last Will and Testament. In the event \_\_\_\_\_ does not survive me, or if he should fail to qualify, or having qualified, dies, resigns, or becomes incapacitated, then I nominate and appoint \_\_\_\_\_ Trustee in his place and stead.

I order and direct that no Trustee nominated or appointed by me shall be required to furnish any bond or other security as such, in the State of New Jersey, or elsewhere, or if a bond be required, such Trustee shall not be required to furnish any sureties thereon.

### **APPOINT GUARDIAN**

In the event my said spouse, \_\_\_\_\_, does not survive me, or surviving me is incapable for any reason to act as Guardian of our minor children, I hereby nominate and appoint \_\_\_\_\_ Guardian of each of my minor children, to have exclusive control of their custody, care and education. In the event \_\_\_\_\_ does not survive me, or surviving me is incapable for any reason to act as Guardian of my minor children, I hereby nominate and appoint \_\_\_\_\_ Guardian of each of my minor children, to have exclusive control of their custody, care and education.

I order and direct that no Guardian shall be required to furnish any bond or other security as such, in the State of New Jersey, or elsewhere, or if a bond be required, such Guardian shall not be required to furnish any sureties thereon, while serving as Guardian of my said children.

### **IN WITNESS WHEREOF**

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand Nineteen.

\_\_\_\_\_ (L.S.)

**ATTESTATION**

Signed, sealed, published and declared by the above named Testator (Testatrix), as and for his (her) Last Will and Testament, in the presence of us, who at his (her) request and in his (her) presence and in the presence of each other, have hereto signed our names as subscribing witnesses.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## ENTIRE ESTATE IN TRUST FOR SPOUSE

### EXECUTORS CAN MAKE FULL OR PARTIAL QTIP ELECTION TO QUALIFY ALL OR SOME OF TRUST FOR MARITAL DEDUCTION WITH UNELECTED PORTION FOR NJ OR US EXEMPTION AMOUNT\*

#### LAST WILL AND TESTAMENT OF ANTHONY SMITH

I, ANTHONY SMITH, residing at 123 Main Street, Clifton, New Jersey 07011, being of sound mind, memory and understanding, do make, publish and declare the following to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me:

#### ARTICLE I

A. I appoint my daughters, MARY JANE SMITH and ERICA SMITH, as executors of this my Last Will and Testament. If MARY, ERICA or any successor executor shall fail to qualify, or having qualified shall cease to serve, as executor, due to death or any other reason whatsoever, I appoint, in succession, my son, MICHAEL SMITH, and my attorney, PETER J. BAKARICH, JR., as his or her successor, it being my intention, to the extent possible, that there shall be two executors serving hereunder at all times.

If at any time only one individual shall be serving as an executor hereunder, he or she, by an instrument in writing, shall appoint any individual(s) and/or trust institution of his or her choice as co-executor(s), to serve together with him or her.

B. I appoint my daughters, MARY JANE SMITH and ERICA SMITH, as trustees of the trusts created hereunder. If MARY, ERICA, or any successor trustee shall fail to qualify, or having qualified shall cease to serve, as a trustee, due to death or any other reason whatsoever (other than removal pursuant to Article VIII hereof), I appoint, in succession, my son, MICHAEL SMITH, and my attorney, PETER J. BAKARICH, JR., as his or her successor, it being my intention, to the extent possible, that there shall be two trustees serving hereunder at all times.

If at any time there shall be no "Disinterested Trustee" (as hereinafter defined) of a trust created hereunder, my other trustees of such trust shall have the right, by majority vote and by an instrument in writing, to appoint any individual(s) and/or trust institution of their, his or her choice as Disinterested Trustee(s) of such trust, to serve with such other trustees.

If at any time only one individual shall be serving as trustee of any trust created hereunder, he or she, by an instrument in writing, shall appoint any individual(s) and/or trust institution of his or her choice as co-trustee(s) of such trust, to serve together with him or her.

\*Provided by Peter J. Bakarich Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey.



- C. My attorney, PETER J. BAKARICH, JR., shall be entitled to both fiduciary fees and legal fees for his services, determined as if the individual co-fiduciary and the attorney were different parties, so that the fact that PETER shall be serving as fiduciary and attorney will neither increase nor decrease the total fees payable.
- D. I direct that no bond or other security shall be required of my executors or trustees, or any of them, or any successors thereto whether appointed by me or by any other person, in any jurisdiction in which they may be called upon to act.
- E. The written instruments referred to in subarticles A and B hereof shall be executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey.

## **ARTICLE II**

I direct my executors to pay, as soon as convenient after my death, all of my debts, the expenses of my last illness, my funeral and related expenses and the expenses of administering my estate. Notwithstanding the foregoing, my executors shall not pay any debt of mine secured by property owned by me (including a life insurance policy), it being my intention either that said property shall pass subject to such indebtedness or, if the property shall be a life insurance policy, that any such debt shall first be satisfied out of the proceeds of such policy.

## **ARTICLE III**

- A. I bequeath all of my personal effects, jewelry and automobiles, and all of my household furnishings, equipment and bric-a-brac, to my wife, CATHY SMITH, if she shall survive me, or if she shall predecease me, I bequeath the same to those of my children, MARTIN SMITH, MARY JANE SMITH, MICHAEL SMITH, ROBERT SMITH, PATRICIA SMITH and ERICA SMITH, who shall survive me, in as nearly equal shares as feasible, to be allocated among them as they shall mutually agree, and in the absence of such agreement, as my executors, in their discretion, shall determine, giving due regard to the preferences of such children.
- B. If neither my wife, CATHY SMITH, nor any of my children, MARTIN SMITH, MARY JANE SMITH, MICHAEL SMITH, ROBERT SMITH, PATRICIA SMITH and ERICA SMITH, shall survive me, the bequest in subarticle A hereof shall lapse, and the aforesaid property shall be added to my residuary estate and distributed as hereinafter provided.

## **ARTICLE IV**

All of the rest, residue and remainder of my estate, of every nature and description, real, personal and mixed, wheresoever situated, remaining after payment of the debts and expenses specified in Article II hereof (referred to herein as my “residuary estate”), I bequeath as follows:

A. If my wife, CATHY SMITH, shall survive me, I bequeath my residuary estate to my trustees, hereinabove named, who shall add the same to any life insurance proceeds or other death benefits, and any other money or property, or interest therein, received by them as a result of my death, or otherwise; and my trustees shall hold all such assets in trust; shall manage, administer, invest and reinvest the principal of the trust; shall collect and receive the income thereof; shall pay any and all expenses incident to the operation of such trust; and shall distribute the net income and principal thereof as follows:

1. Until the death of my wife, CATHY SMITH:

- a. My trustees shall pay to CATHY, or apply for her benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, CATHY shall have the right, exercisable at any time and from time to time, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as she shall deem reasonably necessary to provide for her health, maintenance and support. If, in the judgment of my trustees, CATHY is incapable of exercising such right, my trustees may exercise such right on CATHY's behalf while such incapacity shall exist. In the exercise of such right by my trustees, they shall consider that it is my primary intention that CATHY, for as long as she shall live, shall continue to enjoy the same standard of living that she enjoyed at the time of my death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the foregoing, a "Disinterested Trustee" (as hereinafter defined), without the consent of any other trustee, may pay or apply principal of the trust for any or no reason at all, with no standards or guides relative to the exercise of such discretion being provided, except that no payment or application of trust principal shall be made which shall have the purpose or effect of discharging a legal obligation (whether for support or any other purpose) of the Disinterested Trustee or which shall be for his, her or its pecuniary benefit.

If the Disinterested Trustee shall exercise the specific discretion hereinabove granted to such Trustee, then the other trustees are hereby directed to execute any documents that may be required to effectuate and facilitate the payment or application of the principal of the trust pursuant to such exercise.

- b. It is my intention that CATHY shall have substantially that degree of beneficial enjoyment of this trust during her life which the principles of the law of trusts applicable in the State of New Jersey accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Accordingly, my trustees shall so manage this trust as to produce for CATHY a distributable income consistent with the value of the principal of the trust and its preservation, and shall not retain as principal thereof any assets which shall not be productive of income unless she shall consent thereto which consent, if granted, can be revoked at any time. No powers, rights or discretions granted to my trustees hereunder shall be construed in such a way as to deprive CATHY of said beneficial enjoyment of the trust.

- c. CATHY shall have the right to disclaim, or to renounce, at any time, any one or more of the rights, powers or options contained in this subarticle A relating to distribution or use of principal of the trust to her or for her benefit.
  - d. The provisions of Article VI hereof shall not apply to prevent the sale by a remainderman of the trust of his or her remainder interest in the trust to the trust or to CATHY, nor shall they apply to prevent assignment by CATHY of all or part of her interest in trust income to one or more organizations described in both of Sections 170(c) and 2522(a) of the Code.
2. Upon the death of my wife, CATHY SMITH, any income of the trust that shall then be accrued but not received, or received but not distributed, shall be paid over and distributed to CATHY's estate and the then remaining principal of the trust shall be paid over and distributed in the following shares to the following individuals who shall then be living:
- a. Nine (9%) percent thereof to my son, MARTIN SMITH.
  - b. Twelve (12%) percent thereof to my daughter, MARY JANE SMITH.
  - c. Twenty-one (21%) percent thereof to my son, MICHAEL SMITH.
  - d. Seventeen (17%) percent thereof to my son, ROBERT SMITH.
  - e. Twenty-one (21%) percent thereof to my daughter, PATRICIA SMITH.
  - f. Twenty (20%) percent thereof to my daughter, ERICA SMITH.

If any of the individuals named in subparagraphs a through f hereof shall not then be living, his or her distribution shall be paid over and distributed to those of his or her descendants who shall then be living, per stirpes.

If any of the individuals named in subparagraphs a through f hereof, and all of his or her descendants, shall not then be living, said individual's distribution shall lapse, and the same shall be added to the distributions in said subparagraphs a through f which shall not have lapsed, pro rata.

3. With respect to the trust hereinabove created, it is my expectation that my executors shall make the election provided for in Section 2056(b)(7) of the Code, so that so much of said trust as shall be required to decrease my taxable estate for Federal estate tax purposes to the maximum amount possible without requiring payment of any Federal or State estate (but not inheritance) taxes shall qualify for the Federal estate tax marital deduction, but my executors shall have the discretion, in accordance with the criteria hereinafter set forth, not to do so, in whole or in part. If my executors shall make the aforesaid election as to part, but less than all, of said trust, my trustees may, but shall not be required to, separate said trust into two separate trusts, each to be administered in accordance with the foregoing provisions, with one separate trust consisting of the portion of said trust

with respect to which such election was made and the other separate trust consisting of the portion with respect to which the election was not made. Assets allocated to each such trust shall be valued for such purpose as of the date of allocation.

4. If, following the death of my wife, CATHY SMITH, my trustees shall receive notification from the executors or administrators of her estate that they intend to recover from the person or persons receiving the assets of the trust all or part of the increase in Federal and State estate taxes payable by her estate due to the inclusion in her gross estate for Federal and State estate tax purposes of all or part of the value of the trust upon her death, pursuant to Section 2207A of the Code and applicable State law, then prior to making any distribution, division or other disposition of the then remaining principal of the trust my trustees may, but shall not be required to, lend to such executors or administrators, or advance to them, so much or all of the amount to be so recovered as my trustees, in their discretion, shall deem advisable. Such loan or advancement need not await the actual payment by CATHY's estate of its Federal and State estate taxes, and in the exercise of their discretion hereunder my trustees may take into account the best interests of CATHY's estate and the recipients thereof, including any expense or loss it or they may incur as a result of having to pay such taxes without the benefit of such loan or advancement. My trustees shall be entitled to rely upon the written advice of the executors or administrators of CATHY's estate attesting to both the amount that they are entitled to recover (which may be an estimate) and the reasons why such loan or advancement is requested, without the necessity of verifying the same.
  5. With respect to the right of recovery referred to in paragraph 4 hereof, my trustees shall reimburse the estate of my wife, CATHY SMITH, for the reasonable costs of determining the amount of such recovery, including, but not limited to, legal, accounting and appraisal fees. The loan or advancement provisions of said paragraph 4 shall likewise apply to such costs.
- B. If my wife, CATHY SMITH, shall predecease me, I bequeath my residuary estate in the following shares to the following individuals who shall survive me:
1. Nine (9%) percent thereof to my son, MARTIN SMITH.
  2. Twelve (12%) percent thereof to my daughter, MARY JANE SMITH.
  3. Twenty-one (21%) percent thereof to my son, MICHAEL SMITH.
  4. Seventeen (17%) percent thereof to my son, ROBERT SMITH.
  5. Twenty-one (21%) percent thereof to my daughter, PATRICIA SMITH.
  6. Twenty (20%) percent thereof to my daughter, ERICA SMITH.

If any of the individuals named in paragraphs 1 through 6 hereof shall predecease me, I bequeath his or her share to those of his or her descendants who shall survive me, per stirpes.

If any of the individuals named in paragraphs 1 through 6 hereof, and all of his or her descendants, shall predecease me, said individual's bequest shall lapse, and the same shall be added to the bequests in said paragraphs 1 through 6 which shall not have lapsed, pro rata.

Any life insurance proceeds, or other death benefits, received by my trustees shall also be paid over and distributed as set forth in this subarticle B, unless otherwise specified in the appropriate beneficiary designation.

- C. Anything in this Will to the contrary notwithstanding, if I and my wife, CATHY SMITH, shall die at the same time, within one hundred twenty (120) hours of each other or under such circumstances that the order of our deaths cannot be determined with certainty, then for all purposes of Will, or otherwise, she shall be deemed to have survived me.
- D. I hereby acknowledge that I have not provided for equal distributions or bequests to my children or their descendants. This is due not to any lack of love and affection for any of them, but to their different financial situations.

## **ARTICLE V**

- A. Except as specifically provided to the contrary in this subarticle A, all transfer taxes payable with respect to property passing under this Will shall be paid out of my residuary estate, without apportionment, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and shall not be paid out of my residuary estate. For purposes of this subarticle A, property received by my trustees other than from my executors shall not be considered to have passed under this Will.

Pursuant to the provisions of paragraph 3 of subarticle A of Article IV hereof, my executors have discretion to make or not to make the election provided for in Section 2056(b)(7) of the Code with respect to all or part of the trust created under said subarticle A. If the portion of such trust with respect to which such election was not made shall be subject to transfer taxes, the taxes attributable to such portion shall be paid therefrom.

- B. It is my intention that all transfer taxes payable with respect to property passing other than under this Will shall be paid by the recipient thereof, and, if paid by my executors, shall be recovered from such recipient if my executors shall deem it reasonably feasible to do so. My executors shall not be liable to my estate or to any person interested therein if my executors shall not deem it reasonably feasible to recover such taxes, and my executors shall have no obligation to pursue recovery under such circumstances. If my executors shall come into possession of any property distributable to a beneficiary from whom my executors shall have a right of recovery pursuant to this subarticle B, my executors may pay, on behalf of the beneficiary, the amount of recoverable taxes and charge the same to such property or sell any part of such property to produce cash to satisfy the recovery right.

If an asset of my estate is valued for transfer tax purposes higher than the amount received by my estate due to the application of Code Section 2703 or otherwise, and if the purchaser or purchasers of such asset, or the owner or owners of the purchaser, receive any bequest under this Will, then to the extent such person or persons are benefitted, directly or indirectly, by the purchase, such benefit shall be deemed to be property passing other than under this Will for purposes of this subarticle B. The same principle shall apply if any gift tax is included in my gross estate pursuant to Code Section 2035(b), with the recipient of the gift being treated as a purchaser.

- C. If any transfer taxes are to be paid out of, or by the recipient of, specifically identified property pursuant to subarticle A hereof, the taxes attributable to each such property shall be a pro rata portion of the total transfer taxes payable with respect to all property subject to such taxes passing under this Will, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- D. The transfer taxes attributable to the property referred to in subarticle B hereof shall be the amount by which the total of such taxes payable exceeds the total of such taxes which would have been payable had such property not been subject to transfer taxes, the same to be allocated among the various interests in such property pro rata, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- E. Whenever transfer taxes with respect to property passing under this Will are payable from specified property, or by the recipient thereof, in accordance with the provisions of this Article V, my executors may withhold distribution of a portion of such property to secure payment thereof, and may make payment on behalf of the recipient or make whatever other arrangements my executors shall deem advisable to assure that the taxes are paid. If the recipient also receives property other than under this Will, the foregoing authority to withhold distribution of property passing under this Will shall extend to the transfer taxes payable with respect to such property passing outside of this Will.
- F. When used in this Will, the term “transfer taxes” shall be deemed to include all taxes payable by reason of property passing upon my death, whether labeled estate taxes, inheritance taxes, death taxes, succession taxes, transfer taxes, or otherwise, and whether imposed by the Federal government, any state, city or municipality, or otherwise, including interest and penalties thereon. Such term shall not be deemed to include taxes imposed on generation-skipping transfers pursuant to Code Section 2601 et seq. or any other statute of similar import, whether imposed by the Federal government, any state, city or municipality, or otherwise, which taxes, including interest and penalties thereon, shall be paid as provided in Section 2603 of the Code, or in any other statute of similar import.
- G. Nothing contained in this Article V shall be deemed to be a direction that my estate recover or not recover from the recipient of property included in my gross estate by reason of Section

2044 of the Code the amount specified in Section 2207A of the Code, it being my intention that my executors shall make such decision in accordance with such criteria, as they, in their discretion, shall deem appropriate.

- H. A person (the “payor”) receiving assets as a result of my death (whether or not received pursuant to this Will) may be obligated to pay a transfer tax (often called, and referred to herein as, an “inheritance tax”) and also may be charged with a portion of another transfer tax (often called, and referred to herein as, an “estate tax”). Such inheritance tax payment may reduce the estate tax liability of my estate, a portion of which reduction could, in the absence of this subarticle H, inure to the benefit of beneficiaries other than the payor. Anything in this Article V to the contrary notwithstanding, any such reduction shall be applied first to reduce (but not below zero) the amount of estate tax charged to the payor, with any balance being applied as it would have been had this subarticle H not existed.
- I. To the extent possible, no transfer taxes shall be paid from any property, whether passing (i) under this Will or otherwise or (ii) outright or in trust, which shall qualify for the Federal estate tax marital or charitable deduction.
- J. My executors shall not be liable to any person or persons as a result of the exercise by them of any discretion granted pursuant to this Article V, and any discretionary decisions made by my executors shall be conclusive and binding upon all persons interested therein.

## **ARTICLE VI**

The interest of the beneficiary or any remainderman in any trust created hereunder, either in income or in principal, or in both, shall not be subject to sale, assignment, pledge or transfer in any manner, and such interest shall not be liable or subject in any manner while in the possession of my trustees for the debts, contracts, obligations, liabilities, engagements, undertakings or torts of the beneficiary or any such remainderman. Neither the beneficiary nor any remainderman shall have the power in any manner to anticipate, charge or encumber his or her interest, either in income or in principal, or in both.

## **ARTICLE VII**

Any portion of my estate or of any trust created hereunder vesting in absolute ownership in a person who is a minor and/or who, in the judgment of my fiduciaries, is incapable of adequately managing such assets, may be held for the benefit of such person by my fiduciaries until such minor shall attain majority and/or, in the judgment of my fiduciaries, such incapacity shall cease to exist. During such period, my fiduciaries so holding such property shall have all the powers and authority herein granted to them with respect to my estate or any trust created hereunder; shall not be required to furnish bond or other security; and may pay or apply to or for the benefit of such person, such portions, or all, of the property so held, and/or the income earned thereon, as they shall deem to be in the best interest of such person,

accumulating as principal any income not so expended in any year. To the extent applicable, my fiduciaries may, in their discretion, make such payment or application by expending the same directly for the benefit of such person or by paying the amount so to be paid or applied to the parent or legal guardian of such person, or to another individual with whom such person may reside, or to an individual standing in the place of a parent to such person, or to a Custodian for such person designated by my fiduciaries under an applicable Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, or directly to such person, or otherwise, as my fiduciaries may, from time to time, deem expedient, and the receipt of such person or such other payee shall be a full acquittance to my fiduciaries to the extent of such payments. The authority granted to my fiduciaries hereunder shall be in addition to, and not in lieu of, any other alternative available to them with respect to the administration and distribution of such portion of my estate or of such trust, and it shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property, or of such accumulations of income, if any, by such person, nor shall it prevent the absolute vesting thereof in such person.

## **ARTICLE VIII**

- A. If my wife, CATHY SMITH, shall survive me, she shall have the right, at any time and from time to time, to remove one or more of the co-trustee(s) of any trust created hereunder and either (i) allow the next available successor trustee(s), appointed in subarticle B of Article I hereof, to serve or (ii) appoint any individual(s) and/or, if no trust institution shall then be serving, any trust institution of her choice as successor co-trustee(s), to serve together with any then serving co-trustee(s).
- B. Any successor co-trustee being appointed pursuant to subarticle A hereof (other than the individuals specifically appointed by me in subarticle B of Article I hereof), must be an “Independent Trustee,” which is an individual or trust institution not related or subordinate [within the meaning of Section 672(c) of the Code] to the person making such appointment. In addition, any trust institution being appointed shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.
- C. The rights granted in subarticle A hereof may be exercised by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered to the then acting trustee(s), either in person or by prepaid, registered or certified mail, which instrument shall advise such trustee(s) of the appointed successor(s) and shall state the effective date of removal, to be not less than thirty (30) days and not more than sixty (60) days after delivery. On such effective date, or as soon thereafter as may be reasonably feasible, the trustee(s) being removed shall then turn over to the remaining co-trustee(s) and/or appointed successor(s) all funds then held by such trustee(s) in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the trustee(s) being removed, reserving therefrom such amount as such trustee(s) shall deem reasonably necessary to cover the expenses of such removal, including any applicable termination commissions.



The trustee(s) being removed shall have the right to demand and receive, prior to releasing any funds to the remaining co-trustee(s) and/or appointed successor(s), written approval of such trustee's or trustees' statements or final accounting by the eldest beneficiary then entitled to receive income distributions from the trust [or in the event that such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], whichever shall be applicable, which shall have the same force and effect as an approved accounting pursuant to Article XII hereof. In lieu thereof, such trustee(s) may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining co-trustee(s) and/or appointed successor(s) until such statements or account, judicial or otherwise, shall have been approved.

- D. Any trustee of any trust created hereunder shall have the right to resign at any time, without approval of the Court having jurisdiction of this Will, by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and (i) delivered, either in person or by prepaid, registered or certified mail, to the co-trustee(s), or, if none, to the eldest beneficiary then entitled to receive income distributions from the trust [or in the event that such beneficiary is incapacitated or is a minor, to such beneficiary and the guardian(s) or personal representative(s) of such beneficiary] and (ii) filed with the Court having jurisdiction over said trust. Such resignation shall be effective upon the qualification of the resigning trustee's successor(s) but in no event earlier than thirty (30) days after delivery and filing of the aforesaid written instrument of resignation.
- E. On the effective date of the resignation of a trustee pursuant to subarticle D hereof, or as soon thereafter as may be reasonably feasible, the resigning trustee shall then turn over to the remaining trustee(s) and/or appointed successor(s), all funds then held by the resigning trustee in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the resigning trustee, reserving therefrom such amount as such trustee shall deem reasonably necessary to cover the expenses of such resignation, including any applicable termination commissions. The resigning trustee shall have the right to demand and receive, prior to releasing any funds to the remaining trustee(s) and/or appointed successor(s), written approval of the statements or final accounting of the resigning trustee by the eldest beneficiary then entitled to receive income distributions from the trust [or in the event that such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect of an approved accounting pursuant to Article XII hereof. In lieu thereof, the resigning trustee may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining trustee(s) and/or appointed successor(s) until such statements or accounting, judicial or otherwise, shall have been approved.
- F. For purposes of subarticle E hereof, any individual trustee shall be deemed to have resigned when it is determined that he or she is under a medical infirmity or physical incapacity (an "Incapacity"), which shall be deemed to exist when the same has been

declared by a court of competent jurisdiction or when a conservator or guardian for such trustee has been appointed based upon such Incapacity. Furthermore, such Incapacity shall be deemed to exist upon presentation to the then serving co-trustee(s), or, if none, to the next succeeding successor trustee(s), and to the Court having jurisdiction of this Will, of a certificate executed by a licensed physician which states that (i) he or she is the attending physician for the trustee; (ii) that the trustee is incapable of caring for himself or herself; and (iii) that the trustee is physically or mentally incapable of managing his or her financial affairs and attending properly to the normal duties and responsibilities required for the prudent management and protection of property. The effective date of such Incapacity shall be the date of the order or decree adjudicating the Incapacity, the date of the order or decree appointing the guardian or conservator, or the date of the certificate of such attending physician described above, whichever shall first occur.

For purposes of determining a serving trustee's Incapacity, such trustee (hereinafter the "Consenting" Trustee) hereby consents to the disclosure to the then serving co-trustee(s), or, if none, to the next succeeding successor trustee(s) [hereinafter the "Requesting" Trustee] of all of the Protected Health Information ("PHI") and medical records of the Consenting Trustee and the Requesting Trustee shall be treated as the Consenting Trustee would be with regard to the use and dissemination of his or her PHI and medical records, including, but not limited to, any written opinion relating to the Consenting Trustee's Incapacity. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164. The Consenting Trustee hereby intends that the Requesting Trustee be treated as the personal representative of the Consenting Trustee for all purposes, as provided in 45 CFR 164.502(g)(2), relating to any inquiry relating to his or her PHI, and the Consenting Trustee therefore specifically authorizes the Requesting Trustee to request, obtain, receive and inspect any and all information bearing upon the Consenting Trustee's health, including PHI relevant to the determination of the Consenting Trustee's ability to perform his or her duties as a trustee hereunder, to sign whatever authorizations for release of information required by providers or others, and to waive any rights the Consenting Trustee may have for breach of confidentiality for the release of such information to the Requesting Trustee. The authority given to the Requesting Trustee shall supersede any prior agreement that the Consenting Trustee may have made with his or her health care providers to restrict access to, or disclosure of, his or her PHI.

In addition, the Consenting Trustee specifically authorizes any physician, dentist, health care provider, any insurance company and the Medical Information Bureau Inc., or any other health care organization that has provided treatment or services to the Consenting Trustee to give, disclose and release to the Requesting Trustee all of the Consenting Trustee's PHI and medical records regarding any past, present or future medical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The foregoing authority given to the Requesting Trustee shall apply to a successor trustee even though he or she has not yet assumed his or her duties and shall have no expiration date. Said authority shall expire only in the event that the Consenting Trustee shall permanently cease to serve as a trustee hereunder.

Each initial trustee and each successor trustee, upon qualifying as such, hereby accepts, and agrees to be bound by, the provisions of this subarticle F.

## **ARTICLE IX**

In the administration of my estate, and any trust created hereunder, my fiduciaries shall have the following powers, in addition to the powers vested in them by law, which in each and every instance may be exercisable by them at such times (if at all), in such manner, and in accordance with such criteria, as they, in their discretion, shall deem appropriate:

- A. To retain any property, real, personal or mixed, whether owned by me at the time of my death or subsequently purchased or acquired by my fiduciaries, for such length of time as they shall deem proper, regardless of the nature of such property and regardless of whether the same shall be productive of income, and to receive and accept, at any time and from time to time, from any person or persons, including the fiduciary of any other estate or trust, any additions to my estate or any trust created hereunder in the form of cash, stock, securities or other property, real, personal or mixed, provided that such additions are acceptable to my fiduciaries.
- B. To make such investments and reinvestments of principal and accumulated income as they may consider proper, and to retain cash or the proceeds from the sale of any assets until such time or times as they deem it appropriate to invest such funds, so long as the requirements (other than diversification) of any applicable Prudent Investor Act (or equivalent) are satisfied. My fiduciaries may make their decision regarding diversification based upon such criteria as they, in their sole discretion, shall deem advisable, including, but not limited to, tax considerations, and my fiduciaries shall incur no liability of any kind as a result of their decision whether or not to diversify.
- C. To purchase or otherwise acquire, and to sell, exchange, mortgage, lease, grant and accept options and easements with respect to and otherwise deal with, any property, real, personal and mixed, improved or unimproved, at public or private sale, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions as they may deem proper. No purchaser, upon any sale or other disposition, shall be bound to see to the application of monies or property arising therefrom or to inquire into the validity, expediency or propriety of any such sale or other disposition. Any leases or options entered into or granted with respect to real or personal property held hereunder may be for such period (whether or not the same extends beyond the actual or probable duration of my estate or of any trust created hereunder) as my fiduciaries shall deem advisable.

- D. To manage, maintain, alter, develop, improve, abandon and otherwise deal with all property held by them, whether real, personal or mixed, and to do all such acts and to exercise all rights, powers and privileges, although not specifically mentioned herein, with respect to such property as may be legally done or exercised by any person owning similar property in his own right.
- E. To pay, extend, renew, modify, compromise, assign, litigate, alter, release or forgive, upon such terms and conditions, with or without consideration, as they shall deem advisable, or submit to arbitration or any other form of alternate dispute resolution, any obligation or claim, including taxes, either in favor of or against my estate, or any trust created hereunder.
- F. To borrow money or property, either upon the security of any or all of the assets of my estate or of any trust created hereunder, or without security or otherwise, upon such terms and conditions and for such purposes in connection with the administration of my estate or of any trust created hereunder, including not by way of limitation the purchase of improved or unimproved real or personal property, as to them shall seem proper, and to make any loans, in such amounts, upon such terms, and to such individuals or entities, as may be deemed advisable, provided such loans bear reasonable interest and are adequately secured.
- G. To invest in, and/or to participate in the formation of, any corporation, partnership (general or limited), joint venture, limited liability company or other business organization, for such purposes, and for such periods of time, as they shall deem advisable, and to purchase shares of stock or other ownership interests therein, and to contribute to the capital thereof, and lend thereto, any assets of my estate or of any trust created hereunder; and to enter into or refuse to enter into any dissolution, liquidation, merger, consolidation, recapitalization, reorganization or other change with respect to any corporation or other such business venture the stock or other ownership interest in which is held by them, and to make exchanges of securities or other interest therein; and to exercise all voting rights with respect to such investment, in person or by proxy, and to enter into voting trusts and other agreements regulating the ownership and disposition thereof, whether or not the same extends beyond the actual or probable duration of my estate or of any trust created hereunder, all upon such terms and conditions as they shall deem advisable.
- H. To continue the operation of any business which I shall own or in which I shall be engaged at the time of my death, and to engage in and operate any other business, whether as a shareholder, partner, member, sole proprietor or otherwise, and to apply to the conduct of any such business any assets of my estate or of any trust created hereunder; and to dissolve, sell (for cash or on credit or partly for cash and partly on credit) or otherwise terminate any such business, all upon such terms and conditions as they shall deem advisable. No loss whatever resulting to my estate or to any trust created hereunder, through the ownership or operation by my fiduciaries of any business, whether the same be carried on as a corporation, partnership, proprietorship, limited liability company or

otherwise, shall be chargeable against my fiduciaries personally. Nothing contained herein shall relieve my fiduciaries from the obligation to comply with any agreement entered into by me prior to my death regarding the sale or disposition of any interest in any business held by me at the time of my death.

- I. To engage attorneys, accountants, agents, investment counsel and other advisers in connection with the administration of my estate and any trust created hereunder, and to pay expenses incurred thereby.
- J. To hold investments in the name of my fiduciaries, or in bearer form, or in the name of a nominee without disclosing a fiduciary relationship, and, with respect to any trust institution serving as a fiduciary, to hold and administer any property in a common trust fund.
- K. To set up reasonable reserves for depreciation and/or depletion.
- L. To postpone the distribution of income earned during the administration of my estate for such period of time (not to extend beyond the period reasonably required for such administration) as they shall deem proper.
- M. To make partial distributions of the principal of my estate, subject to adjustments resulting from the conclusion of any tax proceedings affecting my estate, and to divide and distribute my estate or any trust created hereunder in cash or in kind or partly in cash and partly in kind, without regard to differences in the composition of the shares or the tax bases of the assets distributed.
- N. To hold the interest of two or more trusts, parts or shares created under this Will in consolidated funds, without any physical division of the investments, but such consolidation of investments shall not operate to merge the legal or beneficial interests in such separate trusts, parts or shares.
- O. To make whatever elections or choices as shall be available to them respecting my last income tax return and any gift tax returns, including the filing of joint returns and consenting to gifts made by my spouse being treated as made one-half by me, and to pay all tax liabilities incurred thereby.
- P. To execute and deliver all documents, contracts and instruments necessary or advisable in connection with the administration of my estate and any trust created hereunder.
- Q. To retain within my estate, or within any trust created hereunder, beyond the date it otherwise would have terminated, such assets as they shall deem appropriate to allow my estate, or any such trust, to be deemed not to have terminated for the purpose of petitioning the United States Tax Court with respect to any assessed Federal tax deficiency. Such action can be taken with respect to my estate only if consented to in writing by the beneficiaries receiving at least half of the value of my residuary estate, and can be taken with respect to any trust created hereunder only if consented to in writing by the remainderman thereof (or both of them if there shall be two, or a majority of them if there shall be more than two).

- R. To treat or not to treat as an expense of administering my estate, the costs of any ancillary or similar proceedings with respect to my estate and any costs incurred in connection with the preservation, protection and delivery of assets of my estate, including assets specifically bequeathed.
- S. To allocate receipts and disbursements of my estate or any trust created hereunder between income and principal thereof in such a manner as my fiduciaries shall deem advisable, so long as the requirements of any applicable Principal and Income Act or equivalent are satisfied, except that during the lifetime of my wife, CATHY SMITH, no allocation or allocations shall be made with respect to any portion of my estate or of any trust created hereunder which could prevent the same from qualifying for the Federal estate tax marital deduction.

## **ARTICLE X**

In the administration of my estate, and any trust created hereunder, I direct that:

- A. My fiduciaries shall not personally be liable for any loss which may occur to my estate or to any trust herein created as a result of the exercise of, or the refusal to exercise, any of the powers or discretions vested in them, so long as such exercise or refusal to exercise is made in good faith.
- B. My fiduciaries shall not be disqualified from acting hereunder or from exercising any power granted herein because they may hold an interest in property in which my estate or any trust created hereunder shall also hold an interest, or be a creditor of my estate, or be an employee or agent of, or the holder of an interest in, any business, sole proprietorship, partnership, joint venture, association, corporation, limited liability company or otherwise, in which my estate or any trust created hereunder may hold an interest, or by reason of the fact that they may also be serving as the trustees of any trust established by me during my lifetime.
- C. If my fiduciaries decide in good faith that there is uncertainty as to the necessity for including particular items in my estate for death tax purposes, or particular items in any income or gift tax returns, they may exclude such items. My fiduciaries shall not be personally liable for any tax, interest or penalty imposed, or for any loss incurred, as a result of such decision.
- D. If applicable, my fiduciaries are authorized in their discretion:
  - (i) to consent to the election or revocation of the election by any corporation to be an S corporation for Federal, State and other income tax purposes;
  - (ii) to make or refrain from making the election provided for in Section 1361(e) of the Code, so that a trust will be treated as an “electing small business trust” even if, as a result thereof, the income taxes payable by the trust and/or any beneficiary thereof are increased;

- (iii) to make or refrain from making the election provided for in Section 2056(b)(7) of the Code, so that all or a portion of qualified terminable interest property shall qualify for the Federal estate tax marital deduction;
- (iv) to elect or not to elect an installment payment of Federal estate taxes pursuant to Section 6166 of the Code, and to post bond and/or create liens on assets of my estate as required in connection therewith, and to distribute assets of my estate so encumbered;
- (v) to elect or not to elect to deduct all or part of the expenses of administration of my estate and losses incurred during the settlement of my estate in the computation of the Federal or state income tax liability of my estate;
- (vi) to elect or not to elect to value my estate for transfer tax purposes as of a date other than the date of my death;
- (vii) to elect or not to elect the application of Section 2032A of the Code with respect to qualified real property;
- (viii) to elect or not to elect to disclaim all or part of transfers or bequests made to me prior to my death by other persons;
- (ix) to exercise or refrain from exercising any right, election or option in connection with the Generation-Skipping Transfer tax provided for in Chapter 13 (Section 2601 et seq.) of the Code, including, but not limited to, the right to allocate or not to allocate the GST exemption provided for in Sections 2631 and 2632 of the Code to any applicable property or disposition, including dispositions made by me prior to death, and to make disparate allocations thereof to similar properties or dispositions;
- (x) to elect or not to elect to treat any portion of a payment of estimated tax made with respect to any trust created hereunder as a payment made by a beneficiary of such trust (in equal or unequal shares if there shall be more than one) and to consider any amount so treated as a distribution to such beneficiary;
- (xi) to elect or not to elect, in whole or in part, the application of Section 2057 of the Code (or any section of similar import) with respect to any qualified family-owned business interest, and they shall not be required to elect a larger amount under said Section in order to pay a smaller tax to the extent the election reduces the applicable exclusion amount under Section 2010 of the Code;
- (xii) to elect or not to elect to treat a qualified revocable trust as part of my estate pursuant to Section 645 of the Code;
- (xiii) to elect or not to elect to disclaim all or part of any power or discretion held by my fiduciaries in a fiduciary capacity, and to determine whether or not such disclaimer shall be binding upon, and shall constitute a disclaimer by, any or all successor or substitute fiduciaries;

(xiv) to exercise or refrain from exercising any other election or option in connection with the computation of the transfer tax and income tax liabilities of my estate.

In the exercise of the discretion in clauses (i) through (xiv) hereof, my fiduciaries are to be guided by their opinion of what action will serve the best interests of my estate, and one or more of the beneficiaries thereof, and such discretion can be exercised without prior permission or approval of the court having jurisdiction of this Will. Furthermore, such consent and elections and options can be granted, made or exercised, or not, even though the result may be (i) the creation of liabilities; (ii) the shifting of interests in property between or among beneficiaries; and/or (iii) the fact that certain of the beneficiaries of my estate may incur a gain, while other beneficiaries of my estate may suffer a loss, but my fiduciaries may, if they deem it equitable, require adjustment among the various bequests contained herein and among the various beneficiaries of my estate, as a result of, or as a condition precedent to, the exercise of such discretion.

- E. If pursuant to any provisions of this Will a trust would be established to which any part of my GST exemption [provided for in Section 2631(a) of the Code] would be allocated (hereinafter referred to as a “GST Trust”), and if after such allocation the inclusion ratio of such trust for generation-skipping transfer tax purposes would not be zero, my fiduciaries may, but shall not be required to, establish two separate trusts, each to be administered in accordance with the provisions applicable to the GST Trust, with one trust having an inclusion ratio of one and the other trust having an inclusion ratio of zero. Assets that would have constituted the GST Trust shall be allocated between the two separate trusts as necessary to establish the prescribed inclusion ratios, and shall be valued for such purpose as of the date of allocation.

In addition, if pursuant to any provision of this Will a trust has been established that has an inclusion ratio of greater than zero and less than one, then my fiduciaries may, but shall not be required to, divide such trust into two separate trusts, provided that such division meets the definition of a “qualified severance” contained in Section 2642(a)(3) of the Code or Regulations promulgated pursuant thereto.

- F. My fiduciaries may be employed and/or engaged in any capacity by, or render services to, my estate or any trust created hereunder, and/or may be employed and/or engaged by any corporation, proprietorship, joint venture, sole proprietorship, limited liability company or other entity in which my estate or any such trust may have an interest, and shall be entitled to receive and to retain (in addition to their remuneration for their services as fiduciaries herein) such compensation, perquisites and reimbursement of expenses in connection with such services, in such manner and upon such terms and conditions, as they, in their discretion, shall deem proper.
- G. My fiduciaries may delegate discretion relating to the investment and management of estate or trust assets to an agent (including an entity affiliated with any trust institution serving



as an executor or a trustee) and may do so without liability for the decisions, actions, omissions, neglect, misconduct or default of such agent, provided that such agent was selected and retained with reasonable care, skill and caution. My fiduciaries may pay such agent reasonable compensation for his, her or its services. Notwithstanding any statute or rule of law to the contrary, such compensation (other than of a fiduciary serving hereunder) shall not reduce any statutory commissions or other fees payable to my fiduciaries.

- H. Any individual fiduciary shall have the right, at any time and from time to time, to delegate to the other fiduciaries any or all of his or her powers as a fiduciary hereunder, and to revoke such delegation, in whole or in part, except that an Independent Trustee or an Independent Trustee or Disinterested Trustee may not delegate his or her powers to a fiduciary who would not qualify as a Disinterested Trustee, whichever shall be applicable. Such delegation or revocation thereof shall be by a written instrument delivered to such other fiduciaries and shall specify the extent of such delegation or revocation. The written statement of the other fiduciaries as to whether any fiduciary is acting or has delegated any or all of his or her powers to such other fiduciaries shall fully protect all persons dealing with my estate or any trust created hereunder, whichever shall be applicable.

In addition, my fiduciaries may agree among themselves, in writing, to have any or all of the documents required to be signed by them in connection with the administration of my estate or any trust created hereunder signed by less than all of them.

## **ARTICLE XI**

- A. Wherever in this Will the words “executors,” “trustees” and “fiduciaries” are used, they shall be construed to mean “executor, executors, executrix, executrices, personal representative, personal representatives, trustee, trustees and the survivor or survivors of them and their successor or successors in office.”
- B. Wherever in this Will the word “bequeath” is used, it shall be construed to mean “give, devise and bequeath.”
- C. Wherever in this Will the words “descendant” and “descendants” are used, they shall be construed to be synonymous with the word “issue.”
- D. Wherever in this Will the words “per stirpes” are used with reference to the descendants of any individual, they shall be construed to mean that the determination of such descendants begins with the children of such individual and that no distribution at any generational level shall be per capita.
- E. Wherever in this Will the words “sibling” and “siblings” are used, they shall be construed to mean “brother(s) and sister(s)” (of the whole blood or of the half-blood, but only if I or a descendant of mine shall be the natural or adoptive parent of the latter), but not “step-brother(s) and step-sister(s),” unless the same shall have been adopted by me or a descendant of mine.

F. For all purposes under this Will, whether for the determination of relationships or otherwise, (i) adopted children of mine shall be considered to have, and shall be given, the same status as natural-born children and (ii) adopted children of any other person shall be considered to have, and shall be given, the same status as natural-born children only if the child was a minor when adopted and lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent. All references in this Will to children or descendants of mine or any other person shall include, and it is my intention that this Will shall be effective notwithstanding the fact that there shall be, any child, children, descendant or descendants of mine or any other person born or adopted after the date of execution hereof.

No one claiming to be a natural-born descendant of another person shall be considered as such unless the claimant and the purported parent had established a child-parent relationship prior to the time in question and they had lived together, while the claimant was a minor, as child and parent in the same household. The purpose of this paragraph is to prevent someone from successfully claiming to be a person's child although never acknowledged to be such and it shall apply notwithstanding any provision of law to the contrary.

G. All references made, and all nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.

H. Wherever in this Will the word "Code" is used, it shall be construed to mean the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to refer to such section or to any section of similar import.

I. Wherever in this Will the words "trust institution" are used, they shall be construed to mean a corporation or other organization which is authorized to act as trustee of both lifetime and testamentary trusts, and which shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.

## **ARTICLE XII**

My fiduciaries, upon request, but not more often than annually, shall provide to each beneficiary of my estate and of any trust administered by them, statements setting forth the receipts and disbursements of principal and income and the assets on hand at the commencement and expiration of the period covered by such statements. The written approval of such statements by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], shall be final and binding upon all who are then or may thereafter become entitled to any part of the assets, as to all matters and transactions shown on the statements. Anything herein contained shall not preclude my fiduciaries, from time to time, from rendering an accounting or from submitting an accounting to a court for settlement, as they shall deem advisable. All of my fiduciaries' reasonable expenses (including reasonable attorneys' fees) attributable to any such accounting and approval shall be paid by my estate or such trust, whichever shall be applicable.

### **ARTICLE XIII**

Any trust created hereunder which shall be substantially identical to any other trust created hereunder, or to any trust created under the Last Will and Testament of my wife, CATHY SMITH, or to any trust created by either of us prior to death, may, in the discretion of my trustees, be merged into such other trust, or they may accept a merger of such other trust into the substantially identical trust created hereunder, if my trustees shall determine the same advisable to facilitate the administration thereof, to reduce the expense of operation thereof, or any other reason they shall deem to be in the best interests of the beneficiary thereof.

### **ARTICLE XIV**

To the extent permitted by law, if any beneficiary or remainderman under this Will, or any person who would succeed to any of my property by intestate succession, shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, (i) any bequest to, or other provision for, that beneficiary or remainderman under this Will shall be revoked and shall be disposed of in the same manner as if the contesting beneficiary or remainderman, his or her spouse and all of his or her descendants had predeceased me and (ii) such beneficiary, remainderman or person otherwise entitled to succeed to any of my property by intestate succession, his or her spouse and all of his or her descendants shall also be deemed to have predeceased me and shall not succeed to any of my property by intestate succession.

I also direct that no portion of my estate shall be used to pay the legal fees and other expenses incurred by any of the aforesaid persons who shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, whether or not any such action shall be successful. In addition, to the extent permitted by law, it is also my wish that the legal fees and other expenses incurred by my estate in successfully defending any such action be paid by the person bringing such action.

### **ARTICLE XV**

If at the time of my death I shall have any power of appointment over any property, I hereby exercise such power and direct that such property be disposed of in the same manner as my residuary estate.

### **ARTICLE XVI**

My trustees shall have the right to collect and receive, for the benefit of any trust created hereunder, the proceeds of any policies of insurance on my life made payable to my testamentary

trustees, as well as the proceeds of any other death benefits, of whatsoever nature, made so payable, and any other money or property, or interest therein, receivable by them as a result of my death, or otherwise, and my trustees may execute appropriate proofs of death and claims for such assets, as well as receipts and releases therefor. To the extent permitted by law, all such assets shall be exempt from, and shall not be used in payment of, any of my debts, funeral costs, estate administration expenses and death taxes. If my wife, CATHY SMITH, shall survive me, my trustees shall hold all such assets as part of the principal of the trust or trusts hereinabove created, and, unless otherwise specified in the appropriate beneficiary designation, shall administer the same pursuant to subarticle A of Article IV hereof. If CATHY shall predecease me, my trustees shall pay over and distribute all such assets as set forth in subarticle B of Article IV hereof.

## **ARTICLE XVII**

My executors may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; (iv) any user account of mine; and (v) any domain name of mine. My executors may obtain copies of any electronically stored information of mine from any person or entity that possesses, custodies, or controls that information. I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my executors: (i) any electronically stored information of mine; (ii) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (iii) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. My executors may employ any consultants or agents to advise or assist my executors in decrypting any encrypted electronically stored information of mine or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and I hereby authorize my executors to take any of these actions to access: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; and (iv) any user account of mine. The terms used in this paragraph are to be construed as broadly as possible, and the term “user account” includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

## ARTICLE XVIII

Anything in this Will to the contrary notwithstanding:

- A. "Interested Trustee" means for any trust a Trustee who is (i) a transferor of property to the trust, including a person whose qualified disclaimer resulted in property passing to the trust; or (ii) a person who is, or in the future may be, eligible to receive income or principal pursuant to the terms of the trust. A Trustee described in (i) is an Interested Trustee only with respect to the transferred property (including income and gain on, and reinvestment of, such property). A person is described in (ii) even if he or she has a remote contingent remainder interest, but is not described in (ii) if the person's only interest is as a potential appointee under a non-fiduciary power of appointment held by another person, the exercise of which will take effect only in the future, such as a testamentary power held by a living person. A Trustee who is not an Interested Trustee is a "Disinterested Trustee."
- B. The Disinterested Trustee(s) may, at any time prior to the death of the income beneficiary of any trust administered pursuant to Article IV hereof, by an instrument in writing (1) confer upon the income beneficiary of such trust a non-fiduciary power exercisable only by Will to appoint all or part of the applicable trust administered pursuant to said Article to the creditors of such beneficiary's estate (other than any taxing authority), and the instrument conferring such power may require consent of any other trustee (other than any Interested Trustee), (2) revoke any such instrument previously executed, with or without executing a replacement instrument and/or (3) irrevocably relinquish the powers conferred under (1) and/or (2).

Without limiting the Disinterested Trustee(s)' discretion, such Trustee(s) may use the authority conferred by this subarticle to subject the trust property to estate tax when it appears that to do so may reduce overall taxes (income, gift, estate, inheritance, transfer and generation-skipping transfer).

- C. The aforesaid powers of appointment may be exercised by the applicable income beneficiary by (and only by) specific provision in his or her Last Will and Testament making reference hereto, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise as said income beneficiary shall desire and the Trustee shall transfer and set over the appointed principal of the trust in accordance with any exercise of such power. Any portion of the principal and undistributed income of the trust remaining at the date of death of the beneficiary, which he or she shall not have validly appointed by his or her Last Will and Testament as above provided, shall be paid over and distributed in accordance with the applicable provisions of Article IV hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
ANTHONY SMITH (L.S.)

The foregoing Will, consisting of \_\_\_\_\_ (\_\_\_\_\_) pages, was signed, sealed, published and declared by the said Testator, ANTHONY SMITH, as and for his Last Will and Testament, in the presence of us, who, in his presence, at his request, and in the presence of each other, all being present at the same time, have hereunto subscribed our names as witnesses.

\_\_\_\_\_  
Witness Address

\_\_\_\_\_

\_\_\_\_\_  
Witness Address

\_\_\_\_\_

STATE OF NEW JERSEY)

ss:

COUNTY OF \_\_\_\_\_ )

We, ANTHONY SMITH, the testator, and \_\_\_\_\_ and \_\_\_\_\_, the witnesses, whose names are signed to the attached or foregoing instrument, being duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his Last Will and that he had signed willingly, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the Will as witness and that to the best of his or her knowledge the testator was at that time 18 years of age or older, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
ANTHONY SMITH, Testator

\_\_\_\_\_  
, Witness

\_\_\_\_\_  
, Witness

Subscribed, sworn to and acknowledged before me by ANTHONY SMITH, the testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

**QTIP MARITAL DEDUCTION PECUNIARY FORMULA WILL  
SEPARATE TRUST FOR NJ ESTATE TAX EXEMPTION AND MARITAL (QTIP)  
AND GENERATION-SKIPPING TRUSTS (GST) FOR OTHER ASSETS\***

LAST WILL AND TESTAMENT OF  
SUSAN BANKS

I, SUSAN BANKS, residing at 20 Swan Lane, Cherryville, New Jersey 08822, being of sound mind, memory and understanding, do make, publish and declare the following to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me:

**ARTICLE I**

A. I appoint my husband, GEORGE BANKS, as executor of this my Last Will and Testament. If GEORGE shall fail to qualify, or having qualified shall cease to serve, as executor, due to his death or any other reason whatsoever, I appoint my friend and attorney, HARRY SMITH, as his successor. If HARRY also shall fail to qualify, or having qualified shall cease to serve, as executor, due to his death or any other reason whatsoever, I appoint my friend and accountant, STEVE LANE, as his successor. If STEVE also shall fail to qualify, or having qualified shall cease to serve, as executor, due to his death or any other reason whatsoever, I appoint my friend and attorney, ROGER SMITH, as his successor.

The last serving executor shall have the right, by an instrument in writing or by Last Will and Testament, to appoint any individual(s) and/or trust institution of his or her choice as successor executor(s), and in default of such appointment, or if at any time no executor shall be serving hereunder, then I appoint THE BANK as successor executor.

B. I appoint my husband, GEORGE BANKS, and my friend and attorney, HARRY SMITH, as trustees of the trusts created hereunder. If HARRY shall fail to qualify, or having qualified shall cease to serve, as a trustee, due to his death or any other reason whatsoever (other than removal pursuant to Article XV hereof), I appoint my friend and accountant, STEVE LANE, as his successor. If STEVE also shall fail to qualify, or having qualified shall cease to serve, as a trustee, due to his death or any other reason whatsoever (other than removal pursuant to Article XV hereof), I appoint my friend and attorney, ROGER SMITH, as his successor.

If at any time GEORGE shall be serving as sole trustee of any trust created hereunder, he, by an instrument in writing, shall appoint any individual(s), not related to him by blood or marriage, and/or trust institution of his choice as co-trustee(s) of such trust, to serve together with him.

\*Provided by Peter J. Bakarich, Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey.



The last serving trustee of a trust created hereunder shall have the right, by an instrument in writing or by Last Will and Testament, to appoint any individual(s) and/or trust institution of his or her choice as successor trustee(s) of such trust, and in default of such appointment, or if at any time no trustee shall be serving thereunder, then I appoint THE BANK as successor trustee of such trust.

- C. I direct that no bond or other security shall be required of my executor or trustees, or any of them, or any successors thereto whether appointed by me or any other person, in any jurisdiction in which they may be called upon to act.
- D. The written instruments referred to in subarticles A and B hereof shall be executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey.

Any trust institution being appointed pursuant to subarticle A or B hereof by anyone other than me shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.

## **ARTICLE II**

I direct my executor to pay, as soon as convenient after my death, all of my debts, the expenses of my last illness, my funeral and related expenses and the expenses of administering my estate. Notwithstanding the foregoing, my executor shall not pay any debt of mine secured by property owned by me (including a life insurance policy), it being my intention either that said property shall pass subject to such indebtedness or, if the property shall be a life insurance policy, that any such debt shall first be satisfied out of the proceeds of such policy.

## **ARTICLE III**

- A. I bequeath all of my personal effects, jewelry and automobiles, and all of my household furnishings, equipment and bric-a-brac, to my husband, GEORGE BANKS, if he shall survive me, or if he shall predecease me, I bequeath the same as set forth in subarticle B or C hereof, whichever shall be applicable.
- B. It is my intention to prepare a written statement, to be dated and signed by me, disposing of certain of my personal effects, jewelry and other items of tangible personal property, which statement (i) will be effective if my husband, GEORGE BANKS, shall predecease me and (ii) may be revised and/or superseded from time to time. All items listed in the statement last signed by me prior to my death I hereby bequeath to the beneficiaries, as specified therein, who shall survive me.
- C. If my husband, GEORGE BANKS, shall predecease me, I bequeath all of my personal effects, jewelry, automobiles, household furnishings, equipment and bric-a-brac, not disposed of pursuant to the written statement referred to in subarticle B hereof to those of my children, KRISTEN BANKS and HEATHER BANKS, who shall survive me, in as nearly

equal shares as feasible, to be allocated between them as they shall mutually agree, or in the absence of such agreement, as my executor, in his discretion, shall determine, giving due regard to the preferences of such children.

- D. If neither my husband, GEORGE BANKS, nor either of my children, KRISTEN BANKS and HEATHER BANKS, shall survive me, the bequests in subarticles A and C hereof shall lapse, and the aforesaid property bequeathed thereunder shall be added to my residuary estate and distributed as hereinafter provided.

#### **ARTICLE IV**

- A. I bequeath the sum of five thousand (\$5,000) dollars to each of HALEY TAYLOR and ELIZABETH TAYLOR (children of my friends, MICHELLE and AL TAYLOR) who shall survive me, and to each other additional child of MICHELLE and AL who shall survive me. If any of said children shall predecease me, her or his bequest shall lapse, and the same shall be added to my residuary estate and distributed as hereinafter provided.
- B. I bequeath the sum of twenty-five thousand (\$25,000) dollars to CHARITY in Hackensack, New Jersey, to be used for educational purposes and not for salaries, fund raising or similar administrative expenses.

#### **ARTICLE V**

All of the rest, residue and remainder of my estate, of every nature and description, real, personal and mixed, wheresoever situated, remaining after payment of the debts and expenses specified in Article II hereof (referred to herein as my “residuary estate”), I bequeath to my trustees, hereinabove named, who shall add the same to any life insurance proceeds or other death benefits, and any other money or property, or interest therein, received by them as a result of my death, or otherwise, and my trustees shall administer such assets as follows:

- A. If my husband, GEORGE BANKS, shall survive me, effective as of the date of my death my trustees shall set aside, from the assets received by them, the “Marital Deduction Amount,” as hereinafter defined. The Marital Deduction Amount shall be a pecuniary amount, and not a fractional share of the assets received by my trustees, and shall not be diminished by any transfer taxes payable from such assets. My trustees shall administer the Marital Deduction Amount as follows:
1. My trustees shall hold an amount equal to so much of my GST exemption, provided for in Section 2631 (a) of the Code, as shall not be or have been allocated to generation-skipping transfers made by me during my lifetime or pursuant to other provisions of this Will, in a separate trust, hereinafter referred to as the “Generation-Skipping Share,” pursuant to the provisions of Article VI hereof. Assets allocated to such amount shall be valued for such purpose as of the date of allocation.

2. My trustees shall hold the balance of the Marital Deduction Amount in a separate trust, hereinafter referred to as the “Marital Deduction Share,” pursuant to the provisions of Article VI hereof.
- B. My trustees shall hold the remainder of the assets received by them, or the whole thereof if my husband, GEORGE BANKS, shall not survive me, in trust. Such trust, hereinafter referred to as the “Residuary Share,” shall be administered pursuant to the provisions of Article VII hereof.

## **ARTICLE VI**

My trustees shall hold each of the Generation-Skipping Share and the Marital Deduction Share separately in trust for the following uses and purposes:

A. Until the death of my husband, GEORGE BANKS:

1. My trustees shall pay to GEORGE, or apply for his benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, GEORGE shall have the right, exercisable at any time and from time to time, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as he shall deem reasonably necessary to provide for his health, maintenance and support. If, in the judgment of my trustees, other than GEORGE, he is incapable of exercising such right, such trustees may exercise such right on GEORGE’s behalf while such incapacity shall exist. In the exercise of such right by my trustees, they shall consider that it is my primary intention that GEORGE, for as long as he shall live, shall continue to enjoy the same standard of living that he enjoyed at the time of my death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, GEORGE shall have the absolute right, exercisable only during the last ten (10) days of each calendar year, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as he shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year.

2. It is my intention that GEORGE shall have substantially that degree of beneficial enjoyment of this trust during his life which the principles of the law of trusts applicable in the State of New Jersey accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Accordingly, my trustees shall so manage this trust as to produce for GEORGE a distributable income consistent with the value of the

principal of the trust and its preservation, and shall not retain as principal thereof any assets which shall not be productive of income unless he shall consent thereto which consent, if granted, can be revoked at any time. No powers, rights or discretions granted to my trustees hereunder shall be construed in such a way as to deprive GEORGE of said beneficial enjoyment of the trust.

- B. Upon the death of my husband, GEORGE BANKS, any income of the trust that shall then be accrued but not received, or received but not distributed, shall be paid over and distributed to GEORGE's estate and the then remaining principal of the trust shall be added to, and administered as part of, the Residuary Share, if it shall then be in existence, or administered as set forth in subarticle B or C of Article VII hereof, whichever shall be applicable, if the Residuary Share shall not then be in existence.
- C. With respect to each of the Generation-Skipping Share and the Marital Deduction Share, it is my expectation that my executor shall make the election provided for in Section 2056(b)(7) of the Code, so that the trust shall qualify for the Federal estate tax marital deduction, but my executor shall have the discretion, in accordance with the criteria hereinafter set forth, not to do so, in whole or in part. If my executor shall make the aforesaid election as to part, but less than all, of the trust, my trustees may, but shall not be required to, separate such trust into two separate trusts, each to be administered in accordance with the foregoing provisions, with one separate trust consisting of the portion of such trust with respect to which such election was made and the other separate trust consisting of the portion with respect to which the election was not made. Assets allocated to each such separate trust shall be valued for such purpose as of the date of allocation.

In addition, with respect to the Generation-Skipping Share, it is my expectation that my executor shall make the election provided for in Section 2652(a)(3)(A) of the Code to treat all of the property in such trust, for purposes of the generation-skipping transfer tax, as if the election provided for in Section 2056(b)(7) had not been made, but my executor shall have the discretion, in accordance with the criteria hereinafter set forth, not to do so.

- D. If, following the death of my husband, GEORGE BANKS, my trustees shall receive notification from the executors or administrators of his estate that they intend to recover from the person or persons receiving the assets of the Generation-Skipping Share and/or the Marital Deduction Share all or part of the increase in Federal and State estate taxes payable by his estate due to the inclusion in his gross estate for Federal and State estate tax purposes of all or part of the value of either such trust upon his death, pursuant to Section 2207A of the Code and applicable State law, then (i) to the extent permitted by law, the total amount to be so recovered from both Shares shall first be paid out of the Marital Deduction Share, to the extent thereof, and any balance shall then be paid out of the Generation-Skipping Share and (ii) prior to making any distribution, division or other disposition of the then remaining principal of either such trust my trustees may, but shall not be required to, lend to such executors or administrators, or advance to them, so much or all of the amount to be so recovered as my trustees, in their discretion, shall deem

advisable. Such loan or advancement need not await the actual payment by GEORGE's estate of its Federal and State estate taxes, and in the exercise of their discretion hereunder my trustees may take into account the best interests of GEORGE's estate and the recipients thereof, including any expense or loss it or they may incur as a result of having to pay such taxes without the benefit of such loan or advancement. My trustees shall be entitled to rely upon the written advice of the executors or administrators of GEORGE's estate attesting to both the amount that they are entitled to recover (which may be an estimate) and the reasons why such loan or advancement is requested, without the necessity of verifying the same.

- E. With respect to the right of recovery referred to in subarticle D hereof, my trustees shall reimburse the estate of my husband, GEORGE BANKS, for the reasonable costs of determining the amount of such recovery, including, but not limited to, legal, accounting and appraisal fees. The loan or advancement provisions of said subarticle D shall likewise apply to such costs.

## **ARTICLE VII**

My trustees shall hold the Residuary Share in trust for the following uses and purposes:

- A. If my husband, GEORGE BANKS, shall survive me, then until his death my trustees shall pay to him, or apply for his benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, GEORGE shall have the right, exercisable at any time and from time to time, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as he shall deem reasonably necessary to provide for his health, maintenance and support. If, in the judgment of my trustees, other than GEORGE, he is incapable of exercising such right, such trustees may exercise such right on GEORGE's behalf while such incapacity shall exist. In the exercise of such right by my trustees, they shall consider that it is my primary intention that GEORGE, for as long as he shall live, shall continue to enjoy the same standard of living that he enjoyed at the time of my death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, GEORGE shall have the absolute right, exercisable only during the last ten (10) days of each calendar year, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as he shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year.

- B. Upon the death of my husband, GEORGE BANKS, if he shall survive me, or upon my death if he shall predecease me, my trustees shall divide the then remaining principal and undistributed income of the trust, or the whole thereof, whichever shall be applicable, together with any principal and/or income of any other trust created hereunder that shall be added thereto, into a sufficient number of equal shares so that there shall be set aside one such share for the benefit of each child of mine who shall then be living, and one such share for the benefit of the then living descendants collectively of each child of mine who shall then be deceased, to be allocated among them per stirpes.

Each share allocated to a child of mine, and each portion of a share allocated to a descendant of a deceased child of mine, shall be held by my trustees as a separate trust for the benefit of the person for whom it shall have been allocated (such person being hereinafter referred to as the primary beneficiary of such trust), for the following uses and purposes:

1. Until the attainment of the age of thirty (30) years by the primary beneficiary of the trust, my trustees, at any time or times that they shall deem it advisable, may apply for the benefit of the primary beneficiary and/or the primary beneficiary's descendants, or pay over to him, her and/or them, so much, all or none of the net income of the trust as my trustees, in their discretion, shall deem advisable as set forth in subarticle B of Article XII hereof, as well as for any other reason, purpose or cause that my trustees (other than a beneficiary of the trust) shall determine.
2. From and after the attainment of the age of thirty (30) years by the primary beneficiary of the trust, and until his or her attainment of the age of thirty-five (35) years, my trustees (i) shall apply for the benefit of the primary beneficiary, or pay over to him or her, one-half (1/2) of the net income of the trust, at convenient intervals, but not less often than quarter-annually and (ii) may apply for the benefit of the primary beneficiary and/or the primary beneficiary's descendants, or pay over to him, her and/or them, so much, all or none of the remaining one-half (1/2) of the net income of the trust as my trustees, in their discretion, shall deem advisable as set forth in subarticle B of Article XII hereof, as well as for any other reason, purpose or cause that my trustees (other than a beneficiary of the trust) shall determine.
3. From and after the attainment of the age of thirty-five (35) years by the primary beneficiary of the trust, and until the termination thereof, my trustees shall apply for the benefit of the primary beneficiary, or pay over to him or her, all of the net income of the trust, at convenient intervals, but not less often than quarter-annually.
4. Until the termination of the trust, my trustees, at any time or times that they shall deem it advisable, may apply for the benefit of the primary beneficiary and/or the primary beneficiary's descendants, or pay over to him, her and/or them, such sum or sums out of the principal of the trust (including the whole thereof) as my trustees, in their discretion, shall deem advisable as set forth in subarticle B of Article XII hereof, as well as for any other reason, purpose or cause that my trustees (other than a beneficiary of the trust) shall determine.

5. In the exercise of their discretion in paragraphs 1, 2 and/or 4 hereof to pay or apply net income and/or principal of the trust, my trustees shall consider (a) that it is my primary intention that the reasonable needs of the primary beneficiary be satisfied first before such net income and/or principal is accumulated, preserved for, paid to, or applied for the benefit of, the primary beneficiary's descendants, and (b) that no such payment or application of such net income and/or principal shall be made with respect to the primary beneficiary's descendants if it shall have the effect of discharging a legal obligation of the primary beneficiary or if it shall be for his or her pecuniary benefit.
  6. Upon the death of the primary beneficiary of the trust, my trustees shall allocate the then remaining principal and undistributed income of the trust among the descendants of the primary beneficiary living at the date of his or her death, per stirpes; and in default of such descendants, the same shall be allocated among those of the primary beneficiary's siblings who shall then be living and the then living descendants of any sibling of the primary beneficiary who shall then be deceased, per stirpes; and in default of such siblings and descendants of a deceased sibling, among the then living descendants of that child of mine who shall be the ancestor of the primary beneficiary, per stirpes, and in default of such ancestor's descendants, among those of my children who shall then be living and the then living descendants of any child of mine who shall then be deceased, per stirpes; provided, however, that: (i) any sums thus allocated to any person for whose benefit a trust created hereunder shall then still be in existence shall be added to the principal of such trust, and shall be held and distributed as part thereof, and (ii) any sums thus allocated to any person for whose benefit there shall not then be in existence a trust created hereunder, shall be held in trust for the benefit of such person in accordance with the provisions of paragraphs 1 through 6 of this subarticle B.
- C. Upon the death of the survivor of myself and my husband, GEORGE BANKS, or upon the death of the beneficiary of a trust created under subarticle B hereof, whichever shall be applicable, if none of my children, and no descendant of any deceased child of mine, shall then be living, my trustees shall pay over and distribute the then remaining principal and undistributed income of the trust, or the whole thereof, whichever shall be applicable, together with any income and/or principal of any other trust created hereunder that shall be added thereto, to CHARITY for the purpose of constructing a training facility, and not for salaries, fund raising or similar administrative expenses.

## **ARTICLE VIII**

Anything in this Will to the contrary notwithstanding, any trust created hereunder which shall be or become subject to a rule against perpetuities and which, by its terms, shall not have terminated on or before the date which is twenty-one (21) years after the death of the last survivor of myself, my husband, GEORGE BANKS, and those of my descendants who shall survive me, shall nevertheless terminate on such date, and the principal and undistributed

income thereof shall thereupon be paid over and distributed free of trust to the then current income beneficiary thereof, or the current income beneficiaries thereof, in equal shares, if more than one.

## **ARTICLE IX**

- A. Except as specifically provided to the contrary in this subarticle A, all transfer taxes payable with respect to property passing under this Will shall be paid out of my residuary estate, without apportionment, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and shall not be paid out of my residuary estate. For purposes of this subarticle A, property received by my trustees other than from my executor shall not be considered to have passed under this Will.
1. Pursuant to the provisions of subarticle C of Article VI hereof, my executor has discretion to make or not to make the election provided for in Section 2056(b)(7) of the Code with respect to all or part of the Marital Deduction Share and the Generation-Skipping Share. If the portion of either such Share with respect to which such election was not made shall be subject to transfer taxes, the taxes attributable to such portion shall be paid therefrom.
  2. Pursuant to the provisions of subarticle D of Article X hereof, a trust, to be known as the “Disclaimed Share,” may be established for the benefit of my husband, GEORGE BANKS. If any portion of the Disclaimed Share shall be subject to transfer taxes, the taxes attributable to such portion shall be paid therefrom.
- B. It is my intention that all transfer taxes payable with respect to property passing other than under this Will shall be paid by the recipient thereof, and, if paid by my executor, shall be recovered from such recipient if my executor shall deem it reasonably feasible to do so. My executor shall not be liable to my estate or to any person interested therein if my executor shall not deem it reasonably feasible to recover such taxes, and my executor shall have no obligation to pursue recovery under such circumstances. If my executor shall come into possession of any property distributable to a beneficiary from whom my executor shall have a right of recovery pursuant to this subarticle B, my executor may pay, on behalf of the beneficiary, the amount of recoverable taxes and charge the same to such property or sell any part of such property to produce cash to satisfy the recovery right.

If an asset of my estate is valued for transfer tax purposes higher than the amount received by my estate due to the application of Code Section 2703 or otherwise, and if the purchaser or purchasers of such asset, or the owner or owners of the purchaser, receive any bequest under this Will, then to the extent such person or persons are benefitted, directly or indirectly, by the purchase, such benefit shall be deemed to be property passing other than under this Will for purposes of this subarticle B. The same principle shall apply if any gift tax is included in my gross estate pursuant to Code Section 2035(b), with the recipient of the gift being treated as a purchaser.



- C. If any transfer taxes are to be paid out of, or by the recipient of, specifically identified property pursuant to subarticle A hereof, the taxes attributable to each such property shall be a pro rata portion of the total transfer taxes payable with respect to all property subject to such taxes passing under this Will, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- D. The transfer taxes attributable to the property referred to in subarticle B hereof shall be the amount by which the total of such taxes payable exceeds the total of such taxes which would have been payable had such property not been subject to transfer taxes, the same to be allocated among the various interests in such property pro rata, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- E. Whenever transfer taxes with respect to property passing under this Will are payable from specified property, or by the recipient thereof, in accordance with the provisions of this Article IX, my executor may withhold distribution of a portion of such property to secure payment thereof, and may make payment on behalf of the recipient or make whatever other arrangements my executor shall deem advisable to assure that the taxes are paid. If the recipient also receives property other than under this Will, the foregoing authority to withhold distribution of property passing under this Will shall extend to the transfer taxes payable with respect to such property passing outside of this Will.
- F. When used in this Will, the term “transfer taxes” shall be deemed to include all taxes payable by reason of property passing upon my death, whether labeled estate taxes, inheritance taxes, death taxes, succession taxes, transfer taxes, or otherwise, and whether imposed by the Federal government, any state, city or municipality, or otherwise, including interest and penalties thereon. Such term shall not be deemed to include taxes imposed on generation-skipping transfers pursuant to Code Section 2601 et seq. or any other statute of similar import, whether imposed by the Federal government, any state, city or municipality, or otherwise, which taxes, including interest and penalties thereon, shall be paid as provided in Section 2603 of the Code, or in any other statute of similar import.
- G. Nothing contained in this Article IX shall be deemed to be a direction that my estate recover or not recover from the recipient of property included in my gross estate by reason of Section 2044 of the Code the amount specified in Section 2207A of the Code, it being my intention that my executor shall make such decision in accordance with such criteria, as he, in his discretion, shall deem appropriate.
- H. A person (the “payor”) receiving assets as a result of my death (whether or not received pursuant to this Will) may be obligated to pay a transfer tax (often called, and referred to herein as, an “inheritance tax”) and also may be charged with a portion of another transfer tax (often called, and referred to herein as, an “estate tax”). Such inheritance tax payment may reduce the estate tax liability of my estate, a portion of which reduction could, in the

absence of this subarticle H, inure to the benefit of beneficiaries other than the payor. Anything in this Article IX to the contrary notwithstanding, any such reduction shall be applied first to reduce (but not below zero) the amount of estate tax charged to the payor, with any balance being applied as it would have been had this subarticle H not existed.

- I. To the extent possible, no transfer taxes shall be paid from any property, whether passing (i) under this Will or otherwise or (ii) outright or in trust, which shall qualify for the Federal estate tax marital or charitable deduction.
- J. My executor shall not be liable to any person or persons as a result of the exercise by him of any discretion granted pursuant to this Article IX, and any discretionary decisions made by my executor shall be conclusive and binding upon all persons interested therein.

## ARTICLE X

- A. When used in this Will, the term “Marital Deduction Amount” shall mean an amount equal to (i) the value of those assets received by my trustees that are included in my gross estate for Federal estate tax purposes less (ii) that amount, if any, as shall be required to increase my taxable estate for such purposes to the maximum amount possible without requiring payment of any Federal or State estate (but not inheritance) taxes, and, if my husband, GEORGE BANKS, shall survive me for less than one hundred eighty (180) days, less (iii) any additional amount required to increase further my taxable estate for Federal estate tax purposes to the minimum amount possible which would cause my estate to be taxed in the same marginal Federal estate tax bracket as GEORGE’s estate; provided, however, that this clause (iii) shall be applicable only if, as a result thereof, Federal estate taxes will be payable by both his estate and mine, and (iv) provided, further, that if my estate shall not be subject to State estate taxes, then the amount of the of the reduction referred to in clause (ii) hereof shall be zero [or that amount, if any, as shall be required to cause my taxable estate for Federal estate tax purposes to be \_\_\_\_\_ dollars]. My fiduciaries shall be entitled to rely upon the written advice of the executors or administrators of GEORGE’s estate attesting to both the value of his estate (which may be an estimate) and any other information requested by my fiduciaries to comply with clause (iii) above, without the necessity of verifying the same, and my fiduciaries shall not be personally liable for any loss to my estate or any beneficiary thereof resulting from their administration of such provision based on all such information.
- B. For the purpose of establishing the Marital Deduction Amount:
  - 1. The unified credit (applicable credit amount) allowed against the Federal estate taxes payable by my estate shall be taken into account to the extent it [optional: does not exceed x dollars and] does not result in payment of State estate taxes that could have been avoided if a lesser unified credit had been utilized. Any credit or deduction allowed against such Federal taxes for State death taxes paid by my estate shall be taken into account only to the extent that the amount of the State taxes is determined independently of, and without reference to the amount of, the Federal taxes.

2. Property that is included in my gross estate for Federal estate tax purposes and is disposed of by any provision of this Will, or outside of this Will, in a manner which does not qualify for the marital deduction or the charitable deduction for such purposes, shall be taken into account.
  3. Such portion, if any, of the expenses of administration of my estate and other charges to or payments from the principal of my estate which, by election or otherwise, is not allowed as a deduction in computing my taxable estate for Federal estate tax purposes, shall be taken into account.
  4. The amount of any adjusted taxable gifts as defined in Section 2001(b) of the Code, and the amount of any tax referred to in Section 2001(b)(2) of the Code, shall be taken into account.
  5. Disclaimers, directions having the effect of a disclaimer, and elections to have less than all of qualified terminable interest property qualify for the marital deduction for Federal estate tax purposes, shall not be taken into account.
  6. Notwithstanding the provisions of paragraph 2 hereof, any excess in the value of property over the price for it, determined pursuant to Section 2703 of the Code, shall not be taken into account unless, pursuant to other provisions of this Will applicable to specifically identified property, any transfer taxes attributable to such excess are to be paid out of my residuary estate.
  7. The values and amounts of assets and deductions, or other items, finally fixed in the Federal estate tax proceeding relating to my estate shall be used, whether such values and amounts shall be fixed by agreement, compromise, litigation or otherwise.
- C. Assets allocated to the Marital Deduction Amount shall be valued for such purpose as of the date of allocation, and only assets which are included in my gross estate for Federal estate tax purposes and which qualify for the Federal estate tax marital deduction shall be utilized to make up such amount. If Federal estate taxes shall be payable by my estate, then to the extent possible, there shall not be so utilized any property situated (within the meaning of the Code applicable to my estate or any United States estate tax convention applicable to my estate) in a foreign country and subject to any estate, inheritance, succession or other transfer tax imposed by a foreign country or a possession or political subdivision thereof, or the proceeds of any such property, or any property with respect to which any tax credit or deduction shall be available because the same shall be subject to both Federal estate and income taxes.
- D. If I and my husband, GEORGE BANKS, shall die at the same time, within one hundred twenty (120) hours of each other or under such circumstances that the order of our deaths cannot be determined with certainty, then for all purposes of this trust agreement, or otherwise, he shall be deemed to have predeceased me.

- E. If my husband, GEORGE BANKS, shall survive me, he shall have the right to direct that all or part of the Marital Deduction Amount shall not be set aside and placed in the trust known as the Generation-Skipping Share or the Marital Deduction Share. This right, if exercised, shall constitute a disclaimer pursuant to the provisions of Section 2518 of the Code. This right may be exercised by GEORGE by delivering to my trustees, either in person or by certified mail, not later than nine (9) months after the date of my death, an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, setting forth the amount so disclaimed, and if the same shall be less than the whole of the Marital Deduction Amount, then it may be expressed either as a fraction thereof or as a monetary amount, or any combination thereof. Any exercise of such right shall be irrevocable and shall also comply with the requirements of applicable Federal and State laws. Any amount so disclaimed, and any other money or property, or interest therein (including life insurance proceeds and other death benefits) which would have been paid to GEORGE but, as a result of disclaimer by him, is paid to the trustees herein named, shall be held in a separate trust, hereinafter referred to as the “Disclaimed Share,” pursuant to the provisions of Article XI hereof, which trust shall be administered as if GEORGE survived me, notwithstanding any contrary statutory provisions governing the distribution of disclaimed property.
- E. **[optional]** I am aware of the fact that scheduled changes in the Federal estate tax law, and/or future changes that may be enacted, could substantially decrease the Marital Deduction Amount distributed pursuant to subarticle A hereof, and could conceivably cause such Amount to become a very insubstantial portion of the assets received by my trustees, and that should the Federal estate tax not be applicable to my estate, such Amount would become zero. In the event that (i) the applicable exclusion amount used in computing the Federal estate tax payable by my estate shall be in excess of \$ \_\_\_\_\_ dollars and/or (ii) the Federal estate tax shall not be applicable to my estate, I intend that the Marital Deduction Amount shall be computed as if (i) the Federal estate tax were applicable to my estate and (ii) the applicable exclusion amount used in computing the Federal estate tax payable by my estate were \$ \_\_\_\_\_ dollars and Article X of this Will shall be deemed amended to the extent necessary to give effect to this intention.

## **ARTICLE XI**

My trustees shall hold the Disclaimed Share in trust for the following uses and purposes:

- A. Until the death of my husband, GEORGE BANKS, my trustees shall pay to him, or apply for his benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, GEORGE shall have the right, exercisable at any time and from time to time, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as he shall deem reasonably necessary to provide for his health, maintenance and support. If, in the judgment of my trustees, other than GEORGE, he is incapable of exercising such right, such trustees may exercise such

right on GEORGE's behalf while such incapacity shall exist. In the exercise of such right by my trustees, they shall consider that it is my primary intention that GEORGE, for as long as he shall live, shall continue to enjoy the same standard of living that he enjoyed at the time of my death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, GEORGE shall have the absolute right, exercisable only during the last ten (10) days of each calendar year, upon written request to my trustees, to receive payment out of the principal of the trust of such amount or amounts as he shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year.

- B. Upon the death of my husband, GEORGE BANKS, the then remaining principal and undistributed income of the trust shall be added to, and administered as part of, the Residuary Share, if it shall then be in existence, or administered as set forth in subarticle B or C of Article VII hereof, whichever shall be applicable, if the Residuary Share shall not then be in existence.

## **ARTICLE XII**

- A. Whenever, pursuant to the terms of this Will, my trustees are directed to hold any property in trust, my trustees shall hold the same; shall manage, administer, invest and reinvest the principal of the trust; shall collect and receive the income thereof; shall pay any and all expenses incident to the operation of such trust; and shall distribute the net income and principal thereof in the manner set forth.
- B. Whenever, pursuant to the terms of this Will, my trustees are given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, such portions of the income of the trust, and/or such sums out of the principal of the trust, as my trustees shall deem advisable, my trustees may make such payment or application solely to provide for such beneficiary's health, maintenance, support and education (which may include providing for beneficiary's undergraduate and postgraduate education and enabling the beneficiary to purchase a home). In the case of income, my trustees shall add to the principal of the trust any such net income not so expended in any fiscal year of the trust.
- C. Whenever, pursuant to the terms of this Will, my trustees are given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, portions of the income and/or principal of the trust, my trustees may take into consideration, but shall not be required to do so, any other income or property which may be available to such beneficiary, including the support which a spouse or parent does provide, or is obligated to provide.

D. Whenever, pursuant to the terms of this Will, my trustees are given discretion to pay or to apply income or principal of a trust to or for the benefit of a minor, my trustees may, in their discretion, make such payment or application by expending the same directly for the benefit of such minor, or by paying the amount so to be paid or applied to the parent or legal guardian of such minor, or to the person with whom such minor may reside, or to a person standing in the place of a parent to such minor, or to a Custodian for such minor designated by my trustees under an applicable Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, or directly to such minor, or otherwise, as my trustees may, from time to time deem expedient, and the receipt of such minor or such other payee shall be a full acquittance to my trustees to the extent of such payments.

The provisions of this subarticle D shall also apply, to the extent applicable, whenever my trustees are given discretion to pay or apply income or principal of a trust to or for the benefit of a person who, in their judgment, is incapable of adequately managing such income or principal.

E. Whenever, pursuant to the terms of this Will, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to himself or herself or for his or her own benefit, and the purposes for which such payment or application can be made are not limited to such person's reasonable needs relating to health, maintenance, support and education, such purposes shall be deemed to be so limited, anything contained in this Will to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person to, or on whose behalf, income and/or principal can be so paid or applied, such other person or persons may exercise the discretion granted without reference to the limitations herein set forth. This subarticle shall not apply, however, to a right of withdrawal if the amount which could be withdrawn is limited so that it does not exceed the greater of the dollar or percentage limitation contained in Section 2514(e) of the Code.

F. Whenever, pursuant to the terms of this Will, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to or for the benefit of any other person, then the purposes for which such payment or application can be made shall be limited to those which do not relieve the person having such discretion of a legal obligation, whether for support or any other purpose, anything contained in this Will to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person whose legal obligation could be relieved by such payment or application, such other person or persons may exercise the discretion granted without reference to the limitations herein set forth.

G. Whenever, pursuant to the terms of this Will, there shall be more than one beneficiary of any one trust, and my trustees are given discretion to utilize income and/or principal of such trust for their benefit, my trustees may pay or apply such income and/or principal to or for

the benefit of such beneficiaries equally or unequally, or to or for the benefit of any of them to the exclusion of others (subject only to such preference, if any, of one beneficiary over any others, as may be specifically stated under the terms of such trust), so that utilization of trust income and principal among such beneficiaries according to their respective needs shall take precedence over equal distribution thereof.

### **ARTICLE XIII**

The interest of any beneficiary or remainderman in any trust created hereunder, either in income or in principal, or in both, shall not be subject to sale, assignment, pledge or transfer in any manner, and such interest shall not be liable or subject in any manner while in the possession of my trustees for the debts, contracts, obligations, liabilities, engagements, undertakings or torts of any such beneficiary or remainderman. No beneficiary or remainderman shall have the power in any manner to anticipate, charge or encumber his or her interest, either in income or in principal, or in both.

### **ARTICLE XIV**

Any portion of my estate or of any trust created hereunder vesting in absolute ownership in a person who is a minor and/or who, in the judgment of my fiduciaries, is incapable of adequately managing such assets, may be held for the benefit of such person by my fiduciaries until such minor shall attain majority and/or, in the judgment of my fiduciaries, such incapacity shall cease to exist. During such period, my fiduciaries so holding such property shall have all the powers and authority herein granted to them with respect to my estate or any trust created hereunder; shall not be required to furnish bond or other security; and may pay or apply to or for the benefit of such person, in any applicable manner set forth in subarticle D of Article XII hereof, such portions, or all, of the property so held, and/or the income earned thereon, as they shall deem to be in the best interest of such person, accumulating as principal any income not so expended in any year. The authority granted to my fiduciaries hereunder shall be in addition to, and not in lieu of, any other alternative available to them with respect to the administration and distribution of such portion of my estate or of such trust, and it shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property, or of such accumulations of income, if any, by such person, nor shall it prevent the absolute vesting thereof in such person.

### **ARTICLE XV**

- A. If my husband, GEORGE BANKS, shall survive me, he shall have the right, from time to time, but in no event more than once during any three (3) year period, to remove any then serving trustee(s) of any trust created hereunder and appoint any individual(s) and/or, if no trust institution shall then be serving, any trust institution of his choice as successor trustee(s) to serve together with GEORGE; provided, however, that any successor trustee

may not be subordinate or related [by blood or marriage or within the meaning of Section 672(c) of the Code] to the person making such appointment.

- B. After the death of my husband, GEORGE BANKS, each adult beneficiary, with respect to the trust created hereunder for his or her own primary benefit, shall have the right, from time to time, but in no event more than once during any three (3) year period, to remove any then serving trustee(s), and if no trust institution shall then be serving, appoint any trust institution of his or her choice as successor; provided, however, that such trust institution being appointed (i) may not be subordinate or related [within the meaning of Section 672(c) of the Code] to the person making such appointment and (ii) shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.
- C. The rights granted in subarticles A and B hereof may be exercised by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered to the then acting trustee(s), either in person or by prepaid, registered or certified mail, which instrument shall advise such trustee(s) of the appointed successor(s) and shall state the effective date of removal, to be not less than thirty (30) days and not more than sixty (60) days after delivery. On such effective date, or as soon thereafter as may be reasonably feasible, the trustee(s) being removed shall then turn over to the remaining co-trustee(s) and/or appointed successor(s) all funds then held by such trustee(s) in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the trustee(s) being removed, reserving therefrom such amount as such trustee(s) shall deem reasonably necessary to cover the expenses of such removal, including any applicable termination commissions. The trustee(s) being removed shall have the right to demand and receive, prior to releasing any funds to the remaining co-trustee(s) and/or appointed successor(s), written approval of such trustee's or trustees' statements or final accounting by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], whichever shall be applicable, which shall have the same force and effect as an approved accounting pursuant to Article XIX hereof. In lieu thereof, such trustee(s) may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining co-trustee(s) and/or appointed successor(s) until such statements or account, judicial or otherwise, shall have been approved.
- D. Any trustee of any trust created hereunder shall have the right to resign at any time, without approval of the Court having jurisdiction of this Will, by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and (i) delivered, either in person or by prepaid, registered or certified mail, to the co-trustee(s), or, if none, to the eldest beneficiary then entitled to receive income distributions from the trust [or in the event that such beneficiary is incapacitated or is a minor, to such beneficiary and the guardian(s) or



personal representative(s) of such beneficiary] and (ii) filed with the Court having jurisdiction over said trust. Such resignation shall be effective upon the qualification of the resigning trustee's successor(s) but in no event earlier than thirty (30) days after delivery and filing of the aforesaid written instrument of resignation.

- E. On the effective date of the resignation of a trustee pursuant to subarticle D hereof, or as soon thereafter as may be reasonably feasible, the resigning trustee shall then turn over to the remaining trustee(s) and/or appointed successor(s), all funds then held by the resigning trustee in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the resigning trustee, reserving therefrom such amount as such trustee shall deem reasonably necessary to cover the expenses of such resignation, including any applicable termination commissions. The resigning trustee shall have the right to demand and receive, prior to releasing any funds to the remaining trustee(s) and/or appointed successor(s), written approval of the statements or final accounting of the resigning trustee by the eldest beneficiary then entitled to receive income distributions from the trust [or in the event that such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect of an approved accounting pursuant to Article XIX hereof. In lieu thereof, the resigning trustee may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining trustee(s) and/or appointed successor(s) until such statements or accounting, judicial or otherwise, shall have been approved.
- F. For purposes of subarticle E hereof, any individual trustee shall be deemed to have resigned when it is determined that he or she is under a medical infirmity or physical incapacity (an "Incapacity"), which shall be deemed to exist when the same has been declared by a court of competent jurisdiction or when a conservator or guardian for such trustee has been appointed based upon such Incapacity. Furthermore, such Incapacity shall be deemed to exist upon presentation to the then serving co-trustee(s), or, if none, to the next succeeding successor trustee(s), and to the Court having jurisdiction of this Will, of a certificate executed by a licensed physician which states that (i) he or she is the attending physician for the trustee; (ii) that the trustee is incapable of caring for himself or herself; and (iii) that the trustee is physically or mentally incapable of managing his or her financial affairs and attending properly to the normal duties and responsibilities required for the prudent management and protection of property. The effective date of such Incapacity shall be the date of the order or decree adjudicating the Incapacity, the date of the order or decree appointing the guardian or conservator, or the date of the certificate of such attending physician described above, whichever shall first occur.

For purposes of determining a serving trustee's Incapacity, such trustee (hereinafter the "Consenting" Trustee) hereby consents to the disclosure to the then serving co-trustee(s), or, if none, to the next succeeding successor trustee(s) [hereinafter the "Requesting" Trustee] of all of the Protected Health Information ("PHI") and medical records of the Consenting Trustee and the Requesting Trustee shall be treated as the Consenting Trustee would be with regard to the use and dissemination of his or her PHI and medical

records, including, but not limited to, any written opinion relating to the Consenting Trustee's Incapacity. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164. The Consenting Trustee hereby intends that the Requesting Trustee be treated as the personal representative of the Consenting Trustee for all purposes, as provided in 45 CFR 164.502(g)(2), relating to any inquiry relating to his or her PHI, and the Consenting Trustee therefore specifically authorizes the Requesting Trustee to request, obtain, receive and inspect any and all information bearing upon the Consenting Trustee's health, including PHI relevant to the determination of the Consenting Trustee's ability to perform his or her duties as a trustee hereunder, to sign whatever authorizations for release of information required by providers or others, and to waive any rights the Consenting Trustee may have for breach of confidentiality for the release of such information to the Requesting Trustee. The authority given to the Requesting Trustee shall supersede any prior agreement that the Consenting Trustee may have made with his or her health care providers to restrict access to, or disclosure of, his or her PHI.

In addition, the Consenting Trustee specifically authorizes any physician, dentist, health care provider, any insurance company and the Medical Information Bureau Inc., or any other health care organization that has provided treatment or services to the Consenting Trustee to give, disclose and release to the Requesting Trustee all of the Consenting Trustee's PHI and medical records regarding any past, present or future medical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The foregoing authority given to the Requesting Trustee shall apply to a successor trustee even though he or she has not yet assumed his or her duties and shall have no expiration date. Said authority shall expire only in the event that the Consenting Trustee shall permanently cease to serve as a trustee hereunder.

Each initial trustee and each successor trustee, upon qualifying as such, hereby accepts, and agrees to be bound by, the provisions of this subarticle F.

## **ARTICLE XVI**

In the administration of my estate, and any trust created hereunder, my fiduciaries shall have the following powers, in addition to the powers vested in them by law, which in each and every instance may be exercisable by them at such times (if at all), in such manner, and in accordance with such criteria, as they, in their discretion, shall deem appropriate:

- A. To retain any property, real, personal or mixed, whether owned by me at the time of my death or subsequently purchased or acquired by my fiduciaries, for such length of time as they shall deem proper, regardless of the nature of such property and regardless of whether the same shall be productive of income, and to receive and accept, at any time and from time to time, from any person or persons, including the fiduciary of any other estate or

trust, any additions to my estate or any trust created hereunder in the form of cash, stock, securities or other property, real, personal or mixed, provided that such additions are acceptable to my fiduciaries.

- B. To make such investments and reinvestments of principal and accumulated income as they may consider proper, and to retain cash or the proceeds from the sale of any assets until such time or times as they deem it appropriate to invest such funds, so long as the requirements (other than diversification) of any applicable Prudent Investor Act (or equivalent) are satisfied. My fiduciaries may make their decision regarding diversification based upon such criteria as they, in their sole discretion, shall deem advisable, including, but not limited to, tax considerations, and my fiduciaries shall incur no liability of any kind as a result of their decision whether or not to diversify.
- C. To purchase or otherwise acquire, and to sell, exchange, mortgage, lease, grant and accept options and easements with respect to and otherwise deal with, any property, real, personal and mixed, improved or unimproved, at public or private sale, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions as they may deem proper. No purchaser, upon any sale or other disposition, shall be bound to see to the application of monies or property arising therefrom or to inquire into the validity, expediency or propriety of any such sale or other disposition. Any leases or options entered into or granted with respect to real or personal property held hereunder may be for such period (whether or not the same extends beyond the actual or probable duration of my estate or of any trust created hereunder) as my fiduciaries shall deem advisable.
- D. To manage, maintain, alter, develop, improve, abandon and otherwise deal with all property held by them, whether real, personal or mixed, and to do all such acts and to exercise all rights, powers and privileges, although not specifically mentioned herein, with respect to such property as may be legally done or exercised by any person owning similar property in his own right.
- E. To pay, extend, renew, modify, compromise, assign, litigate, alter, release or forgive, upon such terms and conditions, with or without consideration, as they shall deem advisable, or submit to arbitration or any other form of alternate dispute resolution, any obligation or claim, including taxes, either in favor of or against my estate, or any trust created hereunder.
- F. To borrow money or property, either upon the security of any or all of the assets of my estate or of any trust created hereunder, or without security or otherwise, upon such terms and conditions and for such purposes in connection with the administration of my estate or of any trust created hereunder, including not by way of limitation the purchase of improved or unimproved real or personal property, as to them shall seem proper, and to make any loans, in such amounts, upon such terms, and to such individuals or entities, as may be deemed advisable, provided such loans bear reasonable interest and are adequately secured.

- G. To invest in, and/or to participate in the formation of, any corporation, partnership (general or limited), joint venture, limited liability company or other business organization, for such purposes, and for such periods of time, as they shall deem advisable, and to purchase shares of stock or other ownership interests therein, and to contribute to the capital thereof, and lend thereto, any assets of my estate or of any trust created hereunder; and to enter into or refuse to enter into any dissolution, liquidation, merger, consolidation, recapitalization, reorganization or other change with respect to any corporation or other such business venture the stock or other ownership interest in which is held by them, and to make exchanges of securities or other interest therein; and to exercise all voting rights with respect to such investment, in person or by proxy, and to enter into voting trusts and other agreements regulating the ownership and disposition thereof, whether or not the same extends beyond the actual or probable duration of my estate or of any trust created hereunder, all upon such terms and conditions as they shall deem advisable.
- H. To continue the operation of any business which I shall own or in which I shall be engaged at the time of my death, and to engage in and operate any other business, whether as a shareholder, partner, member, sole proprietor or otherwise, and to apply to the conduct of any such business any assets of my estate or of any trust created hereunder; and to dissolve, sell (for cash or on credit or partly for cash and partly on credit) or otherwise terminate any such business, all upon such terms and conditions as they shall deem advisable. No loss whatever resulting to my estate or to any trust created hereunder, through the ownership or operation by my fiduciaries of any business, whether the same be carried on as a corporation, partnership, proprietorship, limited liability company or otherwise, shall be chargeable against my fiduciaries personally. Nothing contained herein shall relieve my fiduciaries from the obligation to comply with any agreement entered into by me prior to my death regarding the sale or disposition of any interest in any business held by me at the time of my death.
- I. To engage attorneys, accountants, agents, investment counsel and other advisers in connection with the administration of my estate and any trust created hereunder, and to pay expenses incurred thereby.
- J. To hold investments in the name of my fiduciaries, or in bearer form, or in the name of a nominee without disclosing a fiduciary relationship, and, with respect to any trust institution serving as a fiduciary, to hold and administer any property in a common trust fund.
- K. To set up reasonable reserves for depreciation and/or depletion.
- L. To postpone the distribution of income earned during the administration of my estate for such period of time (not to extend beyond the period reasonably required for such administration) as they shall deem proper.
- M. To make partial distributions of the principal of my estate, subject to adjustments resulting from the conclusion of any tax proceedings affecting my estate, and to divide and distribute my estate or any trust created hereunder in cash or in kind or partly in cash and partly in

kind, without regard to differences in the composition of the shares or the tax bases of the assets distributed.

- N. To hold the interest of two or more trusts, parts or shares created under this Will in consolidated funds, without any physical division of the investments, but such consolidation of investments shall not operate to merge the legal or beneficial interests in such separate trusts, parts or shares.
- O. To make whatever elections or choices as shall be available to them respecting my last income tax return and any gift tax returns, including the filing of joint returns and consenting to gifts made by my spouse being treated as made one-half by me, and to pay all tax liabilities incurred thereby.
- P. To execute and deliver all documents, contracts and instruments necessary or advisable in connection with the administration of my estate and any trust created hereunder.
- Q. To retain within my estate, or within any trust created hereunder, beyond the date it otherwise would have terminated, such assets as they shall deem appropriate to allow my estate, or any such trust, to be deemed not to have terminated for the purpose of petitioning the United States Tax Court with respect to any assessed Federal tax deficiency. Such action can be taken with respect to my estate only if consented to in writing by the beneficiaries receiving at least half of the value of my residuary estate, and can be taken with respect to any trust created hereunder only if consented to in writing by the remainderman thereof (or both of them if there shall be two, or a majority of them if there shall be more than two).
- R. To treat or not to treat as an expense of administering my estate, the costs of any ancillary or similar proceedings with respect to my estate and any costs incurred in connection with the preservation, protection and delivery of assets of my estate, including assets specifically bequeathed.
- S. To allocate receipts and disbursements of my estate or any trust created hereunder between income and principal thereof in such a manner as my fiduciaries shall deem advisable, so long as the requirements of any applicable Principal and Income Act or equivalent are satisfied, except that during the lifetime of my husband, GEORGE BANKS, no allocation or allocations shall be made with respect to any portion of my estate or of any trust created hereunder which could prevent the same from qualifying for the Federal estate tax marital deduction.

## **ARTICLE XVII**

In the administration of my estate, and any trust created hereunder, I direct that:

- A. My fiduciaries shall not personally be liable for any loss which may occur to my estate or to any trust herein created as a result of the exercise of, or the refusal to exercise, any of

the powers or discretions vested in them, so long as such exercise or refusal to exercise is made in good faith.

- B. My fiduciaries shall not be disqualified from acting hereunder or from exercising any power granted herein because they may hold an interest in property in which my estate or any trust created hereunder shall also hold an interest, or be a creditor of my estate, or be an employee or agent of, or the holder of an interest in, any business, sole proprietorship, partnership, joint venture, association, corporation, limited liability company or otherwise, in which my estate or any trust created hereunder may hold an interest, or by reason of the fact that they may also be serving as the trustees of any trust established by me during my lifetime.
- C. If my fiduciaries decide in good faith that there is uncertainty as to the necessity for including particular items in my estate for transfer tax purposes, or particular items in any income or gift tax returns, they may exclude such items. My fiduciaries shall not be personally liable for any tax, interest or penalty imposed, or for any loss incurred, as a result of such decision.
- D. If applicable, my fiduciaries are authorized in their discretion:
  - (i) to consent to the election or revocation of the election by any corporation to be an S corporation for Federal, State and other income tax purposes;
  - (ii) to make or refrain from making the election provided for in Section 1361(e) of the Code, so that a trust will be treated as an “electing small business trust” even if, as a result thereof, the income taxes payable by the trust and/or any beneficiary thereof are increased;
  - (iii) to make or refrain from making the election provided for in Section 2056(b)(7) of the Code, so that all or a portion of qualified terminable interest property shall qualify for the Federal estate tax marital deduction;
  - (iv) to elect or not to elect an installment payment of Federal estate taxes pursuant to Section 6166 of the Code, and to post bond and/or create liens on assets of my estate as required in connection therewith, and to distribute assets of my estate so encumbered;
  - (v) to elect or not to elect to deduct all or part of the expenses of administration of my estate and losses incurred during the settlement of my estate in the computation of the Federal or state income tax liability of my estate;
  - (vi) to elect or not to elect to value my estate for transfer tax purposes as of a date other than the date of my death;
  - (vii) to elect or not to elect the application of Section 2032A of the Code with respect to qualified real property;

- (viii) to elect or not to elect to disclaim all or part of transfers or bequests made to me prior to my death by other persons;
- (ix) to exercise or refrain from exercising any right, election or option in connection with the Generation-Skipping Transfer tax provided for in Chapter 13 (Section 2601 et seq.) of the Code, including, but not limited to, the right to allocate or not to allocate the GST exemption provided for in Sections 2631 and 2632 of the Code to any applicable property or disposition, including dispositions made by me prior to death, and to make disparate allocations thereof to similar properties or dispositions;
- (x) to elect or not to elect to treat any portion of a payment of estimated tax made with respect to any trust created hereunder as a payment made by a beneficiary of such trust (in equal or unequal shares if there shall be more than one) and to consider any amount so treated as a distribution to such beneficiary;
- (xi) to elect or not to elect, in whole or in part, the application of Section 2057 of the Code (or any section of similar import) with respect to any qualified family-owned business interest, and they shall not be required to elect a larger amount under said Section in order to pay a smaller tax to the extent the election reduces the applicable exclusion amount under Section 2010 of the Code;
- (xii) to elect or not to elect to treat a qualified revocable trust as part of my estate pursuant to Section 645 of the Code;
- (xiii) to elect or not to elect to disclaim all or part of any power or discretion held by my fiduciaries in a fiduciary capacity, and to determine whether or not such disclaimer shall be binding upon, and shall constitute a disclaimer by, any or all successor or substitute fiduciaries;
- (xiv) to exercise or refrain from exercising any other election or option in connection with the computation of the transfer tax and income tax liabilities of my estate.

In the exercise of the discretion in clauses (i) through (xiv) hereof, my fiduciaries are to be guided by their opinion of what action will serve the best interests of my estate, and one or more of the beneficiaries thereof, and such discretion can be exercised without prior permission or approval of the court having jurisdiction of this Will. Furthermore, such consent and elections and options can be granted, made or exercised, or not, even though the result may be (i) the creation of liabilities; (ii) the shifting of interests in property between or among beneficiaries; and/or (iii) the fact that certain of the beneficiaries of my estate may incur a gain, while other beneficiaries of my estate may suffer a loss, but my fiduciaries may, if they deem it equitable, require adjustment among the various bequests contained herein and among the various beneficiaries of my estate, as a result of, or as a condition precedent to, the exercise of such discretion.

- E. If pursuant to any provisions of this Will a trust would be established to which any part of my GST exemption [provided for in Section 2631 (a) of the Code] would be allocated (hereinafter referred to as a “GST Trust”), and if after such allocation the inclusion ratio of such trust for generation-skipping transfer tax purposes would not be zero, my fiduciaries may, but shall not be required to, establish two separate trusts, each to be administered in accordance with the provisions applicable to the GST Trust, with one trust having an inclusion ratio of one and the other trust having an inclusion ratio of zero. Assets that would have constituted the GST Trust shall be allocated between the two separate trusts as necessary to establish the prescribed inclusion ratios, and shall be valued for such purpose as of the date of allocation.

I encourage the beneficiaries of any such GST Trust and my fiduciaries, in the exercise or non-exercise of any power or discretion granted to them with respect to such trust, to give due consideration to the generation-skipping transfer tax consequences thereof.

In addition, if pursuant to any provisions of this Will any portion of any trust created hereunder is required to be added to the principal of any other trust created hereunder (such latter trust being hereinafter referred to as the “recipient trust”) and if the inclusion ratios (for generation-skipping transfer tax purposes) of such trusts are not identical, then my fiduciaries, in lieu of making such addition, may, but shall not be required to, hold such portion in a separate trust, to be administered in accordance with the provisions applicable to the recipient trust.

In further addition, if pursuant to any provision of this Will a trust has been established that has an inclusion ratio of greater than zero and less than one, then my fiduciaries may, but shall not be required to, divide such trust into two separate trusts, provided that such division meets the definition of a “qualified severance” contained in Section 2642(a)(3) of the Code or Regulations promulgated pursuant thereto.

- F. My fiduciaries may be employed and/or engaged in any capacity by, or render services to, my estate or any trust created hereunder, and/or may be employed and/or engaged by any corporation, proprietorship, joint venture, sole proprietorship, limited liability company or other entity in which my estate or any such trust may have an interest, and shall be entitled to receive and to retain (in addition to their remuneration for their services as fiduciaries herein) such compensation, perquisites and reimbursement of expenses in connection with such services, in such manner and upon such terms and conditions, as they, in their discretion, shall deem proper.
- G. My fiduciaries may delegate discretion relating to the investment and management of estate or trust assets to an agent (including an entity affiliated with any trust institution serving as an executor or a trustee) and may do so without liability for the decisions, actions, omissions, neglect, misconduct or default of such agent, provided that such agent was selected and retained with reasonable care, skill and caution. My fiduciaries may pay such agent reasonable compensation for his, her or its services. Notwithstanding any statute or rule of law to the contrary, such compensation (other than of a fiduciary serving hereunder) shall not reduce any statutory commissions or other fees payable to my fiduciaries.



- H. Any individual fiduciary shall have the right, at any time and from time to time, to delegate to the other fiduciaries any or all of his or her powers as a fiduciary hereunder, and to revoke such delegation, in whole or in part. Such delegation or revocation thereof shall be by a written instrument delivered to such other fiduciaries and shall specify the extent of such delegation or revocation. The written statement of the other fiduciaries as to whether any fiduciary is acting or has delegated any or all of his or her powers to such other fiduciaries shall fully protect all persons dealing with my estate or any trust created hereunder, whichever shall be applicable.

In addition, my fiduciaries may agree among themselves, in writing, to have any or all of the documents required to be signed by them in connection with the administration of my estate or any trust created hereunder signed by less than all of them.

### **ARTICLE XVIII**

- A. Wherever in this Will the words “executor,” “trustees” and “fiduciaries” are used, they shall be construed to mean “executor, executors, executrix, executrices, personal representative, personal representatives, trustee, trustees and the survivor or survivors of them and their successor or successors in office.”
- B. Wherever in this Will the word “bequeath” is used, it shall be construed to mean “give, devise and bequeath.”
- C. Wherever in this Will the words “descendant” and “descendants” are used, they shall be construed to be synonymous with the word “issue.”
- D. Wherever in this Will the words “per stirpes” are used with reference to the descendants of any individual, they shall be construed to mean that the determination of such descendants begins with the children of such individual and that no distribution at any generational level shall be per capita.
- E. Wherever in this Will the words “sibling” and “siblings” are used, they shall be construed to mean “brother(s) and sister(s)” (of the whole blood or of the half-blood, but only if a descendant of mine shall be the natural or adoptive parent of the latter), but not “step-brother(s) and step-sister(s)”, unless the same shall have been adopted by me or a descendant of mine.
- F. For all purposes under this Will, whether for the determination of relationships or otherwise, (i) adopted children of mine shall be considered to have, and shall be given, the same status as natural-born children and (ii) adopted children of any other person shall be considered to have, and shall be given, the same status as natural-born children only if the child was a minor when adopted and lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent. All references in this Will to children or descendants of mine or any other person shall include, and it is my intention that this Will shall be effective notwithstanding the fact that there shall be, any child,

children, descendant or descendants of mine or any other person born or adopted after the date of execution hereof.

No one claiming to be a natural-born descendant of another person shall be considered as such unless the claimant and the purported parent had established a child-parent relationship prior to the time in question and they had lived together, while the claimant was a minor, as child and parent in the same household. The purpose of this paragraph is to prevent someone from successfully claiming to be a person's child although never acknowledged to be such and it shall apply notwithstanding any provision of law to the contrary.

- G. All references made, and all nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- H. Wherever in this Will the word "Code" is used, it shall be construed to mean the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to refer to such section or to any section of similar import.
- I. Wherever in this Will the words "trust institution" are used, they shall be construed to mean a corporation or other organization which is authorized to act as trustee of both lifetime and testamentary trusts.

## **ARTICLE XIX**

My fiduciaries, upon request, but not more often than annually, shall provide to each beneficiary of my estate and of any trust administered by them, statements setting forth the receipts and disbursements of principal and income and the assets on hand at the commencement and expiration of the period covered by such statements. The written approval of such statements by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], shall be final and binding upon all who are then or may thereafter become entitled to any part of the assets, as to all matters and transactions shown on the statements. Anything herein contained shall not preclude my fiduciaries, from time to time, from rendering an accounting or from submitting an accounting to a court for settlement, as they shall deem advisable. All of my fiduciaries' reasonable expenses (including reasonable attorneys' fees) attributable to any such accounting and approval shall be paid by my estate or such trust, whichever shall be applicable.

## **ARTICLE XX**

With respect to any trust created hereunder which shall have a single primary beneficiary, if at any time after the death of my husband, GEORGE BANKS, and after taking into account the age, maturity and competence of such primary beneficiary, my trustees (other than such primary beneficiary) shall determine it to be in his or her best interest to terminate such trust

and distribute to him or her, outright and free of trust, the entire remaining principal thereof, my trustees may do so, whereupon such trust shall terminate and the rights of any other beneficiaries or remaindermen in such trust shall cease. In making such decision: (i) my trustees shall take into account the relationship of commissions and expenses to the value of the principal of such trust, and if they shall decide that the value of the trust does not warrant the incurring of such commissions and expenses said decision shall be considered a proper reason for termination pursuant to this Article; and (ii) my trustees shall take into account the then existing and anticipated future status of the Federal estate and generation-skipping transfer taxes, and any applicable State estate, generation-skipping transfer and inheritance taxes, and if they shall conclude that the existence of any such tax probably was, but probably is no longer, a principal reason for the existence of the trust, said conclusion also shall be considered a proper reason for termination pursuant to this Article.

## **ARTICLE XXI**

Any trust created hereunder which shall be substantially identical to any other trust created hereunder, or to any trust created under the Last Will and Testament of my husband, GEORGE BANKS, or to any trust created by either of us prior to death, may, in the discretion of my trustees, be merged into such other trust, or they may accept a merger of such other trust into the substantially identical trust created hereunder, if my trustees shall determine the same advisable to facilitate the administration thereof, to reduce the expense of operation thereof, or any other reason they shall deem to be in the best interests of the beneficiary thereof.

## **ARTICLE XXII**

To the extent permitted by law, if any beneficiary or remainderman under this Will, or any person who would succeed to any of my property by intestate succession, shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, (i) any bequest to, or other provision for, that beneficiary or remainderman under this Will shall be revoked and shall be disposed of in the same manner as if the contesting beneficiary or remainderman, his or her spouse and all of his or her descendants had predeceased me and (ii) such beneficiary, remainderman or person otherwise entitled to succeed to any of my property by intestate succession, his or her spouse and all of his or her descendants shall also be deemed to have predeceased me and shall not succeed to any of my property by intestate succession.

I also direct that no portion of my estate shall be used to pay the legal fees and other expenses incurred by any of the aforesaid persons who shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Will or any of its provisions, or shall attempt in any way to oppose or set aside the probate of this Will or impair or invalidate any of the provisions I have made in it, whether or not any such action shall be successful. In addition, to the extent

permitted by law, it is also my wish that the legal fees and other expenses incurred by my estate in successfully defending any such action be paid by the person bringing such action.

### **ARTICLE XXIII**

If at the time of my death I shall have any power of appointment over any property, I hereby exercise such power and direct that such property be disposed of in the same manner as my residuary estate.

### **ARTICLE XXIV**

My trustees shall have the right to collect and receive, for the benefit of any trust created hereunder, the proceeds of any policies of insurance on my life made payable to my testamentary trustees, as well as the proceeds of any other death benefits, of whatsoever nature, made so payable, and any other money or property, or interest therein, receivable by them as a result of my death, or otherwise, and my trustees may execute appropriate proofs of death and claims for such assets, as well as receipts and releases therefor. To the extent permitted by law, all such assets shall be exempt from, and shall not be used in payment of, any of my debts, funeral costs, estate administration expenses and transfer taxes. All such assets shall be held as part of the principal of the trust or trusts created hereunder, and, unless otherwise specified in the appropriate beneficiary designation, shall be administered pursuant to Article V hereof; provided, however, that any such assets which would have been paid to my husband, GEORGE BANKS, but as a result of disclaimer by him, are paid to my trustees, shall be held and administered as part of the “Disclaimed Share,” pursuant to the provisions of Article XI hereof.

### **ARTICLE XXV**

My executor may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; (iv) any user account of mine; and (v) any domain name of mine. My executor may obtain copies of any electronically stored information of mine from any person or entity that possesses, custodies, or controls that information. I hereby authorize any person or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my executor: (i) any electronically stored information of mine; (ii) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (iii) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as

amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. My executor may employ any consultants or agents to advise or assist my executor in decrypting any encrypted electronically stored information of mine or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and I hereby authorize my executor to take any of these actions to access: (i) any kind of computing device of mine; (ii) any kind of data storage device or medium of mine; (iii) any electronically stored information of mine; and (iv) any user account of mine. The terms used in this paragraph are to be construed as broadly as possible, and the term "user account" includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
SUSAN BANKS (L.S.)

The foregoing Will, consisting of \_\_\_\_\_ (\_\_\_\_\_) pages, was signed, sealed, published and declared by the said Testatrix, SUSAN BANKS, as and for her Last Will and Testament, in the presence of us, who, in her presence, at her request, and in the presence of each other, all being present at the same time, have hereunto subscribed our names as witnesses.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_

STATE OF NEW JERSEY)

ss:

COUNTY OF \_\_\_\_\_ )

We, SUSAN BANKS, the testatrix, and \_\_\_\_\_, witnesses, whose names are signed to the attached or foregoing instrument, being duly sworn, do hereby declare to the undersigned authority that the testatrix signed and executed the instrument as her Last Will and that she had signed willingly, and that she executed it as her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testatrix, signed the Will as witness and that to the best of his or her knowledge the testatrix was at that time 18 years of age or older, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
SUSAN BANKS, Testatrix

\_\_\_\_\_  
, Witness

\_\_\_\_\_  
, Witness

Subscribed, sworn to and acknowledged before me by SUSAN BANKS, the testatrix, and \_\_\_\_\_ and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

# FORM FOR DISPOSING OF TANGIBLE PERSONAL PROPERTY

(See Will Form: OUTRIGHT DISTRIBUTION WILL WITH CONTINGENT TRUST FOR DESCENDANTS UNDER AGE X)

Pursuant to subarticle B of Article III of my Will, if my husband, JOHN M. DOE, shall predecease me, then I bequeath the following items to the following persons who shall survive me:

---

Dated

---

JANE A. DOE

\*Provided by Shoobe & Bakarich, P.C., Paramus, New Jersey

# FORM FOR DISPOSING OF TANGIBLE PERSONAL PROPERTY

(See Will Form: DISCLAIMER TRUST WILL OUTRIGHT TO SPOUSE WITH TRUST FOR CHILDREN AND COMMON DISASTER PROVISIONS)

Pursuant to subarticle A of Article IV of my Will, I bequeath the following items to the following persons who shall survive me:

---

Dated

---

AMY GREENSLEEVE

\* Provided by Shoobe & Bakarich, P.C., Paramus, New Jersey



# NEW JERSEY ESTATE TAX PLANNING-I-A

Estate Plan for Michael and Patricia Jones

Assets	Michael	Patricia	Joint
Home (no mortgage)			600,000
Life Insurance on Michael	400,000		
Life Insurance on Patricia		500,000	
Stocks and Bonds	200,000	165,000	
Bank Accounts	230,000	135,000	800,000
IRA Accounts	470,000	500,000	
	1,300,000	1,300,000	1,400,000
			1,300,000
			1,300,000
Total taxable estate (Michael, Patricia and joint)			4,000,000

## Alternative #1

Michael's will: All to Patricia if she survives, otherwise to children

Patricia's will: All to Michael if he survives, otherwise to children

On first death (assuming date of death is in 2017): No US estate tax, no NJ inheritance tax or estate tax

On second death (assuming date of death is in 2017 and no change in asset value)\*

Total taxable estate	4,000,000
US estate tax	0
NJ inheritance tax	0
NJ estate tax	180,800
Total transfer taxes	180,800

Amount passing to children on death of both Michael and Patricia

Total estate	4,000,000
Transfer taxes	(180,800)
Total passing to children	3,819,200

\*Funeral expenses and estate administration expenses are not considered.

# NEW JERSEY ESTATE TAX PLANNING-I-B

Assets	Michael	Patricia	Joint
Home (no mortgage)			600,000
Life Insurance on Michael	400,000		
Life Insurance on Patricia		500,000	
Stocks and Bonds	200,000	165,000	
Bank Accounts	230,000	135,000	800,000
IRA Accounts	470,000	500,000	
	1,300,000	1,300,000	1,400,000
			1,300,000
			1,300,000
Total taxable estate (Michael, Patricia and joint)			4,000,000

## Alternative #2

Michael's will: Portion in trust for Patricia for life, then to children  
Balance outright to Patricia if she survives, otherwise to children

Patricia's will: Portion in trust for Michael for life, then to children  
Balance outright to Michael if he survives, otherwise to children

On first death (in 2017)*	If Michael dies first	If Patricia dies first
Gross estate		
One half of house	300,000	300,000
Life insurance	400,000	500,000
Stocks and bonds	200,000	165,000
Bank accounts	230,000	135,000
One half of joint account	400,000	400,000
IRA account	470,000	500,000
Total	2,000,000	2,000,000
Trust for spouse	(2,000,000)	(2,000,000)
Balance	0	0

No US estate tax, no NJ inheritance or estate tax

On second death (in 2017 and assuming no change in asset value)\*

Gross estate		
All property except 2,000,000 in trust	2,000,000	2,000,000
No NJ estate tax, no NJ inheritance tax		
Amount passing to children on death of both Michael and Patricia		
Property not in trust	2,000,000	2,000,000
Property in trust	2,000,000	2,000,000
NJ estate tax	0	0
Total passing to children	4,000,000	4,000,000

\*Funeral expenses and estate administration expenses are not considered.

# NEW JERSEY ESTATE TAX PLANNING-II-A

Estate Plan for John and Kathy Smith

Assets	John	Kathy	Joint
Home (no mortgage)			800,000
Life Insurance on John	400,000		
Life Insurance on Kathy		500,000	
Stocks and Bonds	200,000	265,000	
Bank Accounts	230,000	235,000	600,000
IRA Accounts	970,000	800,000	
	1,800,000	1,800,000	1,400,000
			1,800,000
			1,800,000
Total taxable estate (John, Kathy and joint)			5,000,000

## Alternative #1

John's will: All to Kathy if she survives, otherwise to children

Kathy's will: All to John if he survives, otherwise to children

On first death (assuming date of death is in 2017): No US estate tax, no NJ inheritance tax or estate tax

On second death (assuming date of death is in 2017 and no change in asset value)\*

Total taxable estate	5,000,000
US estate tax	0
NJ inheritance tax	0
NJ estate tax	292,000
Total transfer taxes	<u>292,000</u>

Amount passing to children on death of both John and Kathy

Total estate	5,000,000
Transfer taxes	<u>(292,000)</u>
Total passing to children	4,708,000

\*Funeral expenses and estate administration expenses are not considered.

# NEW JERSEY ESTATE TAX PLANNING-II-B

Estate Plan for John and Kathy Smith

Assets	John	Kathy	Joint
Home (no mortgage)			800,000
Life Insurance on John	400,000		
Life Insurance on Kathy		500,000	
Stocks and Bonds	200,000	265,000	
Bank Accounts	230,000	235,000	600,000
IRA Accounts	970,000	800,000	
	<u>1,800,000</u>	<u>1,800,000</u>	<u>1,400,000</u>
			1,800,000
			<u>1,800,000</u>
Total taxable estate (John, Kathy and joint)			<u>5,000,000</u>

## Alternative #2

John's will: Portion in trust for Kathy for life, then to children  
Balance outright to Kathy if she survives, otherwise to children

Kathy's will: Portion in trust for John for life, then to children  
Balance outright to John if he survives, otherwise to children

On first death (in 2017)*	If John dies first	If Kathy dies first
Gross estate		
One half of house	400,000	400,000
Life insurance	400,000	500,000
Stocks and bonds	200,000	265,000
Bank accounts	230,000	235,000
One half of joint account	300,000	300,000
IRA account	970,000	800,000
Total	<u>2,500,000</u>	<u>2,500,000</u>
Trust for spouse	<u>(2,000,000)</u>	<u>(2,000,000)</u>
Balance	500,000	500,000

No US estate tax, no NJ inheritance or estate tax

On second death (in 2017 and assuming no change in asset value)\*

Gross estate		
All property except 2,000,000 trust	3,000,000	3,000,000
NJ estate tax (no NJ inheritance)	82,400	82,400
Amount passing to children on death of both John and Kathy		
Property not in trust	3,000,000	
Property in trust	2,000,000	
NJ estate tax	<u>(82,400)</u>	
Total passing to children	4,917,600	

\*Funeral expenses and estate administration expenses are not considered.

# C

Prepared by:

---

Peter J. Bakarich Jr., Esq.

## DURABLE POWER OF ATTORNEY\*

KNOW ALL PERSONS BY THESE PRESENTS, that I, JANE SMITH, of 123 Main Street, Boonton, New Jersey 07005, do hereby appoint my husband, JOHN SMITH, my attorney-in-fact for me and in my name on my behalf:

to receive and receipt for any and all sums of money or payments due or to become due to me;

to commence, prosecute, enforce, defend, answer or oppose, all actions, suits or other legal proceedings in which I am now or may become engaged or interested;

to compromise, refer to arbitration or other forms of alternate dispute resolution or submit to judgment in any such action or proceeding;

to endorse and deposit in my name in any bank or banks any and all moneys collected or received by him;

to draw checks or drafts in my name upon any and all bank accounts or deposits belonging to me;

to enter any safe deposit box that could be entered by me and to remove all or part of the contents thereof;

to conduct banking transactions as set forth in Section 2 of P.L. 1991, c. 95 (C.46:2B11);

to conduct IRA and qualified retirement plan transactions;

to conduct real estate transactions, including the signing of any contracts, deeds, or other documents required in connection therewith;

to buy, sell, trade or otherwise deal with any stocks, bonds or other securities, or any other property, whether real or personal;

to pay any and all bills, accounts, claims and demands now or hereafter payable by me;

\*Provided by Peter J. Bakarich, Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey.

to access, obtain, control and modify all digital or electronic data, information and matter that may be stored on my desktop, laptop, tablet or other computer, peripheral drive, storage device, mobile telephone or any similar electronic device, including without limitation, all internet accounts (including email account, iTunes, financial accounts, financial reports and archives of the same), online photographs and videos, online music, online documents, all licenses to online items and software, social network accounts, domain registrations, DNS service accounts, web-hosting accounts, online stores, tax-preparation service accounts, file-sharing accounts, computer backup processes, and user passwords and other security access to any of the foregoing, and all similar digital items which currently exist or may exist as technology develops, and to obtain, use, change, control and otherwise affect passwords, user names, access codes and other electronic credentials and restrictions on access to such devices and accounts and other electronically or digitally stored data, information and matter;

to act for me in any business in which I am now or have been engaged or interested, whether as a sole proprietorship, partnership, corporation, limited liability company or any other form of business entity, and in connection with any contract or contracts made by me;

to represent me before the Social Security Administration, the Department of Social Services and the Veteran's Administration;

to procure and maintain insurance of any kind, including but not limited to life, disability, long-term care, health, liability and property damage, or to terminate any such insurance;

to complete charitable gifts;

to accept, decline and/or resign any fiduciary appointment on my behalf;

to disclaim any property or interest therein to which I am or may become entitled without having to obtain court approval;

to delegate a parent's or guardian's authority regarding a minor's or an incapacitated person's care, custody and control for a period not exceeding six months;

to create, amend, modify and/or revoke a trust or other arrangement on my behalf for the benefit of myself and/or any descendant of mine (even if such spouse shall be serving as my attorney-in-fact) and, subject to the next following paragraph, to fund such trust or arrangement with any or all of my property;

to make gifts of any or all of my property to my spouse and/or to any descendant of mine (even if such spouse shall be serving as my attorney-in-fact), either outright or in trust, regardless of whether or not such trust is created by me. Notwithstanding the foregoing, any gifts made other than to my spouse by a successor attorney-in-fact shall require court approval unless such gifts are either (i) in continuation of a pattern of gifting previously established by me or (ii) to my descendants equally on a per stirpital basis, with the share of any recipient not to exceed, in any calendar year, the annual exclusion amount pursuant to Section 2503(b) of the Internal Revenue Code of 1986, as amended, determined as if consent had, in fact, been given pursuant to Section 2513 thereof, whether or not actually given;

to do and perform all things, transact all business, make, execute and acknowledge all contracts, leases, orders, deeds, writings, assurances and instruments which may be requisite or proper to effectuate any matter or thing pertaining or belonging to me; and generally

to act for me in all matters affecting my business, property and affairs, real or personal, wheresoever situated, including Federal, State and other tax matters, with the same force and effect and to all intents and purposes as though I were personally present and acting for myself.

I hereby ratify and confirm whatsoever my attorney-in-fact shall do by authority hereof.

My attorney-in-fact shall maintain accurate books and records of all financial transactions and shall render an accounting thereof when required to do so by governing law.

My attorney-in-fact shall be entitled to be reimbursed for all reasonable expenses incurred in connection with his duties hereunder, including legal, accounting and other fees, and shall be entitled to such compensation as may be set forth in a separate written agreement between him and me, and in the absence of such agreement, as provided by governing law.

My attorney-in-fact in the exercise of reasonable care, skill and caution, may delegate to other agents any or all of the specific powers which have been conferred on my attorney-in-fact by this instrument.

My attorney-in-fact is authorized, in his sole discretion, to obtain my Protected Health Information (“PHI”), and he shall be treated as I would be with regard to the use and dissemination of my PHI and medical records. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 USC 1320d and related regulations 45 CFR 160-164. I intend that my attorney-in-fact, in making decisions pursuant hereto, including various property-related decisions which relate to my health care, be treated as my personal representative for all purposes, as provided in 45 CFR 164.502(g)(2), relating to my health care and in any inquiry relating to my PHI, and I therefore specifically authorize my attorney-in-fact to request, obtain, receive and inspect any and all information bearing upon my health, including PHI, relevant to the performance of his duties hereunder (including, but not limited to, all medical treatments and procedures), to sign whatever authorizations for release of information may be required by providers or others, and to waive any rights I may have for breach of confidentiality for the release of such information to my attorney-in-fact. The authority given to my attorney-in-fact shall supersede any prior agreement that I may have made with my health care providers to restrict access to, or disclosure of, my PHI. The authority given to my attorney-in-fact has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

In addition, I specifically authorize any physician, dentist or other health care provider, any insurance company, the Medical Information Bureau Inc. and any other health care organization that has provided treatment or services to me or that has paid for or is seeking payment from me for such services to give, disclose and release to my attorney-in-fact all of my PHI and medical records



regarding any past, present or future physical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

If my husband, JOHN SMITH, shall cease to serve as my attorney-in-fact, due to his death, written resignation or disability, I appoint my children, JAMES SMITH and MARY SMITH, acting severally or separately, residing, respectively, at 243 Pine Street, Boonton, NJ 07005, and 454 Spruce Street, Boonton, NJ 07005, as my successor attorneys-in-fact.

If after the execution of this Durable Power of Attorney protective proceedings for my person or estate shall be commenced in any court, I hereby nominate, in succession, (i) my husband, JOHN SMITH, and (ii) my children, JAMES SMITH and MARY SMITH, as conservator(s), guardian(s) of my estate or guardian(s) of my person, whichever shall be applicable, for consideration by such court.

This Durable Power of Attorney is effective as of the date hereof and shall not be revoked or otherwise affected by my subsequent disability or incapacity or by lapse of time.

This Durable Power of Attorney revokes any and all general powers of attorney I may have heretofore executed (including, but not limited to, the Durable Power of Attorney executed by me on \_\_\_\_\_), but does not revoke any power of attorney given by me for the specific limited purpose or purposes designated therein.

IN WITNESS WHEREOF, I have signed and acknowledged this Durable Power of Attorney this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
JANE SMITH

STATE OF NEW JERSEY)

ss:

COUNTY OF BERGEN)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me the subscriber, a Notary Public of New Jersey, personally appeared JANE SMITH, who, I am satisfied, is the person mentioned in the within instrument, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

## “LIVING WILL”\*

### APPOINTMENT OF HEALTH CARE REPRESENTATIVE AND HEALTH CARE DIRECTIVE

I, JANE SMITH, residing at 123 Main Street, Boonton, New Jersey 07005, voluntarily make this statement as a directive to be followed if I become unable to participate in decisions regarding my medical care and I hereby revoke any prior statement or directive made by me relating thereto.

I realize that it is not possible for me to anticipate the very wide variety of medical decisions which may need to be made in the future and to provide specific written directions. Accordingly, in the event I am unable to understand and appreciate the nature and consequences of health care decisions and to make an informed decision, I appoint my husband, JOHN SMITH, residing at 123 Main Street, Boonton, New Jersey 07005 (Phone: 973-334-0000), as my Health Care Representative to make all health care decisions on my behalf, including, but not limited to (i) to accept or refuse medical or surgical treatment, (ii) to accept or withhold or withdraw life-sustaining procedures and (iii) to consent to my placement in a nursing home or other custodial care facility.

If JOHN shall be unavailable, unable or unwilling to serve for any reason, I appoint my brother, WILLIAM JONES, residing at 123 Main Street, Passaic, New Jersey 07055 (Phone: 973-779-0000), as my Health Care Representative. If WILLIAM also shall be unavailable, unable or unwilling to serve for any reason, I appoint my brother, GEORGE JONES, residing at 123 Main Street, Passaic, New Jersey 07055 (Phone: 973-779-0000), as my Health Care Representative.

I also request, but do not require, that my serving Health Care Representative consult with the individual(s) whom I have named as successor Health Care Representative(s), whenever feasible, regarding any decision to be made pursuant hereto.

I direct my Health Care Representative to carry out my basic objectives set forth below and I authorize my Health Care Representative to interpret those objectives if need be.

If (a) in the opinion of my attending physician (i) I should be in a terminal condition, which I understand to be the terminal stage of an irreversibly fatal illness, disease or condition; or (ii) I am permanently unconscious, and such opinion is confirmed by a second physician, or (b) in the opinion of those responsible for my care, the likely risks and burdens associated with the medical intervention to be withheld or withdrawn may reasonably be judged to outweigh the likely benefits to me from such intervention, I direct my attending physician to withhold or withdraw life-sustaining treatment with the consent of my Health Care Representative, or without such consent if my Health Care Representative and all successors are unavailable after reasonable inquiry.

\*Provided by Peter J. Bakarich, Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey.

**Use if NO to Food & Water:**

I specifically include in the life-sustaining treatment I wish to have withheld or withdrawn cardiopulmonary resuscitation, mechanical respiration, mechanically and/or intravenously administered nutrition and hydration and anti-microbial therapy or treatment. I want all medical treatment limited to measures to provide comfort and to relieve pain and authorize the administration of pain-relieving drugs, even if their administration may hasten the moment of my death.

**Use if YES to Food & Water:**

I specifically include in the life-sustaining treatment I wish to have withheld or withdrawn cardiopulmonary resuscitation, mechanical respiration and anti-microbial therapy or treatment. I do not include mechanically administered nutrition and hydration in the treatment to be withheld or withdrawn and I want these procedures to be used in my care to the extent medically appropriate. I want all medical treatment limited to measures to provide comfort and to relieve pain and authorize the administration of pain-relieving drugs, even if their administration may hasten the moment of my death.

My Health Care Representative is authorized, in his sole discretion, to obtain my Protected Health Information (“PHI”), and he shall be treated as I would be with regard to the use and dissemination of my PHI and medical records. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 USC 1320d and related regulations, 45 CFR 160-164. I intend that my Health Care Representative, in making decisions pursuant hereto that relate to my health care, be treated as my personal representative for all purposes, as provided in 45 CFR 164.502(g)(2), relating to my health care and in any inquiry relating to my PHI, and I therefore specifically authorize my Health Care Representative to request, obtain, receive and inspect any and all information bearing upon my health, including PHI, relevant to the performance of his duties hereunder (including, but not limited to, all medical treatments and procedures), to sign whatever authorizations for release of information may be required by providers or others, and to waive any rights I may have for breach of confidentiality for the release of such information to my Health Care Representative. The authority given to my Health Care Representative shall supersede any prior agreement that I may have made with my health care providers to restrict access to, or disclosure of, my PHI. The authority given to my Health Care Representative has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider(s).

In addition, I specifically authorize any physician, dentist or other health care provider, any insurance company, the Medical Information Bureau Inc. and any other health care organization that has provided treatment or services to me or that has paid for or is seeking payment from me for such services to give, disclose and release to my Health Care Representative all of my PHI and medical records regarding any past, present or future physical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

It is my desire that this Living Will with Appointment of Health Care Representative and Health Care Directive and Anatomical Gift be recognized in all jurisdictions in which I may from time to time be present.

Dated \_\_\_\_\_  
JANE SMITH

We declare that the person who signed this document did so willingly and voluntarily in our presence, is personally known to us, and is of sound mind and free of duress and undue influence. We are both 18 years of age or older, and neither of us is a designated Health Care Representative for such person.

\_\_\_\_\_  
Signature of Witness Address

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Witness Address

\_\_\_\_\_  
Print Name

#### ANATOMICAL GIFT

I wish, if feasible, to donate for transplant any part or all of any organ, tissue, eyes, bone, arteries and other parts or portions of my body which may be useful to another person. I intend for this statement of intent to be an anatomical gift within the meaning of N.J.S.A. 26:6-78 et seq. Consistent with this intent, treatment which prolongs my dying may be continued temporarily or modified so as to preserve and protect for transplant the useful portions of my body.

Dated \_\_\_\_\_  
JANE SMITH

STATE OF NEW JERSEY)

ss:

COUNTY OF BERGEN )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the subscriber, \_\_\_\_\_, personally appeared JANE SMITH, who, I am satisfied, is the person mentioned in the within instrument, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

## HEALTH CARE PROXY DIRECTIVE

KNOW ALL PERSONS BY THESE PRESENTS, That I, AAA, of \_\_\_\_\_, New Jersey, desiring to execute a health care proxy for health care decisions, do hereby appoint my \_\_\_\_\_, BBB, my true and lawful Health Care Representative, for me and in my name to exercise the powers set out in this Health Care Proxy Directive as fully and effectually as I could do if I did not lack decision making capacity as defined in the New Jersey Advance Directives for Health Care Act, or under a corresponding statute in any other jurisdiction.

AND, if my Health Care Representative shall for any reason cease to act as Health Care Representative (even temporarily), then my \_\_\_\_\_, CCC, shall serve as first successor Health Care Representative.

My Health Care Representative (and his successors) shall have the following powers with respect to my personal care and health care decisions:

### Section 1.

- (a) To make any and all decisions regarding my Medical Treatments or Procedures (as hereinafter defined in Section 11 hereof), including the decision to determine when and what treatment or treatments are to be undertaken (or not undertaken) or, once undertaken, continued or discontinued, when, in his judgment, such treatment or treatments are not in my best interest, or pursuant to my wishes as expressed in my Living Will.
- (b) To authorize or to decline to authorize my admission to a medical, nursing, residential or similar facility and to enter into agreements on my behalf for my care and only authorize such admission if appropriate care cannot be provided in my home.
- (c) To authorize or decline to authorize any Medical Treatments or Procedures, including Life Sustaining Treatment when, in his judgment, a contrary course would not be in my best interest, taking into account my medical condition at the time, the prognosis for recovery, my wishes as set out in my Living Will, or if no such written Living Will exists, then my wishes as otherwise expressed to him, and all other factors that he deems appropriate.

**Section 2.** To sign any and all consents required for the implementation of any health care decision including the provision of Medical Treatments or Procedures, and to sign any and all waivers of liability on my behalf to the extent reasonably required by Health Care Professionals or Health Care Institutions to secure their good faith compliance with a decision not to initiate or, once begun, to discontinue any Medical Treatments or Procedures.

**Section 3.** To request, obtain, receive, and inspect any and all information bearing upon my health and relevant to any determinations to be made respecting any health care decision including all Medical Treatments and Procedures, to sign whatever authorizations for release of information which may be required by providers or others, and to waive any rights I may have for breach of confidentiality of medical records for release of such information to my Health Care Representative.

**Section 4.** To retain counsel and to take any and all legal actions on my behalf and in my name, otherwise as he deems appropriate, that may be necessary or appropriate to obtain compliance with my wishes as expressed elsewhere or as determined by him pursuant to this Health Care Proxy Directive, including but not limited to action to secure appointment of a conservator, guardian, or committee, to obtain a declaratory judgment, or to seek injunctive relief and damages (actual, exemplary or punitive).

**Section 5.** To retain and make such use of such other agents to assist him in acting under this Health Care Proxy Directive as he may in his sole discretion deem advisable; to designate under this Health Care Proxy Directive another person as such agent, jointly or severally with him, either temporarily or permanently, who shall be designated first from the successor Health Care Representatives, in order of appointment, nominated hereunder and only from persons other than those nominated hereunder, if all of those so nominated are unavailable or refuse to serve; but he shall be under no obligation or duty to appoint another person to serve with him as a Health Care Representative, and it would be contrary to my wishes and intent for any person to require that he do so or to require that he obtain the consent of any other person for any determination which he makes.

**Section 6.** To do and perform all and every act and thing whatsoever required, necessary or appropriate with respect to my medical care and treatment, in exercise or effectuation of the powers granted under this Health Care Proxy Directive.

**Section 7.** To determine in his discretion the time when, purpose for, and manner in which any power granted to him by this Health Care Proxy Directive shall be exercised, and the conditions to be accepted or waivers to be granted incident thereto.

**Section 8.** This Health Care Proxy Directive shall not be affected by my disability or incompetence.

**Section 9.** A Health Care Professional or Health Care Institution who relies in good faith on a consent or waiver given under this Health Care Proxy Directive shall incur no liability for any act or omission undertaken at the direction of my Health Care Representative.

**Section 10.** If for any reason any provision of this Health Care Proxy Directive is determined not to be legally binding in any regard, I ask that it be deemed separable and that all other provisions be deemed binding to the greatest extent possible, and that each provision nonetheless be honored to the fullest extent possible by my family, Health Care Representatives, attorney, attending physicians, Health Care Professionals, Health Care Institutions, and others who may provide Medical Treatments or Procedures or be involved in decisions respecting my care, as the expression of my will.

**Section 11.** For purposes of this Health Care Proxy Directive, the term “Medical Treatments” or “Procedures” shall mean interventions by doctors, nurses, paramedics, or any other Health Care Professional or Health Care Institution in the care of my body and mind, including all medical and surgical procedures, mechanical or otherwise, treatments, therapies, including drugs and hormones, which may substitute for, replace, supplant, enhance or assist any bodily function. This specifically includes Life Sustaining Treatment which, by way of illustration and not limitation, shall mean the use of any medical device or procedure to artificially maintain respiration, by means of ventilation or otherwise, and alimentation or hydration by means of surgical intubation, intravenous injection, or otherwise, and with respect to all Medical Treatments and Procedures, it includes existing technology as well as any methods or techniques which may be hereafter developed and perfected.

**Section 12.** I intend for my Health Care Representative to be treated as I would with regard to the use and dissemination of my individually identifiable health information and medical records. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 USC 1 320d and CFR 160-164. I specifically authorize any physician, dentist, health care professional, medical provider, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and the Medical Information Bureau, Inc., or other health care organization that has provided treatment or services to me or that has paid for or is seeking payment from me for such services, to give, disclose, and release same to my Health Care Representative; to disclose all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition; to exercise all rights under HIPAA; to access all “Protected Health Information” pursuant to (or notwithstanding any provision of) HIPAA; and to include all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

I HEREBY RATIFY ALL that my Health Care Representative shall do or cause to be done by virtue of this Health Care Proxy Directive, and hold harmless my Health Care Representative for any action taken in good faith, without fraud, pursuant to this Health Care Proxy Directive. I hereby authorize and direct whoever shall be responsible for my estate or have power over any property of mine to reimburse my Health Care Representative for any costs (including legal fees) reasonably incurred by him in or as a result of acting in good faith, without fraud, pursuant to this Health Care Proxy Directive.

In all references herein to any Health Care Representative, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of this my Health Care Proxy Directive.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_ (L.S.)

AAA

STATE OF NEW JERSEY)

ss:

COUNTY OF SOMERSET)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the subscriber, personally appeared AAA, who I am satisfied is the person named in the within document, and who acknowledged in the presence of the witnesses that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.



## INSTRUMENT OF ANATOMICAL GIFT<sup>1</sup>

I, \_\_\_\_\_, of \_\_\_\_\_, as Donor, make this anatomical gift to take effect upon my death and prior to embalment of my body, hereby revoking all such instruments heretofore made by me.

### Eyes

First: I give to the \_\_\_\_\_ EYE BANK of \_\_\_\_\_ or to any eye bank serving the area in which my death occurs, both or either of my eyes for such use as the Donee may see fit with regard to all or any part of said eyes.

### Temporal Bones/Body

Second: I give to \_\_\_\_\_ Medical School, my temporal bones, (the middle and inner ear portions, including the hearing nerve and its central pathways) and any organ of my body (other than my eyes) to be used for any appropriate purpose and authorize any portion of my bones to be transplanted to the body of any other person. Subject to the foregoing gift, I give my entire body (other than my eyes) to \_\_\_\_\_ Medical School, for the promotion of anatomical study and teaching. I direct that after these purposes have been accomplished, my remains be buried in Cemetery<sup>2</sup> with the services of a [Priest/Minister/Rabbi] of the \_\_\_\_\_ faith.

IN WITNESS WHEREOF, I, the said \_\_\_\_\_ have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Donor)

The foregoing instrument was signed by \_\_\_\_\_ in the presence of the undersigned witnesses, who, in his presence, have hereunto subscribed our names as witnesses this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ residing at \_\_\_\_\_

<sup>1</sup> STATUTORY PROVISIONS AS TO DISPOSITION OF HUMAN BODY OR PARTS THEREOF. New Jersey has adopted the Uniform Anatomical Gift Act, N.J.S.A. 26:6-57 to 26:6-65. Under the Act, a person 18 years of age or over may make a gift of all or part of his body, either by a will, or by a document other than a will, signed by him in the presence of two witnesses who must sign the document in his presence. The will or document may be amended or revoked as stated in the statute. The gift may be made to (a) a hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation, or (b) any accredited medical or dental school for education, research or advancement of medical science, or therapy, or

(c) any bank or storage facility for medical or dental education, research, advancement, therapy or transplanting, or (d) any specified individual for therapy or transplantation needed by him. Furthermore, any of the following persons, in order of priority stated, when persons in proper classes are not available at the time of death, and in absence of actual notice of contrary indications by the decedent, may give any part of decedent's body for any of the aforementioned purposes: the spouse; an adult son or daughter; either parent; an adult brother or sister; the guardian of the person; or any other authorized person.

2 DISPOSITION OF REMAINS. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services and, after it has served its scientific purposes, provide for its disposal by burial or cremation. If the gift is of a part of the body, the donee shall cause the same to be removed without unnecessary mutilations and the custody of the remainder of the body vests in the surviving spouse, next-of-kin, or the person under obligation to dispose of the same.

## REVOCABLE LIVING TRUST\*

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between JOHN SMITH, residing at 123 Main Street, Paramus, New Jersey (hereinafter referred to as the "Grantor") and the said JOHN SMITH (hereinafter also referred to as the "Trustee"):

### WITNESSETH:

WHEREAS the Grantor, desirous of making financial provisions for himself and his family, has decided to create the within trust, to be known as the "JOHN SMITH REVOCABLE TRUST";

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, the Grantor has herewith delivered, and does hereby grant, convey, assign and set over to the Trustee, the property described in Schedule A annexed hereto, to be held in trust by the Trustee for the following uses and purposes:

### ARTICLE I

Until the death of the Grantor, the Trustee shall administer the said trust fund, including any other cash, securities, or other property, real, personal or mixed, at any time forming a part of this trust, as follows:

- A. The Grantor shall have the absolute right, at any time and from time to time, upon written request to the Trustee, to receive payment out of the net income and/or principal of the trust of such amount or amounts (including the whole thereof) as he shall request, for any or no purpose at all.
- B. In addition to the aforementioned payment of the net income and/or principal of the trust pursuant to the Grantor's request, the Trustee, at any time or times that he shall deem it advisable, may pay to the Grantor, or apply for his benefit, so much, all or none of the net income of the trust, and/or such sum or sums out of the principal of the trust (including the whole thereof), as the Trustee, in his discretion, shall deem reasonably necessary to provide for the Grantor's health, maintenance and support, as well as for any other reason, purpose or cause.
- C. The Trustee shall add to the principal of the trust any net income thereof not so expended in any fiscal year of the trust pursuant to subarticle A or B hereof.

### ARTICLE II

Subject to subarticle C of this Article II, upon the death of the Grantor, the Trustee shall receive and collect any property, interest in property and money which may be payable to the Trustee as a result of the death of the Grantor or any other person, whether under the Last Will and Testament of the Grantor or any other person, or otherwise; the Trustee shall add the same to any other assets then in his possession; and he shall administer all such assets as follows:

\*Provided by Peter J. Bakarich Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey

- A. If the Grantor's wife, JANE SMITH, shall survive him, the Trustee shall hold all such assets as a separate trust for JANE's benefit, pursuant to Article III hereof.
- B. If the Grantor's wife, JANE SMITH, shall predecease him, the Trustee shall administer all such assets as follows:

- 1. The Trustee shall set aside the sum of five hundred thousand (\$500,000) dollars and all interests received or owned by the trust in (i) the residence located at 10 Mountain View, Lake Side, New Jersey 07777, (ii) the time share(s) located at Savannah, Georgia, and known as Time Share 1 and (iii) the time share(s) located at Charleston, South Carolina, and known as Time Share 2, together with all interests in any insurance policies relating thereto, and shall hold the same in trust pursuant to the provisions of Article V hereof.

The aforesaid sum of five hundred thousand (\$500,000) dollars shall be reduced, dollar for dollar, by any sums set aside pursuant to other provisions of this Agreement or the Grantor's Last Will and Testament, or pursuant to provisions in the Last Will and Testament of the Grantor's wife, JANE SMITH, or in any trust established by her during her lifetime, it being the Grantor's intention that no more than five hundred thousand (\$500,000) dollars in the aggregate shall be set aside in the trust or trusts that shall hold the interests in the aforesaid residence and time shares.

- 2. The remainder of the assets received by the Trustee, after satisfaction of the allocation in paragraph 1 hereof, shall be paid over and distributed to those of the Grantor's children, KATHLEEN SMITH, NANCY SMITH and ELLEN SMITH, who shall survive the Grantor, and to the descendants surviving the Grantor of any such child of his who shall predecease him, per stirpes; provided, however, that any sums thus payable to any descendant of a deceased child of the Grantor who shall be under the age of thirty (30) years at the time of the Grantor's death, shall be held by the Trustee, hereinafter named, as a separate trust for the benefit of such person pursuant to the provisions of Article VI hereof. In determining the assets to be allocated to the aforesaid distributions, there shall be allocated to the distribution to KATHLEEN (or her descendants if she shall not survive the Grantor) all of the Grantor's interest, if any, in a certain agreement among the Grantor, his wife, JANE SMITH, his daughter, KATHLEEN SMITH, and his son-in-law, JOSEPH PERRY, regarding property located at 12 Island Drive, Honolulu, Hawaii, with the value of such interest to be determined by the executors or administrators of the Grantor's estate.

- C. Anything in this Article II to the contrary notwithstanding, any assets received by the Trustee as a result of a disclaimer by the Grantor's wife, JANE SMITH, shall be held as a separate trust for JANE's benefit and administered as if JANE survived the Grantor, notwithstanding any contrary statutory provisions governing the distribution of disclaimed property, pursuant to the provisions of Article IV hereof.

- D. If the Grantor and his wife, JANE SMITH, shall die at the same time, within one hundred twenty (120) hours of each other or under such circumstances that the order of their deaths cannot be determined with certainty, then for all purposes of this trust agreement, or otherwise, JANE shall be deemed to have survived the Grantor.

### **ARTICLE III**

The Trustee shall administer the assets required to be held as a separate trust hereunder for the benefit of the Grantor's wife, JANE SMITH, pursuant to subarticle A of Article II hereof as follows:

A. Until the death of the Grantor's wife, JANE SMITH:

1. The Trustee shall pay to JANE, or apply for her benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, JANE shall have the right, exercisable at any time and from time to time, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall deem reasonably necessary to provide for her health, maintenance and support. If, in the judgment of the Trustee, other than JANE, she is incapable of exercising such right, such Trustee may exercise such right on JANE's behalf while such incapacity shall exist. In the exercise of such right by the Trustee, he shall consider that it is the Grantor's primary intention that JANE, for as long as she shall live, shall continue to enjoy the same standard of living that she enjoyed at the time of the Grantor's death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, JANE shall have the absolute right, exercisable only during the last ten (10) days of each calendar year, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year. The right contained in this paragraph shall apply only if the election mentioned in subarticle C of this Article III shall not have been made as to any part of the trust. If such election shall have been made as to part, but not all, of the trust, and if the Trustee shall have separated the trust as authorized in said subarticle C, then such right shall apply with respect to the separate trust consisting of the portion with respect to which the election was not made.

2. It is the Grantor's intention that JANE shall have substantially that degree of beneficial enjoyment of this trust during her life which the principles of the law of trusts applicable in the State of New Jersey accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Accordingly, the Trustee shall so manage this trust as to produce for JANE a distributable income consistent with the value of the principal of the trust and

its preservation, and shall not retain as principal thereof any assets which shall not be productive of income unless she shall consent thereto which consent, if granted, can be revoked at any time. No powers, rights or discretions granted to the Trustee hereunder shall be construed in such a way as to deprive JANE of said beneficial enjoyment of the trust.

3. JANE shall have the right to disclaim, or to renounce, at any time, any one or more of the rights, powers or options contained in this subarticle A relating to distribution or use of principal of the trust to her or for her benefit.
  4. The provisions of Article IX hereof shall not apply to prevent the sale by a remainderman of the trust of his or her remainder interest in the trust to the trust or to JANE, nor shall they apply to prevent assignment by JANE of all or part of her interest in trust income to one or more organizations described in both of Sections 170(c) and 2522(a) of the Code.
- B. Upon the death of the Grantor's wife, JANE SMITH, any income of the trust that shall then be accrued but not received, or received but not distributed, shall be paid over and distributed to JANE's estate and JANE shall have the right to appoint the then remaining principal of the trust to and among such of the Grantor's descendants as she shall desire, and the Trustee shall transfer and set over such principal in accordance with any exercise of such power. This power of appointment may be exercised by JANE by (and only by) specific provision in her Last Will and Testament making reference hereto, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise, as she shall desire, but may not be exercised for the purpose of discharging a legal obligation (whether for support or any other purpose) of JANE or for her pecuniary benefit. Any portion of the principal of the trust remaining at the date of death of JANE which she shall not have validly appointed by her Last Will and Testament as above provided shall be paid over and distributed as set forth in subarticle B of Article II hereof, as if JANE had predeceased the Grantor and he had died at the time of her death.
- C. With respect to the trust hereinabove created for the benefit of the Grantor's wife, JANE SMITH, it is the Grantor's expectation that the executors or administrators of his estate shall make the election provided for in Section 2056(b)(7) of the Code, so that so much of said trust as shall be required to decrease the Grantor's taxable estate for Federal or State estate (but not inheritance) tax purposes to the maximum amount possible without requiring payment of any such taxes shall qualify for the Federal estate tax marital deduction, but his executors or administrators shall have the discretion, not to do so, in whole or in part. If the executors or administrators of the Grantor's estate shall make the aforesaid election as to part, but less than all, of said trust, the Trustee may, but shall not be required to, separate said trust into two separate trusts, each to be administered in accordance with the foregoing provisions, with one separate trust consisting of the portion of said trust with respect to which such election was made and the other separate trust consisting of the portion with respect to which the election was not made. Assets allocated to each such trust shall be valued for such purpose as of the date of allocation.

In addition, if the executors or administrators of the Grantor's estate shall make the election provided for in said Section 2056(b)(7) with respect to any portion of the trust hereinabove created, or any separate trust created therefrom, then it is the Grantor's expectation that his executors or administrators also shall consider making the election provided for in Section 2652(a)(3)(A) of the Code to treat so much of such portion, or of such separate trust, as shall be appropriate, for purposes of the generation-skipping transfer tax, as if the election provided for in said Section 2056(b)(7) had not been made, so that the Grantor's unused GST exemption may be allocated to such portion or such separate trust, but his executors or administrators shall have the discretion not to do so, in whole or in part. The Trustee is hereby authorized to further separate such portion or such separate trust, in the manner set forth above, to facilitate said election and allocation of GST exemption.

- D. If, following the death of Grantor's wife, JANE SMITH, the Trustee shall receive notification from the executors or administrators of her estate that they intend to recover from the person or persons receiving the assets of the trust, or any separate trust created therefrom, all or part of the increase in Federal and State estate taxes payable by her estate due to the inclusion in her gross estate for Federal and State estate tax purposes of all or part of the value of such trust(s) upon her death, pursuant to Section 2207A of the Code and applicable State law, then (i) to the extent permitted by law, the total amount to be so recovered from all such trusts shall first be paid out of the trust(s) for which the election provided for in Section 2652(a)(3)(A) of the Code shall not have been made, and any balance shall then be paid out of the trust(s) for which the election provided for in said Section 2652(a)(3)(A) shall have been made, and (ii) prior to making any distribution, division or other disposition of the then remaining principal of such trust(s), the Trustee may, but shall not be required to, lend to such executors or administrators, or advance to them, so much or all of the amount to be so recovered as the Trustee, in his discretion, shall deem advisable. Such loan or advancement need not await the actual payment by JANE's estate of its Federal and State estate taxes, and in the exercise of his discretion hereunder the Trustee may take into account the best interests of JANE's estate and the recipients thereof, including any expense or loss it or they may incur as a result of having to pay such taxes without the benefit of such loan or advancement. The Trustee shall be entitled to rely upon the written advice of the executors or administrators of JANE's estate attesting to both the amount that they are entitled to recover (which may be an estimate) and the reasons why such loan or advancement is requested, without the necessity of verifying the same.
- E. With respect to any qualified retirement plan, any qualified retirement annuity or any individual retirement account, as defined in Sections 401(a), 403(a) or (b) and 408(a) of the Code (hereinafter referred to individually and collectively as a or the "retirement fund"), payable to the trust created hereunder for the benefit of the Grantor's wife, JANE SMITH:
1. The Trustee shall withdraw from the retirement fund, during each year, not less than the greater of (i) all of the income of the retirement fund or (ii) the minimum required distribution pursuant to the applicable provisions of Sections 401(a)(9) and/or 408(a)(6) of the Code and the Regulations thereunder.

2. The Trustee shall treat as income of the trust (to be distributed to JANE at least quarterly, as set forth in the trust) both (i) the income earned on the undistributed portion of the retirement fund and (ii) the income earned by the trust on the distributed portion of the retirement fund, notwithstanding the treatment of such earned income under any law concerning the determination of income and principal for trust accounting purposes.
3. The Trustee (i) shall allocate to principal of the trust all distributions from the retirement fund not allocated to income as provided in paragraph 2 hereof, and (ii) shall charge against the principal of the trust all of the trust's expenses normally allocated to principal under applicable law, including any income taxes payable on any distribution from the retirement fund allocated to principal.
4. The Trustee, upon the death of JANE, shall withdraw the undistributed balance of the retirement fund not less rapidly than required by applicable law.
5. In addition to the foregoing, the Trustee shall have the right
  - (i) to increase or accelerate the payment of the retirement fund,
  - (ii) to direct the investments of the retirement fund,
  - (iii) to elect against having income tax withheld on any distribution from the retirement fund,
  - (iv) to demand compensatory distributions from the retirement fund if income tax is nevertheless withheld at the fund level, and
  - (v) to exercise all other rights to which the Trustee may be entitled as beneficiary of the retirement fund.
6. JANE shall have full power to compel the Trustee to follow the aforesaid directions. She shall also have the right to require that the Trustee direct the trustee, custodian or holder of the retirement fund to make the assets of the fund productive of income or to convert such assets into productive assets, so that her beneficial enjoyment of said fund shall be identical to her beneficial enjoyment of the trust, as hereinabove set forth.
7. It is the Grantor's expectation that if the executors or administrators of his estate shall make the election provided for in Sections 2056(b)(7) and 2652(a)(3)(A) of the Code with respect to any portion of the trust hereinabove created, then they shall consider making the same election for the retirement fund, so that it too shall qualify for the Federal estate tax marital deduction and the Grantor's unused GST exemption may be allocated to the applicable portion of the retirement fund, to the extent appropriate and consistent with either such elections that may be made with respect to the trust, as set forth in subarticle C hereof. The provisions of subarticles C and D hereof shall likewise apply to the retirement fund, to the extent appropriate and consistent with the Grantor's intention as set forth in paragraph 8 hereof.



8. It is the Grantor's intention by use of the foregoing provisions to qualify the trust and the retirement fund for the Federal estate tax marital deduction by complying with the requirements of Revenue Rulings 2000-2 and 2006-26 and Sections 401(a)(9) and/or 408(a)(6) of the Code and the Regulations thereunder, and the Grantor hereby directs that said provisions and any beneficiary designation with respect to said retirement fund be interpreted in a manner consistent with such intention.

#### **ARTICLE IV**

The Trustee shall administer the assets required to be held as a separate trust hereunder for the benefit of the Grantor's wife, JANE SMITH, pursuant to subarticle C of Article II hereof as follows:

- A. Until the death of the Grantor's wife, JANE SMITH, the Trustee shall pay to her, or apply for her benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, JANE shall have the right, exercisable at any time and from time to time, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall deem reasonably necessary to provide for her health, maintenance and support. If, in the judgment of the Trustee, other than JANE, she is incapable of exercising such right, such Trustee may exercise such right on JANE's behalf while such incapacity shall exist. In the exercise of such right by such Trustee, he shall consider that it is the Grantor's primary intention that JANE, for as long as she shall live, shall continue to enjoy the same standard of living that she enjoyed at the time of the Grantor's death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, JANE shall have the right, exercisable only during the last ten (10) days of each calendar year, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year.

- B. Upon the death of the Grantor's wife, JANE SMITH, the then remaining principal and undistributed income of the trust shall be paid over and distributed as set forth in subarticle B of Article II hereof, as if JANE had predeceased the Grantor and he had died at the time of her death.

#### **ARTICLE V**

The Trustee shall administer the assets required to be held as a separate trust hereunder pursuant to paragraph 1 of subarticle B of Article II hereof as follows:

A. Until the death of the last to die of the Grantor's children, KATHLEEN SMITH, NANCY SMITH and ELLEN SMITH (each a "beneficiary" and together the "beneficiaries"), and while the trust shall hold an interest in a residence and/or time share(s) (the "properties"):

1. The beneficiaries and their descendants shall have the right to use the properties, at such times as the Trustee, in his discretion, shall determine. The beneficiaries shall not be required to post bond or other security with respect to said properties. The Trustee shall pay all expenses of maintenance and upkeep incurred in connection with said properties, including, but not limited to, utilities, taxes, insurance, repairs and mortgage interest and amortization. In addition, the Trustee shall pay (i) all reasonable expenses of travel of the beneficiaries and their descendants to and from the properties and (ii) all reasonable expenses incurred by the beneficiaries while using the properties, as the Trustee, other than the beneficiary thereof, shall determine. All such expenses shall be paid out of the income and/or principal of the trust to the extent that the trust shall hold assets in addition to the properties. If the trust shall not hold such additional assets, then the Trustee shall make whatever arrangements he shall deem advisable (including, but not limited to, renting or mortgaging the properties or charging the beneficiaries and their descendants for their use of the properties) for the purpose of paying such expenses.
2. Subject to paragraph 3 hereof: The consent of a majority of the beneficiaries shall be required for the sale of any interest in the properties. Such majority also shall have the right, at any time, to direct the Trustee to sell any interest in the properties and to invest the proceeds of such sale in the purchase or construction of a new residence or time share, except that if any beneficiary shall contribute other assets in order to acquire or construct said new residence or time share, then he or she shall have a fee interest in the portion of said new residence or time share acquired or constructed with such assets.
3. Each purchaser in the sale of any interest in the residence located at 10 Mountain View, Lake Side, New Jersey 07777 must be a descendant of the Grantor's grandfather, HOWARD SMITH, or an entity owned by, or created for the benefit of, only such descendant(s), unless such purchaser is purchasing all of the other ten (10) residences located in the lake colony.
4. If a majority of the beneficiaries shall consent to the sale of any interest in the properties, then the beneficiaries shall have the first opportunity to purchase such interest at its fair market value as determined by the Trustee. This right is personal to the beneficiaries and may not be exercised by their descendants, heirs, successors, executors, administrators or assigns. Said right shall be exercised by delivering to the Trustee an instrument in writing to that effect within thirty (30) days after the majority of the beneficiaries shall give their consent.

In the event more than one beneficiary shall exercise the aforesaid right with reference to any interest in the properties, then such interest shall be allocated equally among

such beneficiaries. If no beneficiary exercises his or her right to purchase the interest, then said interest shall be sold at such time and at such price determined to be reasonable by the Trustee.

- B. Upon the first to occur of (i) the death of the last to die of the Grantor's children, KATHLEEN SMITH, NANCY SMITH and ELLEN SMITH, or (ii) the sale of all of the properties without the investment of the proceeds in the purchase or construction of a new residence or time share, the Trustee shall pay over and distribute the then remaining principal of the trust (excluding any portion of any new residence and/or time share in which any beneficiary shall have a fee interest), together with any undistributed income thereof, to those of the Grantor's children, KATHLEEN SMITH, NANCY SMITH and ELLEN SMITH, who shall then be living, and to the then living descendants of any such child of the Grantor who shall then be deceased, per stirpes; provided, however, that any sums thus payable to any descendant of a deceased child of the Grantor who shall then be under the age of thirty (30) years, shall be held by the Trustee, hereinafter named, as a separate trust for the benefit of such person pursuant to the provisions of Article VI hereof.

## **ARTICLE VI**

The Trustee shall administer the assets required to be held as a separate trust hereunder for the benefit of a descendant of a deceased child of the Grantor, pursuant to other provisions of this Agreement, as follows:

- A. Subject to subarticle D hereof, until the attainment of the age of twenty-one (21) years by the beneficiary of the trust, the Trustee, at any time or times that he shall deem it advisable, may apply for the benefit of the beneficiary, or pay over to him or her, so much, all or none of the net income of the trust as the Trustee, in his discretion, shall deem advisable.
- B. From and after the attainment of the age of twenty-one (21) years by the beneficiary of the trust, and until the termination thereof, the Trustee shall apply for the benefit of the beneficiary, or pay over to him or her, all of the net income of the trust, at convenient intervals, but not less often than quarter-annually.
- C. Subject to subarticle D hereof, prior to the distribution of all of the principal of the trust, the Trustee, at any time or times that he shall deem it advisable, may apply for the benefit of the beneficiary thereof, or pay over to him or her, such sum or sums out of the principal of the trust (including the whole thereof) as the Trustee, in his discretion, shall deem advisable.
- D. While a parent of the beneficiary shall be serving as a Trustee, in the exercise of his discretion in subarticles A and C hereof, the Trustee shall have the broadest latitude and independence; for this reason, no standards or guides relating to the exercise of such discretion shall be applicable, except that no payment or application of trust income or principal shall be made which shall have the purpose or effect of discharging a legal obligation (whether for support or any other purpose) of such parent, or which shall be for

his or her benefit. The standards of invasion contained in subarticle B of Article VIII hereof shall not apply to such trust while a parent of the beneficiary shall be serving as a Trustee hereof.

- E. Upon the attainment of the age of twenty-five (25) years by the beneficiary of the trust, or upon the establishment of the trust if he or she shall then have attained the age of twenty-five (25) years but shall not then have attained the age of thirty (30) years, the Trustee shall pay over and distribute to him or her one-half (1/2) of the then remaining principal of the trust; and upon the attainment of the age of thirty (30) years by the beneficiary, or upon the establishment of the trust if he or she shall then have attained such age, the Trustee shall pay over and distribute to him or her all of the then remaining principal of the trust (together with all undistributed income), whereupon the trust shall terminate.
- F. If the beneficiary of the trust shall die before attaining the age of thirty (30) years, the principal of the trust remaining at his or her death (together with all undistributed income) shall be paid over and distributed
- (i) to his or her then living descendants, per stirpes, and in default of such descendants, the same shall be paid over and distributed
  - (ii) to those of the beneficiary's siblings who shall then be living and to the then living descendants of any sibling of the beneficiary who shall then be deceased, per stirpes; and in default of such siblings and descendants of a deceased sibling,
  - (iii) to the then living descendants of that child of the Grantor who shall be the ancestor of the beneficiary, per stirpes, and in default of such ancestor's descendants,
  - (iv) to those of the Grantor's children, KATHLEEN SMITH, NANCY SMITH and ELLEN SMITH, who shall then be living and to the then living descendants of any such child of the Grantor who shall then be deceased, per stirpes; provided, however, that: (i) any sums thus payable to any descendant of a deceased child of the Grantor for whose benefit a trust created hereunder shall then still be in existence shall be added to the principal of such trust, and shall be held and distributed as part thereof, and (ii) any sums thus payable to any descendant of a deceased child of the Grantor who shall then be under the age of thirty (30) years and for whose benefit there shall not then be in existence a trust created hereunder, shall be held in trust for the benefit of such person pursuant to the provisions of this Article VI.

## **ARTICLE VII**

Anything in this Agreement to the contrary notwithstanding, any trust created hereunder which shall be or become subject to a rule against perpetuities and which, by its terms, shall not have terminated on or before the date which is twenty-one (21) years after the death of the last survivor of the Grantor, his wife, JANE SMITH, and those of the Grantor's descendants who shall survive him, shall nevertheless terminate on such date, and the principal and undistributed income thereof shall thereupon be paid over and distributed free of trust to the then current income beneficiary thereof, or the current income beneficiaries thereof, in equal shares, if more than one.

## **ARTICLE VIII**

- A. Whenever, pursuant to the terms of this Agreement, the Trustee is directed to hold any property in trust, the Trustee shall hold the same; shall manage, administer, invest and reinvest the principal of the trust; shall collect and receive the income thereof; shall pay any and all expenses incident to the operation of such trust; and shall distribute the net income and principal thereof in the manner set forth.
- B. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, such portions of the income of the trust, and/or such sums out of the principal of the trust, as the Trustee shall deem advisable, the Trustee may make such payment or application solely to provide for such beneficiary's health, maintenance, support and education (including undergraduate and postgraduate education). In the case of income, the Trustee shall add to the principal of the trust any such net income not so expended in any fiscal year of the trust.
- C. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, portions of the income and/or principal of the trust, the Trustee may take into consideration, but shall not be required to do so, any other income or property which may be available to such beneficiary, including the support which a spouse or parent does provide, or is obligated to provide.
- D. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay or to apply income or principal of a trust to or for the benefit of a minor, the Trustee may, in his discretion, make such payment or application by expending the same directly for the benefit of such minor, or by paying the amount so to be paid or applied to the parent or legal guardian of such minor, or to the person with whom such minor may reside, or to a person standing in the place of a parent to such minor, or to a Custodian for such minor designated by the Trustee under an applicable Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, or directly to such minor, or otherwise, as the Trustee may, from time to time, deem expedient, and the receipt of such minor or such other payee shall be a full acquittance to the Trustee to the extent of such payments.

The provisions of this subarticle D shall also apply, to the extent applicable, whenever the Trustee is given discretion to pay or apply income or principal of a trust to or for the benefit of a person who, in his judgment, is incapable of adequately managing such income or principal.

- E. Whenever, pursuant to the terms of this Agreement, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to himself or herself or for his or her own benefit, and the purposes for which such payment or application can be made are not limited to such person's reasonable needs relating to health, maintenance, support and education, such purposes shall be deemed to be so limited, anything contained in this Agreement to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person to, or on whose behalf, income and/or principal can be so paid or applied, such other person or persons may exercise the

discretion granted without reference to the limitations herein set forth. This subarticle shall not apply, however, to a right of withdrawal if the amount which could be withdrawn is limited so that it does not exceed the greater of the dollar or percentage limitation contained in Section 2514(e) of the Code.

- F. Whenever, pursuant to the terms of this Agreement, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to or for the benefit of any other person, then the purposes for which such payment or application can be made shall be limited to those which do not relieve the person having such discretion of a legal obligation, whether for support or any other purpose, anything contained in this Agreement to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person whose legal obligation could be relieved by such payment or application, such other person or persons may exercise the discretion granted without reference to the limitation herein set forth.
- G. Whenever, pursuant to the terms of this Agreement, there shall be more than one beneficiary of any one trust, and the Trustee is given discretion to utilize income and/or principal of such trust for their benefit, the Trustee may pay or apply such income and/or principal to or for the benefit of such beneficiaries equally or unequally, or to or for the benefit of any of them to the exclusion of others (subject only to such preference, if any, of one beneficiary over any other as may be specifically stated under the terms of such trust), so that utilization of trust income and principal among such beneficiaries according to their respective needs shall take precedence over equal distribution thereof.

## **ARTICLE IX**

The interest of any beneficiary or remainderman in any trust created hereunder, either in income or in principal, or in both, shall not be subject to sale, assignment, pledge or transfer in any manner, and such interest shall not be liable or subject in any manner while in the possession of the Trustee for the debts, contracts, obligations, liabilities, engagements, undertakings or torts of any such beneficiary or remainderman. No beneficiary or remainderman shall have the power in any manner to anticipate, charge or encumber his or her interest, either in income or in principal, or in both.

## **ARTICLE X**

For all purposes under this instrument, whether for the determination of relationships or otherwise:

- A. Adopted children of the Grantor shall be considered to have, and shall be given, the same status as natural-born children and adopted children of any other person shall be considered to have, and shall be given, the same status as natural-born children only if the child was a minor when adopted and lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent. All references in this Agreement to children or descendants of the Grantor or any other person shall include, and the Grantor directs

that this Agreement shall be effective notwithstanding the fact that there shall be, any child, children, descendant or descendants of the Grantor or any other person born or adopted after the date of execution hereof.

- B. No one claiming to be a natural-born descendant of another person shall be considered as such unless the claimant and the purported parent had established a child-parent relationship prior to the time in question and they had lived together, while the claimant was a minor, as child and parent in the same household. The purpose of this paragraph is to prevent someone from successfully claiming to be a person's child although never acknowledged to be such and it shall apply notwithstanding any provision of law to the contrary.

## **ARTICLE XI**

Any portion of the principal of any trust created hereunder vesting in absolute ownership in a person who is a minor and/or who, in the judgment of the Trustee, is incapable of adequately managing such assets, may be held for the benefit of such person by the Trustee until such minor shall attain majority and/or, in the judgment of the Trustee, such incapacity shall cease to exist. During such period, the Trustee so holding such property shall have all the powers and authority herein granted to him with respect to any trust created hereunder; shall not be required to furnish bond or other security; and may pay or apply to or for the benefit of such person, in any applicable manner set forth in subarticle D of Article VIII hereof, such portions, or all, of the property so held, and/or the income earned thereon, as he shall deem to be in the best interest of such person, accumulating as principal any income not so expended in any year. The authority granted to the Trustee hereunder shall be in addition to, and not in lieu of, any other alternative available to him with respect to the administration and distribution of such portion of the principal of the trust, and it shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property, or of such accumulations of income, if any, by such person, nor shall it prevent the absolute vesting thereof in such person.

## **ARTICLE XII**

- A. The Grantor, from time to time, may cause all or part of the proceeds of a policy or policies of insurance on his life, or other death benefits, to be made payable to the Trustee. Unless otherwise specified in the appropriate beneficiary designation, such policies or death benefits, and the proceeds thereof made payable to the Trustee, shall be subject to all of the terms and conditions of this Agreement in the same manner as if they had been made payable hereto at the time of the making and execution hereof. All references herein to insurance policies shall be deemed to include any insurance policy or policies, or death benefit, the proceeds of which are hereafter made payable to the Trustee, or may be payable to the Trustee upon the occurrence of certain contingencies.
- B. The Grantor retains, and during his lifetime shall have the sole right to exercise, any and all of the rights, benefits, elections, privileges, options and other incidents of ownership of whatsoever kind appertaining to any insurance policy on his life subject to this Agreement,

without in any way first securing the consent of the Trustee thereto, including without limitation the right to change beneficiaries thereof, from time to time; the right to transfer ownership thereof; and the right to surrender the same and to receive all dividends and other values thereunder prior to or upon surrender.

- C. With respect to the insurance policies made payable to the Trustee, it is the intention of the Grantor that this trust shall be operative only with respect to such portion of the proceeds thereof as may be due and payable to the Trustee at the time of the death of the Grantor, or thereafter, after deduction of all charges against such policy or policies, by way of advances, loans, or otherwise. Neither the Trustee nor any beneficiary hereunder shall have any claim against the estate of the Grantor for any amounts of life insurance proceeds made payable to the Trustee which are applied against any indebtedness of the Grantor collaterally secured by an assignment of the Grantor's said life insurance.
- D. The Trustee shall have no obligation whatsoever with respect to the payment of premiums, dues, assessments or other charges in connection with any life insurance policies. The Trustee shall be responsible for the proceeds of policies only when as and if collected, or paid to him, and he shall have no responsibility or liability whatsoever to anyone if for any reason any policy or policies shall be uncollectible in whole or in part.
- E. The Trustee shall have, and is hereby given, full power and authority to make all necessary proofs of death under any life insurance policies and to execute and deliver any and all receipts for the proceeds thereof. Except at his own option, the Trustee shall not enter or maintain any litigation to enforce payment of any life insurance policy or policies until he shall have been indemnified to his satisfaction against all expenses and liabilities to which he may, in his judgment, be subjected, or in which he may become involved, by such action on his part. The Trustee, however, may utilize the proceeds of any life insurance policy to meet expenses incurred in connection with enforcing payment of the proceeds of any other policy.
- F. The Trustee is authorized to compromise and adjust claims arising out of any insurance policy or policies upon such terms and conditions as he may deem advisable, and the decision of the Trustee in that regard shall be binding and conclusive upon all persons interested therein.
- G. The Trustee is authorized and empowered, in his sole and absolute discretion, to exercise any and all rights granted to him as beneficiary of said life insurance policies.

### **ARTICLE XIII**

In the administration of the trusts created hereunder, the Trustee shall have the following powers, in addition to all powers vested in him by law, which in each and every instance may be exercisable by him at such times (if at all), in such manner, and in accordance with such criteria, as he, in his discretion, shall deem appropriate:

- A. To retain any investment and property which may be received by him for such length of time as to him may seem proper, without liability by reason of such retention.



- B. To make such investments and reinvestments of principal and accumulated income as he may consider proper, so long as the requirements (other than diversification) of any applicable Prudent Investor Act (or equivalent) are satisfied. The Trustee may make his decision regarding diversification based upon such criteria as he, in his sole discretion, shall deem advisable, including, but not limited to, tax considerations, and the Trustee shall incur no liability of any kind as a result of his decision whether or not to diversify. Any such investments may be held in bearer form, or in the name of the Trustee, or in the name of a nominee or nominees.
- C. To retain cash or the proceeds from the sale of any assets until such time or times as he deems it appropriate to invest such funds.
- D. With respect to any securities forming part of any trust created hereunder: To exercise all voting rights, either in person or by proxy; to enter or refuse to enter into any dissolution, liquidation, consolidation, recapitalization, reorganization, merger or other change in capital structure, and in connection therewith, to make exchanges of securities and to enter into agreements on such terms and conditions as he may deem advisable; and to enter into voting trusts and agreements with other stockholders, and other holders of securities, and the corporations which shall have issued such stock or securities, or any one or more of such persons, for such purposes and for such period of time (whether or not the same extends beyond the actual or probable duration of the trusts created hereunder), and upon such terms and conditions as he shall deem advisable.
- E. To enter into any lease or leases, without application to any court, of any or all real or personal property held hereunder, for such period (whether or not the same extends beyond the actual or probable duration of the trusts created hereunder), and upon such terms and conditions as he shall deem advisable.
- F. To borrow money or property, either upon the security of any or all of the assets of the trusts created hereunder, or without security or otherwise, upon such terms and conditions and for such purposes in connection with the administration of the trusts as to him shall seem proper.
- G. To grant, bargain, sell, exchange, mortgage, grant options to buy, or otherwise dispose of any or all real or personal property, or both, at any time held hereunder, either at public or private sale, for cash or on credit, or partly for cash and partly on credit, upon such terms and conditions, in such manner and for such purposes, and either in whole or in part, as he may deem proper; and to make, execute, acknowledge and deliver good and sufficient instruments for that purpose. No purchaser, upon any sale or other disposition, shall be bound to see to the application of the monies or property arising therefrom or to inquire into the validity, expediency or propriety of any such sale or disposition.
- H. To maintain and insure all real and personal property, and to develop, repair, remodel, alter, build on, improve, rebuild or reconstruct any or all real property, either by building, constructing or erecting new buildings or by repairing, remodeling, altering, rebuilding or reconstructing existing buildings, for such purposes, to any and every extent, and in such

manner as he may deem proper, and to borrow monies in connection therewith upon the security of any such real property and/or of any or all other assets of the trusts.

- I. To foreclose any mortgage or mortgages, and to take title to the property or any part thereof affected by such mortgage or, in his discretion, to accept a conveyance of any property in lieu of foreclosure, and to collect the rents and income therefrom, either through a receiver or directly, and to protect such property against foreclosure under any mortgage that shall be a prior lien on said property, or to redeem from foreclosure under any such mortgages, as well as to protect such property against nonpayment of taxes, assessments or other liens.
- J. To adjust, compromise or arbitrate claims or demands of, or against, the trusts created hereunder, whether such claims are due or shall become due in the future, including without limitation any overpayment or refund claim, or any deficiency, additional assessment or other liability, relating to any Federal, state, county, municipal or other tax, irrespective of the nature thereof.
- K. To join with any other person, persons, nominee or nominees in the incorporation of any and all corporations, for such purposes, for such periods of time, and upon such terms and conditions respecting the organization, operation and maintenance thereof (including not by way of limitation, the adoption of bylaws, rules and regulations) as he shall deem advisable, and to pay for the stock of any such corporation with any or all of the assets of the trusts created hereunder, and to contribute to the capital of such corporation, or to lend to it, any or all of the assets of the trusts created hereunder.
- L. To join with any other person, persons, nominee or nominees in any partnership, whether general or limited, or in any joint venture, limited liability company or other business association, for such purposes, for such period of time, and upon such terms and conditions, as he shall deem advisable, and to contribute to the capital of any such partnership, joint venture, limited liability company or other business association, or to lend to it, any or all of the assets of the trusts created hereunder.
- M. To engage in and operate any business for such purposes, in such manner and for such periods of time as he shall deem advisable, and to apply any and all assets of the trusts created hereunder to the conduct of any such business.
- N. To grant options and execute option agreements with respect to the sale or lease of property held by him hereunder, without obligation to repudiate the same in favor of better offers.
- O. To assign one or more shares of the stock of any corporation which may at any time be held by him hereunder to himself, or to a nominee or nominees, for the purposes of qualifying such person to act as a director of the corporation, the stock of which is so assigned.
- P. To engage such attorneys, investment counsel, clerks, employees, agents, accountants, brokers, officers, architects, contractors, subcontractors, surveyors, and such other persons, firms or corporations, as he shall deem necessary or helpful in connection with the administration of the trusts created hereunder, at such wages, fees, compensation, remuneration, commission rates, prices, consideration or otherwise, as he shall deem proper.

- Q. To set up reasonable reserves for depreciation and/or depletion.
- R. To execute and deliver all documents, contracts and instruments necessary or advisable in connection with the administration of the trusts created hereunder.
- S. To make and retain joint investments and investments of undivided interests in any property, real or personal, whether or not all the property be held hereunder, and whether or not the provisions under which such other property is held are similar, and to administer, or to permit to be administered, all or any part of such property in one or more consolidated funds in which the same shall have joint or undivided interests without any physical division of the investments, but such consolidation of investments shall not operate to merge the legal or beneficial interests in such separate trusts, parts or shares; and to hold and administer any property in a common trust fund administered by any trust institution serving as a Trustee.
- T. To purchase any improved or unimproved real property, at public or private sale, for cash or on credit, or partly for cash and partly on credit, and/or subject to any existing mortgage or mortgages, for such purposes and upon such terms and conditions as he shall deem advisable.
- U. To mortgage or pledge any or all real or personal property at any time held hereunder, and to enter into construction mortgages or purchase money mortgages respecting any and all real property, for such purposes and upon such terms and conditions as he shall deem advisable.
- V. To continue to hold and administer the interest in any business of which the Grantor may be the owner, whether such ownership be as an individual, partner, joint venturer, member or stockholder, or otherwise, or to engage in and operate any business, for such purposes, in such manner, and for such period of time, as he shall deem proper, and to apply to the conduct of any such business any or all of the assets of the trusts created hereunder.
- W. To dissolve or to participate in the dissolution of any partnership, joint venture or limited liability company in which the Grantor shall have an interest or in which the Trustee, in the administration of the trusts created hereunder, shall hold an interest, or of which he shall become a member, whether such dissolution be by agreement, operation of law, or by the judgment of any court, and to enter into any agreements with respect thereto, upon such terms and conditions as he shall deem proper.
- X. Without in any way limiting the generality of the foregoing powers, to sell any interest in any business which may come into his hands as part of any trust created hereunder, at such time or times, for such amount or amounts, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions, as he shall deem proper.
- Y. To lend money to, and to purchase as an investment for the trusts created hereunder from, the executors or administrators of the Grantor's estate, and/or the executors or administrators of the estate of the Grantor's spouse, and/or the Trustee of any trust created by the Grantor or the Grantor's said spouse, by deed or Will, any cash, stock, securities or other property, real, personal or mixed, constituting part of the Grantor's estate, or of the estate of the Grantor's said spouse, or constituting part of any such trust, at such prices, and upon such terms and conditions, as the Trustee, in his discretion, shall deem appropriate.

- Z. To allocate receipts and disbursements of any trust created hereunder between income and principal thereof in such a manner as the Trustee shall deem advisable, so long as the requirements of any applicable Principal and Income Act or equivalent are satisfied, except that during the lifetime of the Grantor's wife, JANE SMITH, no allocation or allocations shall be made with respect to any portion of any trust created hereunder which could prevent the same from qualifying for the Federal estate tax marital deduction.

#### **ARTICLE XIV**

In the administration of the trusts created hereunder, the Grantor directs that:

- A. In any case in which the Trustee is required to divide any trust created hereunder, or any portion thereof, into parts or shares, and/or is required to distribute the same, or any portion thereof, or any part or share into which the same shall have been divided, either to a single distributee, or to two (2) or more distributees, he, in his discretion, may make such partition, division or distribution wholly in kind or in money, or partly in kind or in money, and may distribute different property interests to the several distributees, and the choice and relative value of the property or money so distributed, partitioned or divided shall, in the absence of fraud or bad faith, be binding and conclusive on everyone interested therein, and he shall in no event be accountable for any error of judgment or discretion in exercising the power and authority herein conferred.
- B. The Trustee shall not be accountable for any loss which may occur to the trusts herein created as a result of the exercise of, or the refusal to exercise any of the powers or discretions vested in him, so long as such exercise or refusal to exercise is made in good faith.
- C. No loss whatever resulting to the trusts created hereunder, through the ownership or operation of any business by the Trustee, or as a result of the building, construction or erection by him of any building, improvements or structures, whether the same be carried on by a corporation, partnership, proprietorship, joint venture, limited liability company or otherwise, shall be chargeable against the Trustee personally.
- D. The Trustee may consult with counsel and shall be fully protected in any course of conduct taken in good faith in accordance with the advice of counsel.
- E. The Trustee shall not be disqualified from acting hereunder or from exercising any power granted herein because he may hold an interest in property in which any trust created hereunder shall also hold an interest, or be a creditor of any such trust, or be an employee or agent of, or the holder of an interest in, any business, sole proprietorship, partnership, joint venture, limited liability company, corporation, or otherwise, in which any trust created hereunder may hold an interest, or by reason of the fact that he may also be serving as executor or administrator of the Grantor's estate or the Trustee of any trust established under the Grantor's Last Will and Testament.

- F. If pursuant to any provisions of this Agreement a trust would be established to which any part of the Grantor's GST exemption (provided for in Section 2631 (a) of the Code) would be allocated (hereinafter referred to as a "GST Trust"), and if after such allocation the inclusion ratio of such trust for generation-skipping transfer tax purposes would not be zero, then the Trustee may, but shall not be required to, establish two separate trusts, each to be administered in accordance with the provisions applicable to the GST Trust, with one trust having an inclusion ratio of one and the other trust having an inclusion ratio of zero. Assets that would have constituted the GST Trust shall be allocated between the two separate trusts as necessary to establish the prescribed inclusion ratios, and shall be valued for such purpose as of the date of allocation.

In addition, if pursuant to any provisions of this Agreement any portion of any trust created hereunder is required to be added to the principal of any other trust created hereunder (such latter trust being hereinafter referred to as the "recipient trust") and if the inclusion ratios (for generation-skipping transfer tax purposes) of such trusts are not identical, then the Trustee, in lieu of making such addition, may, but shall not be required to, hold such portion in a separate trust, to be administered in accordance with the provisions applicable to the recipient trust.

In further addition, if pursuant to any provision of this Agreement a trust has been established that has an inclusion ratio of greater than zero and less than one, then the Trustee may, but shall not be required to, divide such trust into two separate trusts, provided that such division meets the definition of a "qualified severance" contained in Section 2642(a)(3) of the Code or Regulations promulgated pursuant thereto.

- G. The Trustee may disclaim all or part of any power or discretion held by the Trustee in a fiduciary capacity, and may determine whether or not such disclaimer shall be binding upon, and shall constitute a disclaimer by, any or all successor or substitute Trustees hereunder, without having to obtain court authorization for such disclaimer or determination.
- H. The Trustee may be employed and/or engaged in any capacity by, or render services to, any trust created hereunder, and/or may be employed and/or engaged by any corporation, proprietorship, joint venture, limited liability company, sole proprietorship or other entity in which any such trust may have an interest, and shall be entitled to receive and to retain (in addition to his remuneration for his services as Trustee herein) such compensation, perquisites and reimbursement of expenses in connection with such services, in such manner and upon such terms and conditions, as he, in his discretion, shall deem proper.
- I. The Trustee may delegate discretion relating to the investment and management of trust assets to an agent (including an entity affiliated with any trust institution serving as a Trustee) and may do so without liability for the decisions, actions, omissions, neglect, misconduct or default of such agent, provided that such agent was selected and retained with reasonable care, skill and caution. The Trustee may pay such agent reasonable compensation for his, her or its services. Notwithstanding any statute or rule of law to the contrary, such compensation (other than of a fiduciary serving hereunder) shall not reduce any statutory commissions or other fees payable to the Trustee.

- J. If more than one Trustee shall be serving, then any individual Trustee shall have the right, at any time and from time to time, to delegate to the other Trustees any or all of his or her powers as a Trustee hereunder, and to revoke such delegation, in whole or in part. Such delegation or revocation thereof shall be by a written instrument delivered to such other Trustees and shall specify the extent of such delegation or revocation. The written statement of the other Trustees as to whether any Trustee is acting or has delegated any or all of his or her powers to such other Trustees shall fully protect all persons dealing with any trust created hereunder.

In addition, the Trustees may agree among themselves, in writing, to have any or all of the documents required to be signed by them in connection with the administration of any trust created hereunder signed by less than all of them.

### **ARTICLE XV**

Except with respect to matters agreed to be undertaken by any life insurance company or companies which may issue any policy or policies which may become subject to this Agreement, the Grantor hereby relieves such companies from any responsibility to see to the execution and performance of the terms and conditions hereof.

### **ARTICLE XVI**

- A. In the event that any trust created hereunder shall contain real estate, interests in real estate or other assets located in a jurisdiction in which the Trustee shall not be authorized to act, then the Trustee shall have the right, by an instrument in writing, to appoint any individual or trust institution of his choice as successor Trustee(s) in such jurisdiction for the limited purpose of dealing with such real estate, interests in real estate or other assets located therein.
- B. Except as provided in the following paragraphs of this subarticle B, if the initial Trustee shall cease to serve, the Grantor's wife, JANE SMITH, and the Grantor's daughter, KATHLEEN SMITH, shall serve as his successors. If KATHLEEN shall fail or cease to serve as a Trustee, the Grantor's daughter, NANCY SMITH, shall serve as her successor.

The Grantor's children, KATHLEEN SMITH, NANCY SMITH and ELLEN SMITH, or the survivor(s) of them, shall serve as Co-Trustees of the trust administered pursuant to Article V hereof.

The surviving spouse of a deceased child of the Grantor shall serve as Trustee of any trust administered pursuant to Article VI hereof for the benefit of a descendant of such spouse and deceased child, but only if such spouse had been married to such child at the time of his or her death. If such surviving spouse of a deceased child shall fail or cease to serve as Trustee, the Grantor's remaining children shall serve as his or her successor(s). At the time of execution of this Agreement, the spouse of KATHLEEN SMITH is JOSEPH PERRY and the spouse of NANCY SMITH is DAVID LONG.

- C. If at any time the Grantor's wife, JANE SMITH, shall be serving as sole Trustee of any trust created hereunder, then she, by an instrument in writing filed with the trust records, shall appoint any individual(s) and/or trust institution of her choice as Co-Trustee(s) of such trust, to serve together with her.
- D. The last serving Trustee of a trust created hereunder shall have the right, by an instrument in writing filed with the trust records, or by Last Will and Testament, to appoint any individual(s) and/or trust institution of his or her choice as successor Trustee(s) of such trust.

If at any time there shall be no Trustee of a trust created hereunder and no successor Trustee shall have been appointed as otherwise set forth in this Article XVI, then the eldest living income beneficiary of the trust, by an instrument in writing, shall appoint any trust institution of his or her choice as successor Trustee of such trust, or, in the event that such beneficiary shall be incapacitated or a minor, the guardian(s) or personal representative(s) of such beneficiary shall make such appointment.

- E. After the death of the Grantor, if his wife, JANE SMITH, shall survive him:
  - 1. She shall have the right, at any time and from time to time, to remove one or more of the then serving individual Co-Trustees of any trust created hereunder and either (i) allow the successor Trustee, appointed in subarticle B hereof, to serve or (ii) appoint any individual(s) and/or, if no trust institution shall then be serving, any trust institution of her choice as successor Co-Trustee(s), to serve together with JANE.
  - 2. She shall have the right, from time to time, but in no event more than once during any three (3) year period, to remove any then serving trust institution as Co-Trustee of any trust created hereunder and appoint any trust institution of her choice as successor.
  - 3. Any successor Trustee(s) [other than NANCY SMITH] being appointed pursuant to this subarticle E (i) may not be related or subordinate [within the meaning of Section 672(c) of the Code] to the person making such appointment, and (ii) in the case of a trust institution, shall, at the time of the appointment, be administering trust assets valued at no less than two hundred fifty million (\$250,000,000) dollars.
- F. Each adult beneficiary, with respect to the trust administered pursuant to Article VI hereof for his or her own benefit, shall have the right, from time to time, but in no event more than once during any three (3) year period, to remove any then serving Trustee(s) of such trust (other than a child of the Grantor or a parent of the beneficiary) and, if no trust institution shall then be serving, appoint any trust institution of his or her choice as successor; provided, however, that such trust institution being appointed (i) may not be related or subordinate [within the meaning of Section 672(c) of the Code] to the person making such appointment, and (ii) shall, at the time of the appointment, be administering trust assets valued at no less than two hundred fifty million (\$250,000,000) dollars.

- G. The written instruments of appointment referred to in subarticles A, C and D hereof shall be executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey.
- H. The rights granted in subarticles E and F hereof may be exercised by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered to the then acting Trustee(s), either in person or by prepaid, registered or certified mail, which instrument shall advise such Trustee(s) of the appointed successor(s), if any, and shall state the effective date of removal, to be not less than thirty (30) days and not more than sixty (60) days after delivery. On such effective date, or as soon thereafter as may be reasonably feasible, the Trustee(s) being removed shall then turn over to the remaining Trustee(s) and/or appointed successor(s), if any, all funds then held by such Trustee(s) in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the Trustee(s) being removed, reserving therefrom such amount as such Trustee(s) shall deem reasonably necessary to cover the expenses of such removal, including any applicable termination commissions. The Trustee(s) being removed shall have the right to demand and receive, prior to releasing any funds to the remaining Trustees and/or appointed successor(s), if any, written approval of such Trustee's or Trustees' statements or final accounting by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect as an approved accounting pursuant to Article XIX hereof. In lieu thereof, such Trustee(s) may submit said statements or final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining Trustee(s) and/or appointed successor(s), if any, until such accounting, judicial or otherwise, shall have been approved.
- I. The initial Trustee named herein hereby waives all rights to all compensation for his services as Trustee, including commissions provided for by law. The compensation to any successor Trustee for services rendered hereunder shall be as set forth in a separate agreement between such Trustee and the Grantor or person appointing such Trustee, as the same shall be amended from time to time, or, in the absence of such agreement, (i) as provided under applicable law in the case of any individual Trustee and (ii) in the case of any trust institution, in accordance with its regularly published schedule of fees in effect at the time such services are performed.
- J. Any Trustee of any trust created hereunder shall have the right to resign at any time by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered, either in person or by prepaid, registered or certified mail, to the Grantor if he shall then be living, or, if he shall then be deceased, to the Co-Trustee(s), or, if none, to the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, to the guardian(s) or personal representative(s) of such beneficiary]. Such resignation shall be effective upon delivery of the aforesaid written instrument of resignation to the then serving Co-Trustee(s), or, if none, upon the qualification of



the resigning Trustee's successor(s), but in no event earlier than thirty (30) days after delivery of the aforesaid written instrument of resignation to the beneficiary or his or her guardian(s) or personal representative(s), whichever shall be applicable.

- K. On the effective date of the resignation of a Trustee pursuant to subarticle J hereof, or as soon thereafter as may be reasonably feasible, the resigning Trustee shall then turn over to the remaining Trustee(s) and/or appointed successor(s), all funds then held by the resigning Trustee in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the resigning Trustee, reserving therefrom such amount as such Trustee shall deem reasonably necessary to cover the expenses of such resignation, including any applicable termination commissions. The resigning Trustee shall have the right to demand and receive, prior to releasing any funds to the remaining Trustee(s) and/or appointed successor(s), written approval of the statements or final accounting of the resigning Trustee, by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect as an approved accounting pursuant to Article XIX hereof. In lieu thereof, the resigning Trustee may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining Trustee(s) and/or appointed successor(s) until such statements or accounting, judicial or otherwise, shall have been approved. The resigning Trustee's successor(s) shall be as set forth in, or appointed pursuant to, subarticles B, C or D hereof, whichever shall be applicable.
- L. For purposes of subarticle K hereof, any individual Trustee shall be deemed to have resigned when it is determined that he or she is under a medical infirmity or physical incapacity (an "Incapacity"), which shall be deemed to exist when the same has been declared by a court of competent jurisdiction or when a conservator or guardian for such Trustee has been appointed based upon such Incapacity. Furthermore, such Incapacity shall be deemed to exist upon presentation to the then serving Co-Trustee(s), or, if none, to the next succeeding successor Trustee(s), of a certificate executed by a licensed physician which states that (i) he or she is the attending physician for the Trustee; (ii) that the Trustee is incapable of caring for himself or herself; and (iii) that the Trustee is physically or mentally incapable of managing his or her financial affairs and attending properly to the normal duties and responsibilities required for the prudent management and protection of property. The effective date of such Incapacity shall be the date of the order or decree adjudicating the Incapacity, the date of the order or decree appointing the guardian or conservator, or the date of the certificate of such attending physician described above, whichever shall first occur.

For purposes of determining a serving Trustee's Incapacity, such Trustee (hereinafter the "Consenting" Trustee) hereby consents to the disclosure to the then serving Co-Trustee(s), or, if none, to the next succeeding successor Trustee(s) [hereinafter the "Requesting" Trustee] of all of the Protected Health Information ("PHI") and medical records of the Consenting Trustee and the Requesting Trustee shall be treated as the Consenting Trustee would be with regard to the use and dissemination of his or her PHI and medical records, including, but not limited

to, any written opinion relating to the Consenting Trustee's Incapacity. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164. The Consenting Trustee hereby intends that the Requesting Trustee be treated as the personal representative of the Consenting Trustee for all purposes, as provided in 45 CFR 164.502(g)(2), relating to any inquiry relating to his or her PHI, and the Consenting Trustee therefore specifically authorize the Requesting Trustee to request, obtain, receive and inspect any and all information bearing upon the Consenting Trustee's health, including PHI relevant to the determination of the Consenting Trustee's ability to perform his or her duties as a Trustee hereunder, to sign whatever authorizations for release of information required by providers or others, and to waive any rights the Consenting Trustee may have for breach of confidentiality for the release of such information to the Requesting Trustee. The authority given to the Requesting Trustee shall supersede any prior agreement that the Consenting Trustee may have made with his or her health care providers to restrict access to, or disclosure of, his or her PHI.

In addition, the Consenting Trustee specifically authorizes any physician, dentist, health care provider, any insurance company and the Medical Information Bureau Inc., or any other health care organization that has provided treatment or services to the Consenting Trustee to give, disclose and release to the Requesting Trustee all of the Consenting Trustee's PHI and medical records regarding any past, present or future medical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The foregoing authority given to the Requesting Trustee shall apply to a successor Trustee even though he or she has not yet assumed his or her duties and shall have no expiration date. Said authority shall expire only in the event that the Consenting Trustee shall permanently cease to serve as a Trustee hereunder.

The initial Trustee and each successor Trustee, upon qualifying as such, hereby expressly accepts, and agrees to be bound by, the provisions of this subarticle L.

## **ARTICLE XVII**

With respect to any trust created hereunder which shall have a single current income beneficiary, if at any time after the death of the last to die of the Grantor's wife, JANE SMITH, and his children, KATHLEEN SMITH, NANCY SMITH and ELLEN SMITH, and after taking into account the age, maturity and competence of such beneficiary, the Trustee (other than such beneficiary) shall determine it to be in the best interest of such beneficiary to terminate such trust and distribute to him or her, outright and free of trust, the entire remaining principal thereof, such Trustee may do so, whereupon such trust shall terminate and the rights of any other beneficiaries or remainderman in such trust shall cease. In making such decision, (i) such Trustee shall take into account the relationship of commissions and expenses to the value of the principal of such trust, and if he shall decide that the value of the trust does not warrant the

incurring of such commissions and expenses said decision shall be considered a proper reason for termination pursuant to this Article; and (ii) such Trustee shall take into account the then existing and anticipated future status of the Federal estate and generation-skipping transfer taxes, and any applicable State estate, generation-skipping transfer and inheritance taxes, and if he shall conclude that the existence of any such tax probably was, but probably is no longer, a principal reason for the existence of the trust, said conclusion also shall be considered a proper reason for termination pursuant to this Article.

### **ARTICLE XVIII**

Any trust created hereunder which shall be substantially identical to any other trust created hereunder, or to any trust created under the Last Will and Testament of the Grantor or Grantor's wife, JANE SMITH, or to any trust created by either of them prior to death, may, in the discretion of the Trustee, be merged into such other trust, or he may accept a merger of such other trust into the substantially identical trust created hereunder, if the Trustee shall determine the same advisable to facilitate the administration thereof, to reduce the expense of operation thereof, or any other reason he shall deem to be in the best interests of the beneficiaries thereof.

### **ARTICLE XIX**

Any successor Trustee, upon request, but not more often than annually, shall provide to each beneficiary of any trust administered by him statements setting forth the receipts and disbursements of principal and income and the assets on hand at the commencement and expiration of the period covered by such statements. The written approval of such statements by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], shall be final and binding upon all who are then or may thereafter become entitled to any part of the assets, as to all matters and transactions shown on the statements. Anything herein contained shall not preclude the Trustee, from time to time, from rendering an accounting to the parties interested therein or from submitting an accounting to a court for settlement, as he shall deem advisable. All of the Trustee's reasonable expenses (including reasonable attorneys' fees) attributable to any such accounting and approval shall be paid by the trust.

### **ARTICLE XX**

- A. Wherever in this Agreement the word "Trustee" is used, it shall be construed to include the Trustee and his successor or successors in office, and all references to such Trustee shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- B. Wherever in this Agreement the words "descendant" and "descendants" are used, they shall be construed to be synonymous with the word "issue."

- C. Wherever in this Agreement the words “per stirpes” are used with reference to the descendants of any individual, they shall be construed to mean that the determination of such descendants begins with the children of such individual and that no distribution at any generational level shall be per capita.
- D. Wherever in this Agreement the words “sibling” and “siblings” are used, they shall be construed to mean “brother(s) and sister(s)” (of the whole blood or of the half blood, but only if the Grantor or a descendant of the Grantor shall be the natural or adoptive parent of the latter), but not “step-brother(s) and step-sister(s),” unless the same shall have been adopted by the Grantor or a descendant of the Grantor.
- E. Wherever in this Agreement the word “Code” is used, it shall be construed to mean the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to refer to such section or to any section of similar import.
- F. Wherever in this Agreement the words “trust institution” are used, they shall be construed to mean a corporation or other organization authorized to act as Trustee of both lifetime and testamentary trusts.
- G. All references made, and all nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.

#### **ARTICLE XXI**

The Trustee hereby expressly undertakes and accepts the trusts created hereby and agrees to carry out the provisions of this Agreement. Any successor Trustee shall qualify by executing an instrument in writing, duly acknowledged, by which he expressly agrees to assume the trusts and to carry out the provisions hereof.

#### **ARTICLE XXII**

No bond or other security shall be required of the Trustee, or any successor Trustee, in any jurisdiction in which they may be called upon to act.

#### **ARTICLE XXIII**

- A. The Grantor hereby reserves the right and power, at any time and from time to time during his lifetime, by an instrument in writing (other than his Last Will and Testament or Codicil thereto) executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and served upon the Trustee, to revoke this trust agreement in whole or in part, or to alter, amend or modify any and all terms or provisions hereof, in any way and to any extent that may seem desirable to him, including the removal or replacement of any Trustee(s), except that without the consent of the Trustee the Grantor shall have no power to increase the duties or

obligations of the Trustee. The Grantor shall serve such instrument upon the Trustee, either by delivering the same to him in person, or by sending the same by prepaid, registered or certified mail, addressed to the Trustee at his address hereinabove set forth, or to such other address as the Grantor and the Trustee may mutually agree upon in writing.

- B. If the Grantor, at any time after he shall cease to be a Trustee, shall attempt to revoke or substantially alter, amend or modify any terms or provisions of this trust agreement pursuant to subarticle A hereof, and if the Trustee at such time shall have reason to doubt whether the Grantor at such time shall have the requisite mental capacity to properly take such action, then the Trustee shall not act thereon until the question of the Grantor's mental capacity shall have been judicially determined, which judicial proceeding the Trustee may, but shall not be required to, initiate. The Trustee shall be required to withhold action pursuant hereto only if he shall actually have knowledge of facts sufficient to give rise to such doubt; shall be under no duty to investigate the Grantor's mental capacity absent such actual knowledge; and shall be entitled to assume that the Grantor has the requisite mental capacity at all times absent such actual knowledge.
- C. Upon the death of the Grantor, this Agreement, and the trusts created hereunder, shall become irrevocable, and may not be terminated, revoked, altered, amended or changed, in any respect whatsoever.

#### **ARTICLE XXIV**

This Agreement shall be governed by the substantive law of the State of New Jersey; provided, however, that the Trustee may, at any time and from time to time, in his discretion, (i) remove (or decline to remove) all or part of the assets of any trust created hereunder, and/or the situs of administration of such trust, from one jurisdiction to another and/or (ii) elect (or decline to elect) that the substantive laws of such other jurisdiction shall thereafter govern. Any decision of the Trustee with respect to the foregoing shall be binding and conclusive on everyone interested therein.

#### **ARTICLE XXV**

To the extent permitted by law, if any beneficiary or remainderman under this Agreement shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Agreement or any of its provisions, or shall attempt in any way to oppose or set aside this Agreement or impair or invalidate any of the provisions the Grantor has made in it, any distribution to, or other provision for, that beneficiary or remainderman under this Agreement shall be revoked and the property covered thereby shall be disposed of in the same manner as if the contesting beneficiary or remainderman, his or her spouse and all of his or her descendants had predeceased the Grantor.

The Grantor also directs that no portion of any trust administered under this Agreement shall be used to pay the legal fees and other expenses incurred by any of the aforesaid persons who shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Agreement or any of its provisions, or shall attempt in any way to oppose or set aside this Agreement or impair or invalidate any of its provisions, whether or not such action shall be successful. In addition, to the extent permitted by law, it is also the Grantor's wish that the legal fees and other expenses incurred by the Trustee in successfully defending any such action be paid by the person bringing such action.

## **ARTICLE XXVI**

The Trustee, at any time and from time to time, shall receive and accept from the Grantor, and/or the executors or administrators of the Grantor's estate, and or the Trustee of any trust created by the Grantor by deed or Will, and may receive and accept from any other person or persons, including any fiduciary of any other estate or trust, any addition to the trust fund, in the form of cash, stock, securities or other property, real personal or mixed.

## **ARTICLE XXVII**

- A. All transfer taxes payable with respect to property passing under this Agreement shall be paid out of the assets to be administered pursuant to Article II hereof, without apportionment and before such assets are so administered, except that (i) any transfer tax determined with reference to the Grantor's relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and (ii) to the extent possible, no such tax shall be paid out of that portion of any trust created hereunder which shall qualify for the Federal estate tax marital deduction or which shall consist of benefits payable under any retirement fund as defined in subarticle E of Article III hereof.
- B. Subject to subarticle A hereof, if the Grantor's wife, JANE SMITH, shall survive him:
  - 1. Pursuant to the provisions of subarticle C of Article III hereof, the executors or administrators of the Grantor's estate have been given the discretion to make or not to make the election provided for in Section 2056(b)(7) of the Code with respect to all or part of the trust administered pursuant to said Article III. If the portion of such trust with respect to which such election was not made shall be subject to any transfer taxes, any such taxes attributable to such portion shall be paid therefrom.
  - 2. Pursuant to the provisions of subarticle C of Article II hereof, a certain trust may be funded for JANE's benefit. If any portion of such trust shall be subject to any transfer taxes, any such taxes attributable to such portion shall be paid therefrom.

- C. The transfer taxes attributable to the property referred to in subarticle A hereof shall be the amount by which the total of such taxes payable exceeds the total of such taxes which would have been payable had such property not been subject to transfer taxes, the same to be allocated among the various interests in such property pro rata, except that any transfer tax determined with reference to the Grantor's relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- D. The transfer taxes attributable to the property referred to in the first and second paragraphs of subarticle B hereof shall be a pro rata portion of the total transfer taxes payable by the Grantor's estate with respect to all property subject to such taxes passing under this Agreement, except that any transfer tax determined with reference to my relationship to the recipient of the property giving rise to such tax shall be charged to such property or recipient and not allocated pro rata as aforesaid.
- E. When used in this Agreement, the term "transfer taxes" shall be deemed to include all taxes payable by reason of property passing upon the Grantor's death, whether labeled estate taxes, inheritance taxes, death taxes, succession taxes, transfer taxes, or otherwise, and whether imposed by the Federal government, any state, city or municipality, or otherwise, including interest and penalties thereon. Such term shall not be deemed to include taxes imposed on generation-skipping transfers pursuant to Code Section 2601 et seq. or any other statute of similar import, whether imposed by the Federal government, any state, city or municipality, or otherwise, which taxes, including interest and penalties thereon, shall be paid as provided in Section 2603 of the Code, or in any other statute of similar import.
- F. The Trustee shall not be liable to any person as a result of the exercise by him of any discretion granted pursuant to this Article XXVII, and any discretionary decisions made by him shall be conclusive and binding upon all persons interested therein.

IN WITNESS WHEREOF, each of the Grantor and the Trustee has hereunto set his hand and seal, on the day and year first above written.

Signed, Sealed and Delivered in the

Presence of:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (L.S.)  
JOHN SMITH, Grantor

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (L.S.)  
JOHN SMITH, Trustee



SCHEDULE "A"

\$1.00

STATE OF NEW JERSEY)

ss:

COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the subscriber, a Notary Public of New Jersey, personally appeared JOHN SMITH, who, I am satisfied, is the Grantor and the Trustee mentioned in the within instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

\_\_\_\_\_  
Notary Public

My Commission expires:

\*Provided by Peter J. Bakarich, Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey

**IRREVOCABLE LIFE INSURANCE TRUST  
FOR SINGLE LIFE POLICIES\***

TOM JONES INSURANCE TRUST

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between TOM JONES, residing at 2 Singer Lane, Englewood Cliffs, New Jersey 07632 (hereinafter referred to as the "Grantor") and STEVE SMITH, 123 Pitt Road, Teaneck, New Jersey 07666 (hereinafter referred to as the "Trustee"):

WITNESSETH:

WHEREAS the Grantor has heretofore taken out certain policies of insurance on his life which are described in the annexed Schedule A, which policies have been, or shall be, delivered to and shall be retained by the Trustee; and

WHEREAS the Grantor has designated or will designate the Trustee as beneficiary of, and has assigned or will assign to the Trustee ownership of, all of the proceeds and incidents of ownership of the policies of insurance set forth in the annexed Schedule A, and may hereafter designate the Trustee as beneficiary of, and/or assign to the Trustee, additional policies of insurance, or portions thereof, on his life; and

WHEREAS the Grantor, desirous of providing for the management and distribution of any property transferred and/or delivered to the Trustee during the Grantor's lifetime and after his death, has decided to create the within trust, to be known as the "TOM JONES INSURANCE TRUST";

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I**

- A. Until the death of the Grantor, the Trustee shall hold in trust any property transferred and/or delivered to him by the Grantor and/or any other person, during the Grantor's lifetime, for the following uses and purposes:
1. The Trustee, at any time or times that he shall deem it advisable, may apply for the benefit of the Grantor's wife, MARY JONES, and/or the Grantor's children, or pay over to them, so much, all or none of the "available net income" (as hereinafter defined) of the trust, and/or such sum or sums out of the principal of the trust (including the whole thereof), as the Trustee, in his discretion, shall deem advisable, except that (i) no such application or payment shall be made prior to thirty (30) days after notice of the intended application or payment shall have been given to each "beneficiary" (as hereinafter defined) entitled to withdraw principal pursuant to paragraphs 2 and/or 5 hereof, during which thirty (30) day

\*Provided by Peter J. Bakarich, Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey

period each such beneficiary may exercise his or her right of withdrawal notwithstanding the fact that such exercise may make the intended application or payment impossible, and (ii) no such application or payment shall be made which shall have the purpose or effect of discharging a legal obligation (whether for support or any other purpose) of the Grantor, or which shall be for his pecuniary benefit.

2. In addition to the foregoing, each of (i) MARY, (ii) the Grantor's current children, LARRY JONES and TODD JONES, and (iii) any future child of the Grantor (referred to in this Article I as the "beneficiaries" and each individually as a "beneficiary") shall have the right, from time to time, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as he or she shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, the "annual withdrawal amount" (as hereinafter defined) with respect to such beneficiary, plus any amounts added thereto pursuant to paragraph 5 hereof.
3. The Trustee shall notify the Grantor, within fifteen (15) days after receipt, of all transfers to the trust made by any person other than the Grantor, whether such transfer shall be in the form of all or part of a policy of insurance or cash, securities or other property. The Grantor shall notify each beneficiary of all transfers to the trust and of all payments of premiums on policies of insurance on his life owned in full or in part by the trust, whether such payments shall be made by the Grantor or by any other person, firm or entity, which payments, for the purposes of this paragraph and paragraph 2 of subarticle B hereof, shall be deemed to be transfers to the trust. The Grantor shall provide such notice within fifteen (15) days after the later of the date of such transfer or the date when the Grantor receives notice thereof. The failure of the Trustee or the Grantor to provide such notice shall not affect the right of any beneficiary to withdraw principal of the trust pursuant to paragraphs 2 and/or 5 hereof.
4. All notifications required by paragraphs 1 and/or 3 hereof, and/or by subarticle D hereof, shall be made in writing and either delivered to the recipient thereof or mailed to such recipient at his or her residence address as known to the notifying party, from time to time.
5. Except as hereinafter provided, the provision of paragraph 2 hereof shall be cumulative, so that amounts not withdrawn pursuant thereto in any one year shall be added to the annual withdrawal amount in each succeeding year. Notwithstanding the preceding sentence, the cumulative amount subject to withdrawal pursuant to paragraph 2 hereof, to the extent not withdrawn in any one year, shall be reduced at the end of such year by the "lapse amount," as hereinafter defined. In the event of the death of the Grantor prior to the lapse of all of any beneficiary's accumulated rights of withdrawal, such beneficiary may exercise such rights, according to the provisions hereof, until they shall fully lapse, over the principal of any separate trust created for his or her benefit after the Grantor's death, or, if no separate trust shall be so created, then over the principal of any other trust created hereunder, whether or not he or she shall be a current income or principal beneficiary

thereof, except that the right granted in this sentence shall not apply with respect to the principal of any trust which qualifies for the Federal estate tax marital deduction.

B. For the purposes of this Article 1:

1. The phrase “available net income” of the trust shall mean such portion, if any, of the net income, if any, of the trust as the Trustee, in his discretion, shall not have expended for the payment of premiums on life insurance policies in accordance with the authority hereinafter granted to him, it being the Grantor’s intention that nothing contained in this Article I shall in any manner be deemed to limit the Trustee’s discretion to use all or a portion of the net income of the trust for the payment of any such premiums.
2. The phrase “annual withdrawal amount” for any calendar year for any beneficiary shall mean the lesser of: (a) the aggregate value of such beneficiary’s share of each transfer made to the trust during such year, which share shall be determined by dividing the amount of such transfer by the number of beneficiaries living on the date thereof or (b) the amount of the gift tax annual exclusion contained in Section 2503(b) of the Code (taking into account the application of Section 2513 thereof, whether or not the consent provided for therein has been signified), or any statute of like import, applicable to such year with respect to a gift made to such beneficiary by the transferor of such transfer.
3. The phrase “lapse amount” for any calendar year for any beneficiary shall mean the amount with respect to which a lapse of a power of appointment shall not be deemed to be a release thereof, pursuant to Section 2514(e) of the Code, or any statute of like import, applicable to such year.

C. With respect to the discretion granted to the Trustee in this Article I to pay or apply income and/or principal of the trust to or for the benefit of the beneficiaries thereof, the Grantor is aware of the fact that prior to his death all or a substantial portion of such principal may consist of policies of insurance, or portions thereof, on his life. The Grantor therefore directs that nothing contained in this Article I shall in any manner be deemed to require that the Trustee at any time surrender any such policy for the cash value, or in the case of split-ownership policies (as hereinafter defined in Article IX) decline to pay any portion of the premium thereon properly allocable to the Trustee, or in any other manner convert any portion of the principal of the trust into cash, it being the Grantor’s intention that the authority hereinafter granted to the Trustee with respect thereto shall not be limited in any manner. If the Trustee, in accordance with the aforementioned discretion, or in compliance with any exercise of the rights granted in paragraphs 2 and/or 5 of subarticle A of this Article I, shall decide or be required to pay or apply any portion of the principal of the trust, he may, and in the absence of other available assets he shall, do so by a direct distribution of any such policy or policies of life insurance, or portion thereof.

D. In addition to the foregoing, if the Trustee, at any time prior to the death of the Grantor, shall deem it advisable to distribute to the beneficiaries of the trust, outright or in trust for their

benefit, one or more of the policies of life insurance, or portions thereof, and/or any or all of the other assets held in the trust, the Trustee may do so, whereupon the trust shall terminate if no assets shall then remain therein, except that (i) no such distribution shall be made prior to thirty (30) days after notice of the intended distribution shall have been given to each beneficiary entitled to withdraw principal pursuant to paragraphs 2 and/or 5 of subarticle A hereof, during which thirty (30) day period each such beneficiary may exercise his or her right of withdrawal notwithstanding the fact that such exercise may make the intended distribution impossible, and (ii) no such distribution shall be made which shall have the purpose or effect of discharging a legal obligation (whether for support or any other purpose) of the Grantor, or which shall be for his pecuniary benefit.

Any distribution pursuant to this subarticle D, whether outright or in trust, may be in such proportions as the Trustee may determine, so long as all distributees, or all persons having a present or future interest in a distributee trust (whether created by the Trustee or any other person), are one or more of the beneficiaries named herein, and/or the descendants of any such beneficiary.

The Grantor understands and intends that the discretion granted to the Trustee, in this subarticle D will permit him to alter the rights of the beneficiaries to the same extent as if he had been given a power to appoint trust assets to or for the benefit of the individuals specified above. In the exercise of his discretion, the Trustee shall not be deemed to be acting in a fiduciary capacity, and such exercise shall be non-reviewable and shall be binding and conclusive upon all persons interested therein.

- E. Upon the death of the Grantor, the then remaining principal and undistributed income of the trust shall be administered as hereinafter provided in Article II.

## **ARTICLE II**

Upon the death of the Grantor, the Trustee shall receive and collect any proceeds of life insurance policies on the life of the Grantor which shall be payable to him and any other property, interests in property and money which may be payable to him as a result of the death of the Grantor or any other person, whether under the Last Will and Testament of the Grantor or any other person, or otherwise, and he shall add the same to any other assets then in his possession and he shall administer all such assets as follows:

- A. If the Grantor's wife, MARY JONES, shall survive him, then until her death the Trustee shall pay to her, or apply for her benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, MARY shall have the right, exercisable at any time and from time to time, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall deem reasonably necessary to provide for her health, maintenance and support. If, in the judgment of the Trustee, MARY is incapable of exercising such right, then the Trustee may exercise such right on MARY's behalf while such incapacity shall exist. In the exercise

of such right by the Trustee, he shall consider that it is the Grantor's primary intention that MARY, for as long as she shall live, shall continue to enjoy the same standard of living that she enjoyed at the time of the Grantor's death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, MARY shall have the absolute right, exercisable only during the last ten (10) days of each calendar year, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year.

In further addition to the aforementioned payments of net income and principal, MARY shall have the right, from time to time, to appoint all or any part of the then remaining principal of the trust to and among such of the Grantor's descendants as she shall desire, and the Trustee shall transfer and set over principal of the trust in accordance with any exercise of such power. This power of appointment may be exercised by MARY by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey and delivered to the Trustee, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise, as MARY shall desire, but may not be exercised for the purpose of discharging a legal obligation (whether for support or any other purpose) of MARY or for her pecuniary benefit.

Upon the death of MARY, she shall have the right to appoint the then remaining principal and undistributed income of the trust to and among such of the Grantor's descendants as she shall desire, and the Trustee shall transfer and set over such principal and income in accordance with any exercise of such power. This power of appointment may be exercised by MARY by (and only by) specific provision in her Last Will and Testament making reference hereto, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise, as she shall desire, but may not be exercised for the purpose of discharging a legal obligation (whether for support or any other purpose) of MARY or for her pecuniary benefit. Any portion of the principal and undistributed income of the trust remaining at the date of death of MARY, which she shall not have validly appointed by her Last Will and Testament as above provided, shall be distributed as provided in subarticle B hereof.

- B. Upon the death of the Grantor if his wife, MARY JONES, shall predecease him, or upon her death if she shall survive him and shall have failed to exercise fully the power of appointment hereinabove granted to her, the Trustee shall divide the unappointed principal and undistributed income of the trust, or the whole thereof, whichever shall be applicable, together with any principal and/or income of any other trust created hereunder that shall be added thereto, into a sufficient number of equal shares so that there shall be set aside one

such share for the benefit of each child of the Grantor who shall then be living, and one such share for the benefit of the then living descendants collectively of each child of the Grantor who shall then be deceased, to be allocated among them per stirpes.

Each share allocated to a child of the Grantor, and each portion of a share allocated to a descendant of a deceased child of the Grantor, shall be held by the Trustee as a separate trust for the benefit of the person for whom it shall have been allocated, for the following uses and purposes:

1. Until the attainment of the age of twenty-one (21) years by the beneficiary of the trust, the Trustee, at any time or times that he shall deem it advisable, may apply for the benefit of the beneficiary, or pay over to him or her, so much, all or none of the net income of the trust as the Trustee, in his discretion, shall deem advisable.
2. From and after the attainment of the age of twenty-one (21) years by the beneficiary of the trust, and until the termination thereof, the Trustee shall apply for the benefit of the beneficiary, or pay over to him or her, all of the net income of the trust, at convenient intervals, but not less often than quarter-annually.
3. Prior to the distribution of all of the principal of the trust, the Trustee, at any time or times that he shall deem it advisable, may apply for the benefit of the beneficiary thereof, or pay over to him or her, such sum or sums out of the principal of the trust (including the whole thereof) as the Trustee, in his discretion, shall deem advisable.
4. Upon the attainment of the age of twenty-five (25) years by the beneficiary of the trust, the Trustee shall pay over and distribute to him or her one-quarter (1/4) of the then remaining principal of the trust; upon the attainment of the age of thirty (30) years by the beneficiary, the Trustee shall pay over and distribute to him or her one-third (1/3) of the then remaining principal thereof; and upon the attainment of the age of thirty-five (35) years by the beneficiary, the Trustee shall pay over and distribute to him or her all of the then remaining principal thereof, together with all undistributed income, whereupon the trust shall terminate. If upon the establishment of the trust the beneficiary thereof shall then have either (i) attained age twenty-five (25) but not age thirty (30), or (ii) attained age thirty (30) but not age thirty-five (35), the Trustee shall then pay over and distribute to him or her either (i) one-quarter (1/4) or (ii) one-half (1/2) of the initial principal thereof, respectively, and only the balance shall be held in trust pursuant hereto; and if upon the establishment of the trust the beneficiary shall then have attained age thirty-five (35), the entire principal thereof shall then be paid over and distributed to him or her, and no portion thereof shall be held in trust hereunder.
5. If the beneficiary of the trust shall die before attaining the age of thirty-five (35) years, the principal of the trust remaining at his or her death (together with all undistributed income) shall be paid over and distributed
  - (i) to his or her then living descendants, per stirpes, and in default of such descendants, the same shall be paid over and distributed



- (ii) to those of the beneficiary's siblings who shall then be living and to the then living descendants of any sibling of the beneficiary who shall then be deceased, per stirpes; and in default of such siblings and descendants of a deceased sibling,
  - (iii) to the then living descendants of that child of the Grantor who shall be the ancestor of the beneficiary, per stirpes, and in default of such ancestor's descendants,
  - (iv) to those of the Grantor's children who shall then be living and to the then living descendants of any child of his who shall then be deceased, per stirpes;
- provided, however, that: (i) any sums thus payable to any person for whose benefit a trust created hereunder shall then still be in existence shall be added to the principal of such trust, and shall be held and distributed as part thereof, and (ii) any sums thus payable to any person who shall then be under the age of thirty-five (35) years and for whose benefit there shall not then be in existence a trust created hereunder, shall be held in trust for the benefit of such person in accordance with the provisions of paragraphs 1 through 5 of this subarticle B.
- C. Upon the death of the last to die of the Grantor and his wife, MARY JONES, or upon the death of the beneficiary of a trust created under subarticle B hereof, whichever shall be applicable, if none of the Grantor's children, and no descendant of any deceased child of the Grantor, shall then be living, then the Trustee shall pay over and distribute the then remaining principal and undistributed income of the trust, or the whole thereof, whichever shall be applicable, together with any income and/or principal of any other trust created hereunder that shall be added thereto, as follows:
1. One-half (1/2) thereof to those of the Grantor's siblings, JEFF JONES and DAVE JONES, who shall then be living and to the then living descendants of either such sibling of the Grantor who shall then be deceased, per stirpes.
  2. One-half (1/2) thereof to those of Mary's siblings, STEVE SMITH and SHELLEY SMITH, who shall then be living and to the then living descendants of either such sibling of MARY who shall then be deceased, per stirpes.
  3. If all of the individuals named in paragraph 1 or 2 hereof, and all of their descendants, shall not then be living, then the distribution in such paragraph shall lapse, and the same shall be added to the distribution in said paragraph 1 or 2 which shall not have lapsed.

### **ARTICLE III**

Anything hereinabove to the contrary notwithstanding, if any portion of the proceeds of any policies of insurance on the Grantor's life received by the Trustee, or any other asset of the trust, shall be includable in the Grantor's gross estate for Federal estate tax purposes, and if his wife, MARY JONES, shall survive him, then, effective as of the date of the Grantor's death, the Trustee shall allocate to the trust created pursuant to the provisions of this Article III, in cash, the portion so includable, and shall hold the same in trust for the following uses and purposes:

A. Until the death of the Grantor's wife, MARY JONES:

1. The Trustee shall pay to MARY, or apply for her benefit, the entire net income of the trust, at convenient intervals, but not less often than quarter-annually. In addition, MARY shall have the right, exercisable at any time and from time to time, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall deem reasonably necessary to provide for her health, maintenance and support. If, in the judgment of the Trustee, MARY is incapable of exercising such right, then the Trustee may exercise such right on Mary's behalf while such incapacity shall exist. In the exercise of such right by the Trustee, he shall consider that it is the Grantor's primary intention that MARY, for as long as she shall live, shall continue to enjoy the same standard of living that she enjoyed at the time of the Grantor's death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, MARY shall have the absolute right, exercisable only during the last ten (10) days of each calendar year, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year. The right contained in this paragraph shall apply only if the election mentioned in subarticle C of this Article III shall not have been made as to any part of the trust. If such election shall have been made as to part, but not all, of the trust, and if the Trustee shall have separated the trust as authorized in said subarticle C, then such right shall apply with respect to the separate trust consisting of the portion with respect to which the election was not made.

2. It is the Grantor's intention that MARY shall have substantially that degree of beneficial enjoyment of this trust during her life which the principles of the law of trusts applicable in the State of New Jersey accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Accordingly, the Trustee shall so manage this trust as to produce for MARY, a distributable income consistent with the value of the principal of the trust and its preservation, and shall not retain as principal thereof any assets which shall not be productive of income unless she shall consent thereto which consent, if granted, can be revoked at any time. No powers, rights or discretions granted to the Trustee hereunder shall be construed in such a way as to deprive MARY of said beneficial enjoyment of the trust.
3. MARY shall have the right to disclaim, or to renounce, at any time, any one or more of the rights, powers or options contained in this subarticle A relating to distribution or use of principal of the trust to her or for her benefit.

4. The provisions of Article VI hereof shall not apply to prevent the sale by a remainderman of the trust of his or her remainder interest in the trust to the trust or to MARY, nor shall they apply to prevent assignment by her of all or part of her interest in trust income to one or more organizations described in both of Sections 170(c) and 2522(a) of the Code.
- B. Upon the death of the Grantor's wife, MARY JONES, any income of the trust that shall then be accrued but not received, or received but not distributed, shall be paid over and distributed to her estate, and she shall have the right to appoint the then remaining principal of the trust to and among such of the Grantor's descendants as she shall desire, and the Trustee shall transfer and set over such principal in accordance with any exercise of such power. This power of appointment may be exercised by MARY by (and only by) specific provision in her Last Will and Testament making reference hereto, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise, as she shall desire, but may not be exercised for the purpose of discharging a legal obligation (whether for support or any other purpose) of MARY or for her pecuniary benefit. Any portion of the principal of the trust remaining at the date of death of MARY which she shall not have validly appointed by her Last Will and Testament as above provided shall be added to the trust administered under Article II hereof, if it shall then be in existence, and/or administered as set forth in subarticle B or C thereof, whichever shall be applicable, as if the same had constituted part of the unappointed principal of the trust administered pursuant to said Article II.
- C. With respect to the trust, hereinabove created, it is the Grantor's expectation that the executors of his estate shall make the election provided for in Section 2056(b)(7) of the Code, so that said trust shall qualify for the Federal estate tax marital deduction, but the Grantor acknowledges that his executors shall have the discretion, in accordance with the criteria set forth in the Grantor's Last Will and Testament, not to do so, in whole or in part. If the Grantor's executors shall make the aforesaid election as to part, but less than all, of said trust, then the Trustee may, but shall not be required to, separate said trust into two separate trusts, each to be administered in accordance with the foregoing provisions, with one separate trust consisting of the portion of said trust with respect to which such election was made and the other separate trust consisting of the portion with respect to which the election was not made. Assets allocated to each such separate trust shall be valued for such purpose as of the date of allocation.

In addition, if the Grantor's executors shall make the election provided for in said Section 2056(b)(7) with respect to any portion of the trust, or any separate trust created therefrom, then it is the Grantor's expectation that his executors also shall consider making the election provided for in Section 2652(a)(3)(A) of the Code to treat so much of such portion, or of such separate trust, as shall be appropriate, for purposes of the generation-skipping transfer tax, as if the election provided for in said Section 2056(b)(7) had not been made, so that the Grantor's unused GST exemption may be allocated to such portion or such

separate trust, but the Grantor's executors shall have the discretion, in accordance with the criteria set forth in the Grantor's Last Will and Testament, not to do so, in whole or in part. The Trustee is hereby authorized to further separate such portion or such separate trust, in the manner set forth above, to facilitate said election and allocation of GST exemption.

- D. If, following the death of the Grantor's wife, MARY JONES, the Trustee shall receive notification from the executors or administrators of her estate that they intend to recover from the person or persons receiving the assets of the trust, or any separate trust created therefrom, all or part of the increase in Federal and State estate taxes payable by her estate due to the inclusion in her gross estate for Federal and State estate tax purposes of all or part of the value of the trust(s) upon her death, pursuant to Section 2207A of the Code and applicable State law, then (i) to the extent permitted by law, the total amount to be so recovered from all such trusts shall first be paid out of the trust(s) for which the election provided for in Section 2652(a)(3)(A) of the Code shall not have been made, and any balance shall then be paid out of the trust(s) for which the election provided for in said Section 2652(a)(3)(A) shall have been made, and (ii) prior to making any distribution, division or other disposition of the then remaining principal of such trust(s), the Trustee may, but shall not be required to, lend to such executors or administrators, or advance to them, so much or all of the amount to be so recovered as the Trustee, in his discretion, shall deem advisable. Such loan or advancement need not await the actual payment by MARY's estate of its Federal and State estate taxes, and in the exercise of his discretion hereunder the Trustee may take into account the best interests of MARY's estate and the recipients thereof, including any expense or loss it or he may incur as a result of having to pay such taxes without the benefit of such loan or advancement. The Trustee shall be entitled to rely upon the written advice of the executors or administrators of MARY's estate attesting to both the amount that they are entitled to recover (which may be an estimate) and the reasons why such loan or advancement is requested, without the necessity of verifying the same.

With respect to the right of recovery referred to in subarticle D hereof, the Trustee shall reimburse the estate of the Grantor's wife, MARY JONES, for the reasonable costs of determining the amount of such recovery, including, but not limited to, legal, accounting and appraisal fees. The loan or advancement provisions of said subarticle D shall likewise apply to such costs.

- E. If the Grantor and his wife, MARY JONES, shall die at the same time, within one hundred twenty (120) hours of each other or under such circumstances that the order of their deaths cannot be determined with certainty, then for all purposes of this trust agreement, or otherwise, she shall be deemed to have survived him.
- F. If the Grantor's wife, MARY JONES, shall survive him, she shall have the right to direct that all or part of the proceeds or assets required to be allocated to the trust administered pursuant to subarticle A hereof shall not be allocated to and placed in said trust. This right,

if exercised, shall constitute a disclaimer pursuant to the provisions of Section 2518 of the Code. This right may be exercised by MARY by delivering to the Trustee, either in person or by certified mail, within the time period allowed by said Section 2518, an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, setting forth the amount so disclaimed, and if the same shall be less than the whole of such proceeds or assets, then it may be expressed either as a fraction thereof or as a monetary amount, or any combination thereof. Any exercise of such right shall be irrevocable and shall also comply with the requirements of applicable Federal and State laws. Any amount so disclaimed shall be held by the Trustee in a separate trust, to be administered as if MARY survived the Grantor, notwithstanding any contrary statutory provisions governing the distribution of disclaimed property, for the following uses and purposes:

1. Until the death of MARY, the Trustee shall pay to her, or apply for her benefit, the entire net income of the trust, at convenient intervals, but not less often than quarterly. In addition, MARY shall have the right, exercisable at any time and from time to time, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall deem reasonably necessary to provide for her health, maintenance and support. If, in the judgment of the Trustee, MARY is incapable of exercising such right, then the Trustee may exercise such right on MARY's behalf while such incapacity shall exist. In the exercise of such right by the Trustee, he shall consider that it is the Grantor's primary intention that MARY, for as long as she shall live, shall continue to enjoy the same standard of living that she enjoyed at the time of the Grantor's death, and that preservation of principal for the remaindermen of the trust shall be subordinate thereto.

In addition to the aforementioned payments of net income and principal, MARY shall have the absolute right, exercisable only during the last ten (10) days of each calendar year, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as she shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, an amount equal to five (5%) percent of the value of the trust as of the last day of such calendar year. Amounts not so withdrawn in any one year shall not be added to or increase amounts subject to withdrawal in any succeeding year.

2. Upon the death of MARY, the then remaining principal and undistributed income of the trust shall be added to the trust administered under Article II hereof, if it shall then be in existence, and/or administered as set forth in subarticle B or C thereof, whichever shall be applicable, as if the same had constituted part of the unappointed principal of the trust administered pursuant to said Article II.

## ARTICLE IV

Anything in this Agreement to the contrary notwithstanding, any trust created hereunder which shall be or become subject to a rule against perpetuities and which, by its terms, shall not have terminated on or before the date which is twenty-one (21) years after the death of the last survivor of the Grantor, his wife, MARY JONES, and those of the Grantor's descendants who shall be living on the date of execution of this Agreement, shall nevertheless terminate on such former date, and the principal and undistributed income thereof shall thereupon be paid over and distributed free of trust to the then current income beneficiary thereof, or the current income beneficiaries thereof, in equal shares, if more than one.

## ARTICLE V

- A. Whenever, pursuant to the terms of this Agreement, the Trustee is directed to hold any property in trust, the Trustee shall hold the same; shall manage, administer, invest and reinvest the principal of the trust; shall collect and receive the income thereof; shall pay any and all expenses incident to the operation of such trust; and shall distribute the net income and principal thereof in the manner set forth.
- B. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, such portions of the income of the trust, and/or such sums of the principal of the trust, as the Trustee shall deem advisable, the Trustee may make such payment or application solely to provide for such beneficiary's health, maintenance, support and education (which may include providing for the beneficiary's undergraduate and postgraduate education and enabling the beneficiary to establish himself or herself in a business or profession); provided, however, that in addition to the foregoing, a "Disinterested Trustee" (as hereinafter defined), without the consent of any other Trustee, may pay or apply net income and/or principal of the trust for any or no reason at all, with no standards or guides relative to the exercise of such discretion being provided, except that no payment or application of trust income or principal shall be made which shall have the purpose or effect of discharging a legal obligation (whether for support or any other purpose) of the Disinterested Trustee or which shall be for his, her or its pecuniary benefit. In the case of income, the Trustee shall add to the principal of the trust any such net income not so expended in any fiscal year of the trust.

If the Disinterested Trustee shall exercise the specific discretion hereinabove granted to such Trustee, then the other Trustees are hereby directed to execute any documents that may be required to effectuate and facilitate the payment or application of the income and/or principal of the trust pursuant to such exercise.

- C. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, portions of the income and/or principal of the trust, the Trustee may take into consideration, but shall not be required to do so, any other income or property which may be available to such beneficiary, including the support which a spouse or parent does provide, or is obligated to provide.

- D. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay or to apply income or principal of a trust to or for the benefit of a minor, the Trustee may, in his discretion, make such payment or application by expending the same directly for the benefit of such minor, or by paying the amount so to be paid or applied to the parent or legal guardian of such minor, or to the person with whom such minor may reside, or to a person standing in the place of a parent to such minor, or to a Custodian for such minor designated by the Trustee under an applicable Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, or directly to such minor, or otherwise, as the Trustee may, from time to time, deem expedient, and the receipt of such minor or such other payee shall be a full acquittance to the Trustee to the extent of such payments.

The provisions of this subarticle D shall also apply, to the extent applicable, whenever the Trustee is given discretion to pay or apply income or principal of a trust to or for the benefit of a person who, in his judgment, is incapable of adequately managing such income or principal.

- E. Whenever, pursuant to the terms of this Agreement, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to himself or herself or for his or her own benefit, and the purposes for which such payment or application can be made are not limited to such person's reasonable needs relating to health, maintenance, support and education, such purposes shall be deemed to be so limited, anything contained in this Agreement to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person to, or on whose behalf, income and/or principal can be so paid or applied, such other person or persons may exercise the discretion granted without reference to the limitations herein set forth. This subarticle shall not apply, however, (i) to a right of withdrawal if the amount which could be withdrawn is limited so that it does not exceed the greater of the dollar or percentage limitation contained in Section 2514(e) of the Code or (ii) to the right to withdraw the amounts subject to withdrawal pursuant to paragraphs 2 and/or 5 of subarticle A of Article I hereof.
- F. Whenever, pursuant to the terms of this Agreement, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to or for the benefit of any other person, then the purposes for which such payment or application can be made shall be limited to those which do not relieve the person having such discretion of a legal obligation, whether for support or any other purpose, anything contained in this Agreement to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person whose legal obligation could be relieved by such payment or application, such other person or persons may exercise the discretion granted without reference to the limitation herein set forth.

- G. Whenever, pursuant to the terms of this Agreement, there shall be more than one beneficiary of any one trust, and the Trustee is given discretion to utilize income and/or principal of such trust for their benefit, the Trustee may pay or apply such income and/or principal to or for the benefit of such beneficiaries equally or unequally, or to or for the benefit of any of them to the exclusion of others (subject only to such preference, if any, of one beneficiary over any other as may be specifically stated under the terms of such trust), so that utilization of trust income and principal among such beneficiaries according to their respective needs shall take precedence over equal distribution thereof.

## **ARTICLE VI**

The interest of any beneficiary or remainderman in any trust created hereunder, either in income or in principal, or in both, shall not be subject to sale, assignment, pledge or transfer in any manner, and such interest shall not be liable or subject in any manner while in the possession of the Trustee for the debts, contracts, obligations, liabilities, engagements, undertakings or torts of any such beneficiary or remainderman. No beneficiary or remainderman shall have the power in any manner to anticipate, charge or encumber his or her interest, either in income or in principal, or in both.

## **ARTICLE VII**

For all purposes under this instrument, whether for the determination of relationships or otherwise:

- A. Adopted children of the Grantor shall be considered to have, and shall be given, the same status as natural-born children and adopted children of any other person shall be considered to have, and shall be given, the same status as natural-born children only if the child was a minor when adopted and lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent. All references in this Agreement to children or descendants of the Grantor or any other person shall include, and the Grantor directs that this Agreement shall be effective notwithstanding the fact that there shall be, any child, children, descendant or descendants of the Grantor or any other person born or adopted after the date of execution hereof.
- B. No one claiming to be a natural-born descendant of another person shall be considered as such unless the claimant and the purported parent had established a child-parent relationship prior to the time in question and they had lived together, while the claimant was a minor, as child and parent in the same household. The purpose of this paragraph is to prevent someone from successfully claiming to be a person's child although never acknowledged to be such and it shall apply notwithstanding any provision of law to the contrary.



## **ARTICLE VIII**

Any portion of the principal of any trust created hereunder vesting in absolute ownership in a person who is a minor and/or who, in the judgment of the Trustee, is incapable of adequately managing such assets, may be held for the benefit of such person by the Trustee until such minor shall attain majority and/or, in the judgment of the Trustee, such incapacity shall cease to exist. During such period, the Trustee so holding such property shall have all the powers and authority herein granted to him with respect to any trust created hereunder; shall not be required to furnish bond or other security; and may pay or apply to or for the benefit of such person, in any applicable manner set forth in subarticle D of Article V hereof, such portions, or all, of the property so held, and/or the income earned thereon, as he shall deem to be in the best interest of such person, accumulating as principal any income not so expended in any year. The authority granted to the Trustee hereunder shall be in addition to, and not in lieu of, any other alternative available to him with respect to the administration and distribution of such portion of the principal of the trust, and it shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property, or of such accumulations of income, if any, by such person, nor shall it prevent the absolute vesting thereof in such person.

## **ARTICLE IX**

As used in this Agreement, the term “split-ownership” shall refer to any policy or policies of insurance, whereunder the right to receive the portion of the death proceeds in excess of the cash value is vested in the Trustee, and the cash value, including the right to receive the portion of the death proceeds equal to the cash value, is vested in any person other than the Trustee, whether such rights shall have arisen by virtue of assignment from the Grantor or any other person or by endorsement to such policy or policies, or otherwise.

## **ARTICLE X**

- A. The Grantor, and/or any other person, from time to time, may assign to the Trustee all of the incidents of ownership in another policy or policies of insurance on the Grantor’s life, and/or may transfer to the Trustee a portion thereof on a split-ownership basis, and/or may cause all or part of the proceeds thereof, or other death benefits, to be made payable to the Trustee, pursuant to a revocable or irrevocable designation of beneficiary, or otherwise. Such additional policies and death benefits, and/or the proceeds or portion of the proceeds thereof transferred to or made payable to the Trustee, shall be subject to all of the terms and conditions of this Agreement in the same manner as if they had been included herein at the time of the making and execution hereof. All references in this trust agreement to insurance policies shall be deemed to include the policy or policies of insurance described in the annexed Schedule A and any other insurance policy or policies, or death benefits, the incidents of ownership in which shall hereafter be assigned to or procured by the Trustee and/or the portion of any other policy or policies which shall hereafter be transferred to or

procured by the Trustee on a split-ownership basis and/or the proceeds of any other policy or policies which are hereafter made payable to the Trustee primarily or upon the occurrence of certain contingencies.

- B. The Trustee, in his discretion, may accept such an assignment of the incidents of ownership of, and/or may on his own initiative procure, another policy or policies of insurance on the life of the Grantor, in such amount or amounts, and of such type or types (whether on a split-ownership basis or otherwise), and issued by such insurance company or companies, as the Trustee, in his discretion, shall deem advisable.
- C. In addition to the abovementioned policies of life insurance, the Trustee, at any time and from time to time, shall receive and accept from the Grantor and/or the executors or administrators of the Grantor's estate and/or the Trustee of any trust created by the Grantor by deed or Will; and may receive and accept from any other person or persons, including the fiduciary of any other estate or trust, any additions to the trust, in the form of cash, stock, securities or other property, real, personal or mixed, provided that such additions are acceptable to the Trustee, including any contributions toward the payment of premiums on policies of life insurance owned by the Trustee. Unless otherwise directed in the instrument governing the transfer of such additions to the Trustee, the same shall be administered as part of said trust and shall be subject to all the terms and conditions of this trust agreement.
- D. Any policy or policies of life insurance, or portion thereof, owned by the Trustee, whether originally procured by the Trustee or assigned to him, may be held and maintained, notwithstanding that such policy or policies may be considered unproductive assets.

## ARTICLE XI

- A. The Trustee, in his discretion, may apply all or any part of the net income and/or principal of the trust, including any sums available to him pursuant to the authority contained in Article XII, toward the payment of premiums on any life insurance policy or policies as the same accrue.
- B. The Trustee shall have no obligation whatsoever with respect to the payment of premiums, dues, assessments or other charges in connection with any policies of life insurance, or portion thereof, owned by him, and nothing contained in this trust agreement shall be construed as a requirement that the Trustee shall procure, retain or maintain any policy of life insurance, or portion thereof, or that he shall solicit contributions toward the payment of premiums thereon, it being the intention of the Grantor and the understanding of the parties hereto that the Trustee shall have the discretion to permit any or all of such policies of life insurance to lapse, or to surrender for cash any or all of those policies the cash value of which is owned by the Trustee, and that he shall not incur any liability to anyone by reason of the exercise of such discretion.

## ARTICLE XII

- A. With respect to any life insurance policy or policies owned in full by the Trustee, the Trustee, in his discretion, may exercise any and all of the rights, privileges, benefits and options appertaining thereto, including, without limitation, the following rights, privileges, benefits and options:
1. To receive or withdraw at any time or times, in cash, all dividends or shares of surplus allotted or set apart to any of said policies, and the surrender value of all additions to any of said policies purchased by such dividends or shares of surplus.
  2. To obtain and secure from the insurance company issuing any such policy of insurance, such advances or loans on account of any of said policies as may be available from time to time.
  3. To surrender any of said policies for the cash value thereof or for extended insurance, or to elect to take paid-up insurance with respect to any of said policies.
  4. To pledge any of said policies as security for the repayment of loans made to the trust.
  5. To revoke or to change the beneficiary of any of said policies in order to comply with the provisions of this trust agreement.
  6. To convert or exchange any policy or policies into another or other policies, whether or not from the same insurer.
  7. To elect or to alter any method of settlement of the proceeds of any of said policies, and to make successive changes thereof.
  8. To assign all or part of any of said policies in connection with the administration of this trust, or in the exercise of the powers granted to him hereunder or vested in him by operation of law.
  9. If required by any insurance company issuing any such policies, to discharge said company from any and all liability for any amounts paid to the Trustee, or in accordance with his direction, and to agree that no such insurance company shall have any obligation whatsoever to see to the application of any such amounts so paid by it, and to agree further that any such insurance company shall be fully protected in taking or permitting any action in reliance on any instrument or document executed by the Trustee in his capacity as Trustee, and that such insurance company shall not incur any liability for so doing.
  10. To enter into a viatical settlement of any of said policies, whether or not the insured or insureds thereunder is or are terminally ill or chronically ill.
- B. With respect to any insurance policy or policies owned in part by the Trustee on a split-ownership basis, the Trustee, in his discretion, may exercise any and all of those rights, privileges, benefits and options appertaining thereto (including, without limitation, those

specifically enumerated in subarticle A hereof), as shall be applicable to the portion of such policy or policies owned by the Trustee, and the remainder of such rights, privileges, benefits and options shall be exercisable by the owner of the cash value portion thereof.

### **ARTICLE XIII**

With respect to any life insurance policy or policies not owned by the Trustee, but the proceeds of which are made payable to the Trustee, the Grantor, or the owner thereof if other than the Grantor, shall have the sole right to exercise any and all of the rights, benefits, elections, privileges and options of whatsoever kind appertaining to such insurance policies, without in any way first securing the consent of the Trustee thereto. With respect to any such insurance policies, and without limiting the generality of the foregoing, the Grantor or other owner shall have the right to borrow upon any such policy or policies and pledge the same as security for the repayment of loans; to surrender any such policy or policies for the cash surrender value or for extended insurance; to assign all or part of any such policy or policies; to change the beneficiary thereunder and to make successive changes thereof (unless such right shall have been released in writing); to convert any such policy or policies into another or other policies; to receive all dividends upon said policies, and to direct the disposition of such dividends, and, from time to time, to change such directions; and to collect, and retain free of this trust, the proceeds of any policy or policies which mature during the lifetime of the insured thereunder. The Trustee, however, is authorized and empowered, in his discretion, to exercise any and all rights granted to him as beneficiary of any such life insurance policies.

### **ARTICLE XIV**

- A. The Trustee shall have, and is hereby given, full power and authority to make all necessary proofs of death under any life insurance policies and to execute and deliver any and all receipts for the proceeds thereof. Except at his own option, the Trustee shall not enter or maintain any litigation to enforce payment of any life insurance policy or policies until he shall have been indemnified to his satisfaction against all expenses and liabilities to which he may, in his judgment, be subjected, or in which he may become involved, by such action on his part. The Trustee, however, may utilize the proceeds of any life insurance policy to meet expenses incurred in connection with enforcing payment of the proceeds of any other policy.
- B. The Trustee is authorized to compromise and adjust claims arising out of any insurance policy or policies upon such terms and conditions as he may deem advisable, and the decision of the Trustee in that regard shall be binding and conclusive upon all persons interested therein.
- C. The Trustee shall be responsible for the proceeds of the life insurance policies only when, as and if collected, or paid to him, and he shall have no responsibility or liability whatsoever to anyone if for any reason any policy or policies shall be uncollectible in whole or in part.

## ARTICLE XV

In the administration of the trusts created hereunder, the Trustee shall have the following powers, in addition to all powers vested in him by law, which in each and every instance may be exercisable by him at such times (if at all), in such manner, and in accordance with such criteria, as he, in his discretion, shall deem appropriate:

- A. To retain any investment and property which may be received by him for such length of time as to him may seem proper, without liability by reason of such retention.
- B. To make such investments and reinvestments of principal and accumulated income as he may consider proper, so long as the requirements (other than diversification) of any applicable Prudent Investor Act (or equivalent) are satisfied. The Trustee may make his decision regarding diversification based upon such criteria as he, in his sole discretion, shall deem advisable, including, but not limited to, tax considerations, and the Trustee shall incur no liability of any kind as a result of his decision whether or not to diversify. Any such investments may be held in bearer form, or in the name of the Trustee, or in the name of a nominee or nominees.
- C. To retain cash or the proceeds from the sale of any assets until such time or times as he deems it appropriate to invest such funds.
- D. With respect to any securities forming part of any trust created hereunder: To exercise all voting rights, either in person or by proxy; to enter or refuse to enter into any dissolution, liquidation, consolidation, recapitalization, reorganization, merger or other change in capital structure, and in connection therewith, to make exchanges of securities and to enter into agreements on such terms and conditions as he may deem advisable; and to enter into voting trusts and agreements with other stockholders, and other holders of securities, and the corporations which shall have issued such stock or securities, or any one or more of such persons, for such purposes and for such period of time (whether or not the same extends beyond the actual or probable duration of the trusts created hereunder), and upon such terms and conditions as he shall deem advisable.
- E. To enter into any lease or leases, without application to any court, of any or all real or personal property held hereunder, for such period (whether or not the same extends beyond the actual or probable duration of the trusts created hereunder), and upon such terms and conditions as he shall deem advisable.
- F. To borrow money or property, either upon the security of any or all of the assets of the trusts created hereunder, or without security or otherwise, upon such terms and conditions and for such purposes in connection with the administration of the trusts as to him shall seem proper.
- G. To grant, bargain, sell, exchange, mortgage, grant options to buy, or otherwise dispose of any or all real or personal property, or both, at any time held hereunder, either at public or private sale, for cash or on credit, or partly for cash and partly on credit, upon such terms and conditions, in such manner and for such purposes, and either in whole or in part, as

he may deem proper; and to make, execute, acknowledge and deliver good and sufficient instruments for that purpose. No purchaser, upon any sale or other disposition, shall be bound to see to the application of the monies or property arising therefrom or to inquire into the validity, expediency or propriety of any such sale or disposition.

- H. To maintain and insure all real and personal property, and to develop, repair, remodel, alter, build on, improve, rebuild or reconstruct any or all real property, either by building, constructing or erecting new buildings or by repairing, remodeling, altering, rebuilding or reconstructing existing buildings, for such purposes, to any and every extent, and in such manner as he may deem proper, and to borrow monies in connection therewith upon the security of any such real property and/or of any or all other assets of the trusts.
- I. To foreclose any mortgage or mortgages, and to take title to the property or any part thereof affected by such mortgage or, in his discretion, to accept a conveyance of any property in lieu of foreclosure, and to collect the rents and income therefrom, either through a receiver or directly, and to protect such property against foreclosure under any mortgage that shall be a prior lien on said property, or to redeem from foreclosure under any such mortgages, as well as to protect such property against nonpayment of taxes, assessments or other liens.
- J. To adjust, compromise or arbitrate claims or demands of, or against, the trusts created hereunder, whether such claims are due or shall become due in the future, including without limitation any overpayment or refund claim, or any deficiency, additional assessment or other liability, relating to any Federal, state, county, municipal or other tax, irrespective of the nature thereof.
- K. To join with any other person, persons, nominee or nominees in the incorporation of any and all corporations, for such purposes, for such periods of time, and upon such terms and conditions respecting the organization, operation and maintenance thereof (including not by way of limitation, the adoption of bylaws, rules and regulations) as he shall deem advisable, and to pay for the stock of any such corporation with any or all of the assets of the trusts created hereunder, and to contribute to the capital of such corporation, or to lend to it, any or all of the assets of the trusts created hereunder.
- L. To join with any other person, persons, nominee or nominees in any partnership, whether general or limited, or in any joint venture, limited liability company or other business association, for such purposes, for such period of time, and upon such terms and conditions, as he shall deem advisable, and to contribute to the capital of any such partnership, joint venture, limited liability company or other business association, or to lend to it, any or all of the assets of the trusts created hereunder.
- M. To engage in and operate any business for such purposes, in such manner and for such periods of time as he shall deem advisable, and to apply any and all assets of the trusts created hereunder to the conduct of any such business.

- N. To grant options and execute option agreements with respect to the sale or lease of property held by him hereunder, without obligation to repudiate the same in favor of better offers.
- O. To assign one or more shares of the stock of any corporation which may at any time be held by him hereunder to himself, or to a nominee or nominees, for the purposes of qualifying such person to act as a director of the corporation, the stock of which is so assigned.
- P. To engage such attorneys, investment counsel, clerks, employees, agents, accountants, brokers, officers, architects, contractors, subcontractors, surveyors, and such other persons, firms or corporations, as he shall deem necessary or helpful in connection with the administration of the trusts created hereunder, at such wages, fees, compensation, remuneration, commission rates, prices, consideration or otherwise, as he shall deem proper.
- Q. To set up reasonable reserves for depreciation and/or depletion.
- R. To execute and deliver all documents, contracts and instruments necessary or advisable in connection with the administration of the trusts created hereunder.
- S. To make and retain joint investments and investments of undivided interests in any property, real or personal, whether or not all the property be held hereunder, and whether or not the provisions under which such other property is held are similar, and to administer, or to permit to be administered, all or any part of such property in one or more consolidated funds in which the same shall have joint or undivided interests without any physical division of the investments, but such consolidation of investments shall not operate to merge the legal or beneficial interests in such separate trusts, parts or shares; and to hold and administer any property in a common trust fund administered by any acting corporate Trustee.
- T. To purchase any improved or unimproved real property, at public or private sale, for cash or on credit, or partly for cash and partly on credit, and/or subject to any existing mortgage or mortgages, for such purposes and upon such terms and conditions as he shall deem advisable.
- U. To mortgage or pledge any or all real or personal property at any time held hereunder, and to enter into construction mortgages or purchase money mortgages respecting any and all real property, for such purposes and upon such terms and conditions as he shall deem advisable.
- V. To continue to hold and administer the interest in any business of which the Grantor may be the owner, whether such ownership be as an individual, partner, joint venturer, member or stockholder, or otherwise, or to engage in and operate any business, for such purposes, in such manner, and for such period of time, as he shall deem proper, and to apply to the conduct of any such business any or all of the assets of the trusts created hereunder.

- W. To dissolve or to participate in the dissolution of any partnership, joint venture or limited liability company in which the Grantor shall have an interest or in which the Trustee, in the administration of the trusts created hereunder, shall hold an interest, or of which he shall become a member, whether such dissolution be by agreement, operation of law, or by the judgment of any court, and to enter into any agreements with respect thereto, upon such terms and conditions as he shall deem proper.
- X. Without in any way limiting the generality of the foregoing powers, to sell any interest in any business which may come into his hands as part of any trust created hereunder, at such time or times, for such amount or amounts, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions, as he shall deem proper.
- Y. To lend money to, and to purchase as an investment for the trusts created hereunder from, the executors or administrators of the Grantor's estate, and/or the executors or administrators of the estate of the Grantor's spouse, and/or the Trustee of any trust created by the Grantor or the Grantor's said spouse, by deed or Will, any cash, stock, securities or other property, real, personal or mixed, constituting part of the Grantor's estate, or of the estate of the Grantor's said spouse, or constituting part of any such trust, at such prices, and upon such terms and conditions, as the Trustee, in his discretion, shall deem appropriate.
- Z. To allocate receipts and disbursements of any trust created hereunder between income and principal thereof in such a manner as the Trustee shall deem advisable, so long as the requirements of any applicable Principal and Income Act or equivalent are satisfied, except that during the lifetime of the Grantor's wife, MARY JONES, no allocation or allocations shall be made with respect to any portion of any trust created hereunder which could prevent the same from qualifying for the Federal estate tax marital deduction.

## **ARTICLE XVI**

In the administration of the trusts created hereunder, the Grantor directs that:

- A. In any case in which the Trustee is required to divide any trust created hereunder, or any portion thereof, into parts or shares, and/or is required to distribute the same, or any portion thereof, or any part or share into which the same shall have been divided, either to a single distributee, or to two (2) or more distributees, he, in his discretion, may make such partition, division or distribution wholly in kind or in money, or partly in kind or in money, and may distribute different property interests to the several distributees, and the choice and relative value of the property or money so distributed, partitioned or divided shall, in the absence of fraud or bad faith, be binding and conclusive on everyone interested therein, and he shall in no event be accountable for any error of judgment or discretion in exercising the power and authority herein conferred.



- B. The Trustee shall not be accountable for any loss which may occur to the trusts herein created as a result of the exercise of, or the refusal to exercise any of the powers or discretions vested in him, so long as such exercise or refusal to exercise is made in good faith.
- C. No loss whatever resulting to the trusts created hereunder, through the ownership or operation of any business by the Trustee, or as a result of the building, construction or erection by him of any building, improvements or structures, whether the same be carried on by a corporation, partnership, proprietorship, joint venture, limited liability company or otherwise, shall be chargeable against the Trustee personally.
- D. The Trustee may consult with counsel and shall be fully protected in any course of conduct taken in good faith in accordance with the advice of counsel.
- E. The Trustee shall not be disqualified from acting hereunder or from exercising any power granted herein because he may hold an interest in property in which any trust created hereunder shall also hold an interest, or be a creditor of any such trust, or be an employee or agent of, or the holder of an interest in, any business, sole proprietorship, partnership, joint venture, limited liability company, corporation, or otherwise, in which any trust created hereunder may hold an interest, or by reason of the fact that he may also be serving as executor of the Grantor's estate or the Trustee of any trust established under the Grantor's Last Will and Testament.
- F. If pursuant to any provisions of this Agreement a trust would be established to which any part of the Grantor's GST exemption (provided for in Section 2631(a) of the Code) would be allocated (hereinafter referred to as a "GST Trust"), and if after such allocation the inclusion ratio of such trust for generation-skipping transfer tax purposes would not be zero, then the Trustee may, but shall not be required to, establish two separate trusts, each to be administered in accordance with the provisions applicable to the GST Trust, with one trust having an inclusion ratio of one and the other trust having an inclusion ratio of zero. Assets that would have constituted the GST Trust shall be allocated between the two separate trusts as necessary to establish the prescribed inclusion ratios, and shall be valued for such purpose as of the date of allocation.

In addition, if pursuant to any provisions of this Agreement any portion of any trust created hereunder is required to be added to the principal of any other trust created hereunder (such latter trust being hereinafter referred to as the "recipient trust") and if the inclusion ratios (for generation-skipping transfer tax purposes) of such trusts are not identical, then the Trustee, in lieu of making such addition, may, but shall not be required to, hold such portion in a separate trust, to be administered in accordance with the provisions applicable to the recipient trust.

In further addition, if pursuant to any provision of this Agreement a trust has been established that has an inclusion ratio of greater than zero and less than one, then the Trustee may, but shall not be required to, divide such trust into two separate trusts, provided that such division meets the definition of a "qualified severance" contained in Section 2642(a)(3) of the Code or Regulations promulgated pursuant thereto.

- G. The Trustee may be employed and/or engaged in any capacity by, or render services to, any trust created hereunder, and/or may be employed and/or engaged by any corporation, proprietorship, joint venture, limited liability company, sole proprietorship or other entity in which any such trust may have an interest, and shall be entitled to receive and to retain (in addition to his remuneration for his services as Trustee herein) such compensation, perquisites and reimbursement of expenses in connection with such services, in such manner and upon such terms and conditions, as he, in his discretion, shall deem proper.
- H. The Trustee may disclaim all or part of any power or discretion held by the Trustee in a fiduciary capacity, and may determine whether or not such disclaimer shall be binding upon, and shall constitute a disclaimer by, any or all successor or substitute Trustees hereunder, without having to obtain court authorization for such disclaimer or determination.
- I. The Trustee may delegate discretion relating to the investment and management of trust assets to an agent (including an entity affiliated with any trust institution serving as a Trustee) and may do so without liability for the decisions, actions, omissions, neglect, misconduct or default of such agent, provided that such agent was selected and retained with reasonable care, skill and caution. The Trustee may pay such agent reasonable compensation for his, her or its services. Notwithstanding any statute or rule of law to the contrary, such compensation (other than of a fiduciary serving hereunder) shall not reduce any statutory commissions or other fees payable to the Trustee.
- J. If more than one Trustee shall be serving, then any individual Trustee shall have the right, at any time and from time to time, to delegate to the other Trustees any or all of his or her powers as a Trustee hereunder, and to revoke such delegation, in whole or in part, except that an Independent Trustee or Disinterested Trustee may not delegate his or her powers to a Trustee who would not qualify as an Independent Trustee or Disinterested Trustee, whichever shall be applicable. Such delegation or revocation thereof shall be by a written instrument delivered to such other Trustees and shall specify the extent of such delegation or revocation. The written statement of the other Trustees as to whether any Trustee is acting or has delegated any or all of his or her powers to such other Trustees shall fully protect all persons dealing with any trust created hereunder.

In addition, the Trustees may agree among themselves, in writing, to have any or all of the documents required to be signed by them in connection with the administration of any trust created hereunder signed by less than all of them.

## **ARTICLE XVII**

Except with respect to matters agreed to be undertaken by the insurance company or companies which issued the policy or policies of insurance described in the annexed Schedule A, and any other life insurance company which may issue any policies which may become subject to this Agreement, the Grantor hereby relieves such companies from any responsibility to see to the execution and performance of the terms and conditions hereof.

## ARTICLE XVIII

- A. If STEVE SMITH shall cease to serve as Trustee, for any reason whatsoever, then the Grantor's sister-in-law, SHELLEY SMITH, shall serve as his successor.

The last serving Trustee of a trust created hereunder shall have the right, by an instrument in writing (executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey) or by Last Will and Testament, to appoint any individual(s) (other than the Grantor or his wife, MARY JONES), and/or trust institution of his or her choice as successor Trustee(s).

If at any time there shall be no "Disinterested Trustee" (as herein defined) of a trust created hereunder, the other Trustees of such trust, shall have the right, by majority vote and by an instrument in writing, to appoint any individual(s) [other than the Grantor] and/or trust institution of his or her choice as Disinterested Trustee(s) of such trust, to serve with such other trustees.

If at any time there shall be no Trustee of a trust created hereunder and no successor Trustee shall have been appointed as otherwise set forth in this Article XVIII, then the eldest living income beneficiary of the trust, by an instrument in writing, shall appoint any trust institution of his or her choice as successor Trustee of such trust, or, in the event that such beneficiary shall be incapacitated or a minor, the guardian(s) or personal representative(s) of such beneficiary shall make such appointment.

- B. After the death of the Grantor, his wife, MARY JONES, shall have the right, from time to time, but in no event more than once during any five (5) year period, to remove any then serving Trustee(s) of any trust created hereunder and either (i) allow the successor Trustee, appointed in subarticle A hereof, to serve or (ii) appoint any individual(s) (other than herself) and/or, if no trust institution shall then be serving, any trust institution of her choice as successor.
- C. After the death of the last to die of the Grantor and his wife, MARY JONES, each adult beneficiary, with respect to the trust created hereunder for his or her own benefit, shall have the right, from time to time, but in no event more than once during any five (5) year period, to remove any then serving Trustee(s), other than STEVE SMITH and SHELLEY SMITH, and, if no trust institution shall then be serving, appoint any trust institution of his or her choice as successor.
- D. Any successor Trustee (other than SHELLEY SMITH appointed by the Grantor pursuant to subarticle A hereof) must be an "Independent Trustee," which is an individual or trust institution not related or subordinate [within the meaning of Section 672(c) of the Code] to the person making such appointment. In addition any trust institution being appointed, shall, at the time of appointment, be administering trust assets valued at not less than two hundred fifty million (\$250,000,000) dollars.
- E. The rights granted in subarticles B and C hereof may be exercised by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of

real property to be recorded in the State of New Jersey, and delivered to the then acting Trustee(s), either in person or by prepaid, registered or certified mail, which instrument shall advise such Trustee(s) of the appointed successor(s), if any, and shall state the effective date of removal, to be not less than thirty (30) days and not more than sixty (60) days after delivery. On such effective date, or as soon thereafter as may be reasonably feasible, the Trustee(s) being removed shall then turn over to the remaining Co-Trustee(s) and/or appointed successor(s), if any, all funds then held by such Trustee(s) in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the Trustee(s) being removed, reserving therefrom such amount as such Trustee(s) shall deem reasonably necessary to cover the expenses of such removal, including any applicable termination commissions. The Trustee(s) being removed shall have the right to demand and receive, prior to releasing any funds to the remaining Co-Trustee(s) and/or appointed successor(s), if any, written approval of such Trustee's or Trustees' statements or final accounting by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect as an approved accounting pursuant to Article XXI hereof. In lieu thereof, such Trustee(s) may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining Co-Trustee(s) and/or appointed successor(s), if any, until such statements or account, judicial or otherwise, shall have been approved.

- F. The compensation to any Trustee for services rendered hereunder shall be as set forth in a separate agreement between such Trustee and the Grantor or person appointing such Trustee, as the same shall be amended from time to time, or, in the absence of such agreement, (i) as provided under applicable law in the case of any individual Trustee and (ii) in the case of any trust institution, in accordance with its regularly published fee schedule in effect from time to time.
- G. Any Trustee of any trust created hereunder shall have the right to resign at any time by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered, either in person or by prepaid, registered or certified mail, to the Grantor if he shall then be living, or, if he shall then be deceased, to the Co-Trustee(s), or, if none, to the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, to the guardian(s) or personal representative(s) of such beneficiary]. Such resignation shall be effective upon delivery of the aforesaid written instrument of resignation to the then serving Co-Trustee(s), or, if none, upon the qualification of the resigning Trustee's successor(s), but in no event earlier than thirty (30) days after delivery of the aforesaid written instrument of resignation to the beneficiary or his or her guardian(s) or personal representative(s), whichever shall be applicable.

- H. On the effective date of the resignation of a Trustee pursuant to subarticle G hereof, or as soon thereafter as may be reasonably feasible, the resigning Trustee shall then turn over to the remaining Trustee(s) and/or appointed successor(s), all funds then held by the resigning Trustee in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the resigning Trustee, reserving therefrom such amount as such Trustee shall deem reasonably necessary to cover the expenses of such resignation, including any applicable termination commissions. The resigning Trustee shall have the right to demand and receive, prior to releasing any funds to the remaining Trustee(s) and/or appointed successor(s), written approval of the statements or final accounting of the resigning Trustee by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect of an approved accounting pursuant to Article XXI hereof. In lieu thereof, the resigning Trustee may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining Trustee(s) and/or appointed successor(s) until such statements or accounting, judicial or otherwise, shall have been approved. The resigning Trustee's successor(s) shall be as set forth in, or appointed pursuant to, subarticle A hereof.
- I. For purposes of subarticle H hereof, any individual Trustee shall be deemed to have resigned when it is determined that he or she is under a medical infirmity or physical incapacity (an "Incapacity"), which shall be deemed to exist when the same has been declared by a court of competent jurisdiction or when a conservator or guardian for such Trustee has been appointed based upon such Incapacity. Furthermore, such Incapacity shall be deemed to exist upon presentation to the then serving Co-Trustee(s), or, if none, to the next succeeding successor Trustee(s), of a certificate executed by a licensed physician which states that (i) he or she is the attending physician for the Trustee; (ii) that the Trustee is incapable of caring for himself or herself; and (iii) that the Trustee is physically or mentally incapable of managing his or her financial affairs and attending properly to the normal duties and responsibilities required for the prudent management and protection of property. The effective date of such Incapacity shall be the date of the order or decree adjudicating the Incapacity, the date of the order or decree appointing the guardian or conservator, or the date of the certificate of such attending physician described above, whichever shall first occur.

For purposes of determining a serving Trustee's Incapacity, such Trustee (hereinafter the "Consenting" Trustee) hereby consents to the disclosure to the then serving Co-Trustee(s), or, if none, to the next succeeding successor Trustee(s) [hereinafter the "Requesting" Trustee] of all of the Protected Health Information ("PHI") and medical records of the Consenting Trustee and the Requesting Trustee shall be treated as the Consenting Trustee would be with regard to the use and dissemination of his or her PHI and medical records, including, but not limited to, any written opinion relating to the Consenting Trustee's Incapacity. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164. The Consenting Trustee hereby intends that the Requesting Trustee be treated as the personal representative of the Consenting Trustee for all purposes, as provided in 45 CFR 164.502(g)(2), relating to any inquiry relating to his or

her PHI, and the Consenting Trustee therefore specifically authorize the Requesting Trustee to request, obtain, receive and inspect any and all information bearing upon the Consenting Trustee's health, including PHI relevant to the determination of the Consenting Trustee's ability to perform his or her duties as a Trustee hereunder, to sign whatever authorizations for release of information required by providers or others, and to waive any rights the Consenting Trustee may have for breach of confidentiality for the release of such information to the Requesting Trustee. The authority given to the Requesting Trustee shall supersede any prior agreement that the Consenting Trustee may have made with his or her health care providers to restrict access to, or disclosure of, his or her PHI.

In addition, the Consenting Trustee specifically authorizes any physician, dentist, health care provider, any insurance company and the Medical Information Bureau Inc., or any other health care organization that has provided treatment or services to the Consenting Trustee to give, disclose and release to the Requesting Trustee all of the Consenting Trustee's PHI and medical records regarding any past, present or future medical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The foregoing authority given to the Requesting Trustee shall apply to a successor Trustee even though he or she has not yet assumed his or her duties and shall have no expiration date. Said authority shall expire only in the event that the Consenting Trustee shall permanently cease to serve as a Trustee hereunder.

The initial Trustee and each successor Trustee, upon qualifying as such, hereby expressly accepts, and agrees to be bound by, the provisions of this subarticle I.

## **ARTICLE XIX**

With respect to any trust created hereunder which shall have a single current income beneficiary, if at any time after the death of the last to die of the Grantor and his wife, MARY JONES, and after taking into account the age, maturity and competence of such beneficiary, the Trustee (other than such beneficiary) shall determine it to be in the best interest of such beneficiary to terminate such trust and distribute to him or her, outright and free of trust, the entire remaining principal thereof, such Trustee may do so, whereupon such trust shall terminate and the rights of any other beneficiaries or remaindermen in such trust shall cease. In making such decision, (i) such Trustee shall take into account the relationship of commissions and expenses to the value of the principal of such trust, and if he shall decide that the value of the trust does not warrant the incurring of such commissions and expenses said decision shall be considered a proper reason for termination pursuant to this Article; and (ii) such Trustee shall take into account the then existing and anticipated future status of the Federal estate tax and generation-skipping transfer taxes, and any applicable State estate, generation-skipping transfer and inheritance taxes, and if he shall conclude that the existence of any such tax probably was, but probably is no longer, a principal reason for the existence of the trust, said conclusion also shall be considered a proper reason for termination pursuant to this Article.

## **ARTICLE XX**

Any trust created hereunder which shall be substantially identical to any other trust created hereunder, or to a trust created under the Last Will and Testament of the Grantor or of the Grantor's wife, MARY JONES, or under any trust created by the Grantor or MARY during their lifetimes may, in the discretion of the Trustee, be merged into such other trust, or he may accept a merger of such other trust into the substantially identical trust created hereunder, if the Trustee shall determine the same advisable to facilitate the administration thereof, to reduce the expense of operation thereof, or any other reason he shall deem to be in the best interests of the beneficiaries thereof.

## **ARTICLE XXI**

The Trustee, upon request, but not more often than annually, shall provide to each beneficiary of any trust administered by him statements setting forth the receipts and disbursements of principal and income and the assets on hand at the commencement and expiration of the period covered by such statements. The written approval of such statements by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], shall be final and binding upon all who are then or may thereafter become entitled to any part of the assets, as to all matters and transactions shown on the statements. Anything herein contained shall not preclude the Trustee, from time to time, from rendering an accounting to the parties interested therein or from submitting an accounting to a court for settlement, as he shall deem advisable. All of the Trustee's reasonable expenses (including reasonable attorneys' fees) attributable to any such accounting and approval shall be paid by the trust.

## **ARTICLE XXII**

- A. Wherever in this Agreement the word "Trustee" is used, it shall be construed to include the Trustee and his successor or successors in office, and all references to such Trustee shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- B. Wherever in this Agreement the words "descendant" and "descendants" are used, they shall be construed to be synonymous with the word "issue."
- C. Wherever in this Agreement the words "per stirpes" are used with reference to the descendants of any individual, they shall be construed to mean that the determination of such descendants begins with the children of such individual and that no distribution at any generational level shall be per capita.
- D. Wherever in this Will the words "sibling" and "siblings" are used, they shall be construed to mean "brother(s) and sister(s)" (of the whole blood or of the half blood, but only if the

Grantor or a descendant of the Grantor shall be the natural or adoptive parent of the latter), but not “step-brother(s) and step-sister(s),” unless the same shall have been adopted by the Grantor or a descendant of the Grantor.

- E. All references made, and all nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- F. Wherever in this Agreement the word “Code” is used, it shall be construed to mean the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to refer to such section or to any section of similar import.
- G. Wherever in this Agreement the words “trust institution” are used, they shall be construed to mean a corporation or other organization authorized to act as Trustee of both lifetime and testamentary trusts.

### **ARTICLE XXIII**

The Trustee hereby expressly undertakes and accepts the trusts created hereby and agrees to carry out the provisions of this Agreement. Any successor Trustee shall qualify by executing an instrument in writing, duly acknowledged, by which he expressly agrees to assume the trusts and to carry out the provisions hereof.

### **ARTICLE XXIV**

The Grantor agrees and acknowledges that any assignment of any policy to the Trustee shall, without any further action on the Grantor’s part, automatically be deemed to include an assignment to the Trustee of any replacements, renewals, increases in amount thereof or supplements thereto.

### **ARTICLE XXV**

No bond or other security shall be required of the Trustee, or any successor Trustee, in any jurisdiction in which they may be called upon to act.

### **ARTICLE XXVI**

Except as otherwise specifically provided herein, this Agreement, and the trusts created hereunder, may not be terminated, revoked, altered, amended or changed, in any respect whatsoever, by the Grantor or by any other person.



## **ARTICLE XXVII**

This Agreement shall be governed by the substantive law of the State of New Jersey; provided, however, that the Trustee may, at any time and from time to time, in his discretion, (i) remove (or decline to remove) all or part of the assets of any trust created hereunder, and/or the situs of administration of such trust, from one jurisdiction to another and/or (ii) elect (or decline to elect) that the substantive laws of such other jurisdiction shall thereafter govern. Any decision of the Trustee with respect to the foregoing shall be binding and conclusive on everyone interested therein.

## **ARTICLE XXVIII**

To the extent permitted by law, if any beneficiary or remainderman under this Agreement shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Agreement or any of its provisions, or shall attempt in any way to oppose or set aside this Agreement or impair or invalidate any of the provisions the Grantor has made in it, any distribution to, or other provision for, that beneficiary or remainderman under this Agreement shall be revoked and the property covered thereby shall be disposed of in the same manner as if the contesting beneficiary or remainderman, his or her spouse and all of his or her descendants had predeceased the Grantor.

The Grantor also directs that no portion of any trust administered under this Agreement shall be used to pay the legal fees and other expenses incurred by any of the aforesaid persons who shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Agreement or any of its provisions, or shall attempt in any way to oppose or set aside this Agreement or impair or invalidate any of its provisions, whether or not such action shall be successful. In addition, to the extent permitted by law, it is also the Grantor's wish that the legal fees and other expenses incurred by the Trustee in successfully defending any such action be paid by the person bringing such action.

## **ARTICLE XXIX**

Anything in this Agreement to the contrary notwithstanding:

- A. "Interested Trustee" means for any trust a Trustee who is (i) a transferor of property to the trust, including a person whose qualified disclaimer resulted in property passing to the trust; or (ii) a person who is, or in the future may be, eligible to receive income or principal pursuant to the terms of the trust. A Trustee described in (i) is an Interested Trustee only with respect to the transferred property (including income and gain on, and reinvestment of, such property). A person is described in (ii) even if he or she has a remote contingent remainder interest, but is not described in (ii) if the person's only interest is as a potential appointee under a non-fiduciary power of appointment held by another person, the

exercise of which will take effect only in the future, such as a testamentary power held by a living person. A Trustee who is not an Interested Trustee is a “Disinterested Trustee.”

- B. The Disinterested Trustee(s) may, at any time prior to the death of the income beneficiary of any trust administered pursuant to Article II hereof, by an instrument in writing (i) confer upon the income beneficiary of such trust, a non-fiduciary power exercisable only by Will to appoint all or part of the applicable trust administered pursuant to said Article to the creditors of such beneficiary’s estate (other than any taxing authority), and the instrument conferring such power may require consent of any other Trustee (other than any Interested Trustee), (ii) revoke any such instrument previously executed, with or without executing a replacement instrument and/or (iii) irrevocably relinquish the powers conferred under (i) and/or (ii).

The Disinterested Trustee(s) shall have the same right with respect to the income beneficiary of any trust administered pursuant to Article III hereof prior to the death of such income beneficiary.

Without limiting the Disinterested Trustee(s)’ discretion, such Trustee(s) may use the authority conferred by this subarticle to subject the trust property to estate tax when it appears that to do so may reduce overall taxes (income, gift, estate, inheritance, transfer and generation-skipping transfer).

- C. The aforesaid powers of appointment may be exercised by the applicable income beneficiary by (and only by) specific provision in his or her Last Will and Testament making reference hereto, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise as said income beneficiary shall desire and the Trustee shall transfer and set over the appointed principal of the trust in accordance with any exercise of such power. Any portion of the principal and undistributed income of the trust remaining at the date of death of the beneficiary, which he or she shall not have validly appointed by his or her Last Will and Testament as above provided, shall be paid over and distributed in accordance with the applicable provisions of Article II or Article III hereof.

IN WITNESS WHEREOF, the Grantor and the Trustee have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the

Presence of:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (L.S.)  
JOHN SMITH, Grantor

\_\_\_\_\_ (L.S.)  
JOHN SMITH, Trustee

\*Provided by Peter J. Bakarich, Jr., Esq., Winne Banta Basralian & Kahn, P.C., Hackensack, New Jersey

SCHEDULE "A"

Company

Policy Number

Amount

STATE OF NEW JERSEY)

ss:

COUNTY OF BERGEN)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the subscriber, a Notary Public of New Jersey, personally appeared TOM JONES, who, I am satisfied, is the Grantor mentioned in the within instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

---

Notary Public

STATE OF NEW JERSEY)

ss:

COUNTY OF BERGEN)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public New Jersey, personally appeared STEVE SMITH, who, I am satisfied, is the Trustee mentioned in the within instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

---

Notary Public

**IRREVOCABLE LIFE INSURANCE TRUST  
FOR JOINT AND SURVIVOR (LAST TO DIE) POLICIES**

TIMOTHY AND SHIRLEY  
FORRESTER FAMILY TRUST

THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, 2019, by and among TIMOTHY FORRESTER and SHIRLEY FORRESTER, residing at 38 Pine Tree Drive, Pine Hollow, New Jersey 08322 (hereinafter referred to as the “Grantors”) and PAUL FORRESTER, having his office at 107 East Cedar Street, Unit 17, Cedar Run, New Jersey 08092 (hereinafter referred to as the “Trustee”):

WITNESSETH:

WHEREAS the Grantors have heretofore delivered to the Trustee the sum set forth in Schedule A annexed hereto; and

WHEREAS the Grantors, desirous of providing for the management and distribution of such sum and any other property transferred and/or delivered to the Trustee during the Grantors’ lifetimes and after their deaths, have decided to create the within trust, to be known as the “TIMOTHY AND SHIRLEY FORRESTER FAMILY TRUST”;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I**

- A. Until the death of the last to die of the Grantors, the Trustee shall hold in trust any property transferred and/or delivered to him by the Grantors, or either of them, and/or any other person, during the Grantors’ lifetimes, for the following uses and purposes:
1. The Trustee, at any time or times that he shall deem it advisable, may apply for the benefit of the Grantors’ children, or pay over to them, so much, all or none of the “available net income” (as hereinafter defined) of the trust, and/or such sum or sums out of the principal of the trust (including the whole thereof), as the Trustee, in his discretion, shall deem advisable, except that (i) no such application or payment shall be made prior to thirty (30) days after notice of the intended application or payment shall have been given to each “beneficiary” (as hereinafter defined) entitled to withdraw principal pursuant to paragraphs 2 and/or 5 hereof, during which thirty (30) day period each such beneficiary may exercise his or her right of withdrawal notwithstanding the fact that such exercise may make the intended application or payment impossible, and (ii) no such application or payment shall be made which shall have the purpose or effect of discharging a legal obligation of the Grantors, or either of them, or which shall be for their, his or her pecuniary benefit.

2. In addition to the foregoing, each of the Grantor's children, LILLY FORRESTER and WOODY FORRESTER, and any other child of the Grantors born or adopted after the date of execution of this Agreement (referred to in this Article I as the "beneficiaries" and each individually as a "beneficiary") shall have the right, from time to time, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount or amounts as he or she shall desire, for any purpose at all, not to exceed in the aggregate, however, in any one calendar year, the "annual withdrawal amount" (as hereinafter defined) with respect to such beneficiary, plus any amounts added thereto pursuant to paragraph 5 hereof.
3. The Trustee shall notify the Grantors, within fifteen (15) days after receipt, of all transfers to the trust made by any person other than the Grantors, or either of them, whether such transfer shall be in the form of all or part of a policy of insurance or cash, securities or other property. The Grantors shall notify each beneficiary of all transfers to the trust and of all payments of premiums on policies of insurance on their lives owned in full or in part by the trust, whether such payments shall be made by the Grantors, or either of them, or by any other person, firm or entity, which payments, for the purposes of this paragraph and paragraph 2 of subarticle B hereof, shall be deemed to be transfers to the trust. The Grantors shall provide such notice within fifteen (15) days after the later of the date of such transfer or the date when the Grantors receive notice thereof. The failure of the Trustee or the Grantors to provide such notice shall not affect the right of any beneficiary to withdraw principal of the trust pursuant to paragraphs 2 and/or 5 hereof.
4. All notifications required by paragraphs 1 and/or 3 hereof, and/or by subarticle D hereof, shall be made in writing and either delivered to the recipient thereof or mailed to such recipient at his or her residence address as known to the notifying party, from time to time.
5. Except as hereinafter provided, the provision of paragraph 2 hereof shall be cumulative, so that amounts not withdrawn pursuant thereto in any one year shall be added to the annual withdrawal amount in each succeeding year. Notwithstanding the preceding sentence, the cumulative amount subject to withdrawal pursuant to paragraph 2 hereof, to the extent not withdrawn in any one year, shall be reduced at the end of such year by the "lapse amount," as hereinafter defined. In the event of the death of the last to die of the Grantors prior to the lapse of all of any beneficiary's accumulated rights of withdrawal, such beneficiary may exercise such rights, according to the provisions hereof, until they shall fully lapse, over the principal of any separate trust created for his or her benefit after such Grantor's death, or, if no separate trust shall be so created, then over the principal of any other trust created hereunder, whether or not he or she shall be a current income or principal beneficiary thereof.

B. For the purposes of this Article I:

1. The phrase “available net income” of the trust shall mean such portion, if any, of the net income, if any, of the trust as the Trustee, in his discretion, shall not have expended for the payment of premiums on life insurance policies in accordance with the authority hereinafter granted to him, it being the Grantors’ intention that nothing contained in this Article I shall in any manner be deemed to limit the Trustee’s discretion to use all or a portion of the net income of the trust for the payment of any such premiums.
2. The phrase “annual withdrawal amount” for any calendar year for any beneficiary shall mean the lesser of: (a) the aggregate value of such beneficiary’s share of each transfer made to the trust during such year, which share shall be determined by dividing the amount of such transfer by the number of beneficiaries living on the date thereof or (b) the amount of the gift tax annual exclusion contained in Section 2503(b) of the Code (taking into account the application of Section 2513 thereof, whether or not the consent provided for therein has been signified), or any statute of like import, applicable to such year with respect to a gift made to such beneficiary by the transferor of such transfer.
3. The phrase “lapse amount” for any calendar year for any beneficiary shall mean the amount with respect to which a lapse of a power of appointment shall not be deemed to be a release thereof, pursuant to Section 2514(e) of the Code, or any statute of like import, applicable to such year.

C. With respect to the discretion granted to the Trustee, in this Article I to pay or apply income and/or principal of the trust to or for the benefit of the beneficiaries thereof, the Grantors are aware of the fact that prior to their deaths all or a substantial portion of such principal may consist of policies of insurance, or portions thereof, on their lives. The Grantors therefore direct that nothing contained in this Article I shall in any manner be deemed to require that the Trustee at any time surrender any such policy for the cash value, or in the case of split-ownership policies (as hereinafter defined in Article VIII) decline to pay any portion of the premium thereon properly allocable to the Trustee, or in any other manner convert any portion of the principal of the trust into cash, it being the Grantors’ intention that the authority hereinafter granted to the Trustee with respect thereto shall not be limited in any manner. If the Trustee, in accordance with the aforementioned discretion, or in compliance with any exercise of the rights granted in paragraphs 2 and/or 5 of subarticle A of this Article I, shall decide or be required to pay or apply any portion of the principal of the trust, he may, and in the absence of other available assets he shall, do so by a direct distribution of any such policy or policies of life insurance, or portion thereof.

D. In addition to the foregoing, if the Trustee, at any time prior to the death of the last to die of the Grantors, shall deem it advisable to distribute to the beneficiaries of the trust, outright or in trust for their benefit, one or more of the policies of life insurance, or portions thereof, and/or any or all of the other assets held in the trust, the Trustee may do so, whereupon the trust shall terminate if no assets shall then remain therein, except that (i) no such distribution shall be made prior to thirty (30) days after notice of the intended



distribution shall have been given to each beneficiary entitled to withdraw principal pursuant to paragraphs 2 and/or 5 of subarticle A hereof, during which thirty (30) day period each such beneficiary may exercise his or her right of withdrawal notwithstanding the fact that such exercise may make the intended distribution impossible, and (ii) no such distribution shall be made which shall have the purpose or effect of discharging a legal obligation of the Grantors, or either of them, or which shall be for their, his or her pecuniary benefit.

Any distribution pursuant to this subarticle D, whether outright or in trust, may be in such proportions as the Trustee may determine, so long as all distributees, or all persons having a present or future interest in a distributee trust (whether created by the Trustee or any other person), are one or more of the beneficiaries named herein, and/or the descendants of any such beneficiary.

The Grantors understand and intend that the discretion granted to the Trustee in this subarticle D will permit him to alter the rights of the beneficiaries to the same extent as if the Trustee had been given a power to appoint trust assets to or for the benefit of the individuals specified above. In the exercise of his discretion, the Trustee shall not be deemed to be acting in a fiduciary capacity, and such exercise shall be non-reviewable and shall be binding and conclusive upon all persons interested therein.

- E. Upon the death of the last to die of the Grantors, the then remaining principal and undistributed income of the trust shall be administered as hereinafter provided in Article II.

## **ARTICLE II**

- A. Upon the death of the last to die of the Grantors, the Trustee shall receive and collect any proceeds of life insurance policies on the lives of the Grantors which shall be payable to him and any other property, interests in property and money which may be payable to him as a result of the deaths of the Grantors or any other person, whether under the Last Will and Testament of either Grantor or any other person, or otherwise, and he shall add the same to any other assets then in his possession and he shall divide all such assets into a sufficient number of equal shares so that there shall be set aside one such share for the benefit of each child of the Grantors who shall then be living, and one such share for the benefit of the then living descendants collectively of each child of the Grantors who shall then be deceased, to be allocated among them per stirpes.

Each share allocated to a child of the Grantors, and each portion of a share allocated to a descendant of a deceased child of the Grantors, shall be held by the Trustee as a separate trust for the benefit of the person for whom it shall have been allocated, for the following uses and purposes:

1. Until the attainment of the age of twenty-five (25) years by the beneficiary of the trust, the Trustee, at any time or times that he shall deem it advisable, may apply for the benefit of the beneficiary, or pay over to him or her, so much, all or none of the net income of the trust as the Trustee, in his discretion, shall deem advisable.

2. From and after the attainment of the age of twenty-five (25) years by the beneficiary of the trust, and until the termination thereof, the Trustee shall apply for the benefit of the beneficiary, or pay over to him or her, all of the net income of the trust, at convenient intervals, but not less often than quarter-annually.
3. Prior to the distribution of all of the principal of the trust, the Trustee, at any time or times that he shall deem it advisable, may apply for the benefit of the beneficiary thereof, or pay over to him or her, such sum or sums out of the principal of the trust (including the whole thereof) as the Trustee, in his discretion, shall deem advisable.
4. Upon the attainment of the age of thirty (30) years by the beneficiary of the trust, the Trustee shall pay over and distribute to him or her one-tenth (1/10) of the then remaining principal of the trust; upon the attainment of the age of thirty-seven (37) years by the beneficiary, the Trustee shall pay over and distribute to him or her one-sixth (1/6) of the then remaining principal thereof. If upon the establishment of the trust the beneficiary thereof shall then have either (i) attained age thirty (30) but not age thirty-seven (37), or (ii) attained age thirty-seven (37), then the Trustee shall then pay over and distribute to him or her either (i) one-tenth (1/10) or (ii) one-fourth (1/4) of the initial principal thereof, respectively, and only the balance shall be held in trust pursuant hereto.
5. Upon the death of the beneficiary of the trust, he or she shall have the right to appoint the then remaining principal of the trust, together with any undistributed income thereof, to and among such of the descendants of the beneficiary as he or she shall desire, and the Trustee shall transfer and set over such principal and income in accordance with any exercise of such power. This power of appointment may be exercised by the beneficiary by (and only by) specific provision in his or her Last Will and Testament making reference hereto, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise as the beneficiary shall desire, but may not be exercised for the purpose of discharging a legal obligation of the beneficiary or for his or her pecuniary benefit. Any portion of the principal and undistributed income of the trust remaining at the date of death of the beneficiary, which he or she shall not have validly appointed by his or her Last Will and Testament as above provided, shall be allocated among the descendants of the beneficiary living at the date of his or her death, per stirpes; and in default of such descendants, the same shall be allocated among those of the beneficiary's siblings who shall then be living and the then living descendants of any sibling of the beneficiary who shall then be deceased, per stirpes; and in default of such siblings and descendants of a deceased sibling, among the then living descendants of that child of the Grantor who shall be the ancestor of the beneficiary, per stirpes, and in default of such ancestor's descendants, among those of the Grantors' children who shall then be living and the then living descendants of any child of the Grantors who shall then be deceased, per stirpes; provided, however, that: (i) any sums thus allocated to any person for whose benefit a trust created hereunder

shall then still be in existence shall be added to the principal of such trust, and shall be held and distributed as part thereof, and (ii) any sums thus allocated to any person for whose benefit there shall not then be in existence a trust created hereunder, shall be held in trust for the benefit of such person in accordance with the provisions of paragraphs 1 through 6 of this subarticle A.

6. At any time that the Trustees are required to distribute principal out of two or more trusts, which have identical terms but different inclusion ratios for generation-skipping transfer tax purposes, the Trustees are authorized to distribute principal out of each such trust, pro rata or non pro rata, or all out of one or more of such trusts to the exclusion of others, taking into account the generation-skipping transfer tax consequences thereof, so long as the total required principal distribution is made. In the exercise of such discretion, the Trustees are to be guided by their opinion of what action will serve the best interests of such trusts, and one or more of the beneficiaries and/or remaindermen thereof, and such discretion can be exercised without prior permission or approval of the court having jurisdiction of this Agreement. Furthermore, any such decision by the Trustees shall be final and binding on all of the beneficiaries and remaindermen of such trusts.

- B. Upon the death of the last to die of the Grantors, or upon the death of the beneficiary of a trust created under subarticle A hereof, whichever shall be applicable, if none of the Grantors' children, and no descendant of any deceased child of the Grantors, shall then be living, then the Trustee shall pay over and distribute the then remaining principal and undistributed income of the trust, or the whole thereof, whichever shall be applicable, together with any income and/or principal of any other trust created hereunder that shall be added thereto, to the then living descendants of PAUL FORRESTER (brother of Grantor, TIMOTHY FORRESTER), per stirpes, and in default of such descendants, to the Grantor's brother, PAUL FORRESTER, if he shall then be living, or, if he also shall then be deceased, to those individuals who would inherit such assets from the TIMOTHY, and in such shares as they would inherit, under the laws of the State of New Jersey then in effect, as if TIMOTHY had died intestate and such assets had constituted his entire estate.

### **ARTICLE III**

Anything in this Agreement to the contrary notwithstanding, any trust created hereunder which shall be or become subject to a rule against perpetuities and which, by its terms, shall not have terminated on or before the date which is twenty-one (21) years after the death of the last survivor of the Grantors and those of their descendants who shall be living on the date of execution of this Agreement, shall nevertheless terminate on such former date, and the principal and undistributed income thereof shall thereupon be paid over and distributed free of trust to the then current income beneficiary thereof, or the current income beneficiaries thereof, in equal shares, if more than one.

## ARTICLE IV

- A. Whenever, pursuant to the terms of this Agreement, the Trustee is directed to hold any property in trust, the Trustee shall hold the same; shall manage, administer, invest and reinvest the principal of the trust; shall collect and receive the income thereof; shall pay any and all expenses incident to the operation of such trust; and shall distribute the net income and principal thereof in the manner set forth.
- B. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, such portions of the income of the trust, and/or such sums of the principal of the trust, as the Trustee shall deem advisable, the Trustee may make such payment or application solely to provide for such beneficiary's health, maintenance, support and education (which may include providing for the beneficiary's undergraduate and postgraduate education and enabling the beneficiary to establish himself or herself in a business or profession); provided, however, that in addition to the foregoing, a "Disinterested Trustee" (as hereinafter defined), without the consent of any other Trustee, may pay or apply net income and/or principal of the trust for any or no reason at all, with no standards or guides relative to the exercise of such discretion being provided, except that no payment or application of trust income or principal shall be made which shall have the purpose or effect of discharging a legal obligation (whether for support or any other purpose) of the Disinterested Trustee or which shall be for his, her or its pecuniary benefit. In the case of income, the Trustee shall add to the principal of the trust any such net income not so expended in any fiscal year of the trust.

If the Disinterested Trustee shall exercise the specific discretion hereinabove granted to such Trustee, then the other Trustees are hereby directed to execute any documents that may be required to effectuate and facilitate the payment or application of the income and/or principal of the trust pursuant to such exercise.

- C. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay to a beneficiary of any trust created hereunder, or to apply for his or her benefit, portions of the income and/or principal of the trust, the Trustee may take into consideration, but shall not be required to do so, any other income or property which may be available to such beneficiary, including the support which a spouse or parent does provide, or is obligated to provide.
- D. Whenever, pursuant to the terms of this Agreement, the Trustee is given discretion to pay or to apply income or principal of a trust to or for the benefit of a minor, the Trustee may, in his discretion, make such payment or application by expending the same directly for the benefit of such minor, or by paying the amount so to be paid or applied to the parent or legal guardian of such minor, or to the person with whom such minor may reside, or to a person standing in the place of a parent to such minor, or to a Custodian for such minor designated by the Trustee under an applicable Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, or directly to such minor, or otherwise, as the Trustee may, from time to time, deem expedient, and the receipt of such minor or such other payee shall be a full acquittance to the Trustee to the extent of such payments.

The provisions of this subarticle D shall also apply, to the extent applicable, whenever the Trustee is given discretion to pay or apply income or principal of a trust to or for the benefit of a person who, in his judgment, is incapable of adequately managing such income or principal.

- E. Whenever, pursuant to the terms of this Agreement, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to himself or herself or for his or her own benefit, and the purposes for which such payment or application can be made are not limited to such person's reasonable needs relating to health, maintenance, support and education, such purposes shall be deemed to be so limited, anything contained in this Agreement to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person to, or on whose behalf, income and/or principal can be so paid or applied, such other person or persons may exercise the discretion granted without reference to the limitation herein set forth. This subarticle shall not apply, however, (i) to a right of withdrawal if the amount which could be withdrawn is limited so that it does not exceed the dollar or percentage limitation contained in Section 2514(e) of the Code or (ii) to the right to withdraw the amounts subject to withdrawal pursuant to paragraphs 2 and/or 5 of subarticle A of Article I hereof.
- F. Whenever, pursuant to the terms of this Agreement, a person is given the discretion, whether in a fiduciary or non-fiduciary capacity, and whether alone or in conjunction with another person, to pay or to apply income and/or principal of any trust created hereunder to or for the benefit of any other person, then the purposes for which such payment or application can be made shall be limited to those which do not relieve the person having such discretion of a legal obligation, whether for support or any other purpose, anything contained in this Agreement to the contrary notwithstanding. If such discretion is held by more than one person, any of whom is not a person whose legal obligation could be relieved by such payment or application, such other person or persons may exercise the discretion granted without reference to the limitation herein set forth.
- G. Whenever, pursuant to the terms of this Agreement, there shall be more than one beneficiary of any one trust, and the Trustee is given discretion to utilize income and/or principal of such trust for their benefit, the Trustee may pay or apply such income and/or principal to or for the benefit of such beneficiaries equally or unequally, or to or for the benefit of any of them to the exclusion of others (subject only to such preference, if any, of one beneficiary over any other as may be specifically stated under the terms of such trust), so that utilization of trust income and principal among such beneficiaries according to their respective needs shall take precedence over equal distribution thereof.

## **ARTICLE V**

The interest of any beneficiary or remainderman in any trust created hereunder, either in income or in principal, or in both, shall not be subject to sale, assignment, pledge or transfer in any manner, and such interest shall not be liable or subject in any manner while in the possession of the Trustee

for the debts, contracts, obligations, liabilities, engagements, undertakings or torts of any such beneficiary or remainderman. No beneficiary or remainderman shall have the power in any manner to anticipate, charge or encumber his or her interest, either in income or in principal, or in both.

## **ARTICLE VI**

For all purposes under this instrument, whether for the determination of relationships or otherwise:

- A. Adopted children of the Grantors shall be considered to have, and shall be given, the same status as natural-born children and adopted children of any other person shall be considered to have, and shall be given, the same status as natural-born children only if the child was a minor when adopted and lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent. All references in this Agreement to children or descendants of the Grantors or any other person shall include, and the Grantors direct that this Agreement shall be effective notwithstanding the fact that there shall be, any child, children, descendant or descendants of the Grantors or any other person born or adopted after the date of execution hereof.
- B. No one claiming to be a natural-born descendant of another person shall be considered as such unless the claimant and the purported parent had established a child-parent relationship prior to the time in question and they had lived together, while the claimant was a minor, as child and parent in the same household. The purpose of this paragraph is to prevent someone from successfully claiming to be a person's child although never acknowledged to be such and it shall apply notwithstanding any provision of law to the contrary.

## **ARTICLE VII**

Any portion of the principal of any trust created hereunder vesting in absolute ownership in a person who is a minor and/or who, in the judgment of the Trustee, is incapable of adequately managing such assets, may be held for the benefit of such person by the Trustee until such minor shall attain majority and/or, in the judgment of the Trustee, such incapacity shall cease to exist. During such period, the Trustee so holding such property shall have all the powers and authority hereinafter granted to him with respect to any trust created hereunder; shall not be required to furnish bond or other security; and may pay or apply to or for the benefit of such person, in any applicable manner set forth in subarticle D of Article IV hereof, such portions, or all, of the property so held, and/or the income earned thereon, as he shall deem to be in the best interest of such person, accumulating as principal any income not so expended in any year. The authority granted to the Trustee hereunder shall be in addition to, and not in lieu of, any other alternative available to him with respect to the administration and distribution of such portion of the principal of the trust, and it shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property, or of such accumulations of income, if any, by such person, nor shall it prevent the absolute vesting thereof in such person.

## **ARTICLE VIII**

As used in this Agreement, the term “split-ownership” shall refer to any policy or policies of insurance, whereunder the right to receive the portion of the death proceeds in excess of the cash value is vested in the Trustee, and the cash value, including the right to receive the portion of the death proceeds equal to the cash value, is vested in any person other than the Trustee, whether such rights shall have arisen by virtue of assignment from the Grantors, or either of them, or any other person or by endorsement to such policy or policies, or otherwise.

## **ARTICLE IX**

- A. The Grantors, or either of them, and/or any other person, from time to time, may assign to the Trustee all of the incidents of ownership in any policy or policies of insurance on the Grantors’ lives, and/or may transfer to the Trustee a portion thereof on a split-ownership basis, and/or may cause all or part of the proceeds thereof, or other death benefits, to be made payable to the Trustee, pursuant to a revocable or irrevocable designation of beneficiary, or otherwise. Such policies and death benefits, and/or the proceeds or portion of the proceeds thereof transferred to or made payable to the Trustee, shall be subject to all of the terms and conditions of this Agreement in the same manner as if they had been included herein at the time of the making and execution hereof. All references in this trust agreement to insurance policies shall be deemed to include any insurance policy or policies, or death benefits, the incidents of ownership in which shall hereafter be assigned to or procured by the Trustee and/or the portion of any policy or policies which shall hereafter be transferred to or procured by the Trustee on a split-ownership basis and/or the proceeds of any policy or policies which are hereafter made payable to the Trustee primarily or upon the occurrence of certain contingencies.
- B. The Trustee, in his discretion, may accept such an assignment of the incidents of ownership of, and/or may on his own initiative procure, any policy or policies of insurance on the lives of the Grantors, in such amount or amounts, and of such type or types (whether on a split-ownership basis or otherwise), and issued by such insurance company or companies, as the Trustee, in his discretion, shall deem advisable.
- C. In addition to the abovementioned policies of life insurance, the Trustee, at any time and from time to time, shall receive and accept from the Grantors, or either of them, and/or the executors or administrators of either Grantor’s estate and/or the Trustee of any trust created by the Grantors, or either of them, by deed or Will; and may receive and accept from any other person or persons, including the fiduciary of any other estate or trust, any additions to the trust, in the form of cash, stock, securities or other property, real, personal or mixed, provided that such additions are acceptable to the Trustee, including any contributions toward the payment of premiums on policies of life insurance owned by the Trustee. Unless otherwise directed in the instrument governing the transfer of such additions to the Trustee, the same shall be administered as part of said trust and shall be subject to all the terms and conditions of this trust agreement.

- D. Any policy or policies of life insurance, or portion thereof, owned by the Trustee, whether originally procured by the Trustee or assigned to him, may be held and maintained, notwithstanding that such policy or policies may be considered unproductive assets.

### **ARTICLE X**

- A. The Trustee, in his discretion, may apply all or any part of the net income and/or principal of the trust, including any sums available to him pursuant to the authority contained in Article XI, toward the payment of premiums on any life insurance policy or policies as the same accrue.
- B. The Trustee shall have no obligation whatsoever with respect to the payment of premiums, dues, assessments or other charges in connection with any policies of life insurance, or portion thereof, owned by him, and nothing contained in this trust agreement shall be construed as a requirement that the Trustee shall procure, retain or maintain any policy of life insurance, or portion thereof, or that he shall solicit contributions toward the payment of premiums thereon, it being the intention of the Grantors and the understanding of the parties hereto that the Trustee shall have the discretion to permit any or all of such policies of life insurance to lapse, or to surrender for cash any or all of those policies the cash value of which is owned by the Trustee, and that he shall not incur any liability to anyone by reason of the exercise of such discretion.

### **ARTICLE XI**

- A. With respect to any life insurance policy or policies owned in full by the Trustee, the Trustee, in his discretion, may exercise any and all of the rights, privileges, benefits and options appertaining thereto, including, without limitation, the following rights, privileges, benefits and options:
1. To receive or withdraw at any time or times, in cash, all dividends or shares of surplus allotted or set apart to any of said policies, and the surrender value of all additions to any of said policies purchased by such dividends or shares of surplus.
  2. To obtain and secure from the insurance company issuing any such policy of insurance, such advances or loans on account of any of said policies as may be available from time to time.
  3. To surrender any of said policies for the cash value thereof or for extended insurance, or to elect to take paid-up insurance with respect to any of said policies.
  4. To pledge any of said policies as security for the repayment of loans made to the trust.
  5. To revoke or to change the beneficiary of any of said policies in order to comply with the provisions of this trust agreement.
  6. To convert or exchange any policy or policies into another or other policies, whether or not from the same insurer.



7. To elect or to alter any method of settlement of the proceeds of any of said policies, and to make successive changes thereof.
  8. To assign all or part of any of said policies in connection with the administration of this trust, or in the exercise of the powers granted to him hereunder or vested in him by operation of law.
  9. If required by any insurance company issuing any such policies, to discharge said company from any and all liability for any amounts paid to the Trustee, or in accordance with his direction, and to agree that no such insurance company shall have any obligation whatsoever to see to the application of any such amounts so paid by it, and to agree further that any such insurance company shall be fully protected in taking or permitting any action in reliance on any instrument or document executed by the Trustee in his capacity as Trustee, and that such insurance company shall not incur any liability for so doing.
  10. To enter into a viatical settlement of any of said policies, whether or not the insured or insureds thereunder is or are terminally ill or chronically ill.
- B. With respect to any insurance policy or policies owned in part by the Trustee on a split-ownership basis, the Trustee, in his discretion, may exercise any and all of those rights, privileges, benefits and options appertaining thereto (including, without limitation, those specifically enumerated in subarticle A hereof), as shall be applicable to the portion of such policy or policies owned by the Trustee, and the remainder of such rights, privileges, benefits and options shall be exercisable by the owner of the cash value portion thereof.

## **ARTICLE XII**

With respect to any life insurance policy or policies not owned by the Trustee, but the proceeds of which are made payable to the Trustee, the Grantors, or the owner thereof if other than the Grantors, shall have the sole right to exercise any and all of the rights, benefits, elections, privileges and options of whatsoever kind appertaining to such insurance policies, without in any way first securing the consent of the Trustee thereto. With respect to any such insurance policies, and without limiting the generality of the foregoing, the Grantors or other owner shall have the right to borrow upon any such policy or policies and pledge the same as security for the repayment of loans; to surrender any such policy or policies for the cash surrender value or for extended insurance; to assign all or part of any such policy or policies; to change the beneficiary thereunder and to make successive changes thereof (unless such right shall have been released in writing); to convert any such policy or policies into another or other policies; to receive all dividends upon said policies, and to direct the disposition of such dividends, and, from time to time, to change such directions; and to collect, and retain free of this trust, the proceeds of any policy or policies which mature during the lifetime of the insured thereunder. The Trustee, however, is authorized and empowered, in his discretion, to exercise any and all rights granted to him as beneficiary of any such life insurance policies.

### **ARTICLE XIII**

- A. The Trustee shall have, and is hereby given, full power and authority to make all necessary proofs of death under any life insurance policies and to execute and deliver any and all receipts for the proceeds thereof. Except at his own option, the Trustee shall not enter or maintain any litigation to enforce payment of any life insurance policy or policies until he shall have been indemnified to his satisfaction against all expenses and liabilities to which he may, in his judgment, be subjected, or in which he may become involved, by such action on his part. The Trustee, however, may utilize the proceeds of any life insurance policy to meet expenses incurred in connection with enforcing payment of the proceeds of any other policy.
- B. The Trustee is authorized to compromise and adjust claims arising out of any insurance policy or policies upon such terms and conditions as he may deem advisable, and the decision of the Trustee in that regard shall be binding and conclusive upon all persons interested therein.
- C. The Trustee shall be responsible for the proceeds of the life insurance policies only when, as and if collected, or paid to him, and he shall have no responsibility or liability whatsoever to anyone if for any reason any policy or policies shall be uncollectible in whole or in part.

### **ARTICLE XIV**

In the administration of the trusts created hereunder, the Trustee shall have the following powers, in addition to all powers vested in him by law, which in each and every instance may be exercisable by him at such times (if at all), in such manner, and in accordance with such criteria, as he, in his discretion, shall deem appropriate:

- A. To retain any investment and property which may be received by him for such length of time as to him may seem proper, without liability by reason of such retention.
- B. To make such investments and reinvestments of principal and accumulated income as he may consider proper, so long as the requirements (other than diversification) of any applicable Prudent Investor Act (or equivalent) are satisfied. The Trustee may make his decision regarding diversification based upon such criteria as he, in his sole discretion, shall deem advisable, including, but not limited to, tax considerations, and the Trustee shall incur no liability of any kind as a result of his decision whether or not to diversify. Any such investments may be held in bearer form, or in the name of the Trustee, or in the name of a nominee or nominees.
- C. To retain cash or the proceeds from the sale of any assets until such time or times as he deems it appropriate to invest such funds.
- D. With respect to any securities forming part of any trust created hereunder: To exercise all voting rights, either in person or by proxy; to enter or refuse to enter into any dissolution, liquidation, consolidation, recapitalization, reorganization, merger or other change in capital structure, and in connection therewith, to make exchanges of securities and to enter into agreements on such terms and conditions as he may deem advisable; and to enter into voting

trusts and agreements with other stockholders, and other holders of securities, and the corporations which shall have issued such stock or securities, or any one or more of such persons, for such purposes and for such period of time (whether or not the same extends beyond the actual or probable duration of the trusts created hereunder), and upon such terms and conditions as he shall deem advisable.

- E. To enter into any lease or leases, without application to any court, of any or all real or personal property held hereunder, for such period (whether or not the same extends beyond the actual or probable duration of the trusts created hereunder), and upon such terms and conditions as he shall deem advisable.
- F. To borrow money or property, either upon the security of any or all of the assets of the trusts created hereunder, or without security or otherwise, upon such terms and conditions and for such purposes in connection with the administration of the trusts as to him shall seem proper.
- G. To grant, bargain, sell, exchange, mortgage, grant options to buy, or otherwise dispose of any or all real or personal property, or both, at any time held hereunder, either at public or private sale, for cash or on credit, or partly for cash and partly on credit, upon such terms and conditions, in such manner and for such purposes, and either in whole or in part, as he may deem proper; and to make, execute, acknowledge and deliver good and sufficient instruments for that purpose. No purchaser, upon any sale or other disposition, shall be bound to see to the application of the monies or property arising therefrom or to inquire into the validity, expediency or propriety of any such sale or disposition.
- H. To maintain and insure all real and personal property, and to develop, repair, remodel, alter, build on, improve, rebuild or reconstruct any or all real property, either by building, constructing or erecting new buildings or by repairing, remodeling, altering, rebuilding or reconstructing existing buildings, for such purposes, to any and every extent, and in such manner as he may deem proper, and to borrow monies in connection therewith upon the security of any such real property and/or of any or all other assets of the trusts.
- I. To foreclose any mortgage or mortgages, and to take title to the property or any part thereof affected by such mortgage or, in his discretion, to accept a conveyance of any property in lieu of foreclosure, and to collect the rents and income therefrom, either through a receiver or directly, and to protect such property against foreclosure under any mortgage that shall be a prior lien on said property, or to redeem from foreclosure under any such mortgages, as well as to protect such property against nonpayment of taxes, assessments or other liens.
- J. To adjust, compromise or arbitrate claims or demands of, or against, the trusts created hereunder, whether such claims are due or shall become due in the future, including without limitation any overpayment or refund claim, or any deficiency, additional assessment or other liability, relating to any Federal, state, county, municipal or other tax, irrespective of the nature thereof.

- K. To join with any other person, persons, nominee or nominees in the incorporation of any and all corporations, for such purposes, for such periods of time, and upon such terms and conditions respecting the organization, operation and maintenance thereof (including not by way of limitation, the adoption of bylaws, rules and regulations) as he shall deem advisable, and to pay for the stock of any such corporation with any or all of the assets of the trusts created hereunder, and to contribute to the capital of such corporation, or to lend to it, any or all of the assets of the trusts created hereunder.
- L. To join with any other person, persons, nominee or nominees in any partnership, whether general or limited, or in any joint venture, limited liability company or other business association, for such purposes, for such period of time, and upon such terms and conditions, as he shall deem advisable, and to contribute to the capital of any such partnership, joint venture, limited liability company or other business association, or to lend to it, any or all of the assets of the trusts created hereunder.
- M. To engage in and operate any business for such purposes, in such manner and for such periods of time as he shall deem advisable, and to apply any and all assets of the trusts created hereunder to the conduct of any such business.
- N. To grant options and execute option agreements with respect to the sale or lease of property held by him hereunder, without obligation to repudiate the same in favor of better offers.
- O. To assign one or more shares of the stock of any corporation which may at any time be held by him hereunder to himself, or to a nominee or nominees, for the purposes of qualifying such person to act as a director of the corporation, the stock of which is so assigned.
- P. To engage such attorneys, investment counsel, clerks, employees, agents, accountants, brokers, officers, architects, contractors, subcontractors, surveyors, and such other persons, firms or corporations, as he shall deem necessary or helpful in connection with the administration of the trusts created hereunder, at such wages, fees, compensation, remuneration, commission rates, prices, consideration or otherwise, as he shall deem proper.
- Q. To set up reasonable reserves for depreciation and/or depletion.
- R. To execute and deliver all documents, contracts and instruments necessary or advisable in connection with the administration of the trusts created hereunder.
- S. To make and retain joint investments and investments of undivided interests in any property, real or personal, whether or not all the property be held hereunder, and whether or not the provisions under which such other property is held are similar, and to administer, or to permit to be administered, all or any part of such property in one or more consolidated funds in which the same shall have joint or undivided interests without any physical division of the investments, but such consolidation of investments shall not

operate to merge the legal or beneficial interests in such separate trusts, parts or shares; and to hold and administer any property in a common trust fund administered by any acting corporate Trustee.

- T. To purchase any improved or unimproved real property, at public or private sale, for cash or on credit, or partly for cash and partly on credit, and/or subject to any existing mortgage or mortgages, for such purposes and upon such terms and conditions as he shall deem advisable.
- U. To mortgage or pledge any or all real or personal property at any time held hereunder, and to enter into construction mortgages or purchase money mortgages respecting any and all real property, for such purposes and upon such terms and conditions as he shall deem advisable.
- V. To continue to hold and administer the interest in any business of which the Grantors, or either of them, may be the owner, whether such ownership be as an individual, partner, joint venturer, member or stockholder, or otherwise, or to engage in and operate any business, for such purposes, in such manner, and for such period of time, as he shall deem proper, and to apply to the conduct of any such business any or all of the assets of the trusts created hereunder.
- W. To dissolve or to participate in the dissolution of any partnership, joint venture or limited liability company in which the Grantors, or either of them, shall have an interest or in which the Trustee, in the administration of the trusts created hereunder, shall hold an interest, or of which he shall become a member, whether such dissolution be by agreement, operation of law, or by the judgment of any court, and to enter into any agreements with respect thereto, upon such terms and conditions as he shall deem proper.
- X. Without in any way limiting the generality of the foregoing powers, to sell any interest in any business which may come into his hands as part of any trust created hereunder, at such time or times, for such amount or amounts, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions, as he shall deem proper.
- Y. To lend money to, and to purchase as an investment for the trusts created hereunder from, the executor or administrator of either Grantor's estate, and/or the Trustee of any trust created by the Grantors, or either of them, by deed or Will, any cash, stock, securities or other property, real, personal or mixed, constituting part of either Grantor's estate, or constituting part of any such trust, at such prices, and upon such terms and conditions, as the Trustee, in his discretion, shall deem appropriate.
- Z. To allocate receipts and disbursements of any trust created hereunder between income and principal thereof in such a manner as the Trustee shall deem advisable, so long as the requirements of any applicable Principal and Income Act or equivalent are satisfied.

## ARTICLE XV

In the administration of the trusts created hereunder, the Grantors direct that:

- A. In any case in which the Trustee is required to divide any trust created hereunder, or any portion thereof, into parts or shares, and/or is required to distribute the same, or any portion thereof, or any part or share into which the same shall have been divided, either to a single distributee, or to two (2) or more distributees, he, in his discretion, may make such partition, division or distribution wholly in kind or in money, or partly in kind or in money, and may distribute different property interests to the several distributees, and the choice and relative value of the property or money so distributed, partitioned or divided shall, in the absence of fraud or bad faith, be binding and conclusive on everyone interested therein, and he shall in no event be accountable for any error of judgment or discretion in exercising the power and authority herein conferred.
- B. The Trustee shall not be accountable for any loss which may occur to the trusts herein created as a result of the exercise of, or the refusal to exercise any of the powers or discretions vested in him, so long as such exercise or refusal to exercise is made in good faith.
- C. No loss whatsoever resulting to the trusts created hereunder, through the ownership or operation of any business by the Trustee, or as a result of the building, construction or erection by him of any building, improvements or structures, whether the same be carried on by a corporation, partnership, proprietorship, joint venture, limited liability company or otherwise, shall be chargeable against the Trustee personally.
- D. The Trustee may consult with counsel and shall be fully protected in any course of conduct taken in good faith in accordance with the advice of counsel.
- E. The Trustee shall not be disqualified from acting hereunder or from exercising any power granted herein because he may hold an interest in property in which any trust created hereunder shall also hold an interest, or be a creditor of any such trust, or be an employee or agent of, or the holder of an interest in, any business, sole proprietorship, partnership, joint venture, limited liability company, corporation, or otherwise, in which any trust created hereunder may hold an interest, or by reason of the fact that he may also be serving as executor of either Grantor's estate or the Trustee of any trust established under either Grantor's Last Will and Testament.
- F. If pursuant to any provisions of this Agreement a trust would be established to which any part of either Grantor's GST exemption (provided for in Section 2631(a) of the Code) would be allocated (hereinafter referred to as a "GST Trust"), and if after such allocation the inclusion ratio of such trust for generation-skipping transfer tax purposes would not be zero, then the Trustee may, but shall not be required to, establish two separate trusts, each to be administered in accordance with the provisions applicable to the GST Trust, with one trust having an inclusion ratio of one and the other trust having an inclusion ratio of zero. Assets that would have constituted the GST Trust shall be allocated between the two separate trusts as necessary to establish the prescribed inclusion ratios, and shall be valued for such purpose as of the date of allocation.

In addition, if pursuant to any provisions of this Agreement any portion of any trust created hereunder is required to be added to the principal of any other trust created hereunder (such latter trust being hereinafter referred to as the “recipient trust”) and if the inclusion ratios (for generation-skipping transfer tax purposes) of such trusts are not identical, then the Trustee, in lieu of making such addition, may, but shall not be required to, hold such portion in a separate trust, to be administered in accordance with the provisions applicable to the recipient trust.

In further addition, if pursuant to any provision of this Agreement a trust has been established that has an inclusion ratio of greater than zero and less than one, then the Trustee may, but shall not be required to, divide such trust into two separate trusts, provided that such division meets the definition of a “qualified severance” contained in Section 2642(a)(3) of the Code or Regulations promulgated pursuant thereto.

- G. The Trustee may be employed and/or engaged in any capacity by, or render services to, any trust created hereunder, and/or may be employed and/or engaged by any corporation, proprietorship, joint venture, limited liability company, sole proprietorship or other entity in which any such trust may have an interest, and shall be entitled to receive and to retain (in addition to his remuneration for his services as Trustee herein) such compensation, perquisites and reimbursement of expenses in connection with such services, in such manner and upon such terms and conditions, as he, in his discretion, shall deem proper.
- H. The Trustee may disclaim all or part of any power or discretion held by the Trustee in a fiduciary capacity, and may determine whether or not such disclaimer shall be binding upon, and shall constitute a disclaimer by, any or all successor or substitute Trustees hereunder, without having to obtain court authorization for such disclaimer or determination.
- I. The Trustee may delegate discretion relating to the investment and management of trust assets to an agent (including an entity affiliated with any trust institution serving as a Trustee) and may do so without liability for the decisions, actions, omissions, neglect, misconduct or default of such agent, provided that such agent was selected and retained with reasonable care, skill and caution. The Trustee may pay such agent reasonable compensation for his, her or its services. Notwithstanding any statute or rule of law to the contrary, such compensation (other than of a fiduciary serving hereunder) shall not reduce any statutory commissions or other fees payable to the Trustee.
- J. If more than one Trustee shall be serving, then any individual Trustee shall have the right, at any time and from time to time, to delegate to the other Trustees any or all of his or her powers as a Trustee hereunder, and to revoke such delegation, in whole or in part, except that a Disinterested Trustee may not delegate his or her powers to a Trustee who would not qualify as a Disinterested Trustee, whichever shall be applicable. Such delegation or revocation thereof shall be by a written instrument delivered to such other Trustees and shall specify the extent of such delegation or revocation. The written statement of the other Trustees as to whether any Trustee is acting or has delegated any or all of his or her powers to such other Trustees shall fully protect all persons dealing with any trust created hereunder.

In addition, the Trustees may agree among themselves, in writing, to have any or all of the documents required to be signed by them in connection with the administration of any trust created hereunder signed by less than all of them.

## **ARTICLE XVI**

Except with respect to matters agreed to be undertaken by any life insurance company or companies which may issue any policy or policies which may become subject to this Agreement, the Grantors hereby relieve such company or companies from any responsibility to see to the execution and performance of the terms and conditions hereof.

## **ARTICLE XVII**

- A. If PAUL FORRESTER shall cease to serve as Trustee, for any reason whatsoever, or any successor Trustee(s) shall fail or cease to serve, for any reason whatsoever, while one or both of the Grantors shall be living, then the Grantors (or either of them, if the other Grantor is either deceased or incapable of acting) shall appoint any individual, individuals (other than the Grantors or either of them) and/or trust institution of their, his or her choice as successor(s), and in default of such appointment, then BANK shall serve as successor Trustee. Any successor Trustee so appointed by the Grantors, or either of them, may not be related or subordinate [within the meaning of Section 672(c) of the Code] to the Grantors, or either of them.
- B. Upon the death of the last to die of the Grantors, if no trust institution shall then be serving as a Trustee, then BANK shall serve as a Co-Trustee, together with the then serving individual Trustee(s).
- C. If BANK shall decline to accept appointment as a successor Trustee, for any reason whatsoever, then the Grantor's eldest living adult descendant shall appoint any trust institution of his or her choice as its successor, and in default of such adult descendant, then the individual Trustee shall appoint such a successor.

If at any time there shall be no "Disinterested Trustee" (as herein defined) of a trust created hereunder, the other Trustees of such trust shall have the right, by majority vote and by an instrument in writing, to appoint any individual(s) and/or trust institution of his or her choice as Disinterested Trustee(s) of such trust, to serve with such other trustees.

If at any time there shall be no Trustee of a trust created hereunder and no successor Trustee shall have been appointed as otherwise set forth in this Article XVII, then the eldest living income beneficiary of the trust, by an instrument in writing, shall appoint any trust institution of his or her choice as successor Trustee of such trust, or, in the event that such beneficiary shall be incapacitated or a minor, the guardian(s) or personal representative(s) of such beneficiary shall make such appointment.



- D. After the death of the last to die of the Grantors, each adult beneficiary, with respect to the trust created hereunder for his or her own benefit, shall have the right, at any time and from time to time, to remove any individual Trustee of such trust. In addition, such beneficiary shall have the right, from time to time, but in no event more than once during any three (3) year period, to remove any then acting trust institution as Trustee of such trust and appoint any trust institution of his or her choice as successor.
- E. Any trust institution being appointed pursuant to subarticles C and/or D hereof shall, at the time of appointment, (i) be administering trust assets valued at no less than two hundred fifty million (\$250,000,000) dollars and (ii) may not be related or subordinate [within the meaning of Section 672(c) of the Code] to the person making such appointment.
- F. The foregoing rights may be exercised by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered to the then acting Trustee, either in person or by pre-paid, registered or certified mail, which instrument shall advise such Trustee of the appointed successor, if any, and shall state the effective date of removal, to be not less than thirty (30) days and not more than sixty (60) days after delivery. On such effective date, or as soon thereafter as may be reasonably feasible, the Trustee being removed shall then turn over to the remaining Co-Trustee or the appointed successor, if any, all funds then held by such Trustee in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the Trustee being removed, reserving therefrom such amount as such Trustee shall deem reasonably necessary to cover the expenses of such removal, including any applicable termination commissions. The Trustee being removed shall have the right to demand and receive, prior to releasing any funds to the remaining Co-Trustee or appointed successor, if any, written approval of such Trustee's statements or final accounting by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect as an approved accounting pursuant to Article XX hereof. In lieu thereof, such Trustee may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining Co-Trustee or appointed successor, if any, until such statements or account, judicial or otherwise, shall have been approved.
- G. BANK shall be entitled to receive compensation for its services in any fiduciary capacity in accordance with its schedule of rates, published from time to time and in effect at the time the compensation is paid, including minimum fees and additional compensation for special investments, closely held business interests and certain other services. The Grantors recognize that such compensation may exceed the compensation for such services in effect from time to time under applicable law.
- H. The compensation to any individual Trustee for services rendered hereunder shall be as set forth in a separate agreement among the Grantors and such Trustee, as the same shall be amended from time to time, or, in the absence of such agreement, as provided under applicable law.

- I. The compensation to any trust institution (other than BANK) for services rendered as Trustee hereunder shall be as set forth in a separate agreement between such Trustee and the Grantors or person appointing such Trustee, as the same shall be amended from time to time, or, in the absence of such agreement, in accordance with such Trustee's regularly published schedule of fees in effect from time to time.
- J. Any Trustee of any trust created hereunder shall have the right to resign at any time by an instrument in writing, executed and acknowledged in the form then required by law to entitle a conveyance of real property to be recorded in the State of New Jersey, and delivered, either in person or by prepaid, registered or certified mail, to the Grantors if both or either of them shall then be living, or, if both of them shall then be deceased, to the Co-Trustee(s), or, if none, to the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary]. Such resignation shall be effective upon delivery of the aforesaid written instrument of resignation to the then serving Co-Trustee(s), or, if none, upon the qualification of the resigning Trustee's successor(s), but in no event earlier than thirty (30) days after delivery of the aforesaid written instrument of resignation to the beneficiary or his or her guardian(s) or personal representative(s), whichever shall be applicable.
- K. On the effective date of the resignation of a Trustee pursuant to subarticle J hereof, or as soon thereafter as may be reasonably feasible, the resigning Trustee shall then turn over to the remaining Trustee(s) and/or appointed successor(s), all funds then held by the resigning Trustee in the trust or trusts involved, in cash or in kind or partly in cash and partly in kind, in the discretion of the resigning Trustee, reserving therefrom such amount as such Trustee shall deem reasonably necessary to cover the expenses of such resignation, including any applicable termination commissions. The resigning Trustee shall have the right to demand and receive, prior to releasing any funds to the remaining Trustee(s) and/or appointed successor(s), written approval of the statements or final accounting of the resigning Trustee by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], which shall have the same force and effect of an approved accounting pursuant to Article XX hereof. In lieu thereof, the resigning Trustee may submit said final accounting to a court for settlement, and in either event may postpone delivery of funds to the remaining Trustee(s) and/or appointed successor(s) until such statements or accounting, judicial or otherwise, shall have been approved. The resigning Trustee's successor(s) shall be as set forth in, or appointed pursuant to, subarticles A or C hereof, whichever shall be applicable.
- L. For purposes of subarticle K hereof, any individual Trustee shall be deemed to have resigned when it is determined that he or she is under a medical infirmity or physical incapacity (an "Incapacity"), which shall be deemed to exist when the same has been declared by a court of competent jurisdiction or when a conservator or guardian for such Trustee has been

appointed based upon such Incapacity. Furthermore, such Incapacity shall be deemed to exist upon presentation to the then serving Co-Trustee(s), or, if none, to the next succeeding successor Trustee(s), of a certificate executed by a licensed physician which states that (i) he or she is the attending physician for the Trustee; (ii) that the Trustee is incapable of caring for himself or herself; and (iii) that the Trustee is physically or mentally incapable of managing his or her financial affairs and attending properly to the normal duties and responsibilities required for the prudent management and protection of property. The effective date of such Incapacity shall be the date of the order or decree adjudicating the Incapacity, the date of the order or decree appointing the guardian or conservator, or the date of the certificate of such attending physician described above, whichever shall first occur.

For purposes of determining a serving Trustee's Incapacity, such Trustee (hereinafter the "Consenting" Trustee) hereby consents to the disclosure to the then serving Co-Trustee(s), or, if none, to the next succeeding successor Trustee(s) [hereinafter the "Requesting" Trustee] of all of the Protected Health Information ("PHI") and medical records of the Consenting Trustee and the Requesting Trustee shall be treated as the Consenting Trustee would be with regard to the use and dissemination of his or her PHI and medical records, including, but not limited to, any written opinion relating to the Consenting Trustee's Incapacity. This authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164. The Consenting Trustee hereby intends that the Requesting Trustee be treated as the personal representative of the Consenting Trustee for all purposes, as provided in 45 CFR 164.502(g)(2), relating to any inquiry relating to his or her PHI, and the Consenting Trustee therefore specifically authorize the Requesting Trustee to request, obtain, receive and inspect any and all information bearing upon the Consenting Trustee's health, including PHI relevant to the determination of the Consenting Trustee's ability to perform his or her duties as a Trustee hereunder, to sign whatever authorizations for release of information required by providers or others, and to waive any rights the Consenting Trustee may have for breach of confidentiality for the release of such information to the Requesting Trustee. The authority given to the Requesting Trustee shall supersede any prior agreement that the Consenting Trustee may have made with his or her health care providers to restrict access to, or disclosure of, his or her PHI.

In addition, the Consenting Trustee specifically authorizes any physician, dentist, health care provider, any insurance company and the Medical Information Bureau Inc., or any other health care organization that has provided treatment or services to the Consenting Trustee to give, disclose and release to the Requesting Trustee all of the Consenting Trustee's PHI and medical records regarding any past, present or future medical or mental health condition, including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness and drug or alcohol abuse.

The foregoing authority given to the Requesting Trustee shall apply to a successor Trustee even though he or she has not yet assumed his or her duties and shall have no expiration date. Said authority shall expire only in the event that the Consenting Trustee shall permanently cease to serve as a Trustee hereunder.

The initial Trustee and each successor Trustee, upon qualifying as such, hereby expressly accepts, and agrees to be bound by, the provisions of this subarticle L.

### **ARTICLE XVIII**

With respect to any trust created hereunder which shall have a single current income beneficiary, if at any time after the death of the last to die of the Grantors, and after taking into account the age, maturity and competence of such beneficiary, the Trustee (other than such beneficiary) shall determine it to be in the best interest of such beneficiary to terminate such trust and distribute to him or her, outright and free of trust, the entire remaining principal thereof, such Trustee may do so, whereupon such trust shall terminate and the rights of any other beneficiaries or remainderman in such trust shall cease. In making such decision, (i) such Trustee shall take into account the relationship of commissions and expenses to the value of the principal of such trust, and if he shall decide that the value of the trust does not warrant the incurring of such commissions and expenses said decision shall be considered a proper reason for termination pursuant to this Article; and (ii) such Trustee shall take into account the then existing and anticipated future status of the Federal estate and generation-skipping transfer taxes, and any applicable State estate, generation-skipping transfer and inheritance taxes, and if he shall conclude that the existence of any such tax probably was, but probably is no longer, a principal reason for the existence of the trust, said conclusion also shall be considered a proper reason for termination pursuant to this Article.

### **ARTICLE XIX**

Any trust created hereunder which shall be substantially identical to any other trust created hereunder, or to a trust created under the Last Will and Testament of either Grantor or to any trust created by the Grantors, or either of them, during their lifetimes may, in the discretion of the Trustee, be merged into such other trust, or he may accept a merger of such other trust into the substantially identical trust created hereunder, if the Trustee shall determine the same advisable to facilitate the administration thereof, to reduce the expense of operation thereof, or any other reason he shall deem to be in the best interests of the beneficiaries thereof.

### **ARTICLE XX**

The Trustee, upon request, but not more often than annually, shall provide to each beneficiary of any trust administered by him statements setting forth the receipts and disbursements of principal and income and the assets on hand at the commencement and expiration of the period covered by such statements. The written approval of such statements by the then living income beneficiary or beneficiaries of the trust, whichever shall be applicable [or in the event that any such beneficiary is incapacitated or is a minor, by the guardian(s) or personal representative(s) of such beneficiary], shall be final and binding upon all who are then or may thereafter become entitled to any part of the assets, as to all matters and transactions shown on the statements. Anything herein

contained shall not preclude the Trustee, from time to time, from rendering an accounting to the parties interested therein or from submitting an accounting to a court for settlement, as he shall deem advisable. All of the Trustee's reasonable expenses (including reasonable attorneys' fees) attributable to any such accounting and approval shall be paid by the trust.

## **ARTICLE XXI**

- A. Wherever in this Agreement the word "Trustee" is used, it shall be construed to include the Trustee and his successor or successors in office, and all references to such Trustee shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- B. Wherever in this Agreement the words "descendant" and "descendants" are used, They shall be construed to be synonymous with the word "issue."
- C. Wherever in this Agreement the words "per stirpes" are used with reference to the descendants of any individual, they shall be construed to mean that the determination of such descendants begins with the children of such individual and that no distribution at any generational level shall be per capita.
- D. Wherever in this Agreement the words "sibling" and "siblings" are used, they shall be construed to mean "brother(s) and sister(s)" (of the whole blood or of the half blood, but only if the Grantors or a descendant of the Grantors shall be the natural or adoptive parent of the latter), but not "step-brother(s) and step-sister(s)," unless the same shall have been adopted by the Grantors or a descendant of the Grantors.
- E. All references made, and all nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- F. Wherever in this Agreement the word "Code" is used, it shall be construed to mean the Internal Revenue Code of 1986, as amended. Any reference to a section of the Code shall be deemed to refer to such section or to any section of similar import.
- G. Wherever in this Agreement the words "trust institution" are used, they shall be construed to mean a corporation or other organization authorized to act as Trustee of both lifetime and testamentary trusts.

## **ARTICLE XXII**

- A. The Trustee hereby expressly undertakes and accepts the trusts created hereby and agrees to carry out the provisions of this Agreement. Any successor Trustee shall qualify by executing an instrument in writing, duly acknowledged, by which he expressly agrees to assume the trusts and to carry out the provisions hereof.
- B. The individual Trustee initially named herein hereby waives all rights to all compensation for his services rendered hereunder prior to the death of the last to die of the Grantors, including commissions provided for by law.

### **ARTICLE XXIII**

The Grantors agree and acknowledge that any assignment of any policy to the Trustee shall, without any further action on the Grantors' part, automatically be deemed to include an assignment to the Trustee of any replacements, renewals, increases in amount thereof or supplements thereto.

### **ARTICLE XXIV**

No bond or other security shall be required of the Trustee, or any successor Trustee, in any jurisdiction in which they may be called upon to act.

### **ARTICLE XXV**

Except as otherwise specifically provided herein, this Agreement, and the trusts created hereunder, may not be terminated, revoked, altered, amended or changed, in any respect whatsoever, by the Grantors, by either of them or by any other person.

### **ARTICLE XXVI**

This Agreement shall be governed by the substantive law of the State of New Jersey; provided, however, that the Trustee may, at any time and from time to time, in his discretion, (i) remove (or decline to remove) all or part of the assets of any trust created hereunder, and/or the situs of administration of such trust, from one jurisdiction to another and/or (ii) elect (or decline to elect) that the substantive laws of such other jurisdiction shall thereafter govern. Any decision of the Trustee with respect to the foregoing shall be binding and conclusive on everyone interested therein.

### **ARTICLE XXVII**

To the extent permitted by law, if any beneficiary or remainderman under this Agreement shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Agreement or any of its provisions, or shall attempt in any way to oppose or set aside this Agreement or impair or invalidate any of the provisions the Grantor has made in it, any distribution to, or other provision for, that beneficiary or remainderman under this Agreement shall be revoked and the property covered thereby shall be disposed of in the same manner as if the contesting beneficiary or remainderman, his or her spouse and all of his or her descendants had predeceased the Grantor.

The Grantor also directs that no portion of any trust administered under this Agreement shall be used to pay the legal fees and other expenses incurred by any of the aforesaid persons who shall, directly or indirectly, by legal proceedings or otherwise, challenge or contest this Agreement or any of its provisions, or shall attempt in any way to oppose or set aside this Agreement or impair or invalidate any of its provisions, whether or not such action shall be successful. In addition, to

the extent permitted by law, it is also the Grantor's wish that the legal fees and other expenses incurred by the Trustee in successfully defending any such action be paid by the person bringing such action.

## **ARTICLE XXVIII**

Anything in this Agreement to the contrary notwithstanding:

- A. "Interested Trustee" means for any trust a Trustee who is (i) a transferor of property to the trust, including a person whose qualified disclaimer resulted in property passing to the trust; or (ii) a person who is, or in the future may be, eligible to receive income or principal pursuant to the terms of the trust. A Trustee described in (i) is an Interested Trustee only with respect to the transferred property (including income and gain on, and reinvestment of, such property). A person is described in (ii) even if he or she has a remote contingent remainder interest, but is not described in (ii) if the person's only interest is as a potential appointee under a non-fiduciary power of appointment held by another person, the exercise of which will take effect only in the future, such as a testamentary power held by a living person. A Trustee who is not an Interested Trustee is a "Disinterested Trustee."
- B. The Disinterested Trustee(s) may, at any time prior to the death of the income beneficiary of any trust administered pursuant to Article II hereof, by an instrument in writing (i) confer upon the income beneficiary of such trust, a non-fiduciary power exercisable only by Will to appoint all or part of the applicable trust administered pursuant to said Article to the creditors of such beneficiary's estate (other than any taxing authority), and the instrument conferring such power may require consent of any other Trustee (other than any Interested Trustee), (ii) revoke any such instrument previously executed, with or without executing a replacement instrument and/or (iii) irrevocably relinquish the powers conferred under (i) and/or (ii).

Without limiting the Disinterested Trustee(s)' discretion, such Trustee(s) may use the authority conferred by this subarticle to subject the trust property to estate tax when it appears that to do so may reduce overall taxes (income, gift, estate, inheritance, transfer and generation-skipping transfer).

- C. The aforesaid powers of appointment may be exercised by the applicable income beneficiary by (and only by) specific provision in his or her Last Will and Testament making reference hereto, and may be exercised in favor of the permissible appointees in such proportions and amounts, and upon such estates, whether in trust or otherwise as said income beneficiary shall desire and the Trustee shall transfer and set over the appointed principal of the trust in accordance with any exercise of such power. Any portion of the principal and undistributed income of the trust remaining at the date of death of the beneficiary, which he or she shall not have validly appointed by his or her Last Will and Testament as above provided, shall be paid over and distributed in accordance with the applicable provisions of Article II hereof.

IN WITNESS WHEREOF, the Grantors and the Trustee have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (L.S.)  
TIMOTHY FORRESTER, Grantor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (L.S.)  
SHIRLEY FORRESTER, Grantor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (L.S.)  
PAUL FORRESTER, Trustee



SCHEDULE "A"

\$1.00

STATE OF NEW JERSEY)

ss:

COUNTY OF BERGEN)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the subscriber, a Notary Public of New Jersey, personally appeared TIMOTHY FORRESTER and SHIRLEY FORRESTER, who, I am satisfied, are the Grantors mentioned in the within instrument, and thereupon each of them acknowledged that he or she signed, sealed and delivered the same as his or her voluntary act and deed, for the uses and purposes therein expressed.

---

Notary Public

STATE OF NEW JERSEY)

ss:

COUNTY OF BERGEN)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the subscriber, a Notary Public of New Jersey, personally appeared PAUL FORRESTER, who, I am satisfied, is the Trustee mentioned in the within instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

---

Notary Public

**SAMPLE NOTICE LETTER TO BE USED WITH  
IRREVOCABLE INSURANCE TRUSTS**

To: LILLY FORRESTER AND WOODY FORRESTER

Dated: \_\_\_\_\_

Pursuant to Article I of the trust agreement dated \_\_\_\_\_ and known as the “Timothy and Shirley Forrester Family Trust,” whereunder we are the Grantors and Paul Forrester is the Trustee, we are notifying you (i) that on \_\_\_\_\_, a transfer or transfers having a total value of \$ \_\_\_\_\_ was/were made to the trust either in cash or in property, or by payment of a premium or premiums on a policy or policies of insurance owned by the trust, which premium payments are deemed to be transfers to the trust, and (ii) that you have the right, upon written request to the Trustee, to receive payment out of the principal of the trust of such amount as you may wish, up to and including the full amount of your proportionate share (as defined in the trust agreement) of the transfer(s). In the future, additional transfers may be made to the trust and you will have a similar right of withdrawal with respect to each transfer.

Please acknowledge receipt of this notice by signing and dating the enclosed copy and returning it to us.

Sincerely,

\_\_\_\_\_  
TIMOTHY FORRESTER

\_\_\_\_\_  
SHIRLEY FORRESTER

I hereby acknowledge receipt of this notice.

Dated \_\_\_\_\_  
Beneficiary (or parent of minor beneficiary)

# DOCUMENTS AND DEFINITIONS

**WILL or LAST WILL AND TESTAMENT.** The document by which a person disposes of all property standing in his or her own name at death. A will does not dispose of jointly held property unless the person is the last surviving joint tenant.

**INTESTACY.** Dying without a will or with an incomplete will that does not effectively dispose of all of a person's property standing in his or her own name at death. In such a case, New Jersey law determines how a decedent's property is divided among his or her heirs or next of kin, based on how they are related to the decedent.

**TRUST.** An arrangement between the creator of the trust (grantor or settlor) and another person (trustee), in which the grantor directs the trustee to hold, administer and distribute the property transferred to the trust for the benefit of another person (the beneficiary of the trust). A person may create a trust during his or her lifetime (inter vivos or living trust) or at death in his or her will (testamentary trust). A trust created during one's lifetime may be either revocable or irrevocable.

**POWER OF ATTORNEY.** A document in which one person (the principal) authorizes another person (the agent or attorney-in-fact) to act on behalf of the principal with regard to the principal's property. A durable power of attorney is one that is not revoked if the principal becomes disabled or incompetent.

**LIVING WILL or HEALTH CARE DIRECTIVE.** A document in which a person sets forth his or her wishes concerning medical treatment, particularly the providing or withholding of life-sustaining procedures, if the person is unable to make that decision for himself or herself.

**HEALTH CARE PROXY or APPOINTMENT OF HEALTH CARE AGENT.** A document in which one person appoints another person to make medical decisions for him or her if he or she is unable to do so. This document is usually incorporated in a living will, but can be a separate document.

**U.S. ESTATE TAX.** A tax imposed by the federal government on property which a person owns, or over which he or she has control, at the time of his or her death. Generally, the tax is payable only if the total value of property which a person owns or controls at death exceeds a certain amount (applicable exclusion amount), which for 2019 is \$11,400,000 (but which will increase for cost of living). Certain deductions, such as the marital deduction for property passing to a surviving spouse, are available in computing the estate tax. Gifts made during lifetime in excess of the applicable gift tax annual exclusion (currently \$15,000/\$30,000) are counted for purposes of determining the applicable exclusion amount.

**PORTABILITY.** A provision in federal law that allows the unused applicable exclusion amount of a married individual to be transferred at death to his or her surviving spouse, thereby giving the surviving spouse the ability to exclude additional amounts from future gift and estate taxes. If the surviving spouse remarries and the second spouse dies, the applicable exclusion amount available to the surviving spouse from the first deceased spouse may be reduced. Portability does not apply for New Jersey inheritance or estate tax purposes.

**NEW JERSEY INHERITANCE TAX.** A tax imposed by New Jersey on the transfer of property at death. Transfers to certain relatives (*e.g.*, spouse, child, grandchild) are exempt, while transfers to others (*e.g.*, sibling, niece or nephew) are taxed beginning at 11 percent or 15 percent, with certain exemptions (*e.g.*, \$25,000 for sibling, \$499 for niece/nephew). Transfers of certain property (*e.g.*, life insurance proceeds payable to a named beneficiary other than the estate) are also exempt.

**NEW JERSEY ESTATE TAX.** A tax that was imposed by New Jersey equal to the credit for state death taxes granted by the federal government against the U.S. estate tax based on the law in effect on Dec. 31, 2001. Effective for decedents dying on or after Jan. 1, 2018, there is no New Jersey estate tax. For 2017, the New Jersey estate tax exemption was \$2,000,000.

**U.S. GIFT TAX.** A tax imposed by the federal government on gifts. Generally, no federal gift tax will be payable until the total amount of gifts exceeds the applicable exclusion amount (\$11,400,000 in 2019), which will be indexed for inflation. Most gifts under \$15,000 per recipient (\$30,000 if a person is married and the spouse consents to split the gift) in any one year will not count against the applicable exclusion amount.



# **BASIC ESTATE PLANNING**

---

PRACTICAL SKILLS  
SERIES

**2019 Edition**

---

**New Jersey State Bar Association**

New Jersey Law Center  
One Constitution Square  
New Brunswick, NJ

**njsba.com**