

PRACTICAL WILL AND TRUST DRAFTING

PRESENTED TO

**TENNESSEE BAR ASSOCIATION
ESTATE PLANNING FORUM 2018**

**ON
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**By
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Avoiding Drafting Defects.

Avoiding Errors In Transcription.

Avoiding Ambiguities: I give my farm equipment and livestock to my wife if she survives me; and I give the balance of my estate to my sons who survive me, in equal shares.

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LAST WILL AND TESTAMENT

OF

JANE H. SMITH

I, **Jane H. Smith**, a citizen of the United States of America, as well as a citizen and resident of Robertson County, Tennessee, being of sound mind and disposing memory, do hereby make, publish and declare this to be my last will and testament. I revoke all former wills and codicils at any time heretofore executed by me.

ITEM I

APPOINTMENT OF FIDUCIARIES, REFERENCES, DEFINITIONS AND CERTAIN RELATED PROVISIONS

1.1 Appointment Of Executor And, Or, Alternate Or Successor Co-Executors.

(a) I nominate, constitute and appoint my husband, John C. Smith, to be the executor of this my last will and testament; and I direct that my husband shall not be required to make bond in such capacity in any jurisdiction.

(b) If my husband predeceases me, or if my husband for any reason fails to qualify as the executor hereunder (or having qualified, dies or resigns), then I nominate, constitute and appoint my son, James A. Smith, and my son, David B. Smith, or the survivor of them, to be the alternate or the successor co-executors, or the sole alternate or the sole successor executor, of this my last will and testament; and I direct that neither of my sons shall be required to make bond in such capacity in any jurisdiction.

1.2 Appointment Of Trustee, And, Or, Alternate Or Successor Trustee Of Each Trust Created For My Husband's Benefit.

(a) I nominate, constitute and appoint my husband, John C. Smith, to be the trustee of each trust that is created for my husband's benefit pursuant to the provisions of this my last will and testament; and I direct that my husband shall not be required to make bond in such capacity in any jurisdiction.

(b) My husband shall have the right, with full power of substitution and resubstitution, to appoint an individual or individuals, and, or, a bank or trust company, to serve as alternate or as successor trustees (including successive alternate or successor trustees) or as alternate or as successor co-trustees (including successive alternate or successor co-trustees) of each trust that is created for my husband's benefit pursuant to the provisions of this my last will and testament; and I direct that any such alternate or successor trustees, or any such alternate or successor co-trustees, shall not be required to make bond in such capacity in any jurisdiction. Any designation, substitution or resubstitution of an alternate or a successor trustee, or of alternate or successor co-trustees, shall be by an instrument in writing, duly executed and acknowledged by my husband and filed either in the court in which this my last will and testament was admitted to probate, or in the office of the register of deeds for the county in which this my last will and testament was admitted to probate.

(c) If my husband fails to designate an individual or individuals, and, or, a bank or trust company, pursuant to the provisions of this Paragraph 1.2, to serve as the alternate or as the successor trustee, or as the alternate or as the successor co-trustees, then I nominate, constitute and appoint Regions Bank, having an office in Nashville, Tennessee, to be the alternate or the successor trustee of each trust that is created for my husband's benefit pursuant to the provisions of this my last will and testament; and I direct that Regions Bank shall not be required to make bond in such capacity in any jurisdiction.

1.3 Appointment Of Co-Trustees, And, Or, Sole Trustee, Of Each Trust Created For James A. Smith's Benefit.

(a) I nominate, constitute and appoint my son, James A. Smith, and Regions Bank, having an office in Nashville, Tennessee, to be the co-trustees of each trust that is created for James A. Smith's benefit pursuant to the provisions of this my last will and testament; and I direct that neither James A. Smith nor Regions Bank shall be required to make bond in such capacity in any jurisdiction.

(b) If my son, James A. Smith, for any reason fails to qualify as a co-trustee hereunder (or having qualified, if James A. Smith dies or resigns), then I nominate, constitute and appoint Regions Bank to be the sole trustee of each trust that is created for James A. Smith's benefit pursuant to the provisions of this my last will and testament; and I direct that Regions Bank shall not be required to make bond in such capacity in any jurisdiction.

(c) It is my intention that a resident of the State of Tennessee shall always serve as a co-trustee or as a sole trustee of each trust that is created for James A. Smith's benefit pursuant to the provisions of this my last will and testament; and the Tennessee-resident co-trustee's or sole trustee's duties shall include (but are not limited to) the following: the duty and responsibility of maintaining the books and records of each such trust in the State of Tennessee; arranging for the preparation of tax returns for each such trust; holding all assets of each such trust in the State of Tennessee; and principally administering each such trust in the State of Tennessee.

1.4 Appointment Of Co-Trustees, And, Or, Sole Trustee, Of Each Trust Created For David B. Smith's Benefit.

(a) I nominate, constitute and appoint my son, David B. Smith, and Regions Bank, having an office in Nashville, Tennessee, to be the co-trustees of each trust that is created for David B. Smith's benefit pursuant to the provisions of this my last will

and testament; and I direct that neither David B. Smith nor Regions Bank shall be required to make bond in such capacity in any jurisdiction.

(b) If my son, David B. Smith, for any reason fails to qualify as a co-trustee hereunder (or having qualified, if David B. Smith dies or resigns), then I nominate, constitute and appoint Regions Bank to be the sole trustee of each trust that is created for David B. Smith's benefit pursuant to the provisions of this my last will and testament; and I direct that Regions Bank shall not be required to make bond in such capacity in any jurisdiction.

(c) It is my intention that a resident of the State of Tennessee shall always serve as a co-trustee or as a sole trustee of each trust that is created for David B. Smith's benefit pursuant to the provisions of this my last will and testament; and the Tennessee-resident co-trustee's or sole trustee's duties shall include (but are not limited to) the following: the duty and responsibility of maintaining the books and records of each such trust in the State of Tennessee; arranging for the preparation of tax returns for each such trust; holding all assets of each such trust in the State of Tennessee; and principally administering each such trust in the State of Tennessee.

1.5 Appointment Of Trustee Of Each Trust Created For The Benefit Of Other Individuals. I nominate, constitute and appoint Regions Bank, having an office in Nashville, Tennessee, to be the trustee of each trust that is created pursuant to the provisions of this my last will and testament for the benefit of individuals other than my husband, John C. Smith; my son, James A. Smith; and my son, David B. Smith; and I direct that Regions Bank shall not be required to make bond in such capacity in any jurisdiction.

1.6 Continued Use Of Jeffrey W. Jones's Investment Advisory Services. It is my hope, the same being merely precatory in nature and not mandatory, that the fiduciaries who are named in this my last will and testament will continue using the investment advisory services of my friend, Jeffrey W. Jones, if Jeffrey W. Jones is providing investment advisory services to me at the time of my death.

1.7 Fiduciaries' Scope Of Authority. Each fiduciary who is named herein (including any alternates and successors) shall be deemed to have acted within the scope of such fiduciary's authority; to have exercised reasonable care, diligence and prudence; and to have acted impartially as to all persons who are interested in my estate, or in any trust that is created hereunder, unless the contrary is proved by affirmative evidence; and, in the absence of such proof, such fiduciary shall not be liable for any losses arising from the depreciation or shrinkage in value of any property which such fiduciary is authorized to hold or acquire.

1.8 References And Definitions.

(a) The fiduciaries who are named herein are sometimes hereinafter referred to as follows: “the executor” with respect to the executor or any alternates or successors serving in such capacity; “the trustee” with respect to the following: the trustee or the co-trustees, or any alternates or successors serving in such capacity, of each trust that is created pursuant to the provisions of this my last will and testament for my husband’s, John C. Smith’s, benefit; and the trustee or the co-trustees, or any alternates or successors serving in such capacity, of each trust which is created pursuant to the provisions of this my last will and testament for the benefit of individuals other than my husband; and “the fiduciaries” with respect to both the executor and the trustee. The foregoing terms are used for the sake of convenience, regardless of the gender or the number of the parties serving in such fiduciary capacities, with such terms to be read as the context requires.

(b) My husband, John C. Smith, is hereinafter referred to as “my husband”; my son, James A. Smith, is hereinafter referred to as “my son James”; and my son, David B. Smith, is hereinafter referred to as “my son David.” Other references to “child” or “children,” if any, are to the lawful blood descendants in the first degree of a designated parent.

(c) Throughout this my last will and testament, the term “issue” means lawful blood descendants in the first, second or any other degree of a designated ancestor; moreover, an adopted child and such adopted child’s own lawful blood descendants shall be considered as lawful blood descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or parents and shall not be considered descendants of the adopted child’s natural parents; provided, however, that if a child is adopted by a spouse of one of the child’s natural parents, then the child shall be considered a descendant of such natural parent, as well as a descendant of the adopting parent. Notwithstanding any other provisions of this Paragraph 1.8(c) or of this my last will and testament generally, an individual’s issue shall not include an individual who is that individual’s “issue” by virtue of adoption if that individual was adopted after my death and is older than the oldest individual who was a beneficiary of a trust at the time of my death.

(d) Throughout this my last will and testament, whenever property is to be distributed to designated issue on a “*per stirpes*” basis, the property shall be distributed to the individuals and in the relative proportions that personal property of the named ancestor would be distributed under the laws of the State of Tennessee in force at the time

which is stipulated for distribution if the named ancestor had died intestate at such time, domiciled in the State of Tennessee, not married and survived only by such issue.

(e) Throughout this my last will and testament, a child in gestation who is later born alive shall be regarded as a child in being during the period of gestation, in determining whether any individual has died without leaving surviving issue, and in determining, upon the termination of any trust that is created hereunder, whether such child is entitled to share in the disposition of the then-remaining principal and undistributed income of the trust; provided, however, that for all other purposes such child's rights shall accrue from the child's date of birth.

(f) Throughout this my last will and testament, the term "adult" means an individual who has attained the age of majority under the laws of the State of Tennessee; and the term "minor" means an individual who has not attained the age of majority under the laws of the State of Tennessee.

(g) Throughout this my last will and testament, the term "health, education, support or maintenance" shall be construed in such a manner as to be an ascertainable standard both for federal estate tax purposes, within the meaning of Internal Revenue Code § 2041, and for federal gift tax purposes, within the meaning of Internal Revenue Code § 2514, such that the exercise, release or lapse of a power which is limited by this ascertainable standard shall not be taxable as a general power of appointment for either federal estate tax or federal gift tax purposes.

(1) Moreover, the terms "support" and "maintenance" are synonymous, and their meaning shall not be limited to the bare necessities of life; and

(2) The term "education" shall include college and professional education; and

(3) The term "health" shall include medical, dental, hospital and nursing expenses, and expenses of invalidism.

(h) Throughout this my last will and testament, the masculine gender includes the feminine or neuter gender, and the singular number includes the plural number, with such terms to be read as the context requires.

(i) Throughout this my last will and testament, whenever Regions Bank, having an office in Nashville, Tennessee, is named, it shall be deemed to refer to any bank,

trust company or any other type of entity into which it may hereafter be merged or consolidated.

(j) Throughout this my last will and testament, the term “shall” is used in an imperative sense, and the term “may” is used in a permissive sense.

(k) Throughout this my last will and testament, the words “and” and “or” are used interchangeably to mean any one or more, or all, of the terms that are joined by these words, unless the context specifically indicates otherwise.

(l) Throughout this my last will and testament, the term “Internal Revenue Code” means the Internal Revenue Code of 1986, 26 United States Code §§ 1, *et seq.*, as now existing and as amended from time to time hereafter (and any corresponding provisions of succeeding law). If, by the time in question, a particular provision of the Internal Revenue Code has been renumbered or it has been superseded by a subsequent federal tax law, then the reference shall be deemed to be to the renumbered provision or to the corresponding provisions of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this my last will and testament.

(m) Throughout this my last will and testament, the term “Tennessee Code Annotated” means the official compilation of the statutes, codes and session laws of the State of Tennessee of a public and general nature, as now existing and as amended from time to time hereafter (and any corresponding provisions of succeeding law). If, by the time in question, a particular provision of the Tennessee Code Annotated has been renumbered or it has been superseded by a subsequent Tennessee law, then the reference shall be deemed to be to the renumbered provision or to the corresponding provisions of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this my last will and testament.

(n) Throughout this my last will and testament, the term “Treasury Regulations” means the applicable income, estate, gift and generation-skipping transfer tax regulations, as the case may be, that are issued by the U.S. Treasury Department, as now existing and as amended from time to time hereafter (and any corresponding provisions of succeeding regulations). If, by the time in question, a particular provision of the Treasury Regulations has been renumbered or it has been superseded by a subsequent provision of the Treasury Regulations, then the reference shall be deemed to be to the renumbered provision or to the corresponding provisions of the subsequent Treasury Regulations, unless to do so would clearly be contrary to my intent as expressed in this my last will and testament.

(o) Throughout this my last will and testament, the item and paragraph titles or captions are only used as a matter of convenience and reference, and in no way define, limit, extend or describe the scope of this my last will and testament or the intent of any provisions hereof.

(p) Throughout this my last will and testament, the term “interested trustee” means, for any trust, a trustee who is (1) a transferor of property to the trust, including an individual whose qualified disclaimer resulted in property passing to the trust; or (2) an individual who is, or in the future may be, eligible to receive income or principal pursuant to the terms of the trust. A trustee who is described in subpart (1) hereinabove is an interested trustee only with respect to the transferred property (including income and gain on, and reinvestment of, such property). An individual is described in subpart (2) hereinabove even if that individual has a remote contingent remainder interest, but is not described in subpart (2) if that individual’s only interest is as a potential appointee under a non-fiduciary power of appointment which is held by another individual, which power of appointment has not yet been exercised or the exercise of which will take effect only in the future, such as a testamentary power which is held by a living individual.

(q) Throughout this my last will and testament, the term “disinterested trustee” means a trustee who is not an interested trustee.

(r) Throughout this my last will and testament, the term “interested executor” means any executor who is, or in the future may be, eligible to receive income or principal under this my last will and testament. An individual is an interested executor even if that individual has a remote contingent remainder interest, but is not an interested executor if that individual’s only interest is as a potential distributee under a discretionary power that is held by a disinterested trustee and, or, as a potential appointee under a non-fiduciary power of appointment which is held by another individual, which power of appointment has not yet been exercised or the exercise of which will take effect only in the future, such as a testamentary power which is held by a living individual.

(s) Throughout this my last will and testament, the term “retirement benefit” means the interest of a trust, which is created hereunder, in one of the following types of assets if payable to the trust as beneficiary or if owned by the trust: a qualified or nonqualified annuity; a benefit under a qualified or nonqualified plan of deferred compensation; any account in or benefit payable under any pension, profit-sharing, stock bonus or other qualified retirement plan; any individual retirement account or trust; and any and all benefits under any plan or arrangement that is established under Internal Revenue Code §§ 408, 408A, 457, 403, 401 or similar provisions of the Internal Revenue Code; and the term “retirement benefits” means all of those interests collectively.

(t) Throughout this my last will and testament, the term “deferrable retirement benefit” means any retirement benefit that meets the following two requirements:

(1) First, it is subject to the “minimum distribution rules” [as that term is defined in Paragraph 1.8(u) hereinbelow]; and

(2) Second, a designated beneficiary of the benefit has the option (either under the terms of the plan or arrangement that governs that retirement benefit, or by causing the retirement benefit to be transferred to an inherited individual retirement account) to take distribution of that retirement benefit in annual installments over the life expectancy of the (or of the oldest) designated beneficiary of that trust; and the term “deferrable retirement benefits” means all of those interests collectively.

Retirement benefits that are payable under a plan or arrangement which is not subject to the minimum distribution rules (such as, under current law, a “nonqualified deferred compensation plan”) are not deferrable retirement benefits.

(u) Throughout this my last will and testament, the term “minimum distribution rules” means the rules under Internal Revenue Code § 401(a)(9), including the related Treasury Regulations thereunder.

(v) Throughout this my last will and testament, the term “minimum required distribution” for any year means, with respect to any retirement benefit, the amount, if any, as shall be required to be withdrawn in each year of the “applicable distribution period” [as that term is defined in Paragraph 1.8(w) hereinbelow] under the laws then applicable to such retirement benefit to avoid penalty.

(1) In the event that such applicable law does not require a withdrawal of any portion of a retirement benefit until the end of the applicable distribution period in order to avoid a penalty, then no withdrawal need be made in any given year during the applicable distribution period as long as all amounts that are required to be withdrawn by the end of the applicable distribution period are so withdrawn.

(2) Notwithstanding the foregoing, if my husband survives me and retirement benefits are paid to a trust that is created pursuant to the provisions of Item V hereinbelow for my husband’s benefit, then the foregoing shall not be interpreted, construed or administered in a manner that is inconsistent with the qualification of any marital trust for the federal estate tax marital deduction, to the extent so elected.

(w) Throughout this my last will and testament, the terms “life expectancy” and “designated beneficiary” shall have the same meaning as under the minimum distribution rules. The “the applicable distribution period” means the longest period over which retirement benefits may be distributed under Internal Revenue Code § 401(a)(9), and the Treasury Regulations thereunder, without incurring a penalty. During the period that my husband is living, the applicable distribution period means my husband’s life expectancy.

1.9 Recognition And Approval Of Conflicting Interests.

(a) I recognize that in the exercise of fiduciary powers, the executor and the trustee may be placed in a position of having conflicting interests, both as fiduciaries and as individuals.

(b) I direct that any such conflicting interests shall not be a basis for the executor’s and the trustee’s not participating in the exercise of their respective fiduciary powers in connection with any property, whether real, personal or mixed, that I own at the time of my death.

1.10 Unanimous Decision Required Of Co-Executors.

(a) In each case in which discretionary power is vested in co-executors, express or implied decisions or actions in the exercise thereof shall be final and conclusive, and be binding upon all persons whomsoever.

(b) In reaching all decisions of whatever kind or nature, the co-executors shall act on the basis of a unanimous decision (except as to matters expressly left to the decision of one certain co-executor).

1.11 Authority To Appoint Ancillary Administrators.

(a) If it becomes necessary, then I authorize the executor to nominate, constitute and appoint ancillary administrators to serve in jurisdictions other than Tennessee.

(b) I further direct that no bond shall be required of any such ancillary administrators for the faithful performance of such ancillary administrators’ duties; and the ancillary administrators shall have all of the powers with respect to my estate in those jurisdictions that the executor is given with respect to my domiciliary estate (including the

power to sell real or personal property at public or private sale for any purpose), to be exercisable without the joinder of any beneficiary or the approval of any court.

1.12 Notice To Beneficiaries Under Will.

(a) Pursuant to the provisions of Tennessee Code Annotated § 30-2-301, the executor shall furnish a copy of this my last will and testament, or relevant portions thereof, to each beneficiary hereunder.

(b) If a beneficiary hereunder is a minor or is otherwise under a legal disability at the time that a copy of this my last will and testament, or relevant portions thereof, is to be furnished to such beneficiary, then the executor shall furnish the copy to such beneficiary's legal guardian.

1.13 Waiver Of Inventory And Accountings.

(a) Pursuant to the provisions of Tennessee Code Annotated § 30-2-301, the executor is excused from the requirement of making and filing an inventory with the court exercising probate jurisdiction over my estate.

(b) Pursuant to the provisions of Tennessee Code Annotated § 30-2-601, the executor is excused from the requirement of making and filing accountings with the court exercising probate jurisdiction over my estate.

1.14 Corporate Successor To Business Of Corporate Fiduciary. Any corporate successor to the estate administration and trust business of a corporate fiduciary, acting hereunder at any time, shall succeed to the capacity of its predecessor without conveyance or transfer.

1.15 Corporate Fiduciary Fees.

(a) I direct that the compensation of each corporate fiduciary, acting hereunder at any time, shall be paid pursuant to each such corporate fiduciary's own published schedule of fees (including percentage fees), as each such schedule of fees is in effect at the time or times when services are rendered.

(b) I waive any requirement under applicable law or rule of court that any such fees be approved by the court having jurisdiction of the administration of my estate or of any trust which is created hereunder.

1.16 Individual Fiduciary Fees.

(a) I direct that the compensation of each individual fiduciary, acting hereunder at any time with respect to my estate or with respect to any trust that is created pursuant to the provisions of this my last will and testament, shall, unless waived, be paid pursuant to the published schedule of fees for Regions Bank, having an office in Nashville, Tennessee, as each such schedule of fees (including percentage fees) is in effect at the time or times when services are rendered by an individual fiduciary.

(b) I waive any requirement under applicable law or rule of court that any such fees be approved by the court having jurisdiction of the administration of my estate or of any trust which is created hereunder.

1.17 Reimbursement Of Fiduciaries' Expenses. The executor and the trustee are both entitled to reimbursement for any out-of-pocket expenditures that are made or incurred in the proper administration of my estate and the trusts that are created hereunder or in furtherance of their fiduciary duties and obligations.

1.18 Attorneys' Fees.

(a) I recognize that the executor and the trustee have authority to select and retain an attorney or attorneys to provide legal services to the executor or to the trustee.

(b) I believe that the attorney or attorneys who are retained by the executor or by the trustee should be compensated on an hourly basis, at their customary hourly rate, and I waive any requirement under applicable law or rule of court that any such fees (and reimbursable expenses) be approved by the court having jurisdiction of the administration of my estate or of any trust which is created hereunder.

ITEM II

**RESIGNATION OF TRUSTEES,
REMOVAL OF TRUSTEES AND CERTAIN
OTHER PROVISIONS RELATING TO TRUSTEES**

2.1 Resignation Or Removal Of Trustees. Any individual or entity who is then serving as a trustee or as a co-trustee of any trust that is created hereunder may resign or may be removed, all in accordance with the following provisions of this Paragraph 2.1.

(a) Any trustee or co-trustee may resign upon thirty days' written notice to the beneficiary who is then-receiving or who is then-entitled to receive the income of a trust; and that written notice shall also be provided to the next successor trustee or co-trustee hereunder, if any.

(1) If a resignation occurs, then the successor trustee or co-trustee who is designated in Paragraphs 1.2, 1.3, 1.4 and 1.5 hereinabove, if any, shall serve as the trustee or as the co-trustee of the applicable trust; but if no successor trustee or co-trustee is designated or able to serve, then the trustee's or the co-trustee's successor, subject to the appointment provisions of Paragraph 1.2 hereinabove, may be appointed by the income beneficiary of that trust; provided, however, that the successor trustee or co-trustee shall be a bank, trust company or any other type of entity which may legally serve as a trustee in the State of Tennessee and has an office located in Nashville, Tennessee.

(2) If any individual who is serving as a trustee or as a co-trustee becomes incapacitated, then that individual shall be deemed for all purposes to have resigned as the trustee or as the co-trustee.

(b) A beneficiary who is then-receiving or who is then-entitled to receive the income of any trust shall have the right to remove solely for cause, upon thirty day's written notice of removal, any individual or entity (whether corporate or otherwise) serving as the trustee or as a co-trustee of that trust. If removal occurs, then the successor trustee or co-trustee who is designated in Paragraphs 1.2, 1.3, 1.4 and 1.5 hereinabove, if any, shall serve as the trustee or as a co-trustee; provided however, that if no successor trustee or co-trustee is designated or able to serve, then the trustee's or the co-trustee's successor, subject to the appointment provisions of Paragraph 1.2 hereinabove, may be appointed by the income beneficiary of that trust; provided further, however, that the successor trustee or co-trustee shall be a bank, trust company or any other type of entity which may legally serve as a trustee in the State of Tennessee and has an office located in Nashville, Tennessee.

(c) If the income beneficiary fails to select a successor trustee or co-trustee within a thirty-day period, then the trustee or the co-trustee who has resigned or who has been removed may petition the court having jurisdiction over the trust for the appointment of a successor trustee or co-trustee; provided, however, that the successor trustee or co-trustee shall be a bank, trust company or any other type of entity which may legally serve as a trustee in the State of Tennessee and has an office located in Nashville, Tennessee.

(d) Any successor trustee or co-trustee who is chosen by the beneficiary shall not be related under Internal Revenue Code § 672(c) to the individual who is exercising this power of selection.

(e) Upon the appointment of the successor trustee or the co-trustee, the resigning or the removed trustee or co-trustee shall deliver all of the assets that are then held to the successor trustee or co-trustee.

(1) The resigning or the removed trustee or co-trustee shall then have full release for all assets that are so delivered (subject, however, to the judicial settlement of the accounts of the resigning or the removed trustee or co-trustee if requested by the individual exercising this power of selection or by the successor trustee or co-trustee).

(2) A parent or legal guardian or closest adult next-of-kin for any minor beneficiary shall act on behalf of a minor beneficiary concerning the removal of any trustee or co-trustee and the selection of any successor trustee or co-trustee hereunder.

2.2 Authority Of Successor Trustees. Any successor trustees, acting hereunder at any time, shall possess and exercise all of the powers and authority that are conferred herein on the original trustee.

2.3 Successors To Business Of Entity Trustees. Any entity successor (whether corporate or otherwise) to the trust business of an entity trustee, acting hereunder at any time, shall succeed to the capacity of its predecessor without conveyance or transfer.

2.4 Documenting Succession.

(a) All of the trusts that are created under this my last will and testament need not have, nor continue to have, the same trustee.

(b) The successor to any trustee may document succession with an affidavit setting forth that the preceding trustee has failed or has ceased to serve and that the successor has assumed the duties of the trustee.

(c) The affidavit shall be filed either in the court in which this my last will and testament was admitted to probate, or in the office of the register of deeds for the county in which this my last will and testament was admitted to probate.

(d) The public, all persons who are interested in and, or, dealing with a trust that is created hereunder, and the trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and to act as the trustee of that trust.

2.5 Multiple Trustees. While two or more trustees are acting hereunder, the following provisions shall apply where the context admits:

(a) The bank, trust company or any other type of entity that is serving as the trustee, if any, shall have custody of the trust property and the books and records of the trustees;

(b) With respect to any matter over which two or more trustees have joint authority, a trustee, by written notice, may temporarily delegate any or all of that trustee's rights, powers, duties and discretion as trustee to any other trustee sharing that authority, with the consent of the latter;

(c) The trustees may establish bank and brokerage accounts and may authorize that checks or drafts may be drawn on, or withdrawal made from, any such account with the individual signature of any trustee;

(d) Any trustee alone may perform on behalf of the trustees all of the acts that are necessary for the acquisition, sale and transfer of personal and real property, including the giving of directions and the signing and endorsing of checks and other negotiable instruments, stock and bond certificates and powers, deeds of real estate and related transfer documents, applications, tax forms and other forms or documents; and no person who is dealing with the trustee need inquire into the propriety of any such act if that trustee certifies in writing to that person that the trustees have approved that act;

(e) A trustee shall be presumed to have approved a proposed act or decision to refrain from acting if that trustee fails to indicate approval or disapproval thereof within fifteen days after a written request for approval has been received; and a trustee shall not be required to continue to make a proposal that has been disapproved of on at least two occasions if that trustee has informed each disapproving co-trustee that continued disapproval will be assumed until notice to the contrary has been received;

(f) The trustees may execute documents by jointly signing one document or by separately signing concurrent counterpart documents; and

(g) Unless specifically provided for otherwise, at any time when more than one person is designated to act in the same fiduciary capacity, then the action or the decision of a majority in number shall control; and a person who does not vote or who does not concur in any vote shall not be liable for any act or failure to act of the others.

ITEM III

FUNERAL EXPENSES, ADMINISTRATION EXPENSES, DEBTS AND DEATH TAXES

3.1 Payment Of Funeral Expenses And Administration Expenses. I direct that all of my funeral expenses and all of the expenses of administering my estate (both domiciliary and ancillary) shall be paid by the executor out of my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow, as soon as practicable after my death, without apportionment against the share of any beneficiary.

3.2 Payment Of Debts.

(a) Subject to the provisions of Paragraph 3.2(b) hereinbelow, I direct that all of my lawful debts shall be paid by the executor out of my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow, as soon as practicable after my death, without apportionment against the share of any beneficiary.

(b) If any property or interest in property passing pursuant to the provisions of this my last will and testament, or by operation of law or otherwise by reason of my death, is, at the time of my death, encumbered by mortgage or lien or pledged to secure any obligation (whether the encumbered or pledged property or interest in property is, at the time of my death, owned by me jointly or individually), then it is my intention that any such indebtedness shall not be charged to or paid from my estate, but, instead, that the devisee, legatee, joint owner taking by right of survivorship or beneficiary receiving the property or interest in property shall take the same subject to all of the encumbrances existing at the time of my death.

(c) If permitted by law, then the executor may pay a debt without requiring the creditor to file a claim against my estate. I suggest that the executor consult with the attorney for my estate before paying any of my debts.

3.3 Payment Of Death Taxes.

(a) All estate, inheritance, legacy, succession, generation-skipping or other wealth transfer taxes [other than any additional estate tax that is imposed by Internal Revenue Code §§ 2031(c)(5)(C) or 2032A(c), any generation-skipping transfer tax on any generation-skipping transfer other than a direct skip or any comparable tax which is imposed by any other taxing authority] that result from my death and that are imposed by any domestic or foreign taxing authority with respect to property passing pursuant to the provisions of this my last will and testament, together with interest and penalties on those taxes, shall be charged against and paid without apportionment out of my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow, as an administration expense.

(b) Those taxes on property not passing pursuant to the provisions of this my last will and testament shall be apportioned to and paid from that property by those succeeding to that property, taking into account the provisions of any instrument governing that property, the provisions of the Internal Revenue Code and any provisions of other applicable law apportioning those taxes. I acknowledge that the actual burden of death tax may be borne, in whole or in part, by my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow.

(c) *However, the following clarifications and, or, modifications of the general rules that are set forth in Paragraphs 3.3(a) and 3.3(b) hereinabove shall apply.*

(1) All taxes that are generated by my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow, shall be apportioned within my residuary estate to the share or shares generating the tax, but shall not be apportioned between current and future interests, such as a life estate and remainder, even if one and not the other is taxable.

(2) The tax on any “qualified terminable interest property” (QTIP property) that is included in my gross estate under Internal Revenue Code § 2044 shall be apportioned and paid in the manner which is provided in Internal Revenue Code § 2207A.

(A) If not already provided by applicable law, then, to the extent that I have the power to do so, I direct that state and foreign taxes shall be apportioned to and paid from the property at the marginal rate in the same way federal tax is payable, so that QTIP property shall contribute all of the additional tax at the marginal rate caused by its inclusion.

(B) I further direct that any provision of my husband's last will and testament or other governing instrument that provides which portion of a trust, or which of two or more trusts, of QTIP property should pay taxes shall be followed and the executor shall pursue any right of reimbursement against those trusts only in a manner which is consistent with those provisions.

(3) To the extent any interests in properties pass to a trust that could qualify for the federal estate tax marital deduction by an election by the executor under Internal Revenue Code § 2056(b)(7) and are not allowed as a federal estate tax marital deduction, taxes shall be borne by those interests in properties which are not allowed as a federal estate tax marital deduction to the extent that the taxes thereon exceed what those taxes would have been if the value of those interests in properties for federal estate tax purposes had been allowed as a federal estate tax marital deduction.

(4) The tax on any property over which I had a general power of appointment and that is included in my gross estate under Internal Revenue Code § 2041, whether or not the power is exercised, shall be apportioned and paid in the manner that is provided by the Internal Revenue Code and applicable law; provided, however, that if the general power of appointment is exercisable by this my last will and testament, then I hereby exercise the power to the extent of directing the recipient or recipients of the property to which this power of appointment relates to pay to or on behalf of the executor all of the additional tax at the marginal rate which is caused by its inclusion and not just its proportionate share of tax at the average rate. However, this shall not apply to taxes on property that is included in my gross estate solely because I had a withdrawal right over a fractional share or pecuniary portion of the property, limited to the amount which is set forth in Internal Revenue Code § 2514(e)(1) [currently, \$5,000] or the percentage which is set forth in Internal Revenue Code § 2514(e)(2) [currently, 5%], which shall be paid out of my estate as an administration expense, without apportionment to which this power of appointment relates, and before any determination of my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow, or of any shares or interests therein.

(5) Taxes on retirement benefits shall be paid out of my estate as an administration expense without apportionment and with no right of reimbursement from the recipient or recipients of those benefits and before any determination of my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow, or of any shares or interests therein.

(6) Any generation-skipping transfer tax (other than a tax on a direct skip of property passing as part of my estate and disposed of pursuant to the provisions of this my last will and testament prior to the disposition of my residuary estate under Item V hereinbelow) shall be charged to the property constituting the transfer in the manner that is provided by Internal Revenue Code § 2603(b).

(7) Taxes that are imposed under Internal Revenue Code § 2701(d) shall be apportioned and paid as an additional estate or gift tax as provided in Chapter 14 of the Internal Revenue Code.

(d) I hereby make specific reference to Internal Revenue Code § 2207A (concerning tax on QTIP property), Internal Revenue Code § 2207B (concerning tax on property included under Internal Revenue Code § 2036) and Internal Revenue Code § 2603(b) [concerning the generation-skipping transfer tax under Chapter 13 of the Internal Revenue Code] and to corresponding provisions of state law, and I direct that they shall apply to the extent that they are consistent with the foregoing and shall not apply to the extent that they are inconsistent with the foregoing.

(e) If the payment of taxes from my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow, in accordance with the foregoing provisions of this Paragraph 3.3 exhausts the share or shares of my residuary estate that generate the tax, then the balance of tax due shall be apportioned in accordance with the rules of tax apportionment rather than the rules of abatement.

3.4 Prohibitions Relating To Retirement Benefits.

(a) Notwithstanding any other provisions of this my last will and testament, except as provided in this Paragraph 3.4, the trustee of any trust that is created hereunder shall not, after September 30 of the calendar year following the calendar year in which my death occurs, or such earlier date as is established under the minimum distribution rules as the final date for determining whether a trust meets the requirements for treatment of the beneficiaries of the trust as if they had been named directly as beneficiary of any retirement benefits (or plan) payable to the trust (hereinafter referred to in this Paragraph 3.4 as “such date”) for purposes of such minimum distribution rules, distribute to or for the benefit of my estate, any charity or any other nonindividual beneficiary any deferrable retirement benefits payable to the trust.

(b) It is my intention that all deferrable retirement benefits held by or payable to a trust as of such date shall be distributed to or held for only individual beneficiaries, within the meaning of the minimum distribution rules.

(c) Accordingly, I direct that no deferrable retirement benefit may be used or applied after such date for the payment of my debts, expenses of administration, taxes or other claims against my estate; nor for the payment of any federal and state estate, inheritance, legacy and succession taxes which are payable in any jurisdiction by reason of my death.

(d) This Paragraph 3.4 shall not apply to any bequest or expense that is specifically directed to be funded with deferrable retirement benefits by other provisions of this my last will and testament.

ITEM IV

DISPOSITION OF TANGIBLE PERSONAL PROPERTY

4.1 Disposition Of Certain Items Under Memorandum.

(a) I may have left a memorandum of disposition that is written entirely in my handwriting, which memorandum of disposition is incorporated herein by reference, indicating that certain items of tangible personal property are to be distributed to the beneficiaries who are designated in the memorandum, and I direct the executor to comply with the instructions which are contained in any such memorandum.

(1) Except as otherwise provided in any such memorandum, if an individual who is named therein predeceases me, then the bequest that is made in such memorandum to that individual shall lapse.

(2) In addition, such memorandum shall not operate to revoke this my last will and testament unless expressly stated therein.

(b) If the executor is unable, after diligent search and inquiry, to locate and identify such memorandum, then I authorize the executor to dispose of all of my tangible personal property, pursuant to the provisions of Paragraph 4.2 hereinbelow, on the assumption that no such memorandum was executed or is then in existence.

4.2 Disposition Of Balance Of Tangible Personal Property. Any clothing, jewelry, personal effects (including personally held art, antiques, stamp and coin collections and other collectibles), automobiles (together with any assignable policies of insurance thereon) and any other tangible personal property, wherever situated, that I use in a personal manner (specifically excluding, however, all of the following: all of my tangible personal property which I use in a trade, business or farm operation; all of my

tangible personal property which is primarily held for investment purposes; and all of my ordinary currency and cash bullion), but not mentioned by me in the memorandum which is referred to in Paragraph 4.1 hereinabove, I give and bequeath as follows (subject, however, to the provisions of Paragraphs 4.3, 4.4 and 4.5 hereinbelow):

- (a) If my husband survives me, then to my husband; or,
- (b) If my husband predeceases me, then to my issue who survive me, *per stirpes*; or,
- (c) In default thereof, the bequests that would otherwise have been made pursuant to the provisions of this Paragraph 4.2 shall lapse and the aforementioned tangible personal property shall, instead, form a part of my residuary estate, which is disposed of pursuant to the provisions of Item V hereinbelow, as if such tangible personal property had been an original part thereof.

4.3 Determinations Made By Executor. Any determinations that are made with respect to, or any division of, my tangible personal property, or any other action which is taken by the executor pursuant to the provisions of Paragraphs 4.1 and, or, 4.2 hereinabove, shall be conclusive upon all persons who are interested in my estate.

4.4 Disposition To A Minor. If, pursuant to the provisions of Paragraphs 4.1 and, or, 4.2 hereinabove, a disposition of tangible personal property is to be made to a minor by the executor, then the disposition shall be made to the minor's guardian, whose receipt shall constitute full acquittance of the executor.

4.5 Expenses Relating To Tangible Personal Property. All of the expenses that are associated with safeguarding, insuring, packing, storing, delivering and distributing the tangible personal property, which is disposed of pursuant to the provisions of this Item IV, shall be deemed to be part of the expenses of administering my estate.

ITEM V

DISPOSITION OF RESIDUARY ESTATE

5.1 Disposition, Generally.

(a) If my husband survives me, then I give, devise and bequeath to the trustee, in trust, my entire residuary estate, consisting of all of the rest, residue and remainder of my property of every kind and description [whether real, personal or mixed

(including lapsed legacies and devises, but excluding any property over which I have a power of appointment, it being my intention not to exercise any such power; unless, however, a power of appointment has otherwise specifically been exercised hereinabove)], wherever situated and whether acquired before or after the execution of this my last will and testament (hereinafter referred to as “my entire residuary estate” in this Paragraph 5.1), to be held and administered by the trustee for the uses and purposes, upon the terms and conditions and with the powers and duties which are set forth hereinbelow.

(1) Commencing with my date of death, the trustee shall pay to my husband, as long as my husband lives, all of the income that is derived from the trust estate, currently, in regular monthly or other convenient installments, but no less frequently than quarter-annually.

(A) No provision of this Paragraph 5.1(a), or of this my last will and testament generally, shall be deemed to limit my husband’s right, commencing with my date of death, to receive currently (in regular monthly or other convenient installments, but no less frequently than quarter-annually) the entire income that is derived from the trust estate.

(B) If, at any time, the trust estate contains unproductive property, then my husband, during the continuance of the trust estate, shall have the absolute right, power and authority to require the trustee either to make nonproductive property of the trust estate productive or to convert such nonproductive property to productive property. This power is expressly applicable to retirement benefits.

(2) The trustee has full power to encroach, from time to time and at any time, upon the principal of the trust estate for my husband’s health, education, support or maintenance, as long as my husband lives; and in considering whether or not to make any principal distributions to my husband, the trustee shall give primary consideration to my husband’s health, education, support or maintenance, rather than to the conservation of the trust estate for persons having remainder interests therein.

(3) The executor may elect to have a specific portion or all of the trust estate [referred to throughout this my last will and testament as “the marital portion” (and with the balance of the trust estate, *i.e.*, the non-elected portion of the trust estate, being referred to throughout this my last will and testament as “the non-marital portion”)] treated as “qualified terminable interest property” under Internal Revenue Code § 2056(b)(7) and, or, under corresponding provisions of state death tax laws.

(A) If the executor determines to make any such election as to less than all of the trust estate, then the specific portion shall be expressed as a fraction, and the value of the marital portion at any time may be determined by multiplying the value of the trust estate at that time by the fraction then in effect. Each discretionary distribution of principal from the trust estate to my husband shall be charged first against the marital portion, until exhaustion of the marital portion, by adjusting the fraction, first by restating it so that the numerator and the denominator are the values of the marital portion and of the trust estate, respectively, immediately before the distribution, and then by subtracting the amount of the distribution from each of the numerator and the denominator, except that the numerator shall not be reduced below zero.

(B) Alternatively, the trustee may divide the trust estate as of the date of my death into separate trusts, representing the fractional portions for which a “qualified terminable interest property” election was and was not made, and administer them as separate trusts pursuant to the provisions of this my last will and testament (but subject, however, to a common set of provisions).

(C) In either event, if any election is made to qualify a portion of the trust estate for the marital deduction, then, to the extent possible, that portion shall be satisfied only with property qualifying for the marital deduction.

(D) If any trust, which is created for my husband’s benefit pursuant to the provisions of this Paragraph 5.1(a), is or becomes the beneficiary of any retirement benefit, then the trustee of that trust shall withdraw from the trust’s share of that retirement benefit, each year: as long as my husband is living,

(4) Upon my husband’s death, the trustee shall distribute from the marital portion the amount by which the federal and, or, state estate, inheritance, legacy and succession taxes (including any interest and penalties) that are payable in any jurisdiction by reason of my husband’s death shall be increased as a result of the inclusion of any part of the marital portion in my husband’s gross estate for such tax purposes, and without reimbursement, recovery or contribution from any person, which amount shall be certified in writing by the personal representative of my husband’s estate. The amount that is so distributable may be distributed either directly or to that personal representative, as the trustee determines to be appropriate.

(5) Upon my husband’s death, the entire principal of each trust that is then being held and administered by the trustee pursuant to the provisions of this Paragraph 5.1(a) [but only after all of the distributions, if any, which are required pursuant

to the provisions of Paragraph 5.1(a)(4) hereinabove have first been distributed to my husband's estate], shall be divided by the trustee into two shares, as follows:

(A) The first share shall be composed of *one-half* thereof and it shall be hereinafter referred to as "the first portion" in this my last will and testament; and

(B) The second share shall be composed of *one-half* thereof and it shall be hereinafter referred to as "the second portion" in this my last will and testament.

(b) The first portion shall be distributed and paid, as follows:

(1) If my son James is then surviving, then to the trustee, to be held and administered by the trustee, in trust, for my son James's benefit pursuant to the provisions of Paragraph 5.2 hereinbelow; or,

(2) If my son James is not then surviving, but my son James leaves issue who are then surviving, then to my son James's issue who are then surviving, to be divided and then, as the case may be, to be distributed and paid outright, or to be held and administered by the trustee, in trust, pursuant to the provisions of Paragraph 5.3 hereinbelow, for the benefit of my son James's issue who are then surviving; or,

(3) If my son James is not then surviving and my son James leaves no issue who are then surviving, then to my issue who are then surviving, *per stirpes*; provided, however, that any property or interest in property which would otherwise pass hereunder either to an individual who is then or will be a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof, or to an individual who will be a beneficiary of a trust which is to be held pursuant to the provisions of Paragraph 5.7 hereinbelow (because such individual is then under twenty-one years of age and not a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof), as the case may be, shall not pass to such individual outright, but, instead, shall be added to the principal of the trust with respect to which the individual is, or will be, a beneficiary, to be held, administered and distributed by the trustee pursuant to the provisions of that trust; or,

(4) If none of the foregoing are then surviving, then to the individuals and, or, entities whose identity and respective shares shall be determined

pursuant to the provisions of Paragraph 5.6 hereinbelow (subject, however, to the provisions of Paragraph 5.7 hereinbelow).

(c) The second portion shall be distributed and paid, as follows:

(1) If my son David is then surviving, then to the trustee, to be held and administered by the trustee, in trust, for my son David's benefit pursuant to the provisions of Paragraph 5.4 hereinbelow; or,

(2) If my son David is not then surviving, but my son David leaves issue who are then surviving, then to my son David's issue who are then surviving, to be divided and then, as the case may be, to be distributed and paid outright, or to be held and administered by the trustee, in trust, pursuant to the provisions of Paragraph 5.5 hereinbelow, for the benefit of my son David's issue who are then surviving; or,

(3) If my son David is not then surviving and my son David leaves no issue who are then surviving, then to my issue who are then surviving, *per stirpes*; provided, however, that any property or interest in property which would otherwise pass hereunder either to an individual who is then or will be a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof, or to an individual who will be a beneficiary of a trust which is to be held pursuant to the provisions of Paragraph 5.7 hereinbelow (because such individual is then under twenty-one years of age and not a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof), as the case may be, shall not pass to such individual outright, but, instead, shall be added to the principal of the trust with respect to which the individual is, or will be, a beneficiary, to be held, administered and distributed by the trustee pursuant to the provisions of that trust; or,

(4) If none of the foregoing are then surviving, then to the individuals and, or, entities whose identity and respective shares shall be determined pursuant to the provisions of Paragraph 5.6 hereinbelow (subject, however, to the provisions of Paragraph 5.7 hereinbelow).

(d) If my husband predeceases me, then my entire residuary estate shall be divided by the executor into two shares, as follows:

(1) The first share shall be composed of *one-half* thereof and it shall be hereinafter referred to as "the third portion" in this my last will and testament; and

(2) The second share shall be composed of *one-half* thereof and it shall be hereinafter referred to as “the fourth portion” in this my last will and testament.

(e) I give, devise and bequeath the third portion, as follows:

(1) If my son James survives me, then to the trustee, to be held and administered by the trustee, in trust, for my son James’s benefit pursuant to the provisions of Paragraph 5.2 hereinbelow; or,

(2) If my son James predeceases me, but my son James leaves issue who survive me, then to my son James’s issue who survive me, to be divided and then, as the case may be, to be distributed and paid outright, or to be held and administered by the trustee, in trust, pursuant to the provisions of Paragraph 5.3 hereinbelow, for the benefit of my son James’s issue who survive me; or,

(3) If my son James predeceases me and my son James leaves no issue who survive me, then to my issue who survive me, *per stirpes*; provided, however, that any property or interest in property which would otherwise pass hereunder either to an individual who is then or will be a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof, or to an individual who will be a beneficiary of a trust which is to be held pursuant to the provisions of Paragraph 5.7 hereinbelow (because such individual is then under twenty-one years of age and not a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof), as the case may be, shall not pass to such individual outright, but, instead, shall be added to the principal of the trust with respect to which the individual is, or will be, a beneficiary, to be held, administered and distributed by the trustee pursuant to the provisions of that trust; or,

(4) If none of the foregoing survive me, then to the individuals and, or, entities whose identity and respective shares shall be determined pursuant to the provisions of Paragraph 5.6 hereinbelow (subject, however, to the provisions of Paragraph 5.7 hereinbelow).

(f) I give, devise and bequeath the fourth portion, as follows:

(1) If my son David survives me, then to the trustee, to be held and administered by the trustee, in trust, for my son David’s benefit pursuant to the provisions of Paragraph 5.4 hereinbelow; or,

(2) If my son David predeceases me, but my son David leaves issue who survive me, then to my son David's issue who survive me, to be divided and then, as the case may be, to be distributed and paid outright, or to be held and administered by the trustee, in trust, pursuant to the provisions of Paragraph 5.5 hereinbelow, for the benefit of my son David's issue who survive me; or,

(3) If my son David predeceases me and my son David leaves no issue who survive me, then to my issue who survive me, *per stirpes*; provided, however, that any property or interest in property which would otherwise pass hereunder either to an individual who is then or will be a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof, or to an individual who will be a beneficiary of a trust which is to be held pursuant to the provisions of Paragraph 5.7 hereinbelow (because such individual is then under twenty-one years of age and not a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof), as the case may be, shall not pass to such individual outright, but, instead, shall be added to the principal of the trust with respect to which the individual is, or will be, a beneficiary, to be held, administered and distributed by the trustee pursuant to the provisions of that trust; or,

(4) If none of the foregoing survive me, then to the individuals and, or, entities whose identity and respective shares shall be determined pursuant to the provisions of Paragraph 5.6 hereinbelow (subject, however, to the provisions of Paragraph 5.7 hereinbelow).

5.2 Trust For My Son James.

(a) If the first portion, the second portion, the third portion and, or, the fourth portion, or any part or parts thereof, or any other property or interests in property, as the case may be, are to be held by the trustee pursuant to the provisions of this Paragraph 5.2 for my son James's benefit, then any such portions and, or, parts thereof, or any other property or interests in property, shall be collectively held and administered by the trustee for the uses and purposes, upon the terms and conditions and with the powers and duties that are set forth hereinbelow.

(b) During my son James's lifetime, the trustee may, from time to time and at any time, pay and distribute to, or for the benefit of, my son James such amounts of the net income, principal, or both, of the trust, as the trustee determines to be advisable for my son James's health, education, support or maintenance.

(c) Any net income of the trust that is not paid to, or for the benefit of, my son James shall be incorporated periodically, but at least annually, into the principal of the trust, to be held, administered and distributed pursuant to all of the terms, conditions and limitations applying thereto.

(d) Upon my son James's death, the entire then-remaining principal and income of the trust, whether current or accumulated, shall be distributed and paid by the trustee, as follows:

(1) To such appointee or appointees (including my son James's estate), and in such estates, interests and proportions, as my son James appoints in a valid last will and testament; subject, however, to the other provisions of this Paragraph 5.2(d)(1) hereinbelow.

(A) Before the exercise of the general testamentary power of appointment, which is granted to my son James, is effective, my son James shall do the following: specifically refer to the power that is granted pursuant to the provisions of this Paragraph 5.2(d)(1); expressly declare an intention to exercise the power which is granted pursuant to the provisions of this Paragraph 5.2(d)(1); execute a last will and testament subsequent to the creation of the trust with respect to which the power relates; and comply with the rule against perpetuities and accumulations.

(B) In disposing of any property that is subject to the general testamentary power of appointment, which is granted pursuant to the provisions of this Paragraph 5.2(d)(1), the trustee may rely upon an instrument which is admitted to probate in any jurisdiction as my son James's last will and testament, or may assume that my son James died intestate if the trustee has no notice of a last will and testament within six months of my son James's death.

(2) To the extent that the general testamentary power of appointment, which is granted to my son James pursuant to the provisions of Paragraph 5.2(d)(1) hereinabove, is not fully and effectually exercised by my son James, then, upon my son James's death, the trust, as then constituted, or the part thereof which is not fully and effectually appointed, shall be distributed and paid, as follows:

(A) If my son James leaves issue who are then surviving, then to my son James's then-surviving issue, to be divided and then, as the case may be, to be distributed and paid outright, or to be held and administered by the trustee, in trust, pursuant to the provisions of Paragraph 5.3 hereinbelow, for the benefit of my son James's then-surviving issue; or,

(B) If my son James leaves no issue who are then surviving, then to my then-surviving issue, *per stirpes*; provided, however, that any property or interest in property which would otherwise pass hereunder either to an individual who is then or will be a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof, or to an individual who will be a beneficiary of a trust which is to be held pursuant to the provisions of Paragraph 5.7 hereinbelow (because such individual is then under twenty-one years of age and not a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof), as the case may be, shall not pass to such individual outright, but, instead, shall be added to the principal of the trust with respect to which the individual is, or will be, a beneficiary, to be held, administered and distributed by the trustee pursuant to the provisions of that trust; or,

(C) If none of the foregoing are then surviving, then to the individuals and, or, entities whose identity and respective shares shall be determined pursuant to the provisions of Paragraph 5.6 hereinbelow (subject, however, to the provisions of Paragraph 5.7 hereinbelow).

5.3 Disposition To My Son James's Issue.

(a) If the first portion, the second portion, the third portion and, or, the fourth portion, or any part or parts thereof, or any other property or interests in property, as the case may be, are to be disposed of pursuant to the provisions of this Paragraph 5.3 for the benefit of my son James's issue, then any such portions and, or, parts thereof, or any other property or interests in property, shall be divided by the executor and, or, by the trustee, as the case may be, into as many equal shares as my son James has children then surviving and as my son James has deceased children leaving issue then surviving.

(b) One such share shall be distributed and paid to each of my son James's then-surviving children and one such share shall be distributed and paid to the then-surviving issue of each of my son James's deceased children, *per stirpes*; provided, however, that with respect to any child of my son James [hereinafter referred to as a "child" (with respect to my son James) in this Paragraph 5.3] who has not then-attained forty-five years of age, and with respect to any child of a deceased child of my son James [hereinafter referred to as a "grandchild" (with respect to my son James) in this Paragraph 5.3] who has not then-attained twenty-one years of age, the share or the partial share that would otherwise be distributed and paid to such child or to such grandchild (but not the share or the partial share of any issue of a deceased grandchild, which share or partial share shall be distributed and paid to the deceased grandchild's own then-surviving issue, *per stirpes*, outright, absolutely, in fee simple and free of trust) shall, instead, be designated with the

name of such child or such grandchild, as the case may be, and be held and administered by the trustee as a separate and distinct trust for the uses and purposes which are set forth hereinbelow.

(1) Until the child or the grandchild in whose name a trust is designated hereunder attains twenty-one years of age, the trustee may, from time to time and at any time, pay to, or for the benefit of, the child or the grandchild in whose name a trust is designated hereunder, all or such part of the net income of the child's or of the grandchild's own trust as the trustee determines to be advisable for the child's or for the grandchild's health, education, support or maintenance.

(2) Any net income of a child's or of a grandchild's trust that is not paid to, or for the benefit of, the child or the grandchild in whose name a trust is designated hereunder, shall be incorporated periodically, but at least annually, into the principal of the child's or of the grandchild's own trust, to be held, administered and distributed pursuant to all of the terms, conditions and limitations applying thereto.

(3) When any child in whose name a trust is designated hereunder attains twenty-one years of age, then the trustee shall thereafter pay to the child, quarterly or at more frequent intervals, the entire net income of the child's own trust until the final termination of the child's trust as provided hereinbelow.

(4) When any child in whose name a trust is designated hereunder attains thirty-five years of age, then the trustee shall distribute and pay to the child one-third of the principal and accumulated income, if any, of the child's own trust, outright, absolutely, in fee simple and free of trust.

(5) When any child in whose name a trust is designated hereunder attains forty years of age, then the trustee shall distribute and pay to the child one-half of the then-remaining principal and accumulated income, if any, of the child's own trust, outright, absolutely, in fee simple and free of trust.

(6) When any child in whose name a trust is designated hereunder attains forty-five years of age, or when any grandchild in whose name a trust is designated hereunder attains twenty-one years of age, then the trustee shall distribute and pay to the child or to the grandchild the entire then-remaining principal and income, whether current or accumulated, of the child's or of the grandchild's own trust, outright, absolutely, in fee simple and free of trust.

(7) After a share or a partial share has been set aside for a child or for a grandchild, then the trustee shall have the continuing power to encroach upon the principal of a child's or of a grandchild's trust, from time to time and at any time, the trustee determines that a principal encroachment from the child's or from the grandchild's own trust (A) is advisable for the child's or for the grandchild's health, education, support or maintenance, (B) in order to permit the child or the grandchild to enter into or engage in a business or profession in which the trustee believes the child or the grandchild has reasonable prospects of success and, or, (C) in order to permit the child or the grandchild to make a reasonable down payment on a personal residence, and to distribute to, or for the benefit of, the child or the grandchild the amount of any such principal encroachments.

(8) Notwithstanding any other provision of this Paragraph 5.3, or of this my last will and testament generally, no trustee, acting pursuant to the provisions of this Paragraph 5.3, shall pay any part of the income, whether current or accumulated, or distribute any part of the principal, of a trust to the discharge of any legal obligation of a parent of a beneficiary of a trust (including, but not limited to, obligations that are imposed by local law with respect to support or to education of a beneficiary of a trust by the beneficiary's parents); nor shall any trustee, acting hereunder at any time, make any distributions or payments from a trust that would have the effect of discharging any individual's legal obligation to support or to educate a beneficiary of a trust (including a trustee's own personal legal obligation, if any, to support or to educate the beneficiary of a trust).

(9) Notwithstanding any other provision of this Paragraph 5.3, or of this my last will and testament generally, no trustee, acting pursuant to the provisions of this Paragraph 5.3 in a fiduciary capacity, shall possess any power constituting a "general power of appointment" within the meaning of Internal Revenue Code §§ 2041 and 2514.

(10) If, prior to the time that a trust is created for a child or for a grandchild pursuant to any of the foregoing provisions, the child or the grandchild attains the age when a mandatory partial or a mandatory total distribution and payment is required to be made to the child or to the grandchild pursuant to the provisions of Paragraphs 5.3(b)(4), 5.3(b)(5) and 5.3(b)(6) hereinabove, then the child's or the grandchild's share or partial share shall be partially or totally distributed and paid to the child or to the grandchild, as the case may be, outright, absolutely, in fee simple and free of trust, in the same proportions as are required to be distributed and paid by such mandatory provisions.

(11) If a child or a grandchild in whose name a trust is designated hereunder dies prior to the complete distribution and payment of the child's or of the grandchild's own trust, then, upon the child's or upon the grandchild's death, the child's

or the grandchild's own trust, as then constituted, shall be distributed and paid to such appointee or appointees (including the child's or the grandchild's own estate), and in such estates, interests and proportions, as the child or as the grandchild appoints in the child's or in the grandchild's own valid last will and testament; subject, however, to the other provisions of this Paragraph 5.3(b)(11) hereinbelow.

(A) Before the exercise of the general testamentary power of appointment, which is granted to a child or to a grandchild pursuant to the provisions of this Paragraph 5.3(b)(11), is effective, the child or the grandchild holding the power shall do the following: specifically refer to the power that is granted pursuant to the provisions of this Paragraph 5.3(b)(11); expressly declare an intention to exercise the power which is granted pursuant to the provisions of this Paragraph 5.3(b)(11); execute a last will and testament subsequent to the creation of the trust with respect to which the power relates; and comply with the rule against perpetuities and accumulations.

(B) In disposing of any property that is subject to a general testamentary power of appointment, which is granted pursuant to the provisions of this Paragraph 5.3(b)(11), the trustee may rely upon an instrument which is admitted to probate in any jurisdiction as a child's or as a grandchild's last will and testament, or may assume that a child or a grandchild died intestate if the trustee has no notice of a last will and testament within six months after a child's or a grandchild's death.

(12) To the extent that the general testamentary power of appointment, which is granted to a child or to a grandchild pursuant to the provisions of Paragraph 5.3(b)(11) hereinabove, is not fully and effectually exercised by the child or by the grandchild holding the power, then, upon the child's or upon the grandchild's death, the child's or the grandchild's own trust, as then constituted, or the part thereof which is not fully and effectually appointed, shall be distributed and paid to the following: to the child's or to the grandchild's own then-surviving issue, *per stirpes*; or, in default thereof, to my son James's then-surviving issue, *per stirpes*; or, in default thereof, to my then-surviving issue, *per stirpes*; or, in default thereof, to the individuals and, or, entities whose identity and respective shares shall be determined pursuant to the provisions of Paragraph 5.6 hereinbelow; provided, however, that any property or interest in property which would otherwise pass hereunder either to an individual who is then or will be a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof, or to an individual who will be a beneficiary of a trust which is to be held pursuant to the provisions of Paragraph 5.7 hereinbelow (because such individual is then under twenty-one years of age and not a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof), as the case may be, shall not pass to such individual outright, but, instead, shall be

added to the principal of the trust with respect to which the individual is, or will be, a beneficiary, to be held, administered and distributed by the trustee pursuant to the provisions of that trust.

(c) If, at any time, the aggregate net fair market value of the assets composing the principal account of any trust, which is created pursuant to the provisions of this Paragraph 5.3, totals less than \$100,000, then the trustee may terminate the trust and, thereafter, distribute the trust, as then constituted, to the beneficiary for whom that trust is held.

5.4 Trust For My Son David.

(a) If the first portion, the second portion, the third portion and, or, the fourth portion, or any part or parts thereof, or any other property or interests in property, as the case may be, are to be held by the trustee pursuant to the provisions of this Paragraph 5.4 for my son David's benefit, then any such portions and, or, parts thereof, or any other property or interests in property, shall be collectively held and administered by the trustee for the uses and purposes, upon the terms and conditions and with the powers and duties that are set forth hereinbelow.

(b) During my son David's lifetime, the trustee may, from time to time and at any time, pay and distribute to, or for the benefit of, my son David such amounts of the net income, principal, or both, of the trust, as the trustee determines to be advisable for my son David's health, education, support or maintenance.

(c) Any net income of the trust that is not paid to, or for the benefit of, my son David shall be incorporated periodically, but at least annually, into the principal of the trust, to be held, administered and distributed pursuant to all of the terms, conditions and limitations applying thereto.

(d) Upon my son David's death, the entire then-remaining principal and income of the trust, whether current or accumulated, shall be distributed and paid by the trustee, as follows:

(1) To such appointee or appointees (including my son David's estate), and in such estates, interests and proportions, as my son David appoints in a valid last will and testament; subject, however, to the other provisions of this Paragraph 5.4(d)(1) hereinbelow.

(A) Before the exercise of the general testamentary power of appointment, which is granted to my son David, is effective, my son David shall do the following: specifically refer to the power that is granted pursuant to the provisions of this Paragraph 5.4(d)(1); expressly declare an intention to exercise the power which is granted pursuant to the provisions of this Paragraph 5.4(d)(1); execute a last will and testament subsequent to the creation of the trust with respect to which the power relates; and comply with the rule against perpetuities and accumulations.

(B) In disposing of any property that is subject to the general testamentary power of appointment, which is granted pursuant to the provisions of this Paragraph 5.4(d)(1), the trustee may rely upon an instrument which is admitted to probate in any jurisdiction as my son David's last will and testament, or may assume that my son David died intestate if the trustee has no notice of a last will and testament within six months of my son David's death.

(2) To the extent that the general testamentary power of appointment, which is granted to my son David pursuant to the provisions of Paragraph 5.4(d)(1) hereinabove, is not fully and effectually exercised by my son David, then, upon my son David's death, the trust, as then constituted, or the part thereof which is not fully and effectually appointed, shall be distributed and paid, as follows:

(A) If my son David leaves issue who are then surviving, then to my son David's then-surviving issue, to be divided and then, as the case may be, to be distributed and paid outright, or to be held and administered by the trustee, in trust, pursuant to the provisions of Paragraph 5.5 hereinbelow, for the benefit of my son David's then-surviving issue; or,

(B) If my son David leaves no issue who are then surviving, then to my then-surviving issue, *per stirpes*; provided, however, that any property or interest in property which would otherwise pass hereunder either to an individual who is then or will be a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof, or to an individual who will be a beneficiary of a trust which is to be held pursuant to the provisions of Paragraph 5.7 hereinbelow (because such individual is then under twenty-one years of age and not a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof), as the case may be, shall not pass to such individual outright, but, instead, shall be added to the principal of the trust with respect to which the individual is, or will be, a beneficiary, to be held, administered and distributed by the trustee pursuant to the provisions of that trust; or,

(C) If none of the foregoing are then surviving, then to the individuals and, or, entities whose identity and respective shares shall be determined pursuant to the provisions of Paragraph 5.6 hereinbelow (subject, however, to the provisions of Paragraph 5.7 hereinbelow).

5.5 Disposition To My Son David's Issue.

(a) If the first portion, the second portion, the third portion and, or, the fourth portion, or any part or parts thereof, or any other property or interests in property, as the case may be, are to be disposed of pursuant to the provisions of this Paragraph 5.5 for the benefit of my son David's issue, then any such portions and, or, parts thereof, or any other property or interests in property, shall be divided by the executor and, or, by the trustee, as the case may be, into as many equal shares as my son David has children then surviving and as my son David has deceased children leaving issue then surviving.

(b) One such share shall be distributed and paid to each of my son David's then-surviving children and one such share shall be distributed and paid to the then-surviving issue of each of my son David's deceased children, *per stirpes*; provided, however, that with respect to any child of my son David [hereinafter referred to as a "child" (with respect to my son David) in this Paragraph 5.5] who has not then-attained forty-five years of age, and with respect to any child of a deceased child of my son David [hereinafter referred to as a "grandchild" (with respect to my son David) in this Paragraph 5.5] who has not then-attained twenty-one years of age, the share or the partial share that would otherwise be distributed and paid to such child or to such grandchild (but not the share or the partial share of any issue of a deceased grandchild, which share or partial share shall be distributed and paid to the deceased grandchild's own then-surviving issue, *per stirpes*, outright, absolutely, in fee simple and free of trust) shall, instead, be designated with the name of such child or such grandchild, as the case may be, and be held and administered by the trustee as a separate and distinct trust for the uses and purposes which are set forth hereinbelow.

(1) Until the child or the grandchild in whose name a trust is designated hereunder attains twenty-one years of age, the trustee may, from time to time and at any time, pay to, or for the benefit of, the child or the grandchild in whose name a trust is designated hereunder, all or such part of the net income of the child's or of the grandchild's own trust as the trustee determines to be advisable for the child's or for the grandchild's health, education, support or maintenance.

(2) Any net income of a child's or of a grandchild's trust that is not paid to, or for the benefit of, the child or the grandchild in whose name a trust is designated hereunder, shall be incorporated periodically, but at least annually, into the principal of the child's or of the grandchild's own trust, to be held, administered and distributed pursuant to all of the terms, conditions and limitations applying thereto.

(3) When any child in whose name a trust is designated hereunder attains twenty-one years of age, then the trustee shall thereafter pay to the child, quarter-annually or at more frequent intervals, the entire net income of the child's own trust until the final termination of the child's trust as provided hereinbelow.

(4) When any child in whose name a trust is designated hereunder attains thirty-five years of age, then the trustee shall distribute and pay to the child one-third of the principal and accumulated income, if any, of the child's own trust, outright, absolutely, in fee simple and free of trust.

(5) When any child in whose name a trust is designated hereunder attains forty years of age, then the trustee shall distribute and pay to the child one-half of the then-remaining principal and accumulated income, if any, of the child's own trust, outright, absolutely, in fee simple and free of trust.

(6) When any child in whose name a trust is designated hereunder attains forty-five years of age, or when any grandchild in whose name a trust is designated hereunder attains twenty-one years of age, then the trustee shall distribute and pay to the child or to the grandchild the entire then-remaining principal and income, whether current or accumulated, of the child's or of the grandchild's own trust, outright, absolutely, in fee simple and free of trust.

(7) After a share or a partial share has been set aside for a child or for a grandchild, then the trustee shall have the continuing power to encroach upon the principal of a child's or of a grandchild's trust, from time to time and at any time, the trustee determines that a principal encroachment from the child's or from the grandchild's own trust (A) is advisable for the child's or for the grandchild's health, education, support or maintenance, (B) in order to permit the child or the grandchild to enter into or engage in a business or profession in which the trustee believes the child or the grandchild has reasonable prospects of success and, or, (C) in order to permit the child or the grandchild to make a reasonable down payment on a personal residence, and to distribute to, or for the benefit of, the child or the grandchild the amount of any such principal encroachments.

(8) Notwithstanding any other provision of this Paragraph 5.5, or of this my last will and testament generally, no trustee, acting pursuant to the provisions of this Paragraph 5.5, shall pay any part of the income, whether current or accumulated, or distribute any part of the principal, of a trust to the discharge of any legal obligation of a parent of a beneficiary of a trust (including, but not limited to, obligations that are imposed by local law with respect to support or to education of a beneficiary of a trust by the beneficiary's parents); nor shall any trustee, acting hereunder at any time, make any distributions or payments from a trust that would have the effect of discharging any individual's legal obligation to support or to educate a beneficiary of a trust (including a trustee's own personal legal obligation, if any, to support or to educate the beneficiary of a trust).

(9) Notwithstanding any other provision of this Paragraph 5.5, or of this my last will and testament generally, no trustee, acting pursuant to the provisions of this Paragraph 5.5 in a fiduciary capacity, shall possess any power constituting a "general power of appointment" within the meaning of Internal Revenue Code §§ 2041 and 2514.

(10) If, prior to the time that a trust is created for a child or for a grandchild pursuant to any of the foregoing provisions, the child or the grandchild attains the age when a mandatory partial or a mandatory total distribution and payment is required to be made to the child or to the grandchild pursuant to the provisions of Paragraphs 5.5(b)(4), 5.5(b)(5) and 5.5(b)(6) hereinabove, then the child's or the grandchild's share or partial share shall be partially or totally distributed and paid to the child or to the grandchild, as the case may be, outright, absolutely, in fee simple and free of trust, in the same proportions as are required to be distributed and paid by such mandatory provisions.

(11) If a child or a grandchild in whose name a trust is designated hereunder dies prior to the complete distribution and payment of the child's or of the grandchild's own trust, then, upon the child's or upon the grandchild's death, the child's or the grandchild's own trust, as then constituted, shall be distributed and paid to such appointee or appointees (including the child's or the grandchild's own estate), and in such estates, interests and proportions, as the child or as the grandchild appoints in the child's or in the grandchild's own valid last will and testament; subject, however, to the other provisions of this Paragraph 5.5(b)(11) hereinbelow.

(A) Before the exercise of the general testamentary power of appointment, which is granted to a child or to a grandchild pursuant to the provisions of this Paragraph 5.5(b)(11), is effective, the child or the grandchild holding the power shall do the following: specifically refer to the power that is granted pursuant to the provisions of this Paragraph 5.5(b)(11); expressly declare an intention to exercise the power which is

granted pursuant to the provisions of this Paragraph 5.5(b)(11); execute a last will and testament subsequent to the creation of the trust with respect to which the power relates; and comply with the rule against perpetuities and accumulations.

(B) In disposing of any property that is subject to a general testamentary power of appointment, which is granted pursuant to the provisions of this Paragraph 5.5(b)(11), the trustee may rely upon an instrument which is admitted to probate in any jurisdiction as a child's or as a grandchild's last will and testament, or may assume that a child or a grandchild died intestate if the trustee has no notice of a last will and testament within six months after a child's or a grandchild's death.

(12) To the extent that the general testamentary power of appointment, which is granted to a child or to a grandchild pursuant to the provisions of Paragraph 5.5(b)(11) hereinabove, is not fully and effectually exercised by the child or by the grandchild holding the power, then, upon the child's or upon the grandchild's death, the child's or the grandchild's own trust, as then constituted, or the part thereof which is not fully and effectually appointed, shall be distributed and paid to the following: to the child's or to the grandchild's own then-surviving issue, *per stirpes*; or, in default thereof, to my son David's then-surviving issue, *per stirpes*; or, in default thereof, to my then-surviving issue, *per stirpes*; or, in default thereof, to the individuals and, or, entities whose identity and respective shares shall be determined pursuant to the provisions of Paragraph 5.6 hereinbelow; provided, however, that any property or interest in property which would otherwise pass hereunder either to an individual who is then or will be a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof, or to an individual who will be a beneficiary of a trust which is to be held pursuant to the provisions of Paragraph 5.7 hereinbelow (because such individual is then under twenty-one years of age and not a beneficiary of a trust which is then being held or is to be held pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4 and, or, 5.5 hereof), as the case may be, shall not pass to such individual outright, but, instead, shall be added to the principal of the trust with respect to which the individual is, or will be, a beneficiary, to be held, administered and distributed by the trustee pursuant to the provisions of that trust.

(c) If, at any time, the aggregate net fair market value of the assets composing the principal account of any trust, which is created pursuant to the provisions of this Paragraph 5.5, totals less than \$100,000, then the trustee may terminate the trust and, thereafter, distribute the trust, as then constituted, to the beneficiary for whom that trust is held.

5.6 Takers In Default. The executor or the trustee, as the case may be, shall pay and distribute any property that is not otherwise disposed of under this my last will and testament to *Volunteer State College Foundation*, Gallatin, Tennessee, for its general purposes.

5.7 Trusts For Individuals Under Twenty-One Years Of Age.

(a) If any individual to whom a bequest, legacy, devise, distribution or payment is to be made, pursuant to the provisions of Paragraphs 5.1(b)(3), 5.1(b)(4), 5.1(c)(3), 5.1(c)(4), 5.1(e)(3), 5.1(e)(4), 5.1(f)(3), 5.1(f)(4), 5.2(d)(2)(B), 5.2(d)(2)(C), 5.3(b)(12), 5.4(d)(2)(B), 5.4(d)(2)(C) and, or, 5.5(b)(12) hereinabove, because such individual is then under twenty-one years of age at the time such bequest, legacy, devise, distribution or payment is to be made (and with each such individual being hereinafter referred to as a “beneficiary” in this Paragraph 5.7), then each such beneficiary’s bequests, legacies, devises, distributions or payments shall vest in interest in each such beneficiary, but with each such beneficiary’s bequests, legacies, devises, distributions or payments to be collectively held and administered by the trustee in a separate and distinct trust for each such beneficiary until the beneficiary for whom a trust is held attains twenty-one years of age, and subject to the following:

(1) Until a beneficiary’s trust terminates, the trustee may, from time to time and at any time, pay and distribute to, or for the benefit of, the beneficiary of the trust such amounts of the net income, principal, or both, of the trust, as the trustee determines to be advisable for the beneficiary’s health, education, support or maintenance (even to the extent of exhausting principal); subject, however, to the provisions of Paragraphs 5.7(b) and 5.7(c) hereinbelow.

(2) Any net income of a beneficiary’s trust that is not paid to, or for the benefit of, the beneficiary of the trust shall be incorporated periodically, but at least annually, into the principal of the beneficiary’s trust, to be held, administered and distributed pursuant to all of the terms, conditions and limitations applying thereto.

(3) When the beneficiary of a trust attains twenty-one years of age, then the trustee shall distribute and pay to the beneficiary of the trust the entire then-remaining principal and income of the trust, whether current or accumulated, outright, absolutely, in fee simple and free of trust.

(4) If the beneficiary of a trust dies prior to attaining twenty-one years of age, then the trustee shall distribute and pay to the personal representative of the

beneficiary's estate the entire then-remaining principal and income of the trust, whether current or accumulated.

(5) Separate books and records shall be kept for each trust that is created pursuant to the provisions of this Paragraph 5.7; provided, however, that it shall not be necessary for a physical division of assets to be made for each trust.

(b) Notwithstanding any other provision of this Paragraph 5.7, or of this my last will and testament generally, no trustee, acting pursuant to the provisions of this Paragraph 5.7, shall pay any part of the income, whether current or accumulated, or distribute any part of the principal, of a trust to the discharge of any legal obligation of a parent of a beneficiary of a trust (including, but not limited to, obligations that are imposed by local law with respect to support or to education of a beneficiary of a trust by the beneficiary's parents); nor shall any trustee, acting hereunder at any time, make any distributions or payments from a trust that would have the effect of discharging any individual's legal obligation to support or to educate a beneficiary of a trust (including a trustee's own personal legal obligation, if any, to support or to educate the beneficiary of a trust).

(c) Notwithstanding any other provision of this Paragraph 5.7, or of this my last will and testament generally, no trustee, acting pursuant to the provisions of this Paragraph 5.7 in a fiduciary capacity, shall possess any power constituting a "general power of appointment" within the meaning of Internal Revenue Code §§ 2041 and 2514.

(d) If, at any time, the aggregate net fair market value of the assets composing the principal account of any trust, which is created pursuant to the provisions of this Paragraph 5.7, totals less than \$100,000, then the trustee may terminate the trust and, thereafter, distribute and pay the trust, as then constituted, to the beneficiary for whom that trust is held.

5.8 Conduit Trust Provisions.

(a) Notwithstanding any other provisions of this my last will and testament [but subject to the provisions of Paragraph 5.1(a)(3)(D) hereinabove relating to my husband], with respect to each trust that is created hereunder, during each year, commencing with the year of my death, the trustee shall withdraw from any deferrable retirement benefit the minimum required distribution for that deferrable retirement benefit for that year, plus such additional amount or amounts as the trustee deems advisable for a beneficiary's health, education, support or maintenance.

(b) All of the withdrawn amounts (net of expenses properly charged thereto) shall be paid directly to the beneficiary upon receipt by the trustee.

ITEM VI

DISCLAIMERS OR RENUNCIATIONS

6.1 Right To Disclaim Or Renounce. Any person (including any fiduciary) who is permitted by law to disclaim or to renounce may, pursuant to the applicable disclaimer and, or, renunciation statutes, disclaim or renounce, in whole or in part, any bequest, devise, interest, benefit, right, privilege or power that is made or granted to such person by this my last will and testament.

6.2 Effect Of Disclaimer Or Renunciation. Unless otherwise specifically provided in this my last will and testament, if a person makes a disclaimer or renunciation, then the disclaimed or renounced bequest, devise, interest, benefit, right, privilege or power, or the part thereof that is disclaimed or renounced, shall devolve hereunder as though the person making the disclaimer or renunciation had predeceased me; provided, however, that any such disclaimer or renunciation shall not affect any other bequest, devise, interest, benefit, right, privilege or power which is made or granted pursuant to the provisions of this my last will and testament.

6.3 Intention. I do not intend by this Item VI to suggest that any particular person disclaim or renounce any bequest, devise, interest, benefit, right, privilege or power which is made or granted pursuant to the provisions of this my last will and testament.

ITEM VII

POWERS OF THE FIDUCIARIES

7.1 Specific Powers Granted. Subject to the satisfaction of all of the bequests, legacies and devises that are set forth hereinabove, and, further, subject to all of the provisions and limitations which are expressly set forth in this my last will and testament otherwise, the fiduciaries are authorized (with respect to any property, whether real, personal or mixed, which is held at any time under any provision of this my last will and testament) to do the following:

(a) To retain any property, or undivided interests in property, that is owned by me at the time of my death, including residential property, regardless of any lack of diversification or risk, for such period of time as the fiduciaries determine to be

appropriate; and to exchange any such property for other property and to retain such property which is received in exchange, although such property represents a large percentage of the total property of my estate, or of any trust which is created hereunder, or even the entirety thereof;

(b) To invest and reinvest all or any part of my estate, or all or any part of any trust that is created hereunder, in any property and in undivided interests in property, wherever situated, including the following: bonds, debentures and notes, whether secured or unsecured; stocks of corporations, regardless of class; interests in limited partnerships; interests in limited liability partnerships; interests as members in limited liability companies; real estate or any interest in real estate; and interests in trusts, investment trusts (whether of the open or the closed fund type) and participations in common, collective or pooled trust funds;

(c) To sell, dispose of or grant options to purchase any property (whether real, personal or mixed, whether tangible or intangible and whether owned by me at the time of my death) composing a part of my estate, or of any trust that is created hereunder, for cash or upon credit, and to exchange any property of my estate, or of any trust which is created hereunder, for other property, at such times and upon such terms and conditions as the fiduciaries determine to be appropriate; and no person dealing with the fiduciaries is bound to see to the application of any monies paid;

(d) To hold any securities or other property in any of the following forms: in the fiduciaries' own names; in the fiduciaries' names as the executor or as the trustee; in the name of a nominee (with or without disclosure of any fiduciary relationship); or in bearer form;

(e) To sell or exercise stock subscription or conversion rights;

(f) To refrain from voting or to vote shares of stock that are owned by my estate, or by any trust which is created hereunder, at shareholders' meetings, whether in person or by special, limited or general proxy; and, in general, to exercise all of the rights, powers and privileges of an owner with respect to any securities composing a part of my estate or of any trust which is created hereunder;

(g) To participate in any plan of reorganization, consolidation or merger involving any company or companies (including limited liability companies) whose stock, interests or other securities compose a part of my estate or of any trust that is created hereunder; to deposit such stock or other securities under any plan of reorganization with any protective committee; to delegate to such committee discretionary power with relation

thereto; to pay a proportionate part of the expenses of such committee and any assessments which are levied under any such plan; to accept and retain new securities which are received by the fiduciaries pursuant to any such plan; to exercise all of the conversion, subscription, voting and other rights of any nature pertaining to such property; and to pay any amount or amounts of money as the fiduciaries determine to be appropriate in connection therewith;

(h) To borrow money and encumber, mortgage or pledge any asset of my estate, or of any trust that is created hereunder, for a term within or extending beyond the term of the anticipated administration of my estate or for a term within or extending beyond the term of any trust which is created hereunder;

(i) To enter, for any purpose, into a lease as lessor or as lessee, with or without the option to purchase or renew, for a term within or extending beyond the term of the anticipated administration of my estate or for a term within or extending beyond the term of any trust that is created hereunder;

(j) To subdivide, develop and dedicate real property for public use; to make or obtain the vacation of plats; to adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to dedicate easements for public use without consideration; and to grant a conservation easement that is described in Internal Revenue Code § 2031(c) over any real property which is included in my estate and passing pursuant to the provisions of this my last will and testament, all without the consent or joinder of any devisee of such real property or of any court or other judicial office.

(k) To make ordinary and extraordinary repairs and alterations in buildings and other structures; to demolish any improvements; to raze existing party walls and buildings; and to erect new party walls and buildings;

(l) To continue or permit the continuation of any unincorporated and, or, any incorporated business or limited liability company that I own or in which I have an interest at the time of my death, for such period of time as the fiduciaries determine to be appropriate; or to recapitalize or liquidate the same, upon such terms and conditions as the fiduciaries determine to be appropriate; and, without limiting the generality of the foregoing powers, the fiduciaries have the power to do the following: invest additional sums in any such business, even to the extent that my estate, or any trust which is created hereunder, is invested largely or entirely in any such business, without liability for any loss resulting from lack of diversification; act as an employee or select other employees of any such business, the same to be compensated without regard to any such person being a

fiduciary or a beneficiary hereunder; and make such other arrangements with respect thereto as the fiduciaries determine to be appropriate;

(m) To settle and adjust my partnership interest in any partnership (whether a general partnership, a limited partnership or a limited liability partnership) in which I have an interest at the time of my death, upon such terms and conditions as the fiduciaries determine to be appropriate; and, without limiting the generality of the foregoing powers, the fiduciaries have the power to continue in any such partnership and to subject to the risks of the business the assets representing my interest therein at the time of my death, for such period of time and upon such terms and conditions as the fiduciaries determine to be appropriate; and no change in the constitution of any such partnership by the death or the retirement of any partners or by the admission of any additional partners shall affect the powers that are granted herein; and the fiduciaries may invest additional sums in any such partnership, even to the extent that my estate, or any trust which is created hereunder, is invested largely or entirely in any such partnership, without liability for any loss resulting from lack of diversification;

(n) To collect, receive and receipt for rents, issues, profits and income of my estate or of any trust that is created hereunder;

(o) To insure the assets of my estate, or of any trust that is created hereunder, against damage or loss; and to insure the fiduciaries against liability with respect to third persons;

(p) To deal with the fiduciaries, in the fiduciaries' separate capacities or in any fiduciary capacities, in buying and selling assets, in lending and borrowing money and in all other transactions, regardless of the occupancy by the same person of dual positions;

(q) To compromise, adjust, arbitrate, sue on or defend, abandon and otherwise deal with and settle claims in favor of or against my estate, or in favor of or against any trust that is created hereunder, as the fiduciaries determine to be appropriate;

(r) To employ and compensate agents, accountants, investment advisors, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors and other assistants and advisors as the fiduciaries determine to be necessary for the proper administration of my estate or of any trust that is created hereunder; and to do so without liability for any neglect, omission, misconduct or default of any such agent or professional representative; provided, however, that such individual was selected and retained with reasonable care;

(s) To determine what shall be charged or credited to income or to principal; and to determine whether or not to establish depreciation reserves;

(t) To hold and retain the principal of my estate, or of any non-marital deduction trust that is created hereunder, undivided until actual division becomes necessary in order to make distributions; to hold, manage, invest and account for the several shares, or parts thereof, by appropriate entries on the fiduciaries' books of account; and to allocate to each share, or part thereof, such share's proportionate part of all of the receipts and expenses; provided, however, that the carrying of several trusts as one shall not defer the vesting in title or possession of any share or part thereof;

(u) To make payment in cash or in kind, or partly in cash and partly in kind, upon any division or distribution of my estate or of any trust that is created hereunder and without regard to different income tax bases;

(v) Except as otherwise specifically provided herein, any allocations or distributions of specific pecuniary amounts that are to be made hereunder may be made by the fiduciaries, without the consent of any beneficiary, in one or more allocations or distributions, in cash or in kind (*i.e.*, in the form of a whole or partial undivided interest in one or more specific properties, whether real, personal or mixed), or partly in cash and partly in kind, and with or without being made subject to liabilities (whether pre-existing or newly created) and without regard to different income tax bases; provided, however, that as of the effective date or dates of any such allocations or distributions, the net fair market value of the assets and liabilities composing any such allocations or distributions shall represent the specific pecuniary amounts which such allocations or distributions are to satisfy;

(w) Except as otherwise specifically provided herein, any allocations or distributions of a fractional share of the assets of any part of my estate, or of any trust that is created hereunder, need not be pro rata nor include any particular asset, but rather may be composed of such assets and be made subject to such liabilities (whether pre-existing or newly created), if any, pro rata or not, that the fiduciaries, without the consent of any beneficiary, determine to be appropriate and without regard to different income tax bases; provided, however, that as of the effective date or dates of any such allocations or distributions, the net fair market value of the assets and liabilities composing any such allocations or distributions shall represent the proper fractional share of the then-net fair market value of the whole which such allocations or distributions are to satisfy;

(x) To take all appropriate actions to prevent, identify and, or, respond to actual or threatened violations of any environmental law or regulation thereunder; to expend funds to do the following: conduct environmental assessments, audits and site monitoring in order to determine compliance with any environmental law or regulation thereunder; take all appropriate remedial action to contain, clean up and, or, remove any environmental hazard (including a spill, release, discharge or contamination), either on the fiduciaries' own accord or in response to an actual or threatened violation of any environmental law or regulation thereunder; institute legal proceedings concerning environmental hazards and, or, contest or settle legal proceedings brought by any local, state or federal agency that is concerned with environmental compliance or by a private litigant; comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; employ agents, consultants and legal counsel to assist or perform the foregoing undertakings and, or, actions; and the fiduciaries may charge the expenses which are incurred to principal or to income, in such equitable manner as the fiduciaries determine to be appropriate;

(y) To exercise all of the powers that are necessary, appropriate, customary, desirable or incidental to the proper administration of my estate or of any trust which is created hereunder; and

(z) To do all of the foregoing without the authorization of any court.

7.2 Power Over Digital Assets, Digital Devices And Digital Accounts.

(a) The fiduciaries may take any action with respect to my "digital assets," "digital devices" and "digital accounts" (as those terms are defined in this Paragraph 7.2 hereinbelow), as the fiduciaries deem necessary or appropriate, and as permitted under applicable federal, state or international law, giving due effect to the authorization that is provided herein.

(b) This authority includes, but is not be limited to, the following: (1) the authority to access or control any digital device, including any computer, camera, telephone or data storage device that was owned or lawfully used by me, whether individually or jointly; (2) the authority to manage, control, delete or terminate any e-mail, telephone, bank, brokerage, investment, insurance, social networking, internet service provider, retail vendor, utility or other account which was owned or lawfully used by me, whether individually or jointly; and (3) the authority to change my username and password to gain access to such accounts and information.

(c)

7.3 Distributions As Paid From Capital Gains.

(a) A disinterested trustee may deem, within the meaning of Treasury Regulations § 1.643(a)-3(e), any discretionary distributions as being paid from capital gains that were realized during the year.

(b) A disinterested trustee may take any action that may be necessary in order for such deeming to be respected for tax purposes.

7.4 Use Of Powers. The powers that are granted to the fiduciaries pursuant to the provisions of this my last will and testament shall not be exhausted by any use thereof; such powers are continuing in nature and are exercisable by the fiduciaries until all of the provisions of this my last will and testament are fully executed; and, subject to all of the provisions and limitations which are expressly set forth in this my last will and testament, the fiduciaries' determination of whether or not to exercise any such power is final.

7.5 Power Under Will.

(a) As authorized by Tennessee Code Annotated § 31-2-103, my individually owned real property, and all of the interests therein (including undivided interests), shall be administered as part of my probate estate and shall be subject to the executor's control, with this my last will and testament governing the disposition of the same.

(b) In addition to the rights and powers that are granted pursuant to the provisions of Paragraph 7.1 hereinabove, the executor is granted the power to sell any or all of my real property, including undivided interests in real property, which I own at the time of my death, without the approval of any court and without the necessity of joinder of any beneficiaries under this my last will and testament; provided, however, that under no circumstances shall this provision be interpreted, construed or administered so as to require the executor to sell any such real property during the administration of my estate.

(c) The proceeds from the sale of real property that is made by the executor, pursuant to the power under will which is granted by this Paragraph 7.5, shall be distributed pursuant to the provisions of this my last will and testament.

(d) I understand that the disposition of real property which I own jointly with my husband as a tenant by the entirety, at the time of my death, is not governed by the provisions of this my last will and testament.

7.6 Power To Make Distributions Directly To The Beneficiary Of A Trust.

The executor shall have the power to distribute to the beneficiary of a trust (other than my husband) under this my last will and testament any property or portion thereof given to the trustee of that trust if, pursuant to the terms of that trust, the property would immediately be subject to final distribution directly to the beneficiary with no discretion in the trustee to withhold it (because of age or disability), and the receipt of the beneficiary shall discharge the executor.

7.7 No Powers Granted That Affect Eligibility To Qualify For The Marital Deduction. Notwithstanding any other provisions of this my last will and testament, under no circumstances shall any provisions of this Item VII, or of this my last will and testament generally, grant any powers to the fiduciaries, or be interpreted, construed or administered so as to authorize the fiduciaries to exercise any powers, that would prevent the gifts, devises and bequests, which are made to, or for the benefit of, my husband, pursuant to the provisions of this my last will and testament, from being eligible to qualify for the federal estate tax marital deduction under the Internal Revenue Code.

ITEM VIII

**GENERAL TRUST PROVISIONS
AND RELATED MATTERS**

8.1 Spendthrift Provision.

(a) Neither the principal nor the income of any trust that is created hereunder, nor any share thereof, shall be pledged, assigned, transferred, sold or in any manner whatsoever accelerated, anticipated or encumbered by any beneficiary; nor shall any principal or income of any such trust be in any manner subject to, or liable in the hands of the trustee for, the debts, contracts or engagements of any such beneficiary; including, but not limited to, claims for alimony, maintenance or support for a spouse; nor shall any power of appointment be subject to involuntary exercise; nor shall the principal or the income of any trust which is created hereunder be subject to any assignment or other voluntary or involuntary alienation or disposition whatsoever; but in all distributions of principal and payments of income, the same shall be distributed and paid only to the beneficiary entitled, upon receipt of the beneficiary, or to others for the benefit of that beneficiary as provided in this my last will and testament.

(b) This spendthrift provision is intended to restrain both voluntary and involuntary transfers of a beneficiary's interest in a trust pursuant to the provisions of Tennessee Code Annotated § 35-15-502; and this spendthrift provision is a material purpose of any such trust.

(c) A beneficiary's interest in a trust that is subject to the trustee's discretion does not constitute an interest in property nor an enforceable right even if the discretion is expressed in the form of a standard of distribution or the beneficiary is then serving as a trustee or as a co-trustee.

8.2 Protection From Marital Claims.

(a) All of the benefits that are granted to a beneficiary under this my last will and testament shall be the separate property of that beneficiary (as distinguished from marital property, community property, quasi-community property or any other form of property as to which that beneficiary's spouse might have a claim or interest arising out of the marital relationship under the law of any jurisdiction, domestic or foreign).

(b) All of the benefits that are granted to a beneficiary pursuant to the provisions of this my last will and testament shall also be free of any interference from, or control or marital power of, that beneficiary's spouse.

(c) For purposes of this Paragraph 8.2, the term "benefits" shall include real or personal property, whether tangible or intangible, and the provisions of this Paragraph 8.2 shall apply not only to benefits that are actually paid to any beneficiary but also to trust property which is allocated to a trust in which the beneficiary possesses an interest pursuant to the provisions of this my last will and testament.

8.3 Initial Situs, Construction And Change Of Situs.

(a) The State of Tennessee is hereby designated as the situs of all of the trusts that are created hereunder.

(b) All questions pertaining to the interpretation, construction, validity and administration of the trusts that are created hereunder shall be determined pursuant to the laws of the State of Tennessee.

8.4 Substitute Trustees.

8.5 Rule Against Perpetuities. Notwithstanding any other provision of this my last will and testament to the contrary, all of the trusts that are created hereunder (or pursuant to a power of appointment which is granted hereunder) shall terminate one day prior to the expiration of the permissible period under the relevant application of the rule against perpetuities, if any; and, upon such termination, all of the assets thereof shall be distributed and paid outright, absolutely, in fee simple and free of trust, to those beneficiaries, and in the same proportions, as are then receiving, or as are then entitled to receive, the income therefrom.

8.6 Distributions During Minority Or Disability. During the minority or other disability of any beneficiary to whom principal is distributable, or to whom income is payable, from any trust that is created hereunder, the trustee shall make distributions and payments in any one or more of the following ways: to a beneficiary directly; to the legal guardian of a beneficiary's property; to a custodian under either a Uniform Gift To Minors Act or a Uniform Transfers To Minors Act (including a custodian selected by the trustee); or directly for the benefit of a beneficiary, including reimbursement for amounts which are advanced for a beneficiary's benefit; subject, however, to the provisions of Paragraphs 5.3(b)(8), 5.3(b)(9), 5.5(b)(8), 5.5(b)(9), 5.7(b) and 5.7(c) hereinabove, and Paragraph 8.7 hereinbelow; and provided further, however, that the provisions of this Paragraph 8.6 shall not be interpreted, construed or administered in a manner that is inconsistent with the qualification of any marital trust for the federal estate tax marital deduction, to the extent so elected, or any provisions of this my last will and testament which are intended to cause a beneficiary of a trust to be treated as the designated beneficiary of a deferrable retirement benefit for purposes of Internal Revenue Code § 401(a)(9) and the Treasury Regulations thereunder.

8.7 Maintenance Of Eligibility For The Marital Deduction. Notwithstanding any other provisions of this my last will and testament, under no circumstances shall any provision of this Item VIII, or of this my last will and testament generally, grant any powers to the trustee, or be interpreted, construed or administered so as to authorize the trustee, to divert, accumulate, affect the frequency of payment or otherwise affect my husband's right to receive currently (in regular monthly or other convenient installments, but no less frequently than quarter-annually) the entire income that is derived from all of the trusts, which are created for my husband's benefit pursuant to the provisions of this my last will and testament, or otherwise affect my husband's rights with respect to all of such trusts, so as to prevent any such trust from being eligible to qualify for the federal estate tax marital deduction under the Internal Revenue Code.

8.8 Merger Or Consolidation Of Trusts. When a trust that is created pursuant to the provisions of Paragraphs 5.2, 5.3, 5.4, 5.5 and, or, 5.7 hereinabove, for beneficiaries other than my husband, and any other trust (whether created hereunder or created under any other instrument by me or by anyone else) have the same trustee, the same beneficiary or beneficiaries (other than my husband) and substantially identical terms as to the payment of income and the distribution of principal, then the trustee of each such trust may merge or consolidate the trusts, and administer the trusts as one, on a basis which is consistent with the generation-skipping transfer tax provisions of Paragraph 9.9 hereinbelow (if such provisions are applicable); unless, however, the merger or consolidation is contrary to, or inconsistent with, applicable law, other provisions of this my last will and testament and, or, the terms of any instrument which is supplemental hereto.

8.9 Assistance To Guardians. During the existence of any trust created hereunder that has a minor beneficiary, the trustee thereof may expend so much of the net income and, or, the principal thereof, and at such times and in such manner, as the trustee determines to be necessary or desirable to assist the guardian of the minor beneficiary's person (or any other person with whom a minor beneficiary is living) in providing appropriate accommodations for the minor beneficiary in the household of the guardian of the minor beneficiary's person (or in the other person's household); and the trustee shall reimburse the guardian of the minor beneficiary's person (or the other person) for all appropriate expenses which may be incurred by the guardian of the minor beneficiary's person (or by the other person); including, but not limited to, the following: hiring domestic help; taking vacation trips; building or acquiring new residences; or enlarging old residences; and even though the guardian of the minor beneficiary's person (or the other person) is directly or indirectly benefitted thereby; and all as the trustee, in the trustee's sole discretion, determines such expenditures to be beneficial to the minor beneficiary.

8.10 Trustees Can Create Trusts.

(a)

(b)

8.11 Negating Power Of Appointment For Interested Trustee As Beneficiary.

(a) Notwithstanding any other provisions of this my last will and testament, no interested trustee who is a beneficiary of any trust that is created pursuant to the provisions of this my last will and testament shall ever participate as trustee of that trust **(1)** in the exercise, or in the decision not to exercise, any discretion over beneficial payments, distributions, applications, uses or accumulations of income or principal by the

trustee to or for any beneficiary other than pursuant to an ascertainable standard, within the meaning of Internal Revenue Code §§ 2041 and 2514, if any, which is expressly set forth and authorized in this my last will and testament; or (2) in the exercise of any general power of appointment which is described in Internal Revenue Code §§ 2041 or 2514 (but this shall not apply to a general power of appointment, if any, which is granted in a non-fiduciary capacity).

(b) If any trustee is under a duty to support a beneficiary or is acting as a guardian, conservator or similar fiduciary of any individual who is a beneficiary, then that trustee shall not participate in the exercise, or in the decision not to exercise, any discretion over beneficial payments, distributions, applications or uses of trust property in discharge of any obligation of support.

(c) No trustee shall participate in the exercise of any discretion [including, but without limitation, any discretion which would constitute an “incident of ownership” within the meaning of Internal Revenue Code § 2042(2)], with respect to any insurance policy on the trustee’s life that is held pursuant to the provisions of this my last will and testament.

(d) In each case, the determination of the remaining trustee or trustees shall be final and binding upon the beneficiary of that trust.

(e) In addition, no individual shall have any power of appointment over or power to direct the beneficial enjoyment of the fractional share of any trust, which is created pursuant to the provisions of this my last will and testament, consisting of disclaimed property (including any accumulated income of that share), unless that power to direct the beneficial enjoyment is limited by an ascertainable standard within the meaning of Internal Revenue Code §§ 2041 and 2514.

8.12 Miscellaneous Additional Provisions.

(a) If I have given the trustee discretion concerning payments of income or distributions of principal, then that discretion shall be absolute and uncontrolled and subject to correction by a court only if the trustee acts utterly without reason, in bad faith, with reckless indifference to the purposes of the trust or the interests of the beneficiaries or in violation of specific provisions of this my last will and testament.

(1) If I have set forth general guidelines (as opposed to directions or dollar limits) for the trustee in making payments or distributions, then those guidelines

shall be merely suggestive and shall not create an enforceable standard whereby a payment or distribution could be criticized or compelled.

(2) It is my strong belief that the trustee will be in the best position to interpret and carry out the intentions, which are expressed in this my last will and testament, under changing circumstances.

(3) This Paragraph 8.12 shall not, however, apply to any standards for payments or distributions that are framed in terms of health, education, support or maintenance as those words create an ascertainable standard for federal tax purposes when applied to a trustee's power or a power which is held individually, although even in those cases the holder of the power shall have as much discretion as is consistent therewith.

(4) An interested trustee who is otherwise authorized to make payments or distributions to themselves subject to an ascertainable standard may exercise that discretion, notwithstanding any contrary rule of law, unless that authorization would cause the trust property to be subject to the claims of the creditors of the interested trustee.

(b) Notwithstanding any other provision of this my last will and testament, each trustee is prohibited from making, voting on or otherwise participating in any discretionary payment of income or distribution of principal from a trust that would discharge or substitute for a legal obligation of that trustee, including the obligation to support a beneficiary of a trust.

(1) Further, notwithstanding any other provision of this my last will and testament, any trustee who is authorized to pay income or to distribute principal for that trustee's own health, education, support or maintenance, in their accustomed manner of living, shall consider all of the resources that are reasonably available to themselves.

(2) Subject to that, in exercising discretion over payments or distributions, the trustee may consider, or may disregard, other resources that are available to any beneficiary.

(c) Unless I have specifically provided otherwise, and subject to any ascertainable standard governing its exercise, the trustee's discretionary power to pay income or to distribute principal includes the power to pay and to distribute all of that income and, or, principal to one or more members of a class to the exclusion of others, whether or not the terms of the trust specifically mention that possibility.

(d) A trustee may irrevocably release one or more powers that are held by the trustee while retaining other powers.

(e) Any executor or trustee may delegate to a co-executor or to a co-trustee any power that is held by the delegating executor or trustee, but only if the co-executor or the co-trustee is authorized to exercise the power which is delegated. A delegation may be revocable but, while it is in effect, the delegating executor or trustee shall have no responsibility concerning the exercise of the delegated power.

(f) Unless otherwise provided in this my last will and testament, any authority that is granted to a trustee pursuant to the provisions of this my last will and testament or by any provision of law, whether stated as an authority, right, power or otherwise, may be exercised by the trustee in that trustee's sole and absolute discretion.

8.13 Disinterested Trustee May Confer Upon My Husband A General Power Of Appointment.

(a)

(b)

ITEM IX

MISCELLANEOUS

9.1 Presumption As To Survivorship.

(a) If my husband and I die under such circumstances that there is no sufficient evidence that we died other than simultaneously, then my husband shall be deemed to have survived me.

(b) If any individual, other than my husband, who would be a beneficiary pursuant to any provision of this my last will and testament if that individual survives me, or if that individual survives some other beneficiary hereunder, dies under such circumstances that there is no sufficient evidence to determine whether or not that individual survived me or survived such other beneficiary, as the case may be, then I direct that for purposes of this my last will and testament that individual shall be deemed to have predeceased me, or to have predeceased such other beneficiary, as the case may be; but if my husband and I die under such circumstances, then my husband shall be deemed to have survived me as provided in Paragraph 9.1(a) hereinabove.

9.2 No Contract To Make A Will. Although my husband and I are executing our last wills and testaments at or about the same time, I wish to make it clear that we have not entered into a contract regarding the disposition of our respective estates. We both, including the survivor of us, reserve the right to change or to revoke our respective last wills and testaments at any time without notice to the other.

9.3 Life Insurance Proceeds.

(a) The proceeds of any life insurance that is payable to the executor or to my estate shall pass as part of my estate and be distributed pursuant to the provisions of this my last will and testament.

(b) I understand that, by reason of Tennessee Code Annotated § 56-7-201, the proceeds of any life insurance which is payable to the executor or to my estate are free from the claims of my creditors to the extent that those life insurance proceeds inure to the benefit of my husband, or my children, or both.

(c) If the executor determines that it is in the best interests of my husband, or my children, or both, then the executor may use all or any part of such life insurance proceeds for the payment of the following: my funeral expenses; the expenses of administering my estate; my lawful debts; and the federal and state estate, inheritance, legacy and succession taxes (including penalties and interest) which are payable as a result of my death; provided, however, that none of my creditors shall have a claim against either the executor or such life insurance proceeds, if the executor elects not to use those life insurance proceeds to pay a claim.

9.4 Casualty Insurance Proceeds. If a gift is completely or partially destroyed by virtue of a casualty that is insured against, then the beneficiary of that gift shall receive the insurance proceeds recovered as a substitute for that gift, if that gift is completely destroyed, or the damaged property and the insurance proceeds recovered, if that gift is partially destroyed.

9.5 Deductibility Of Administration Expenses.

(a) I understand that provisions of the Internal Revenue Code, and other laws in force at the time of my death and applicable to my estate, may permit the executor to elect to claim certain administration and other expenses as deductions either on the federal income tax returns, or on the federal estate tax return, of my estate.

(b) I authorize the executor to elect to claim the expenses, which are referred to in Paragraph 9.5(a) hereinabove, as deductions on the particular tax return or returns that the executor determines to be appropriate, regardless of whether the expenses are payable from income or distributable from principal; provided, however, that in allocating income to the payment of estate administration expenses, the executor shall not exercise such power in a manner so as to constitute a material limitation on my husband's substantial beneficial enjoyment of the income of any assets which qualify for the federal estate tax marital deduction and, or, for any state estate, inheritance, legacy or succession tax marital deduction.

9.6 Apportionment Of Income Taxes.

(a) Any income taxes that are imposed upon, or chargeable to, the income of my estate shall be apportioned to, and deducted from, the shares of all beneficiaries (exclusive, however, of any charitable beneficiary) having an interest in such income, in such equitable manner as the executor determines to be appropriate.

(b) Any determinations that are made by the executor with respect to the apportionment of income taxes, pursuant to the provisions of this Paragraph 9.6, shall be conclusive as to all persons who are interested in my estate.

9.7 Authority To File Joint Income Tax Returns.

(a) I authorize the executor to execute and to file a joint income tax return with my husband for the year in which my death occurs and for any years prior thereto.

(b) The executor shall incur no personal liability for any action that is taken in good faith pursuant to the foregoing authorization.

9.8 Authority To File Joint Gift Tax Returns.

(a) I authorize the executor to execute and to file joint gift tax returns with my husband, if any gift tax returns are required of either my husband or myself for the year in which my death occurs and for any years prior thereto.

(b) The executor shall incur no personal liability for any action that is taken in good faith pursuant to the foregoing authorization.

9.9 Generation-Skipping Transfer Tax Provisions.

(a) I authorize the executor to allocate any part of my generation-skipping transfer tax exemptions, under Internal Revenue Code § 2631(a) and under corresponding provisions of state generation-skipping transfer tax laws, to any property with respect to which I am the transferor, including any property that was transferred by me during my lifetime and with respect to which transferred property I did not make an allocation of my generation-skipping transfer tax exemptions prior to my death.

(b) I authorize the trustee to divide the property composing any trust that is being held hereunder which has an inclusion ratio, as defined in Internal Revenue Code § 2642(a)(1), of neither one nor zero, into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero.

(c) Notwithstanding any other provision of this my last will and testament to the contrary, if the inclusion ratio, as defined in Internal Revenue Code § 2642(a)(1), of property that is directed to be added to a trust which is created hereunder is different from the inclusion ratio of such trust, then the trustee may decline to make the addition and may, instead, administer the property as a separate trust with dispositive, administrative and other provisions which are identical to the trust to which the addition would otherwise have been made.

(d) Neither the executor nor the trustee shall incur any personal liability for any action that is taken in good faith pursuant to the foregoing provisions of this Paragraph 9.9.

9.10 Exoneration Of Fiduciaries From Liability For Environmental Hazards. Neither the executor nor the trustee shall incur any personal liability for any loss or depreciation in value that is sustained as a result of the executor and, or, the trustee retaining any property upon which there is later discovered to be hazardous materials or substances requiring remedial action pursuant to any federal, state and, or, local environmental law or regulation thereunder; unless, however, the executor and, or, the trustee contributed to the loss or depreciation in value through willful default, willful misconduct or gross negligence.

9.11 Fiduciary Tax Options And Elections.

(a) No individual fiduciary serving pursuant to the provisions of this my last will and testament may participate in any decision with respect to any tax election or

option under federal, state or local law that could enlarge, diminish or shift their beneficial interest hereunder from or to the beneficial interest hereunder of another individual.

(b) Any such tax election or option shall be made only by a fiduciary or fiduciaries who do not have a beneficial interest hereunder or whose beneficial interest could not be enlarged, diminished or shifted by the election or option.

(c) If the only fiduciary or fiduciaries who otherwise could exercise that tax election or option hold beneficial interests hereunder which could be so enlarged, diminished or shifted, then another individual or a bank, trust company or any other type of entity that may legally serve as a fiduciary [but not an individual, bank, trust company or other entity which is related or subordinate within the meaning of Internal Revenue Code § 672(c) to any acting fiduciary hereunder] shall be appointed by the fiduciary or fiduciaries by an acknowledged written instrument which is delivered to the person so appointed and the fiduciary who is so appointed shall alone exercise any such election or option.

9.12 No Contest Provisions.

9.13 Savings Clause. If any of the provisions or directions of this my last will and testament fail or are held to be ineffectual or invalid for any reason, then it is my desire that no other portion or provision of this my last will and testament be invalidated, impaired or affected thereby, but that this my last will and testament shall be construed as if that invalid provision or direction had not been contained therein

9.14 Captions. The captions that are used in this my last will and testament are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this my last will and testament or the intent of any provision hereunder.

9.15 Additional Tax And Other Savings Provisions.

(a) Notwithstanding any other provisions of this my last will and testament, the trustee shall not suspend any mandatory payments or distributions that are required for a trust to qualify, in whole or in part, for any federal or state marital deduction or charitable deduction or as a qualified Subchapter S trust.

(b) Additionally, nothing in this my last will and testament shall prevent or suspend any payment or distribution of deferrable retirement benefits that are mandated by provisions of any trust that is created hereunder to which deferrable retirement benefits are payable or distributable.

(c) Finally, nothing in this my last will and testament shall prevent payments or distributions that are mandated by the provisions of Paragraph 8.5 hereinabove (relating to the maximum duration of trusts under the relevant application of the rule against perpetuities).

IN WITNESS WHEREOF, I have hereunto set my hand to this my last will and testament, consisting of this, and the preceding _____ typewritten pages, all in the presence of the persons witnessing this my last will and testament, at my request, on this the _____ day of February, 2020, at Nashville, Tennessee.

Jane H. Smith

Signed, sealed, published and declared by the testatrix, **Jane H. Smith**, to be the testatrix's last will and testament, in the presence of all of us, the undersigned witnesses, at one and the same time; and we, the undersigned witnesses, at the testatrix's request and in the testatrix's presence and in the presence of each other, have hereunto subscribed our names as witnesses; and we, the undersigned witnesses, do hereby attest to the sound and disposing mind of the testatrix and to the performance of the aforesaid act of execution at the place and on the date that is set forth hereinabove.

WITNESSES:

ADDRESSES:

Nashville, TN

Nashville, TN

AFFIDAVIT

_____ and _____,
after being duly sworn according to law, each depose and say the following:

1. The witnesses are adult citizens of Davidson County and Davidson County, Tennessee, respectively;

2. The witnesses have witnessed the execution of the last will and testament of **Jane H. Smith** (sometimes hereinafter referred to as “the testatrix”), dated February _____, 2020, to which this affidavit is attached;

3. This affidavit is being made at the testatrix’s request and pursuant to the provisions of Tennessee Code Annotated § 32-2-110;

4. The witnesses’ signatures are affixed to the testatrix’s last will and testament;

5. The witnesses signed or affixed the witnesses’ signatures to the testatrix’s last will and testament at the testatrix’s instance and request and in the testatrix’s presence and sight, and in the presence and sight of each other, at the place and on the date that is recited in the testatrix’s last will and testament;

6. The testatrix signed said paper writing as and for the testatrix’s last will and testament in the witnesses’ presence and sight;

7. At the time that the witnesses witnessed the testatrix’s last will and testament, the testatrix was, in the witnesses’ opinion, of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a last will and testament; and

8. The annexed last will and testament of **Jane H. Smith** was examined by the undersigned witnesses at the time this affidavit was made.

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Severally subscribed and sworn to before me this _____ day of February,
2020.

Notary Public For The State Of Tennessee

My Commission Expires: _____

IRREVOCABLE TRUST AGREEMENT

“The John C. Smith 2020 Trust For The Benefit Of Jane H. Smith”

THIS IRREVOCABLE TRUST AGREEMENT (hereinafter referred to as “this Trust Agreement”) is made, entered into and effective for all intents and purposes as of this the _____ day of February, 2020, by and between **John C. Smith** (hereinafter referred to as “the grantor”), and the trustee [as formally named in Paragraph 1.7(c) hereinbelow.

ARTICLE I

TRUST ESTATE, IRREVOCABILITY AND OTHER LIMITATIONS ON GRANTOR, ADDITIONS AND REFERENCES AND DEFINITIONS

1.1 Trust Estate.

(a) The grantor, in consideration of the agreements and undertakings hereinafter made by the trustee, the receipt and sufficiency of which consideration are acknowledged, irrevocably transfers, conveys and assigns to the trustee, and to any successor trustees serving hereunder, from time to time and at any time, the property described and listed in Exhibit A that is attached hereto and made a part hereof by this reference.

(b) The trustee agrees to receive and to hold, in trust, the property that is described and listed in Exhibit A, together with any other property which any person or persons may hereafter transfer, convey, assign, devise and, or, bequeath to the trusts created hereunder, subject to the terms and conditions set forth hereinbelow.

1.2 Trusts Irrevocable As To Grantor. This Trust Agreement and all of the trusts created hereunder are irrevocable.

1.3 No Power To Alter, Amend, Revoke Or Terminate. The grantor does not retain, nor will the grantor ever have, either the right or the power, whether exercisable alone or in conjunction with any other person, in whatever capacity, to do any of the following: alter, amend, revoke or terminate the trusts created hereunder; or alter, amend, revoke or terminate any of the provisions of this Trust Agreement.

1.4 Relinquishment Of Possession, Enjoyment And Control. The grantor, absolutely and forever, relinquishes the following: all direct, indirect or constructive possession, enjoyment and control of, or the right to any income from, the property of the trusts created hereunder; as well as every interest of any nature, whether present or future and whether vested or contingent, in the property of the trusts created hereunder; and, further, the right, either alone or in conjunction with any person, to designate the person or persons who will possess or enjoy the property or the income of the trusts created hereunder.

1.5 Grantor's Intentions, Generally.

(a) The grantor creates the trusts hereunder as a means by which assets may be held for the benefit of certain members of the grantor's family.

(b) It is the grantor's intention that all gifts made to the trusts created hereunder shall be complete for federal gift tax purposes; and that the assets of each such trust (including life insurance proceeds) shall be excluded from the grantor's gross estate for federal estate tax purposes.

(c) It is the grantor's further intention that the provisions of this Trust Agreement shall be construed so as to effectuate the grantor's intentions.

1.6 Additions.

(a) The grantor, and any other person or persons, may at any time transfer, convey, assign, devise and, or, bequeath to any one or more of the trusts created hereunder, either by inter vivos or testamentary transfer, additional property of any kind acceptable to the trustee.

(1) The trustee may refuse to accept the transfer of additional property if the trustee determines that the rejection of such additional property is in the best interests of a trust and the beneficiaries thereof.

(2) The trustee may accept the transfer of additional property subject to one or more conditions imposed by the trustee or by the transferor thereof, if the trustee determines that such conditional acceptance is in the best interests of a trust and the beneficiaries thereof.

(3) No condition imposed upon a transfer of additional property that is accepted by the trustee may in any way alter, amend or otherwise change the rights of a beneficiary with respect to any prior transfers to a trust.

(b) If an addition is made to a trust created hereunder, then the property composing that addition shall become a part of the principal of the trust to which the addition is made; and the additional property shall be administered and distributed as if the additional property had originally formed a part of that trust.

(c) The trustee may assume any obligation associated with any additional property transferred, conveyed, assigned, devised or bequeathed to any one or more of the trusts created hereunder.

1.7 References And Definitions.

(a) Throughout this Trust Agreement, the term “initial trust” means the original trust created hereunder for the benefit of the grantor’s wife, Jane H. Smith, and the terms “trust” and “trusts” mean the initial trust and any other trusts that may subsequently be created hereunder.

(b) Throughout this Trust Agreement, the initial trust shall be known as “*The John C. Smith 2020 Trust For The Benefit Of Jane H. Smith.*”

(c) Throughout this Trust Agreement, the term “trustee” means the grantor’s wife, Jane H. Smith, as trustee, and any successor trustees serving in such fiduciary capacity.

(d) Throughout this Trust Agreement, the term “the grantor’s wife” means Jane H. Smith.

(e) Throughout this Trust Agreement, the term “the grantor’s niece Linda” means Linda S. Chase.

(f) Throughout this Trust Agreement, the term “the grantor’s nephew Richard” means Richard M. Chase.

(g) Throughout this Trust Agreement, the term “the grantor’s sister-in-law Jane” means Jane L. Chase.

(h) Throughout this Trust Agreement, the term “the grantor’s brother-in-law Robert” means Robert Chase.

(i) Throughout this Trust Agreement, the term “the grantor’s sister-in-law Jamie” means Jamie M. Thomas.

(j) Throughout this Trust Agreement, the term “the grantor’s step-daughter Dorothy” means Dorothy A. Burns.

(k) Throughout this Trust Agreement, the term “the Samaritan’s Purse” means the *Samaritan’s Purse*, Boone, North Carolina, an Internal Revenue Code § 501(c)(3) organization, and all gifts hereunder to it are for its general purposes.

(l) Throughout this Trust Agreement, the term “issue” means lawful blood descendants in the first, second or any other degree of a designated ancestor; moreover, an adopted child and such adopted child’s own lawful blood descendants shall be considered as lawful blood descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or parents and shall not be considered descendants of the adopted child’s natural parents; provided, however, that if a child is adopted by a spouse of one of the child’s natural parents, then the child shall be considered a descendant of such natural parent, as well as a descendant of the adopting parent

(m) Throughout this Trust Agreement, if property is to be distributed to designated issue on a “*per stirpes*” basis, then the property shall be distributed to the persons and in the relative proportions that personal property of the named ancestor would be distributed under the laws of the State of Tennessee in force at the time stipulated for distribution if the named ancestor had died intestate at that time, domiciled in the State of Tennessee, not married and survived only by such issue.

(n) Throughout this Trust Agreement, a child in gestation who is later born alive shall be regarded as a child in being during the period of gestation, in determining whether any person has died without leaving surviving issue, and in determining, upon the termination of any trust created hereunder, whether that child is entitled to share in the disposition of the then-remaining principal and undistributed income of the trust; provided, however, that for all other purposes that child’s rights shall accrue from that child’s date of birth.

(o) Throughout this Trust Agreement, the term “adult” means a person who has attained the age of majority under the laws of the State of Tennessee; and the term

“minor” means a person who has not attained the age of majority under the laws of the State of Tennessee.

(p) Throughout this Trust Agreement, the term “health, education, support or maintenance” shall be construed in such a manner as to be an ascertainable standard both for federal estate tax purposes, within the meaning of Internal Revenue Code § 2041, and for federal gift tax purposes, within the meaning of Internal Revenue Code § 2514, such that the exercise, release or lapse of a power limited by this ascertainable standard shall not be taxable as a general power of appointment for either federal estate tax or federal gift tax purposes.

(1) Moreover, the terms “support” and “maintenance” are synonymous, and their meaning shall not be limited to the bare necessities of life;

(2) The term “education” shall include college and professional education; and

(3) The term “health” shall include medical, dental, hospital and nursing expenses, and expenses of invalidism.

(q) Throughout this Trust Agreement, the masculine gender includes the feminine or neuter gender, and the singular number includes the plural number, with such terms to be read as the context requires.

(r) Throughout this Trust Agreement, the term “shall” is used in an imperative sense, and the term “may” is used in a permissive sense.

(s) Throughout this Trust Agreement, the words “and” and “or” are used interchangeably to mean any one or more, or all, of the terms joined by these words, unless the context specifically indicates otherwise.

(t) Throughout this Trust Agreement, the term “Internal Revenue Code” means the Internal Revenue Code of 1986, 26 United States Code §§ 1, *et seq.*, as now existing and as amended from time to time hereafter (and any corresponding provisions of succeeding law). If, by the time in question, a particular provision of the Internal Revenue Code has been renumbered or it has been superseded by a subsequent federal tax law, then the reference shall be deemed to be to the renumbered provision or to the corresponding provisions of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this Trust Agreement.

(u) Throughout this Trust Agreement, the term “Tennessee Code Annotated” means the official compilation of the statutes, codes and session laws of the State of Tennessee of a public and general nature, as now existing and as amended from time to time hereafter (and any corresponding provisions of succeeding law). If, by the time in question, a particular provision of the Tennessee Code Annotated has been renumbered or it has been superseded by a subsequent Tennessee law, then the reference shall be deemed to be to the renumbered provision or to the corresponding provisions of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this Trust Agreement.

(v) Throughout this Trust Agreement, the term “Treasury Regulations” means the applicable income, estate, gift and generation-skipping transfer tax regulations, as the case may be, that are issued by the U.S. Treasury Department, as now existing and as amended from time to time hereafter (and any corresponding provisions of succeeding regulations). If, by the time in question, a particular provision of the Treasury Regulations has been renumbered or it has been superseded by a subsequent provision of the Treasury Regulations, then the reference shall be deemed to be to the renumbered provision or to the corresponding provisions of the subsequent Treasury Regulations, unless to do so would clearly be contrary to my intent as expressed in this Trust Agreement.

(w) Throughout this Trust Agreement, the term “interested trustee” means, for any trust, a trustee who is (1) a transferor of property to the trust, including a person whose qualified disclaimer resulted in property passing to the trust; or (2) 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 who is described in subpart (1) hereinabove 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 subpart (2) hereinabove even if that person has a remote contingent remainder interest, but is not described in subpart (2) if the person’s only interest is as a potential appointee under a non-fiduciary power of appointment which is held by another person, the exercise of which will take effect only in the future, such as a testamentary power which is held by a living person.

(x) Throughout this Trust Agreement, the term “disinterested trustee” means a trustee who is not an interested trustee.

(y) Throughout this Trust Agreement, the article and paragraph titles or captions are only used as a matter of convenience and reference, and in no way define, limit, extend or describe the scope of this Trust Agreement or the intent of any provisions hereof.

ARTICLE II

APPOINTMENT OF TRUSTEES AND CERTAIN OTHER PROVISIONS RELATING TO TRUSTEES

2.1 Trustees Of The Initial Trust For The Benefit Of The Grantor's Wife.

(a) The grantor's wife shall be the trustee of the initial trust created hereunder for the benefit of the grantor's wife.

(b) Upon the death or the resignation of the grantor's wife, the grantor's friend, Kenneth Anderson, shall serve as the first successor trustee of the initial trust; and if Kenneth Anderson fails to qualify as the first successor trustee (or having qualified, he dies or resigns), then the grantor's friend, Gary J. Williams, shall serve as the second successor trustee of the initial trust; and if Gary J. Williams fails to qualify as the second successor trustee (or having qualified, he dies or resigns), then Regions Bank, having an office in Nashville, Tennessee, shall serve as the third successor trustee of the initial trust.

2.2 Trustees Of The Contingent Marital Trust Under Paragraph 3.3.

(a) If the contingent marital trust is created pursuant to the provisions of Paragraph 3.3 hereinbelow, then the survivor of the grantor's wife and the grantor, as the surviving spouse who is the beneficiary of the marital trust, shall serve as the trustee thereof.

(b) Upon the death or the resignation of the surviving spouse as the trustee of the marital trust, the grantor's friend, Kenneth Anderson, shall serve as the first successor trustee of the marital trust; and if Kenneth Anderson, fails to qualify as the first successor trustee (or having qualified, he dies or resigns), then the grantor's friend, Gary J. Williams, shall serve as the second successor trustee of the marital trust; and if Gary J. Williams fails to qualify as the second successor trustee, then Regions Bank, having an office in Nashville, Tennessee, shall serve as the third successor trustee of the marital trust.

2.3 Trustees Of The Trusts Under Paragraphs 3.4 And, Or, 3.5. The grantor's friend, Kenneth Anderson, shall serve as the trustee of each trust created pursuant to the provisions of Paragraphs 3.4 and, or, 3.5 hereinbelow; and if Kenneth Anderson, fails to qualify as the trustee (or having qualified, he dies or resigns), then the grantor's friend, Gary J. Williams, shall serve as the first successor trustee of each such trust; and if Gary J. Williams fails to qualify as the first successor trustee (or having qualified, he dies

or resigns), then Regions Bank, having an office in Nashville, Tennessee, shall serve as the second successor trustee of each such trust.

2.4 Resignation And Incapacity Of The Trustees.

(a) Any trustee may resign at any time by giving prior written notice to the beneficiary of the trust with respect to which the resignation relates. If no successor trustee has been appointed within a reasonable period of time, or none has otherwise been provided for hereunder, then the resigning trustee may deposit the trust property with the court having jurisdiction over the administration of the trust.

(b) A trustee who becomes incapacitated, other than temporarily, shall be treated as having resigned.

2.5 Authority Of Successor Trustees. Any successor trustees, acting hereunder at any time, shall possess and exercise all of the powers and authority conferred herein on the original trustee.

2.6 Corporate Successor To Business Of Corporate Trustees. Any corporate successor to the trust business of a corporate trustee, acting hereunder at any time, shall succeed to the capacity of its predecessor without conveyance or transfer.

2.7 Documenting Succession.

(a) All trusts created hereunder need not have, nor continue to have, the same trustee.

(b) The successor to any trustee may document succession with an affidavit setting forth that the preceding trustee has failed or has ceased to serve and that the successor has assumed the duties of the trustee.

(c) The affidavit shall be filed in the Office of the Register of Deeds for Davidson County, Tennessee.

(d) The public, all persons interested in and, or, dealing with a trust created hereunder, and the trustee may rely upon a copy of the affidavit as conclusive evidence of a successor's authority to serve and to act as a trustee of that trust.

2.8 Multiple Trustees. While two or more trustees are acting hereunder, the following provisions shall apply where the context admits:

(a) The corporate trustee, if any, shall have custody of the trust property and the books and records of the trustees;

(b) With respect to any matter over which two or more trustees have joint authority, a trustee, by written notice, may temporarily delegate any or all of that trustee's rights, powers, duties and discretion as trustee to any other trustee sharing that authority, with the consent of the latter;

(c) The trustees may establish bank and brokerage accounts and may authorize that checks or drafts may be drawn on, or withdrawal made from, any such account with the individual signature of any trustee;

(d) Any trustee alone may perform on behalf of the trustees all acts necessary for the acquisition, sale and transfer of personal and real property, including the giving of directions and the signing and endorsing of checks and other negotiable instruments, stock and bond certificates and powers, deeds of real estate and related transfer documents, applications, tax forms and other forms or documents; and no person dealing with a trustee need inquire into the propriety of any such act if that trustee certifies in writing to that person that the trustees have approved that act;

(e) A trustee shall be presumed to have approved a proposed act or decision to refrain from acting if that trustee fails to indicate approval or disapproval thereof within fifteen days after a written request for approval; and a trustee shall not be required to continue to make a proposal that has been disapproved of on at least two occasions if that trustee has informed each disapproving co-trustee that continued disapproval will be assumed until notice to the contrary has been received;

(f) The trustees may execute documents by jointly signing one document or by separately signing concurrent counterpart documents; and

(g) Unless specifically provided for otherwise, at any time when more than one person is designated to act in the same fiduciary capacity, then the action or the decision of a majority in number shall control; and a person who does not vote or who does not concur in any vote shall not be liable for any act or failure to act of the others.

2.9 Substitute Trustees.

2.10 Recognition And Approval Of Conflicting Interests And Related Matters.

(a) The grantor recognizes that in the exercise of fiduciary powers, the trustee may be placed in a position of having conflicting interests, both as a fiduciary and as a person.

(b) The grantor directs that any such conflicting interests shall not be a basis for the trustee not participating in the exercise of the trustee's fiduciary powers in connection with any property, whether real, personal or mixed, that a trust created hereunder may hold or own.

(c) By way of further amplification, the grantor acknowledges that the grantor has appointed the trustee cognizant of the fact that the trustee may also serve as a general and limited partner, manager, director, officer, attorney, accountant, real estate broker, real estate manager, real estate investment advisor, financial and investment advisor, employee and, or, other owner with respect to the partnerships, corporations and other business entities which may form a substantial part of any trust created hereunder, and that the trustee's interest as a fiduciary hereunder may conflict with their individual interest as such general and limited partner, manager, director, officer, attorney, accountant, real estate broker, real estate manager, real estate investment advisor, financial and investment advisor, employee and, or, other owner with respect to the partnerships, corporations and other business entities.

(1) Notwithstanding the foregoing, the grantor wishes these persons to serve as the trustee because of the grantor's confidence in their individual skills and because they are the most appropriate persons as a result of their involvement with the partnerships, corporations or other business entities to manage and operate those partnerships, corporations or other business entities; including, but not limited to, making decisions related to the sale of any real property held by any such partnership, corporation or other business entity and the reinvestment of the proceeds of sale in a new real estate project.

(2) In addition, the grantor expressly authorizes the trustee to act as a general and limited partner, manager, director, officer, attorney, accountant, real estate broker, real estate manager, real estate investment advisor, financial and investment advisor, employee and, or, other owner with respect to those partnerships, corporations and other business entities, and to receive compensation for their services.

(d) Except to the extent (but only to the extent) a restraint on self-dealing may not be waived under applicable local law by a governing instrument, the grantor authorizes the trustee, without court approval or notice (1) to purchase or otherwise acquire assets from and (2) to sell, transfer, exchange or loan any assets to any trust of which the trustee is acting as a trustee, at any time or times, and upon such terms, credits and conditions as the trustee deems advisable notwithstanding that such participation otherwise may be an act of self-dealing under applicable state law.

(e) No trustee shall be liable to anyone for anything done or not done by any other trustee or by any other beneficiary.

(f) The fact that a trustee is active in the real estate investment business or in the investment business generally shall not be deemed a conflict of interest, and purchases and sales of investments may be made through a corporate fiduciary or through any firm of which a corporate or individual fiduciary is a partner, member, shareholder, proprietor, associate, employee, owner, subsidiary, affiliate or the like. Property of any trust that is created hereunder may be invested in individual securities, mutual funds, partnerships, private placements or other forms of investment promoted, underwritten, managed or advised by a trustee or their firm.

(g) The trustee may employ and rely upon the advice given by real estate and, or, general investment counsel, delegate discretionary investment authority over investments to real estate and, or, investment counsel and pay such counsel reasonable compensation in addition to fees that are otherwise payable to the trustee, notwithstanding any rule of law otherwise prohibiting such dual compensation.

(1) The trustee may acquire and retain investments that present a higher degree of risk than would normally be authorized by the applicable rules of fiduciary investment and conduct.

(2) No investment, no matter how risky or speculative, shall be absolutely prohibited, as long as prudent procedures are followed in selecting and retaining the investment and the investment constitutes a prudent percentage of a trust created hereunder.

(3) The trustee may, but need not, favor retention of assets originally owned by the grantor.

(4) The trustee shall not be under any duty to diversify investments, regardless of any rule of law requiring diversification, and any such duty is waived.

(5) The trustee may retain and acquire property that does not produce income, subject to any restrictions or qualifications of this power set forth elsewhere in this Trust Agreement (*e.g.*, the provisions of Paragraph 3.3 hereinbelow relating to the marital trust, if the marital trust is created).

(h) The fact that the trustee (or a firm of which a trustee is a member or with which a trustee is otherwise affiliated) renders legal, accounting, real estate brokerage, real estate management, real estate investment services or general investments services, or other professional services, to a trust created hereunder shall not be deemed a conflict of interest, and the trustee may pay fees for those services to that trustee or firm without prior approval of any court or any beneficiary, whether or not there is a co-fiduciary to approve such payment.

(i) Except when prohibited by another provision of this Trust Agreement, the trustee may enter into transactions on behalf of any trust created hereunder in which that trustee is personally interested as long as the terms of that transaction are fair to the trust. For example, the trustee may purchase property from a trust which is created hereunder at its then fair market value without court approval.

2.11 Special Trustee Liability Provisions.

(a) Some persons may be hesitant to serve as the trustee hereunder because of a concern about potential liability.

(b) Therefore, with respect to any trust created hereunder (1) no trustee shall incur any liability by reason of any error of judgment, mistake of law or action of any kind taken or omitted to be taken in connection with the administration of any trust created hereunder if in good faith reasonably believed by that trustee to be in accordance with the provisions and intent hereof, except for matters involving that trustee's willful misconduct or gross negligence proved by clear and convincing evidence; (2) no trustee shall have any fiduciary responsibility to observe, monitor or evaluate the actions of the other trustees, if any, and shall not be liable to any party for the failure to seek to remedy a breach of trust, or in a recurring situation to request instructions from a court having jurisdiction over a trust, even if the trustee may be guilty of a gross violation of fiduciary duties hereunder; and (3) each trustee shall be fully indemnified by the trust estate against any claim or demand by any trust beneficiary or trust creditor, except for any claim or demand based on

that trustee's willful misconduct or gross negligence proved by clear and convincing evidence.

(c) Expenses incurred by a trustee in defending any such claim or demand shall be paid by the trust estate in advance of the final disposition of such claim or demand, upon receipt of an undertaking by or on behalf of the trustee to repay that amount if it ultimately is determined that the trustee is not entitled to be indemnified as authorized by this Paragraph 2.11

(d) In no event shall any trustee be liable for any matter with respect to which that trustee is not authorized to participate hereunder (including the duty to review or monitor trust investments).

ARTICLE III

DISPOSITIVE PROVISIONS

3.1 Initial Trust For The Benefit Of The Grantor's Wife. During the life of the grantor's wife, the trustee shall hold and administer all of the property in the initial trust, as follows:

(a) The trustee shall pay to the grantor's wife, as long as the grantor's wife survives, all of the income derived from the initial trust, currently, in monthly or other convenient installments, but not less frequently than quarter-annually.

(b) Each calendar year in which the grantor's wife is living on December 31 and so directs, the trustee shall distribute to the grantor's wife up to the greater of that amount referred to in Internal Revenue Code § 2514(e)(1) [currently, \$5,000] or that percentage referred to in Internal Revenue Code § 2514(e)(2) [currently, 5% of the principal of the initial trust on that date]. This right shall not accumulate from year to year, and the limitation determined with reference to Internal Revenue Code § 2514(e)(1) [currently, \$5,000] shall be reduced to any smaller limit that would result from taking into account first all other powers held by the grantor's wife that must, under Internal Revenue Code § 2514(e), be aggregated to determine the largest lapse that can occur without being treated as a release.

(c) A successor trustee (other than the grantor's wife) or a substitute trustee named pursuant to the provisions of Paragraph 2.9 hereinabove may, from time to time and at any time, distribute to, or for the benefit of, the grantor's wife such amounts of

the principal of the initial trust that such successor or substitute trustee determines to be advisable for the health, maintenance or support of the grantor's wife.

3.2 Upon The Death Of The Grantor's Wife.

(a) Upon the death of the grantor's wife, the entire then-remaining income and principal of the initial trust shall be paid and distributed by the trustee, as follows:

(1) To such appointee or appointees (excluding, however, the grantor's wife, her creditors, her estate and the creditors of her estate), and in such estates, interests and proportions, as the grantor's wife appoints in a valid last will and testament; subject, however, to the other provisions of this Paragraph 3.2(a)(1) hereinbelow.

(A) Before the exercise of the limited testamentary power of appointment, which is granted to the grantor's wife is effective, the grantor's wife shall do the following: specifically refer to the power that is granted pursuant to the provisions of this Paragraph 3.2(a)(1); expressly declare an intention to exercise the power which is granted pursuant to the provisions of this Paragraph 3.2(a)(1); execute a last will and testament subsequent to the creation of the trust with respect to which the power relates; and comply with the rule against perpetuities and accumulations.

(B) In disposing of any property that is subject to the limited testamentary power of appointment, which is granted pursuant to the provisions of this Paragraph 3.2(a)(1), the trustee may rely upon an instrument which is admitted to probate in any jurisdiction as the last will and testament of the grantor's wife, or may assume that the grantor's wife died intestate if the trustee has no notice of a last will and testament within six months of the death of the grantor's wife.

(2) To the extent that the limited testamentary power of appointment, which is granted to the grantor's wife pursuant to the provisions of Paragraph 3.2(a)(1) hereinabove, is not fully and effectually exercised by the grantor's wife, then, upon the death of the grantor's wife, the trust, as then constituted, or the part thereof which is not fully and effectually appointed, shall be divided by the trustee into the following shares and thereafter some of those shares shall be distributed and paid outright and some of those shares shall be held and administered by the trustee, in further trust, as the case may be, for the uses and purposes, upon the terms and conditions and with the powers and duties set forth hereinbelow.

(A) *Twenty-sixtieths* (20/60ths) thereof to the following: if the grantor's niece Linda is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's niece Linda; or, if the grantor's niece Linda is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's niece Linda (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's nephew Richard is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's nephew Richard; or, if the grantor's nephew Richard is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's nephew Richard (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, then to the Samaritan's Purse;

(B) *Twenty-sixtieths* (20/60ths) thereof to the following: if the grantor's nephew Richard is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's nephew Richard; or, if the grantor's nephew Richard is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's nephew Richard (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's niece Linda is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's niece Linda; or, if the grantor's niece Linda is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's niece Linda (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, then to the Samaritan's Purse;

(C) *Six-sixtieths* (6/60ths) thereof to the following: to the then-surviving issue, *per stirpes*, of the grantor's niece Linda (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's niece Linda is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's niece Linda; or, if the grantor's niece Linda is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's nephew Richard (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's nephew Richard is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's nephew Richard; or, if the grantor's nephew Richard is not then surviving, then to the Samaritan's Purse;

(D) *Six-sixtieths* (6/60ths) thereof to the following: to the then-surviving issue, *per stirpes*, of the grantor's nephew Richard (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but

if the grantor's nephew Richard is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's nephew Richard; or, if the grantor's nephew Richard is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's niece Linda (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's niece Linda is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's niece Linda; or, if the grantor's niece Linda is not then surviving, then to the Samaritan's Purse;

(E) *Two-And-One-Half-Sixtieths* (2.5/60ths) to the following: to the grantor's sister-in-law Jane, if the grantor's sister-in-law Jane is then surviving; or, if the grantor's sister-in-law Jane is not then surviving, but if the grantor's brother-in-law Robert is then surviving, then to the grantor's brother-in-law Robert; or, if the grantor's brother-in-law Robert is not then surviving, then to the Samaritan's Purse;

(F) *Two-And-One-Half-Sixtieths* (2.5/60ths) to the following: to the grantor's brother-in-law Robert, if the grantor's brother-in-law Robert is then surviving; or, if the grantor's brother-in-law Robert is not then surviving, but if the grantor's sister-in-law Jane is then surviving, then to the grantor's sister-in-law Jane; or, if the grantor's sister-in-law Jane is not then surviving, then to the Samaritan's Purse;

(G) *One-sixtieth* (1/60th) thereof to the following: to the grantor's sister-in-law Jamie, if the grantor's sister-in-law Jamie is then-surviving; or, if the grantor's sister-in-law Jamie is not then surviving, then to the Samaritan's Purse;

(H) *One-sixtieth* (1/60th) thereof to the following: to the grantor's step-daughter Dorothy, if the grantor's step-daughter Dorothy is then-surviving; or, if the grantor's step-daughter Dorothy is not then surviving, then to the Samaritan's Purse; and

(I) *One-sixtieth* (1/60th) thereof to the Samaritan's Purse.

(b) Notwithstanding the provisions of Paragraph 3.2(a) hereinabove, to the extent, if any, that without regard to this Article III, property in the initial trust is included in the grantor's gross estate or in the gross estate of the grantor's wife for federal estate tax purposes, then upon the death of the person in whose gross estate that property is included, that property shall be distributed and paid to the trustee of the contingent marital trust created pursuant to the provisions of Paragraph 3.3 hereinbelow to be disposed of under the terms of that trust.

3.3 Contingent Marital Trust. Property to be held in the contingent marital trust shall be held by the trustee for the benefit of the survivor of the grantor's wife and the grantor (hereinafter referred to in this Paragraph 3.3 as "the surviving spouse"), and all references to "the marital trust" shall be to the trust held under this Paragraph 3.3.

(a) The following provisions shall apply during the surviving spouse's life:

(1) The trustee shall pay to the surviving spouse all of the net income of the marital trust at least annually.

(2) The trustee shall distribute to the surviving spouse as much of the principal of the marital trust as the trustee may, from time to time, determine to be advisable for the surviving spouse's health, education, support (in their accustomed manner of living) or maintenance. Without limiting the trustee's discretion, the trustee may consider the needs of the surviving spouse as more important than the needs of any other beneficiary.

(3) The surviving spouse may direct the trustee to make any unproductive property productive of income or to convert any unproductive property to property that produces income, within a reasonable period of time, notwithstanding any provision of this Trust Agreement or any applicable law otherwise authorizing the trustee to retain unproductive property.

(4) The application of any specific provision of this Trust Agreement to the marital trust shall in all events be construed so as to give the surviving spouse that degree of beneficial enjoyment of the trust property during the surviving spouse's life which the principles of the law of trusts accord to a person who is the sole income beneficiary of a trust, and to ensure that the marital trust qualifies for the federal estate tax marital deduction to the extent so elected.

(b) Upon the surviving spouse's death the trustee shall divide the marital trust into the following shares and thereafter distribute and pay some of those shares outright, and the trustee shall hold and administer some of those shares, in further trust, as the case may be, for the uses and purposes, upon the terms and conditions and with the powers and duties set forth hereinbelow.

(1) *Twenty-sixtieths* (20/60ths) thereof to the following: if the grantor's niece Linda is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's niece Linda;

or, if the grantor's niece Linda is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's niece Linda (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's nephew Richard is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's nephew Richard; or, if the grantor's nephew Richard is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's nephew Richard (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, then to the Samaritan's Purse;

(2) *Twenty-sixtieths* (20/60ths) thereof to the following: if the grantor's nephew Richard is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's nephew Richard; or, if the grantor's nephew Richard is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's nephew Richard (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's niece Linda is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's niece Linda; or, if the grantor's niece Linda is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's niece Linda (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, then to the Samaritan's Purse;

(3) *Six-sixtieths* (6/60ths) thereof to the following: to the then-surviving issue, *per stirpes*, of the grantor's niece Linda (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's niece Linda is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's niece Linda; or, if the grantor's niece Linda is not then surviving, then to the then-surviving issue, *per stirpes*, of the grantor's nephew Richard (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's nephew Richard is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's nephew Richard; or, if the grantor's nephew Richard is not then surviving, then to the Samaritan's Purse;

(4) *Six-sixtieths* (6/60ths) thereof to the following: to the then-surviving issue, *per stirpes*, of the grantor's nephew Richard (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's nephew Richard is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's nephew Richard; or, if the grantor's nephew Richard is not then surviving, then to the then-

surviving issue, *per stirpes*, of the grantor's niece Linda (subject, however, to the provisions of Paragraph 3.5 hereinbelow); or, if there are no such issue then surviving, but if the grantor's niece Linda is then surviving, then to the trustee, in trust, to be held pursuant to the provisions of Paragraph 3.4 hereinbelow for the benefit of the grantor's niece Linda; or, if the grantor's niece Linda is not then surviving, then to the Samaritan's Purse;

(5) *Two-And-One-Half-Sixtieths* (2.5/60ths) to the following: to the grantor's sister-in-law Jane, if the grantor's sister-in-law Jane is then surviving; or, if the grantor's sister-in-law Jane is not then surviving, but if the grantor's brother-in-law Robert is then surviving, then to the grantor's brother-in-law Robert; or, if the grantor's brother-in-law Robert is not then surviving, then to the Samaritan's Purse;

(6) *Two-And-One-Half-Sixtieths* (2.5/60ths) to the following: to the grantor's brother-in-law Robert, if the grantor's brother-in-law Robert is then surviving; or, if the grantor's brother-in-law Robert is not then surviving, but if the grantor's sister-in-law Jane is then surviving, then to the grantor's sister-in-law Jane; or, if the grantor's sister-in-law Jane is not then surviving, then to the Samaritan's Purse;

(7) *One-sixtieth* (1/60th) thereof to the following: to the grantor's sister-in-law Jamie, if the grantor's sister-in-law Jamie is then-surviving; or, if the grantor's sister-in-law Jamie is not then surviving, then to the Samaritan's Purse;

(8) *One-sixtieth* (1/60th) thereof to the following: to the grantor's step-daughter Dorothy, if the grantor's step-daughter Dorothy is then-surviving; or, if the grantor's step-daughter Dorothy is not then surviving, then to the Samaritan's Purse; and

(9) *One-sixtieth* (1/60th) thereof to the Samaritan's Purse.

(c) If the surviving spouse disclaims any of the surviving spouse's interest in the principal and income of the marital trust, then the disclaimed property shall be distributed and paid in the same manner as the marital trust is directed to be distributed and paid upon the surviving spouse's death, in accordance with the provisions of Paragraph 3.3(b) hereinabove. If the surviving spouse disclaims all of the surviving spouse's interest in the income of the marital trust or a portion of the income of the marital trust, then the surviving spouse shall be deemed to have disclaimed the surviving spouse's interest in all or a corresponding portion of the principal of the marital trust.

(d) To the extent that the following authorization does not cause any interest hereunder to fail to qualify, in whole or in part, for the federal estate tax marital deduction which otherwise would so qualify, the trustee is authorized to allocate

management expenses within the meaning of Treasury Regulations § 20.2056(b)-4(d)(1)(i) to any interest hereunder that qualifies for the federal estate tax marital deduction.

3.4 Trusts For The Grantor's Niece Linda And The Grantor's Nephew Richard.

(a) If any property or interest in property is to be held and administered by the trustee for the grantor's niece Linda and, or, for the grantor's nephew Richard pursuant to the provisions of this Paragraph 3.4, then that property or interest in property shall be collectively held and administered by the trustee in a separate and distinct trust designated for each such beneficiary, upon the terms and conditions set forth hereinbelow.

(b) Within 60 days of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-tenth of the principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(c) On the first anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-ninth of the principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(d) On the second anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-eighth of the principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(e) On the third anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-seventh of the principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(f) On the fourth anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-sixth of the principal and income,

whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(g) On the fifth anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-fifth of the principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(h) On the sixth anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-fourth of the principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(i) On the seventh anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-third of the principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(j) On the eighth anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder one-half of the principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(k) On the ninth anniversary of the date of the creation of a trust pursuant to the provisions of this Paragraph 3.4, the trustee shall distribute and pay to the beneficiary in whose name a trust is designated hereunder the entire then-remaining principal and income, whether current or accumulated, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(l) Any net income of a beneficiary's trust not paid to, or for the benefit of, the beneficiary of the trust shall be incorporated periodically, but at least annually, into the principal of the beneficiary's trust, to be held, administered and distributed pursuant to all of the terms, conditions and limitations applying thereto.

(m) If the beneficiary of a trust dies prior to the complete distribution and payment of their trust, then the trustee shall distribute and pay to the personal representative of the beneficiary's estate the entire then-remaining principal and income, whether current or accumulated, of the trust.

(n) Separate books and records shall be kept for each trust created pursuant to the provisions of this Paragraph 3.4; provided, however, that it shall not be necessary for a physical division of assets to be made for each trust.

3.5 Trusts For Other Beneficiaries Who Are Under Forty Years Of Age.

(a) If any person (other than the grantor's niece Linda and the grantor's nephew Richard) to whom a payment or distribution is to be made pursuant to the provisions of Paragraphs 3.2(a)(2)(A), 3.2(a)(2)(B), 3.2(a)(2)(C), 3.2(a)(2)(D), 3.3(b)(1), 3.3(b)(2), 3.3(b)(3) or 3.3(b)(4) hereinabove is under forty years of age, at the time that the distribution and the payment is to be made to that person (with each such person who is then under forty years of age being hereinafter referred to as "a beneficiary" in this Paragraph 3.5), then each such beneficiary's distributions and payments shall vest in interest in each such beneficiary, but with each such beneficiary's distributions and payments to be collectively held and administered by the trustee in a separate and distinct trust designated for each such beneficiary, upon the terms and conditions set forth hereinbelow.

(b) Until a beneficiary's trust terminates, the trustee may, from time to time and at any time, pay and distribute to, or for the benefit of, the beneficiary of the trust such amounts of the net income, principal, or both, of the beneficiary's trust, as the trustee determines to be advisable for the beneficiary's health, education, support or maintenance (even to the extent of exhausting principal).

(c) Any net income of a beneficiary's trust not paid to, or for the benefit of, the beneficiary of that trust shall be incorporated periodically, but at least annually, into the principal of the beneficiary's trust, to be held, administered and distributed pursuant to all of the terms, conditions and limitations applying thereto.

(d) When any beneficiary in whose name a trust is designated hereunder attains thirty years of age, then the trustee shall distribute and pay to the beneficiary of the trust one-third of the principal and accumulated income, if any, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(e) When any beneficiary in whose name a trust is designated hereunder attains thirty-five years of age, then the trustee shall distribute and pay to the beneficiary of the trust one-half of the principal and accumulated income, if any, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(f) When a beneficiary in whose name a trust is designated hereunder attains forty years of age, then the trustee shall distribute and pay to the beneficiary of the trust the entire then-remaining principal and accumulated income, if any, of the beneficiary's own trust, outright, absolutely, in fee simple and free of trust.

(g) If, prior to the time a trust is created pursuant to the provisions of this Paragraph 3.5, a beneficiary attains the age when a mandatory partial or a mandatory total distribution and payment is required to be made to the beneficiary, then the beneficiary's share or partial share shall be partially or totally distributed and paid to the beneficiary, outright, absolutely, in fee simple and free of trust, in the same proportions as are required to be distributed and paid by such mandatory provisions.

(h) If the beneficiary of a trust dies while their own trust is in existence, then the trustee shall distribute and pay to the personal representative of the beneficiary's estate the entire then-remaining principal and accumulated income, if any, of that trust.

(i) Separate books and records shall be kept for each trust created pursuant to the provisions of this Paragraph 3.5; provided, however, that it shall not be necessary for a physical division of assets to be made for each trust.

3.6 Rule Against Perpetuities.

3.7 Payments And Distributions On Behalf Of A Disabled Beneficiary.

(a) If a person to whom the trustee is authorized or required, pursuant to the provisions of this Trust Agreement, to pay income or to distribute principal from a trust, is a minor, or is disabled or for any other reason is incapable of receiving and, or, managing a payment or distribution at the time that the payment or the distribution is to be made with such person who is a minor, or who is disabled or otherwise incapable of receiving and, or, managing such payment or distribution, being hereinafter referred to as a "disabled beneficiary" in this Paragraph 3.7), then the trustee may exercise any one or more of the following powers with respect to that disabled beneficiary:

(1) Transfer property to the name of a disabled beneficiary (by depositing cash or registering securities in the disabled beneficiary's name), whether or not the disabled beneficiary is then able to exercise control over the transferred property;

(2) Transfer property to any custodian or guardian of the property of a disabled beneficiary (including a custodian selected by the trustee);

(3) Transfer property to the trustee of any trust empowered to receive and hold a disabled beneficiary's property and, thereafter, to distribute and pay the transferred property and any income derived therefrom to the disabled beneficiary as soon as the disabled beneficiary is capable of receiving the transferred property and the income derived therefrom without substantial risk of involuntary diversion; but if and only if the property transfer will not fail because of the violation of any rule against perpetuities, accumulation of profits, restraint on alienation, duration of trust or remoteness of vesting;

(4) Transfer property to any creditor of a disabled beneficiary in discharge of any of the disabled beneficiary's debts; and, or,

(5) Use a payment or distribution to obtain goods or services for a disabled beneficiary; but if and only if no debt of any other person is thereby discharged.

(b) The trustee shall determine whether a person is a disabled beneficiary within the meaning of this Paragraph 3.7.

(c) Notwithstanding any other provision of this Paragraph 3.7, under no circumstances shall any provision of this Paragraph 3.7 be interpreted, construed or administered in a manner that is inconsistent with the provisions of Paragraph 3.3(a)(4) hereinabove (if the marital trust is created), and Paragraph 5.5 hereinbelow.

3.8 Discharge Of Trustees From Liability For Proper Payments And Distributions. A receipt from the person to whom income is paid and, or, to whom principal is distributed pursuant to the provisions of this Article III, or any other evidence of the application of such payment or distribution for the benefit of a beneficiary, shall fully discharge the trustee from any further liability in connection with any such payment or distribution.

3.9 Certain Income Taxes. The trustee shall not reimburse the grantor from any assets of any trust created hereunder for the grantor's income tax, whether federal, state, local or foreign, on the amount, if any, of the gross income of such trust reportable

directly on the grantor's income tax return under Internal Revenue Code § 671; and the grantor hereby waives any right or eligibility to be reimbursed for such taxes.

ARTICLE IV

SPENDTHRIFT PROVISIONS

4.1 Restrictions.

(a) Neither the income nor the principal of any trust created hereunder, nor any share thereof, shall be pledged, assigned, transferred, sold or in any manner whatsoever accelerated, anticipated or encumbered by any beneficiary; nor shall any income or principal of any such trust be in any manner subject to, or liable in the hands of the trustee for, the debts, contracts or engagements of any such beneficiary; including, but not limited to, claims for alimony, maintenance or support for a spouse; nor shall any power of appointment be subject to involuntary exercise; nor shall the income or the principal of any trust created hereunder be subject to any assignment or other voluntary or involuntary alienation or disposition whatsoever; but in all payments of income and distributions of principal, the same shall be paid and distributed only to the beneficiary entitled, upon receipt of the beneficiary, or to others for the benefit of that beneficiary as provided hereunder.

(b) This spendthrift provision is intended to restrain both voluntary and involuntary transfers of a beneficiary's interest in a trust pursuant to the provisions of Tennessee Code Annotated § 35-15-502; and this spendthrift provision is a material purpose of any such trust.

(c) A beneficiary's interest in a trust that is subject to the trustee's discretion does not constitute an interest in property or an enforceable right even if the discretion is expressed in the form of a standard of distribution or the beneficiary is then serving as a trustee hereunder.

4.2 Protection From Marital Claims.

(a) All of the benefits granted to a beneficiary hereunder shall be the separate property of that beneficiary (as distinguished from marital property, community property, quasi-community property or any other form of property as to which that beneficiary's spouse might have a claim or interest arising out of the marital relationship under the law of any jurisdiction, domestic or foreign).

(b) All of the benefits granted to a beneficiary hereunder shall also be free of any interference from, or control or marital power of, that beneficiary's spouse.

(c) For purposes of this Paragraph 4.2, the term "benefits" shall include real or personal property, whether tangible or intangible, and the provisions of this Paragraph 4.2 shall apply not only to benefits actually paid to any beneficiary but also to trust property allocated to a trust in which the beneficiary possesses an interest pursuant to the provisions of this Trust Agreement.

4.3 Alternative Distributions.

(a) If the trustee has notice that, or believes that the rights or interests of a beneficiary in or to any part of the income and, or, the principal of the beneficiary's trust, during the term thereof as provided in Article III hereinabove, have been or may be diverted from the purpose of providing for the personal protection and welfare of the beneficiary, whether that diversion is by voluntary act or by legal process, then the trustee may withhold the payment of income, or the distribution of principal, or both, to the beneficiary from the beneficiary's trust.

(b) Thereafter, the trustee may utilize so much of the beneficiary's trust, during the term thereof as provided in Article III hereinabove, as the trustee determines to be advisable for the beneficiary's health, education, support or maintenance; subject, however, to the provisions of Paragraphs 4.4 and 5.5 hereinbelow.

4.4 Limitations Of Article IV. Notwithstanding any other provision of this Article IV, under no circumstances shall any provision of this Article IV be interpreted, construed or administered in a manner inconsistent with the provisions of Paragraph 3.3(a)(4) hereinabove, if the marital trust is created.

ARTICLE V

POWERS, DUTIES AND CERTAIN OBLIGATIONS OF THE TRUSTEES AND CERTAIN OTHER MATTERS

5.1 In General.

(a) With respect to each trust created hereunder, but subject to all of the provisions and limitations otherwise expressly set forth in this Trust Agreement, the trustee

is authorized (with respect to any property, whether real, personal or mixed, held at any time under any provision of this Trust Agreement) to do the following:

(1) To loan money or other property of a trust to any beneficiary of a trust (or to any business controlled by any beneficiary of a trust), with or without formal evidence of indebtedness, and with or without collateral security, for such periods of time and upon such terms and conditions as the trustee determines to be appropriate; to secure any such loan by a lien upon any property payable or distributable to any beneficiary of a trust; and to guarantee any loan of any beneficiary of a trust (or of any business controlled by any beneficiary of a trust); provided, however, that all of the foregoing provisions of this subparagraph are subject to the general requirements that any such arrangements shall be made upon commercially reasonable terms and conditions, for full and adequate consideration in money or money's worth and at fair market value;

(2) To receive, acquire and retain any of the property of the several trusts created hereunder, undivided until division becomes necessary in order to make any payment or distribution; to hold, manage, invest, reinvest and account for the several shares, or partial shares, by appropriate entries in books of account; and to allocate to each share, or partial share, the share's or the partial share's proportionate part of all receipts and disbursements;

(3) To retain, for any period of time, any property received or acquired, even though the retention of that property by reason of the character of that property, or otherwise, is not appropriate apart from this provision;

(4) To collect, receive and receipt for rents, profits and other income from any property forming a part of any trust created hereunder;

(5) To expend money or other property in order to collect, sell, manage, conserve or administer any property held under any of the provisions of this Trust Agreement or in order to improve, repair, equip, develop, furnish, maintain, alter, extend or add to any such property;

(6) To sell at public or private sale (including, specifically, the power to initiate or participate in any public offering or underwriting); to partition; to exchange for like or unlike property; to lease for any period of time, even though the period of time may be longer than the duration of the trust with respect to which the leased property relates; to modify, renew or extend any lease; to grant options upon, release, demolish, abandon, dedicate and otherwise dispose of any property held under any of the

provisions of this Trust Agreement, upon such terms and conditions, including credit, and for such consideration (even though the consideration may be less than the value at which that property was received or acquired) or for such other benefit (even though that property may be intangible) as the trustee determines to be appropriate; provided, however, that all of the foregoing provisions of this subparagraph are subject to the general requirements that any such arrangements shall be made upon commercially reasonable terms and conditions, for full and adequate consideration in money or money's worth and at fair market value;

(7) To transfer title to, grant rights or interests in and convey in fee simple, or otherwise, any property forming a part of any trust created hereunder (whether that property is real, personal or mixed);

(8) To invest and reinvest in the following: any and all kinds of securities, whether domestic or foreign (including common and preferred stocks, bonds, debentures, notes, commodity contracts, mortgages and options on property), money market funds, commercial paper, repurchase agreements, United States Treasury obligations, certificates of deposit, savings accounts, checking accounts and other cash investments; investment trusts and common trust funds; interests in partnerships (whether general, special or limited); interests as members in limited liability companies; interests in limited liability partnerships; any real, personal or mixed property; any business, mining or farming operations or other ventures; or any other interests or investments, even though those interests or investments would not be of a character authorized by applicable law but for this provision;

(9) To diversify, or not to diversify, the property forming a part of any trust created hereunder (whether that property was originally received or subsequently acquired by exchange, investment or otherwise); and, specifically, the trustee shall not be under any duty to diversify investments, regardless of any rule of law requiring diversification, and any such duty is hereby waived;

(10) To retain cash for reasonable periods of time and in such amounts as are sufficient to meet the anticipated needs of both a trust and any beneficiary of that trust;

(11) To do all things necessary, appropriate, customary, desirable or incidental to the proper conduct of the affairs of unincorporated businesses, incorporated businesses, limited liability companies, limited liability partnerships, mining or farming operations, real estate operations or other ventures;

(12) To do all things necessary, appropriate, customary, desirable or incidental to the proper conduct of the affairs of any corporation (including, but not limited to, voting the stock of that corporation); and to place stock in the name of a trustee or in the name of a beneficiary of a trust in order to qualify the trustee or the beneficiary of the trust as a director of a corporation;

(13) To organize, reorganize, merge, consolidate, recapitalize, dissolve, liquidate or otherwise create or change the form of any corporation, partnership (whether general, special or limited), limited liability company, limited liability partnership, joint venture or other entity, whether done alone or with others; and to contribute to any such corporation, partnership, joint venture, limited liability company, limited liability partnership or other entity any property (whether real, personal or mixed), or undivided interests in any such property, forming a part of any trust created hereunder;

(14) To exercise all voting, sale, purchase, exchange or other rights or options with respect to any security or other property forming a part of any trust created hereunder;

(15) To refuse, reject or choose not to exercise any offer to purchase, option to purchase or other right or option with respect to any securities or other property forming a part of any trust created hereunder;

(16) To participate in any plan or proceeding for protecting or enforcing any right, obligation or interest arising from any property forming a part of any trust created hereunder; to serve as a member of a security-holder protective committee; and to deposit securities pursuant to any plan that may be agreed upon;

(17) To expend money or other property, whether by bidding in at foreclosure, by making a contribution to capital, or by paying an assessment or otherwise, in order to protect property forming a part of any trust created hereunder;

(18) To pay, contest, compromise, abandon, release, adjust, submit to arbitration, sue on, defend and otherwise deal with and settle any claim in favor of or against the trustee or any trust created hereunder;

(19) To receive, acquire and retain policies for fire, business interruption, title, liability, fidelity, indemnity or other casualty insurance, either in stock or mutual companies, in any amount and against any risk in which any trust created hereunder has an insurable interest;

(20) To borrow money or other property for such periods of time, upon such terms and conditions and for such purposes as the trustee determines to be appropriate; to mortgage, pledge or otherwise encumber any property forming a part of any trust created hereunder, as security for any such loan; and to renew, extend or refund any existing loan, either as a maker or as an endorser;

(21) To foreclose upon any security held with respect to any obligation forming a part of any trust created hereunder; or to acquire any such security without foreclosure;

(22) To keep books of account and to make reports thereof upon a reasonable basis and with such detail as the trustee determines to be appropriate;

(23) To execute any instrument, whether under seal or otherwise;

(24) To bind the beneficiary of each trust created hereunder (whether a beneficiary is born or unborn; and whether a beneficiary is ascertained or unascertained), by any action taken or not taken, as against any other party;

(25) To act notwithstanding the self-interest of the trustee, including the power to determine the amount of and to receive compensation for services as the trustee or in any other capacity; to borrow from, deposit money with or otherwise deal with a corporate trustee's own banking department; to invest in a corporate trustee's own stock, the stock of any of the corporate trustee's affiliates or in a corporate trustee's own common trust funds; and to hold or own an interest in any investment, corporation, unincorporated business, partnership (whether general, special or limited), limited liability company, limited liability partnership, farming or mining operation, real estate operation or other venture in which any trust created hereunder is also the owner of an interest;

(26) To obtain the advice of accountants, attorneys at law, brokers, investment counsel, realtors, appraisers and other experts; to compensate those experts by salary, commission, fee or otherwise; and to act pursuant to the advice of those experts without independent investigation;

(27) To delegate to one or more agents the authority to do the following: execute and deliver contracts, checks, documents of title and other instruments; maintain books of account; prepare reports and tax returns; possess and record ownership of securities, bank accounts and other property; manage any investment, unincorporated business, partnership (whether general, special or limited), limited liability company, limited liability partnership, farming or mining operation, real estate operation or other

venture forming a part of any trust created hereunder (whether by employing agents, giving proxies, entering into voting trusts or otherwise); select the time to acquire or dispose of property; delegate any power possessed by the trustee (including this power) that is necessary, appropriate, customary or desirable so that the trustee's agent or agents can perform any function delegated pursuant to this subparagraph; and compensate those agents by salary, commission, fee or otherwise;

(28) To enter into any pooling or unitization agreement;

(29) To purchase options upon any property;

(30) To advance money on behalf of any trust created hereunder, for which advances (including interest) the trustee shall have a lien on the assets of the trust with respect to which any such advances are made;

(31) To permit any beneficiary of a trust created hereunder to have the use, possession and enjoyment of any property then distributable, pending actual distribution thereof;

(32) To construct, repair or demolish any improvements upon any real property forming a part of any trust created hereunder;

(33) To hold investments, or any part of any trust created hereunder, in common or undivided interests, with other persons;

(34) To manage, control, operate, invest, reinvest, sell, exchange, lease, mortgage, encumber or otherwise deal with the property forming a part of any trust created hereunder to the same extent and with the same powers that any individual would have with respect to that individual's own property and funds (including the power to sell, convey or mortgage real property without the necessity of joinder of any beneficiary), all without limiting the generality of the foregoing provision or of any other provisions of this Trust Agreement;

(35) To take all appropriate actions to prevent, identify and, or, respond to actual or threatened violations of any environmental law or regulation thereunder; to expend funds to do the following: conduct environmental assessments, audits and site monitoring in order to determine compliance with any environmental law or regulation thereunder; take all appropriate remedial action to contain, clean up and, or, remove any environmental hazard (including a spill, release, discharge or contamination), either on the trustee's own accord or in response to an actual or threatened violation of any

environmental law or regulation thereunder; institute legal proceedings concerning environmental hazards and, or, contest or settle legal proceedings brought by any local, state or federal agency concerned with environmental compliance or by a private litigant; comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and employ agents, consultants and legal counsel to assist or perform the foregoing undertakings and, or, actions; and the trustee may charge the expenses incurred either to the income or to the principal of a trust, in such equitable manner as the trustee determines to be appropriate;

(36) To act freely under all or any of the powers granted to the trustee pursuant to the provisions of this Trust Agreement in all matters concerning each trust created hereunder, after the trustee has exercised the trustee's best judgment, based upon all of the circumstances of any particular situation, without the necessity of obtaining the consent or approval of any court and notwithstanding the fact that the trustee may also be acting individually, or as a trustee of other trusts, or as an agent for other persons, or corporations or other business entities interested in the same matters as a stockholder, director, partner, member or otherwise; provided, however, that the trustee shall exercise those powers pursuant to the provisions and limitations otherwise expressly set forth in this Trust Agreement and, at all times, in a fiduciary manner;

(37) To enter into agreements with any taxing authority, including, but not limited to, the Internal Revenue Service and any state taxing authority, in such a manner as to circumscribe the scope in which the administrative provisions of any trust created hereunder may be implemented, in order to insure that any such administrative provisions will not cause unanticipated tax liability of any kind; and to provide that taxing authority with any necessary disclaimer or agreement restricting the discretion of the trustee in further transactions or in any other matter that is in the best interests of the trusts created hereunder and the beneficiaries thereof;

(38) To accept the validity of the death of a beneficiary of any trust created hereunder by the presentation of a certified copy of that beneficiary's death certificate;

(39) To exercise all powers necessary, appropriate, customary, desirable or incidental to the proper administration of each trust created hereunder; provided, however, that the foregoing is subject to all of the provisions and limitations otherwise expressly set forth in this Trust Agreement; and

(40) To do all of the foregoing without the authorization of any court.

(b) The powers granted to the trustee by the provisions of this Paragraph 5.1 shall not be exhausted by any use thereof; those powers shall be continuing in nature and exercisable by the trustee until all of the provisions of this Trust Agreement are fully executed; and, subject to all of the provisions and limitations otherwise expressly set forth in this Trust Agreement, the trustee's determination of whether or not to exercise any such power is final.

(c) The trustee may make all tax elections and allocations that the trustee considers appropriate; provided, however, that this authority is exercisable only in a fiduciary capacity and may not be used to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of fiduciary duties. Tax elections and allocations made in good faith shall not require equitable adjustments.

5.2 Trustees Can Create Trusts.

5.3 Change Of Situs.

(a) The situs of the property of any trust created hereunder may be maintained in any jurisdiction which is appropriate to trust purposes and its administration, in the discretion of the trustee (other than an interested trustee), and thereafter transferred at any time or times to any jurisdiction selected by the trustee (other than an interested trustee) in accordance with applicable state law, which may include court approval of the transfer or adequate notice to trust beneficiaries.

(b) Upon any such transfer of situs, the trust estate of that trust may thereafter, at the election of the trustee (other than an interested trustee) of that trust, be administered exclusively under the laws of (and be subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred.

(c) Accordingly, if the trustee (other than an interested trustee) of any trust created hereunder elects to change the situs of any such trust, then the trustee is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

5.4 Miscellaneous Additional Provisions.

(a) If the trustee has been given discretion concerning payments of income or distributions of principal, then that discretion shall be absolute and uncontrolled and subject to correction by a court only if the trustee acts utterly without reason, in bad

faith, with reckless indifference to the purposes of the trust or the interests of the beneficiaries or in violation of specific provisions of this Trust Agreement.

(1) If general guidelines have been set forth (as opposed to directions or dollar limits) for the trustee in making payments or distributions, then those guidelines shall be merely suggestive and shall not create an enforceable standard whereby a payment or distribution could be criticized or compelled.

(2) It is the grantor's strong belief that the trustee will be in the best position to interpret and carry out the intentions, which are expressed hereunder, under changing circumstances.

(3) This Paragraph 5.4 shall not, however, apply to any standards for payments or distributions that are framed in terms of health, education, support or maintenance as those words create an ascertainable standard for federal tax purposes when applied to a trustee's power or a power which is held individually, although even in those cases the holder of the power shall have as much discretion as is consistent therewith.

(4) An interested trustee who is otherwise authorized to make payments or distributions to themselves subject to an ascertainable standard may exercise that discretion, notwithstanding any contrary rule of law, unless that authorization would cause the trust property to be subject to the claims of the creditors of the interested trustee.

(b) Notwithstanding any other provision of this Trust Agreement, each trustee is prohibited from making, voting on or otherwise participating in any discretionary payment of income or distribution of principal from a trust that would discharge or substitute for a legal obligation of that trustee, including the obligation to support a beneficiary of a trust.

(1) Further, notwithstanding any other provision of this Trust Agreement, any trustee who is authorized to pay income or to distribute principal for that trustee's own health, education, support or maintenance, in their accustomed manner of living, shall consider all of the resources that are reasonably available to themselves.

(2) Subject to that, in exercising discretion over payments or distributions, the trustee may consider, or may disregard, other resources that are available to any beneficiary.

(c) Unless specifically provided otherwise in this Trust Agreement, and subject to any ascertainable standard governing its exercise, the trustee's discretionary

power to pay income or to distribute principal includes the power to pay and to distribute all of that income and, or, principal to one or more members of a class to the exclusion of others, whether or not the terms of the trust specifically mention that possibility.

(d) Any trustee may delegate to a co-trustee any power that is held by the delegating trustee, but only if the trustee is authorized to exercise the power which is delegated. A delegation may be revocable but, while it is in effect, the delegating executor or trustee shall have no responsibility concerning the exercise of the delegated power.

(e) Unless otherwise provided in this Trust Agreement, any authority that is granted to a trustee pursuant to the provisions of this Trust Agreement or by any provision of law, whether stated as an authority, right, power or otherwise, may be exercised by the trustee in that trustee's sole and absolute discretion.

5.5 General Power Of Appointment Not Granted To Trustees.

(a) Notwithstanding any other provision of this Trust Agreement and by way of amplification, the grantor hereby limits the general discretionary powers of the trustee so that no individual trustee shall participate in any decision or exercise any power which would cause any portion of a trust created hereunder to be includable in the estate of the individual trustee for federal transfer tax purposes pursuant to the provisions of Internal Revenue Code §§ 2514 or 2041.

(b) Where a standard for discretionary payments or distributions or any other discretion of the trustee consists of two or more elements, then those elements shall be severable for purposes of determining any trustee's ability to participate in a decision or to exercise any power under this Trust Agreement.

(c) No trustee shall participate in the exercise of any discretion [including, but without limitation, any discretion which would constitute an "incident of ownership" within the meaning of Internal Revenue Code § 2042(2)] with respect to any insurance policy on the life of the trustee and held hereunder.

5.6 Power To Substitute Property. The grantor appoints the grantor as the substitutor.

(a) During the grantor's lifetime, the substitutor shall have the power, exercisable from time to time and at any time in a non-fiduciary capacity [within the meaning of Internal Revenue Code § 675(4)] without the approval or consent of any person in a fiduciary capacity within the meaning of that section, to acquire or reacquire any asset

or assets forming part of the trust estate of any trust held pursuant to the provisions of this Trust Agreement [other than any direct or indirect interest in stock that would, by reason of the power of substitution, be included in the gross estate of the substitutor for federal estate tax purposes under Internal Revenue Code § 2036(b)], by substituting other property of an equivalent value, determined as of the date of that substitution.

(b) With respect to any such “2036(b) stock” described in Paragraph 5.6(a) hereinabove, the trustee shall appoint another individual, who is not a person in whose estate that stock would be included if that person held the power, directly or indirectly, to vote that stock, to hold the power of substitution with respect to that stock, the person who is so appointed with respect to that stock being the “substitutor” only with respect thereto.

(c) The grantor directs that the power to substitute property is not assignable, and any attempted assignment makes this power void.

(d) Without reducing or eliminating the fiduciary duties imposed on the trustee hereunder or by applicable law, the substitutor shall exercise this power to substitute property by certifying in writing that the substituted property and the trust property for which it is substituted are of equivalent value, and the trustee shall have a fiduciary obligation to ensure the substitutor’s compliance with the terms of the power of substitution by being satisfied in advance of completing the substitution that the asset or assets acquired and substituted are in fact of equivalent value, within the meaning of Revenue Ruling 2008-22.

(e) This power to substitute property cannot be exercised in a manner that can shift benefits among the trust beneficiaries.

(f) Without limiting the foregoing prohibition upon shifting benefits among trust beneficiaries, the trustee shall have, with respect to any trust not being administered as a unitrust or the distributions from which are not limited to discretionary distributions of principal and payments of income (so that the power to reinvest the principal of the trust and the duty of impartiality are not required in order to avoid the power of substitution potentially causing a shift of benefits among trust beneficiaries, all within the meaning of Revenue Ruling 2008-22), the power to reinvest the principal of the trust and the duty of impartiality with respect to trust beneficiaries at all times while the power of substitution is in effect.

(g) The foregoing grant of a power of reinvestment and the imposition of a duty of impartiality are included herein for compliance with Revenue Ruling 2008-22, and whenever that power and that duty are not granted and imposed pursuant to the provision of this Paragraph 5.6, the remaining provisions of this Trust Agreement shall determine whether and to what extent that power and that duty are granted and imposed.

(h) The substitutor may at any time during the grantor's lifetime release the power of substitution, in whole or in part, by delivering to the trustee an acknowledged written instrument. Any such release made by the substitutor shall be irrevocable, and shall be binding upon all current and successor trustees, the current and any successor substitutors, and all persons interested hereunder, and no person shall thereafter have the power to substitute trust property pursuant to the provisions of this Paragraph 5.6 to the extent of such release.

(i) Any substitutor may cease to act as a substitutor by delivering to the trustee an acknowledged written notice.

(j) If the substitutor ceases to act for any reason without having fully released the power to substitute property as provided hereunder, and if no successor substitutor has otherwise been named, then the successor substitutor shall be an individual [other than the grantor or any person who is a related or subordinate party within the meaning of Internal Revenue Code § 672(c) with respect to the grantor] as shall be designated by an acknowledged written instrument that is executed by the trustee.

(k) If at any time prior to the complete release of the power of substitution there is no substitutor acting hereunder, then the trustee (but acting in an individual capacity and not in a fiduciary capacity) shall exercise the substitutor's powers pursuant to the provisions of this Paragraph 5.6 until the appointment of a successor substitutor as provided in this Paragraph 5.6.

ARTICLE VI

BOOKS, RECORDS, BOND, ACCOUNTINGS AND TRUSTEES' COMMISSIONS

6.1 Books And Records. The trustee shall keep all of the books of account and records of the trusts created hereunder.

6.2 Bond And Accountings.

(a) The trustee, including any successor trustees, shall not be required to furnish any bond, qualify before any court or file any inventories or accountings in any court; unless, however, the trustee is specifically required to do so pursuant to the provisions of Article II hereinabove.

(b) In accordance with the provisions of Tennessee Code Annotated § 35-15-813(e), the provisions of Tennessee Code Annotated §§ 35-15-813(a) and (b) shall not apply to the trustee.

6.3 Trustees' Commissions.

(a) Unless specifically waived by the trustee, the trustee, and each successor trustee, shall be entitled to reasonable commissions for the trustee's services hereunder; and the trustee is authorized to pay those commissions from each of the trusts created hereunder.

(b) The compensation of each corporate trustee, acting hereunder at any time, shall be paid pursuant to each such corporate trustee's own published schedule of fees, as each such schedule of fees is in effect at the time or times when services are rendered.

(c) Commissions are payable by the trustee at such time or times as the trustee determines to be appropriate.

ARTICLE VII

DIVISION OR APPORTIONMENT OF TRUST ASSETS

7.1 Division Or Apportionment. In making any division or apportionment of property transferred to the trusts, which are created hereunder, for the purpose of creating any fund, share, portion or part provided for at any time herein, the trustee is not required to convert such property into money or to divide or apportion each and every item thereof; instead, the trustee may divide or apportion all or any part of any item of such property to any fund, share, portion or part or to any beneficiary provided for by this Trust Agreement.

7.2 Grantor's Intentions Under Article VII. It is the grantor's intention to leave any division or apportionment of property transferred to the trusts, which are created hereunder, to the trustee; with the direction, however, that each such fund, share, portion

or part, which is provided for at any time herein, shall be constituted so that the same, in the trustee's judgment, has the value, relative or absolute, designated by this Trust Agreement; and with the further direction that the trustee shall, in all events, make any division or apportionment on a basis consistent with the provisions of Paragraph 9.5 hereinbelow.

ARTICLE VIII

PRINCIPAL AND INCOME

8.1 Ascertainment Of Principal And Income; And Allocation Of Receipts And Disbursements. All questions relating to the ascertainment of principal and income, and the allocation of receipts and disbursements between principal and income, shall be resolved by the trustee pursuant to the specific provisions of this Trust Agreement, if applicable, and otherwise pursuant to the provisions of the so-called "*Uniform Principal And Income Act*," from time to time in effect in the State of Tennessee (hereinafter referred to as "the Act" in this Article VIII); or if the Act is abolished, then pursuant to the terms of the Act as the Act was last in effect in the State of Tennessee.

8.2 Allocation Of Gain To Accounting Income ("The Deeming Rule"). The trustee (excluding, however, any interested trustee) may allocate any capital gain recognized by any trust hereunder to accounting income, which allocation shall be evidenced by the execution by the trustee of an instrument in writing and kept with the records of the trust.

ARTICLE IX

MISCELLANEOUS

9.1 Merger, Consolidation And Division Of Trusts. For convenience of administration and, or, investment, but only on a basis consistent with the generation-skipping transfer tax provisions of Paragraph 9.5 hereinbelow (if those provisions are applicable), the trustee may do the following:

(a) Invest the assets of multiple trusts in a single fund, assigning them undivided interests in that common fund, dividing the income proportionately and accounting for them separately;

(b) Merge or consolidate any trust created hereunder together with any other trusts having the same trustee and substantially the same dispositive provisions; and

(c) Divide any trust created hereunder into two or more separate trusts, with each such trust to contain a fractional share of the assets of the trust before that division.

9.2 Accounting Period. The trusts created hereunder shall each have a December 31 tax and accounting year-end.

9.3 Initial Situs And Construction.

(a) The State of Tennessee is hereby designated as the initial situs of all of the trusts created hereunder.

(b) All questions pertaining to the interpretation, construction, validity and administration of the trusts created hereunder shall initially be determined pursuant to the laws of the State of Tennessee.

9.4 Severability Of Provisions. Each provision of this Trust Agreement shall be considered severable from the rest; and if any provision of this Trust Agreement or the application of a provision to any person, entity or circumstance is held to be invalid or contrary to any existing or future law or is held to be unenforceable to any extent, then the remainder of this Trust Agreement and the application of any other provision to any person, entity or circumstance shall not be affected thereby; and each provision of this Trust Agreement shall be interpreted to the greatest extent permitted by law, so as to give effect to the original intent of the parties hereto.

9.5 Generation-Skipping Transfer Tax Provisions.

(a) The trustee may divide the property composing any trust created hereunder that has an inclusion ratio, as defined in Internal Revenue Code § 2642(a)(1), of neither one nor zero, into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero.

(b) Notwithstanding any other provision of this Trust Agreement to the contrary, if the inclusion ratio, as defined in Internal Revenue Code § 2642(a)(1), of property directed to be added to a trust created hereunder is different from the inclusion ratio of such trust, then the trustee may decline to make the addition and may, instead,

administer the property as a separate trust with dispositive, administrative and other provisions identical to the trust to which the addition would otherwise have been made.

(c) The trustee shall not incur any personal liability for any action taken in good faith pursuant to the foregoing provisions of this Paragraph 9.5.

9.6 Exoneration Of Trustees From Liability For Environmental Hazards. The trustee shall not incur any personal liability for any loss or depreciation in value sustained as a result of the trustee retaining any property upon which there is later discovered to be hazardous materials or substances requiring remedial action pursuant to any federal, state and, or, local environmental law or regulation thereunder; unless, however, the trustee contributed to the loss or depreciation in value through willful default, willful misconduct or gross negligence.

9.7 Acceptance And Acknowledgment. The trustee accepts the trusts created hereunder and acknowledges receipt of the property described and listed in Exhibit A.

9.8 Execution In Counterparts. This Trust Agreement may be executed simultaneously in any number of counterparts, each of which shall be considered an original, but all of which counterparts together shall constitute but one and the same instrument.

9.9 Manifestation Of Trustees' Actions. When a trustee takes action authorized hereunder and that action does not involve the participation of another person with respect to that action, the trustee may (but shall not be required to) execute, within a reasonable period of time of taking that action, an acknowledged, written instrument describing the action taken, which instrument shall be maintained with the trust's records and either filed in the court having jurisdiction over the trust or delivered to one or more of the adult and competent beneficiaries then eligible or entitled to distributions of principal or payments of income of that trust; or, if there is no such beneficiary, then to one or more of the parents, guardians of the person, conservators or committee of the minor or incompetent beneficiaries then eligible or entitled to distributions of principal or payments of income of that trust. Failure to execute or to file or to deliver the instrument shall not make the action taken by a trustee void, voidable or ineffective, and the trustee shall not be subject to any liability or surcharge for failure to document that action.

9.10 Savings Clause. If any of the provisions or directions of this Trust Agreement fail or are held to be ineffectual or invalid for any reason, then it is the grantor's desire that no other portion or provision of this Trust Agreement be invalidated, impaired or affected thereby, but that this Trust Agreement shall be construed as if the invalid provision or direction had not been contained therein.

9.11 Captions. The captions used in this Trust Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Trust Agreement or the intent of any provision herein.

[Signatures Appear On The Following Pages]

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement for all intents and purposes on the day and year first written hereinabove.

Grantor:

John C. Smith

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Personally appeared before me, _____, a Notary Public in and for said State and County, the within named **John C. Smith**, the bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and notarial seal at Nashville, Tennessee, this _____ day of February, 2020.

Notary Public For The State Of Tennessee

My Commission Expires: _____

[Signatures Continued On The Following Page]

Trustee:

Jane H. Smith

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Personally appeared before me, _____, a Notary Public in and for said State and County, the within named **Jane H. Smith**, the bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that she, **as trustee**, executed the within instrument for the purposes therein contained.

WITNESS my hand and notarial seal at Nashville, Tennessee, this _____ day of February, 2020.

Notary Public For The State Of Tennessee

My Commission Expires: _____

EXHIBIT A

IRREVOCABLE TRUST AGREEMENT

*“The John C. Smith 2020 Trust
For The Benefit Of Jane H. Smith”*

Original Property Transfer

\$10 in cash on February ____, 2020.