

**Schedule A**

**UNIVERSAL WILL PROVISIONS**

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## A. DEFINITIONS

The terms listed below shall be defined in the Will and in these Universal Will Provisions as follows:

**1. *Code.*** The “Code” shall mean the Internal Revenue Code of 1986 as amended and in effect at the time of the Testator's death.

**2. *Corporate Fiduciary.*** “Corporate Fiduciary” shall mean a Personal Representative, Executor, or Trustee that is a bank, trust company, professional fiduciary, or other entity authorized to serve as a fiduciary under the laws of the United States, any state within its jurisdiction, or any foreign jurisdiction.

**3. *Death taxes.*** “Death taxes” shall mean all federal, state or foreign estate or inheritance taxes payable by reason of the Testator's death, and any additions to tax, interest or penalties thereon.

**4. *Descendant or descendants.*** “Descendant” or “descendants” shall mean (a) Children or more remote issue; (b) an individual in gestation at their father's death who is later born alive (except that rights to distribution of net income from a trust shall accrue only from date of birth); and (c) living issue of living issue, unless the terms “descendant” or “descendants” are modified by the words “per stirpes.” Legal adoption shall have the same effect as if the adopted individual had been naturally born to the adopting parent or parents, except that no adoption shall be deemed to be valid if the adopted individual was nineteen (19) years of age or more at the time of the adoption. For purposes of this definition, no individual shall be considered a descendant if they are conceived using anonymously donated or stored reproductive cells or genetic material (including sperm, eggs, or embryos) unless such use was authorized in writing by the individual whose genetic material is involved, and such authorization expressly states an intent for resulting offspring to be included as descendants under this instrument.

**5. *Estates and Trusts Laws.*** Estates and Trusts Laws shall mean the applicable laws of the Governing State that govern all matters related to Wills, estates, and trusts, including, but not limited to, their creation, validity, construction, administration, management, settlement and dissolution, as amended and in effect from time to time.

**6. *Estate Share of Such Trust.*** The words “estate share of such trust,” as used in the Will shall mean that portion of the subject trust that shall consist of the following described fractional share:

a. The numerator shall be an amount equal to the greater of *(a)* the largest amount, if any, which, if included in the gross estate of the person who shall have been the primary beneficiary of such trust, as finally determined for federal estate tax purposes, would result in no federal and state estate tax with respect to such beneficiary's estate, after taking into consideration such beneficiary's adjusted taxable gifts and all estate tax credits that are available to their estate, and assuming no deductions are allowed with respect to such estate for the purpose of computing such tax, or *(b)* the excess, if any, of *(i)* the minimum dollar value which under the applicable rate schedule provided by Section 2001(c) of the Code delineates the level at which the marginal rate of the federal estate tax that could be imposed with respect to such beneficiary's estate will equal or exceed the generation-skipping transfer tax "applicable rate" under Section 2641(a) of the Code that would then be applicable with respect to the principal of such trust in the absence of the provisions of this Subparagraph over *(ii)* the aggregate value of such beneficiary's gross estate and their adjusted taxable gifts, as finally determined for federal estate tax purposes without taking into account any interest in such trust that may be included in their gross estate by virtue of the provisions of this Subparagraph.

b. The denominator shall be the value as of the date of such beneficiary's death of the balance of the subject trust. If the numerator shall exceed the denominator, then the "estate share of such trust" shall include the subject trust in its entirety.

**7. *Fiduciary.*** Any Personal Representative, Executor, or Trustee who may be serving at any time. Where powers or discretions are conferred upon the Fiduciaries, such powers or discretions shall be exercised, as to an estate, by the Personal Representatives, and, as to a trust, by the Trustees. Personal Representative shall be construed to include the term Executor, as applicable, and vice versa.

**8. *Governing State.*** The term "Governing State" shall have the meaning assigned to it in the Will. If the Testator does not define "Governing State" in the Will, it shall mean the Testator's state of residence at the time of the Testator's death.

**9. *Health, education, maintenance, and support.*** The terms "health, education, maintenance, or support" are used in the Will to establish an "ascertainable standard," as described in Sec. 2041(b)(1)(A) of the Code and its associated Regulations. To the extent not inconsistent with the foregoing, each of these terms has the most expansive possible meaning available under the applicable Estates and Trusts Laws.

**10. *Heirs.*** "Heirs" shall mean those individuals, and in such proportions, as would be entitled to a decedent's estate had the decedent died intestate, unmarried, and a resident of the Governing State on the day the determination of the identity of the heirs becomes relevant.

**11. *Include, Including.*** “Include or including” shall be interpreted, as the case may be, by way of illustration and not by way of limitation.

**12. *Independent Fiduciary.*** The term “Independent Fiduciary” shall refer to any then-serving Fiduciary other than one who (i) has a beneficial interest, whether present or future, in the Testator’s estate or any trust created under the Will, (ii) is the spouse of a person who has such a beneficial interest, (iii) is legally obligated to support any person who has such a beneficial interest, or (iv) is controlled or supported by, or related or subordinate to (within the meaning of Section 672(c) of the Code) a person who has such a beneficial interest. If the then-serving Independent Fiduciary is unwilling or unable to act or continue as Fiduciary hereunder, any and all then-serving Fiduciaries shall have the right to appoint a successor Independent Fiduciary.

**13. *Independent Trustee.*** The term “Independent Trustee” shall mean any Independent Fiduciary who is serving as Trustee of any trust created pursuant to these Universal Will Provisions or under the Will.

**14. *Persons.*** “Persons” shall mean individuals, general or limited partnerships, limited liability companies, joint ventures or stock companies, unincorporated and incorporated associations, corporations, companies, trusts, estates, and any other entity recognized by law.

**15. *Per stirpes.*** Except as may be otherwise provided in the Will, whenever it is directed that any property of the Trust shall be distributed to or divided among a person’s descendants living at a particular time, *per stirpes*, this shall mean that such property shall be divided into as many equal shares as shall be necessary to provide one equal share for each then-living child of such person and one equal share for the then-living descendants of each then deceased child of such person; and one such equal share shall be set aside for each then-living child of such person, and one such equal share shall be divided in like manner among the then-living descendants, *per stirpes*, of each then deceased child of such person. This method of distribution is based on the principle of representation, whereby descendants of a deceased beneficiary take the share their ancestor would have received had they survived.

**16. *Qualified Charity.*** “Qualified Charity” shall mean an organization which, at the time any payment is due or may be paid thereto, is described in §§170(c), 2055(a) and 2522(a) of the Code; provided, however, that a foreign charity that (*a*) is a beneficiary of a legacy under a will or a trust created under a will (including by exercise of a power of appointment created under a Will), and (*b*) is described in §§2055(a) and 2522(a) of the Code shall be a Qualified Charity.

**17. *Residuary estate.*** All property that the Testator has the power to dispose of by Will, except as otherwise effectively disposed of under sections of the Will other than the section disposing of the "residuary estate." Unless a contrary intent is expressly stated either in the Will or in the document creating the power, the Testator's disposition of the "residuary estate" shall constitute an exercise of all powers of testamentary appointment or disposition that the Testator has at the time of execution of the Will or may thereafter acquire, even if the power is not expressly referred to in the Will; provided, however, that no power of appointment that is a "general power of appointment" as defined in §2041(b) of the Code shall be deemed exercised if such power was created on or before October 21, 1942.

**18. *Retirement Benefits.*** Retirement Benefits shall mean any benefit arising from an employer-employee relationship or deemed as such, including but not limited to qualified and non-qualified plans, pension plans, IRAs, tax-sheltered annuities, deferred compensation, and any other benefits subject to Code Section 401, *et seq.*

**19. *Spouse.*** The term "spouse" of any person, or any similar term, and any pronouns referring to that term, shall refer only to a person then legally married to and not legally separated from such person pursuant to the terms of either a separation agreement or court decree; and, at the death of any person or at any particular time thereafter shall refer only to the last person to whom such deceased person shall have been legally married to and not legally separated from pursuant to the terms of either a separation agreement or court decree. In the event that divorce or legal separation proceedings between a person and their spouse are commenced, then (a) any and all benefits provided hereunder for such person's spouse shall immediately cease, and for all purposes of the Will (including the right to receive information about the trust), such person's spouse shall be deemed to have died upon the date of the commencement of such divorce or legal separation proceedings; and (b) such person's said spouse shall immediately cease to act as a Trustee or in any other fiduciary capacity with respect to the trust. With respect to any trust governed by the Will the Independent Trustee of such trust shall have the sole and absolute authority to determine whether at any particular time any person shall meet the definition of "spouse," and any such determination by such Independent Trustee shall be final and legally binding upon all interested persons.

**20. *Testator.*** As used in these powers, the term "Testator" shall refer to the individual who has incorporated these Universal Will Provisions in their Will by reference.

**21. *Will.*** As used in these Universal Will Provisions, the term "Will" shall refer to the duly executed Last Will and Testament of the Testator, as modified by any Codicil or Codicils thereto.

**22. *Willingness and Availability to Act.*** For the purposes of construing these Universal Will Provisions and the Will, a person shall be deemed not to be able and willing, or unable or unwilling, as the case may be, to act in connection with any particular trust, upon **(a)** such person's death, written resignation or renunciation of any power conferred herein, **(b)** a court order holding such person to be legally incompetent to act on their behalf or appointing a Guardian to act for such person; **(c)** duly executed, witnessed and acknowledged written certificates of incapacity of at least two licensed physicians, one of whom shall be such person's then attending physician (unless such person has no such physician) and each of whom represents that they are certified by a recognized medical board, has examined such person and has concluded that, by reason of accident, physical or mental illness, progressive or intermittent physical or mental deterioration, or other similar cause, such person had, at the date thereof, become incapacitated to act rationally and prudently in their own financial best interests; or **(d)** other evidence that a Trustee of such trust deems to be credible and still currently applicable that such person has disappeared, is unaccountably absent, or is being detained under duress where such person is unable effectively and prudently to look after their own financial best interests.

## **B. POWERS OF FIDUCIARIES**

Subject to any limitations stated elsewhere in the Will or the Universal Will Provisions, the Fiduciaries are vested, without necessity of application to any court, with all powers now or hereafter conferred by applicable law, and with such other powers as are appropriate to carry out the intent of the Testator, including, but not limited to, the powers enumerated below. These powers shall be exercised in a fiduciary capacity and construed broadly to effectuate the intent of the Testator.

**1. *Investments generally.*** The Fiduciaries may buy, hold, encumber (including by margin loan), pledge, sell, transfer, or exercise options and conversion rights regarding any and all stocks, bonds, debentures, stock rights, warrants, options, mutual funds, investment company or investment trust interests, partnership interests (both general and limited), limited liability company interests, joint venture interests, and any other securities or types of investment property of every kind and nature; may execute stock powers; may vote and otherwise act with respect to any and all stocks and other securities or investments (whether or not closely held and including stock or other securities of a corporation created by the Fiduciaries or of a Corporate Fiduciary or of any holding company that owns all or any part of the stock of such Corporate Fiduciary, and any securities that may be received in exchange for, or as a dividend on, or in a reorganization of the Corporate Fiduciary) or common trust funds or any other kind of property, domestic or foreign, wasting or non-wasting, productive or non-productive, regardless of the fact that any or all of the investments made or retained are of a character or size that would not be permissible under any statute or rule of court or otherwise deemed advisable for investments by Fiduciaries.

**2. *Retention of assets.*** The Fiduciaries may retain, for any period, without liability for loss, all assets initially received by the Fiduciaries as a part of a trust, regardless of whether an asset constitutes a large part or all of any trust or is not of the character, size, or income yield permissible or otherwise deemed advisable for investments by Fiduciaries.

**3. *Registration of assets.*** The Fiduciaries may register any stock, fund, or other asset of the trust in bearer form or in the name of any broker/dealer, recognized depository, or nominee whom the Trustee may select, without liability for any loss.

**4. *Real or leasehold property.*** The Fiduciaries may buy, hold, insure, manage, improve, develop, partition, subdivide, lease, eject tenants or other persons from, mortgage, encumber, grant easements to, exchange, sell (at public or private sale), assign, or convey any interest in real or leasehold property; may execute the necessary instruments and covenants to effectuate the foregoing powers; may create covenants and other restrictions that either run or do not run with the land; may dedicate property for streets, alleys, or other public uses, with or without compensation; may adjust boundaries; may abandon property, permit property to be lost by tax sale, ground rent termination or other proceeding, or convey property for a nominal consideration or no consideration if it is deemed to be worthless or of insufficient value to warrant further efforts to keep and protect; may pay or abstain from payment of taxes, encumbrances, water rents, assessments, repairs, maintenance, and upkeep; may set up appropriate reserves for the upkeep of property, including reserves for depreciation or obsolescence; may lease property for a term longer than the term of the trust, and may perfect the title to property.

**5. *Environmental hazards.***

**a.** For the purpose of this Subparagraph entitled ‘Environmental Hazards:’

**i.** The term "Environmental Requirements" means any federal, state, or local law, ordinance, rule, regulation, code, permit, license, approval, order, or decree, or any administrative or judicial interpretation thereof, as amended from time to time, concerning the protection of human health, the environment, or natural resources.

**ii.** The term "Hazardous Material" means any substance, material, or waste that is regulated, listed, or identified under Environmental Requirements or any other substance, material, or waste that is or may be hazardous, dangerous, or toxic to living things or the environment.

**b.** With respect to any real or leasehold property in which the estate or any trust under the Will has an interest, the Fiduciaries may engage such experts as they may deem appropriate to determine *(i)* that such property is not contaminated or threatened by contamination by Hazardous Material and is not being used and has never been used for any activities directly or indirectly involved in the generation, use, treatment, storage, disposal, release, or discharge of any Hazardous Material or *(ii)* that taking title to any such property or interest will not cause any Trustee to be considered an "owner" or "operator" of property subject to the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") or equivalent state law, as amended from time to time, or will not otherwise cause any Trustee to incur liability, obligations, or responsibilities under CERCLA or any other Environmental Requirements; provided, however, that nothing in this Subparagraph shall be deemed to require the Fiduciaries to engage such experts.

**c.** The Fiduciaries may periodically inspect, review, and monitor, or require the inspection, review, and monitoring of any and all property held in the estate, any trust under the Will, or of any property or interest that has the potential of becoming a part of any trust under the Will, for the purpose of determining compliance with any Environmental Requirement affecting such property. All expenses of such inspections, review, and monitoring shall be charged equitably to income or principal of the trust.

**d.** The Fiduciaries shall not be personally liable to any beneficiary or any other party for any exercise of the powers contained in this Subparagraph or for any decrease in the value of assets in the trust by reason of compliance with any Environmental Requirements, specifically including any reporting requirements under such laws.

**e.** The Fiduciaries may require evidence of compliance with Environmental Requirements as a condition of accepting the fiduciary appointment.

**f.** The Fiduciaries shall be reimbursed from the estate or trust, as the case may be, for reasonable out-of-pocket expenses incurred in making any determination under this Subparagraph, whether or not the Trustee accepts appointment.

**6. *Business interests.*** Subject to the applicable laws of the Governing State, the Fiduciaries may carry on, engage in, incorporate, reorganize, and in every other way participate fully in any partnership, corporation, or other business entity (including a limited liability company or a limited liability limited partnership) in which the trust has an interest, or may merge, consolidate, or dissolve such interest; may cause or join with others in causing any business entity to be converted into any other business entity; may continue as or become a

partner, stockholder, or member of any partnership, corporation, or other business entity; may modify any partnership or other business entity agreement; may terminate any partnership or other business entity; may elect, employ, and compensate, as directors, officers, managers, employees, counsel, or agents, any person, including any one or more of the individual Fiduciaries, any agent of a Trustee, or the members of any partnership, corporation, or other business entity with which any Trustee may be affiliated.

**7. *Minerals.*** The Fiduciaries may retain, acquire, develop, operate, and otherwise manage mineral lands (i.e., lands actually or potentially bearing oil, gas, or other minerals), mineral rights, royalties, shares in joint ventures, oil or gas payments, intangible or tangible property used or intended for use in connection with exploratory or productive activity; may negotiate and enter into oil, gas, and other mineral leases, "farm-outs," sub-leases, and assignments; may conduct exploratory and developmental operations; and may pool, consolidate, or unitize trust properties for exploration, development, management, or administration.

**8. *Borrowing and Lending.*** The Fiduciaries may lend or borrow money; create mortgages or deeds of trust; and make pledge, guaranty, or collateral debt agreements to a lender as security for obligations of a borrower, if the Fiduciaries deem such action to be necessary, desirable, or advisable.

**9. *Dealings with Testator's estate and beneficiaries.*** The Fiduciaries may make secured or unsecured loans to or sell or purchase any asset (for fair and adequate consideration) from: **(a)** the Testator's estate, **(b)** any beneficiary of the Testator's estate, **(c)** any testamentary or inter vivos trust created by the Testator, the Testator's spouse, or any other member of the Testator's family, or **(d)** any beneficiary of any testamentary or inter vivos trust created by the Testator, the Testator's spouse, or any other member of the Testator's family.

**10. *Employment of agents.*** The Fiduciaries may employ such agents, including advisors, brokers, banks, custodians, investment counsel, accountants, appraisers, attorneys, engineers, geologists, geophysicists, and other assistants, and subsidiaries thereof, as the Fiduciaries may determine, and may delegate to them, or to any one or more of the Fiduciaries hereunder, such of the duties, rights, and powers of the Fiduciaries, and for such periods, as the Fiduciaries may determine, including the right to vote shares of stock belonging to the trust or any trusts created under the Will, the right of access to safe deposit boxes, and the right to withdraw funds. The Fiduciaries are authorized to charge the expense of employing such agents to the income or principal of the trust as the Fiduciaries shall deem appropriate.

**11. *Indemnification agreements.*** The Fiduciaries may enter into and execute any and all guaranty and indemnification agreements or other agreements with any persons, including underwriters, investment bankers, or the Securities and Exchange Commission or other

governmental agencies, necessary, desirable, or advisable in order to accomplish any purpose of the trust, including facilitating or consummating any sale of stock or other securities or any other property. The Fiduciaries shall have the power to purchase insurance contracts or bonds in connection with the execution and delivery of guaranty and indemnification agreements.

**12. *Power to create family trust.*** So long as such action not be considered a material alteration of the nature and extent of beneficial interests within the trust, the Fiduciaries may at any time or from time to time create a common trust fund or family trust with all or any portion of the assets of the trust, and may create such common trust fund or family trust with assets of one or more trusts under the Will, or with assets from other trusts or estates not subject to the Will. In the event of any such combination of assets, the Fiduciaries shall create separate records of the assets held in the common trust fund or family trust for each of the trusts or estates subject to the Will and for each of the trusts or estates not subject to the Will. The Fiduciaries may account for income and principal from each source separately, or the Fiduciaries may commingle income and principal from each source in such manner as the Fiduciaries deem appropriate.

**13. *Accountability for common trust funds and family trusts.*** The Fiduciaries shall maintain records showing the portion of the common trust fund or family trust attributable to the trust or trusts created under the Will. The Fiduciaries may allocate any income, gain, or loss from the common trust fund or family trust to any trust or trusts created under the Will in any manner deemed equitable by the Fiduciaries, and the allocation so made shall be final and binding on all interested persons.

**14. *Power to Confer a General Power of Appointment.*** An Independent Trustee may at any time, prior to the death of a beneficiary, by an instrument in writing *(a)* confer upon such beneficiary a power to appoint all or part of a trust to the creditors of the beneficiary's estate (other than any taxing authority), and the instrument conferring such power upon the beneficiary may require the consent of an Independent Trustee to exercise the power, *(b)* revoke any such instrument previously executed, with or without executing a replacement instrument or *(c)* irrevocably relinquish the powers conferred under *(a)* or *(b)*. Without limiting the Trustee's discretion, the Independent Trustee may use the authority conferred by this Subparagraph to subject the trust property to estate tax instead of the generation-skipping transfer tax when it appears that it may reduce overall taxes to do so. If a power is conferred upon a beneficiary by such Trustee in accordance with this Subparagraph, such power shall not be exercisable in any manner so as to postpone the vesting of any estate or interest in the appointed property or to suspend the absolute ownership or power of alienation of the appointed property for a period ascertainable without regard to the date of the Testator's death or, if earlier, the date the trust becomes irrevocable, and the validity of any exercise shall be measured with respect to that date.

**15. *Margin Investments and Financial Products.*** The Fiduciaries may purchase and sell by way of short sales, puts, calls, straddles, and sales against the box, on margin or otherwise; may maintain and operate margin accounts or otherwise secure loans or advances made in conjunction with such transactions; and may purchase, sell, or otherwise enter into futures, options, derivatives, forwards, swaps, caps, floors, collars, and any other financial, equity, or commodity-related products, however classified and wherever traded.

**16. *Artwork and Collectibles.*** The Fiduciaries may retain, acquire, or invest in non-income-producing or non-earning property, including paintings, prints, pictures, and other works of art; gold, silver, and other precious metals; antiques, foreign currencies, coins, jewels, postage stamps, rare books, and any other type of collectible; may pay any storage charges, insurance premiums, and costs of maintenance and preservation in connection therewith; and may lend such works of art or other objects or collectibles to any beneficiary or charitable organization, or exhibit them on such terms as the Fiduciaries deem appropriate.

**17. *Underwriting Agreements.*** The Fiduciaries may sell securities or other assets at public or private sale, including by underwriting agreements, registration, or other means, and may indemnify, by insurance or otherwise, the underwriters, issuers, purchasers, or any persons controlling such transactions against any claim arising under the Securities Act of 1933, as amended, or any similar laws or regulations.

**18. *Farm and Ranch Operations.*** The Fiduciaries may operate farms, including dairy, breeding, feeding, and poultry operations, and ranches or other agricultural properties, including related improvements, equipment, and supplies; may market the production from such properties; may participate in government programs; and may take such actions alone or jointly with others, including cooperatives, tenants, managers, consultants, and agents, as the Fiduciaries deem necessary, desirable, or advisable.

**19. *Title and Nominee Holdings.*** The Fiduciaries may retain and maintain property of the Testator's estate or any part or all of any trust established by the Will in any jurisdiction, whether domestic or foreign, in a land trust or other title-holding trust, in the name of any person or organization as the Trustee's nominee, or in any other manner without disclosing the trust or agency relationship.

**20. *Delegation.*** The Fiduciaries may employ agents, including investment managers, advisors, and property managers, and may delegate to them, without liability, any powers, discretions, or duties of the Fiduciaries other than those relating to the distribution of assets the Testator's estate or any part or all of any trust established by the Will. The Fiduciaries may designate any such individual as a 'Manager' for the purpose of material participation or

management of such estate or trust assets when required for federal tax benefits or other purposes.

**21. *Division, Segregation, and Severance.*** The Fiduciaries may sever or allocate any existing trust on a fractional basis into two or more separate trusts, or by allocation to a separate account or trust a specific amount from a portion of, or specific assets included in, the trust property of any trust, to reflect a partial disclaimer or for any tax or other reason. The Fiduciaries may administer any separate trust or account created by such segregation or severance on terms and conditions substantially equivalent to the original trust, and all such trusts shall be treated as separate for all purposes from the effective date of the severance or segregation.

**22. *Special Investments.*** Except as otherwise provided, the Fiduciaries are expressly authorized to invest or retain indefinitely any part or all of the Testator's estate or any part or all of any trust established by the Will in special investments, regardless of any resulting risk or lack of diversification, and even though special investments may not be marketable, may be speculative, may fluctuate in value, may involve a high degree of business risk, may not be income-producing and may constitute a substantial part or all of the the Testator's estate or any part or all of any trust established by the Will. "Special investments" means (a) interests in real estate, (b) interests in or indebtedness of a closely held business in which the Testator was involved during the Testator's lifetime, or any other entity or entities succeeding to the business of such businesses by consolidation, merger, purchase of assets or otherwise, and (c) digital assets, digital accounts, and digital currencies (including, but not limited to, cryptocurrencies such as Bitcoin [BTC] or Ethereum [ETH]) owned by the Testator or the trust during the Testator's lifetime.

**23. *Insurance, Storage, and Carrying Costs.*** The Fiduciaries may use assets of the Testator's estate or any trust established by the Will to pay for any insurance premiums, storage fees, maintenance, preservation, management, or other carrying costs associated with any of the Testator's estate or any trust established by the Will, whether real or personal, tangible or intangible. This includes, but is not limited to, costs associated with insuring, storing, and maintaining artworks, collectibles, precious metals, real estate, securities, or any other assets held by the trust. The Fiduciaries may also establish reserves from the Testator's estate or any part or all of any trust established by the Will to cover anticipated future costs related to the maintenance, insurance, or storage of trust property as they deem necessary, desirable, or advisable.

**24. *Additional powers.*** In addition to the powers enumerated herein, the Fiduciaries shall have all powers conferred on Fiduciaries by common law, statute, or rule of court. The Fiduciaries may exercise all powers without the need to apply for or obtain any order, ratification, or approval of any court.

## C. GENERAL ADMINISTRATIVE PROVISIONS

1. ***Bond.*** Unless otherwise provided in the Will, no Fiduciary, Guardian or Custodian shall be required to give surety or bond.

2. ***Partial distributions.*** The Fiduciaries may make partial or unequal distributions to any one or more beneficiaries during the administration of the Testator's estate.

3. ***Quarter-annual payments of income.*** Unless otherwise provided in the Will, the Trustees shall make any payments of net income required to be made under any trust created under the Will at least as often as quarter-annually.

4. ***Discretionary distributions.*** Unless otherwise provided in the Will, in exercising their discretion to distribute all or any part of the income or principal of any trust to any beneficiary thereof, the Trustees are fully relieved of any duty to maintain impartiality between the respective interests of current beneficiaries of such trust, on the one hand, and successive beneficiaries on the other. In exercising such discretion, the Trustees may, but shall not be required to, take into consideration the other financial resources of any such beneficiary or the duty of any other individual to support such beneficiary.

5. ***Distribution to beneficiaries without intervening trust.*** If assets are distributable to a trust that terminates, in whole or in part, upon the happening of an event and such event has occurred before, the distribution to the trust, the Fiduciaries may distribute probate assets directly to any trust beneficiary entitled thereto (including any income to which such beneficiary would have been entitled, absent this Subparagraph), rather than to the trust.

### 6. ***Facility of payment and spendthrift provisions.***

a. If any distribution is to be made to a beneficiary who is under the age of twenty-five (25) years or, in the opinion of the Fiduciaries, is incapable, by reason of mental or physical disability, of managing their personal or business affairs, whether or not such person has been adjudicated incompetent, the Fiduciaries may make such distribution as follows:

i. Directly to the beneficiary;

ii. By deposit in an account in the beneficiary's name in a bank, trust company, or other financial or investment institution;

**iii.** To any relative, friend, or other person or institution who, in the opinion of the Fiduciaries, may be standing *in loco parentis* or supplying services to, or caring for, such beneficiary, or with whom such beneficiary may be living, to be applied by such relative, friend, or other person or institution for the use and benefit of such beneficiary;

**iv.** By direct application by the Fiduciaries for the use and benefit of the beneficiary;

**v.** If the beneficiary is a minor for purposes of any applicable Uniform Gifts to Minors Act or Uniform Transfers to Minors Act, by distribution to such person or institution as the Fiduciaries may designate as Custodian for such beneficiary under such Act, with all the duties and powers in such Custodian as are set forth therein; and, if permitted by such Act, such custodianship shall continue until such beneficiary attains the age of twenty-one (21) years. If otherwise eligible to serve, the Fiduciaries shall be included among the persons and institutions eligible to be designated as Custodian hereunder;

**vi.** To the Trustees, who shall retain and hold the distributable property in a separate trust and pay to such beneficiary such amounts of the net income and principal thereof as the Trustees deem advisable for such beneficiary's health, education, maintenance or support until the later of **(a)** the beneficiary attaining the age of thirty (30) or **(b)** such time as the Trustees determine that the beneficiary is capable of managing their personal or business affairs, at which time (the "Distribution Date") the Trustees shall pay over and distribute the entire remaining principal thereof to or for the benefit of such beneficiary; provided, however, if such beneficiary dies prior to the Distribution Date, the Trustees shall thereupon pay over and distribute the entire remaining principal thereof to the Personal Representative of such deceased beneficiary's estate. The receipt and release of the person or institution to whom any distribution is made hereunder shall be sufficient and complete discharge of the Trustees with respect to such distribution. If there are no Trustees named in the Will, the then-serving Fiduciaries shall serve in that capacity.

**b.** If, upon the termination of any trust under the Will or of any separate share thereof, any person (other than **(i)** the Testator's spouse, or **(ii)** any person whose right to principal distributions arises out of the exercise of a power of appointment) is then the income beneficiary (whether mandatory or discretionary), or such person and their descendants are then the income beneficiaries (whether mandatory or discretionary) of any other trust under the Will, such distribution shall not be paid over absolutely to

such person, but shall instead be added to and held pursuant to the terms of such other trust.

c. Subject to the express provisions of Subsection a of the Subparagraph entitled 'Facility of payment and spendthrift provisions' above, permitting the Trustees to make payments to persons other than beneficiaries, the Trustees shall make all payments of income and principal directly into the hands of the designated beneficiaries and into the hands of no others, whether claiming by their authority or otherwise, in such manner that the same shall not be subject to anticipation or assignment or liable to be subjected by attachment or otherwise to the debts of any such beneficiaries; provided, however, that the foregoing provisions of this Subsection shall not preclude the Trustees, with the consent of any beneficiary, from making any such payment to such beneficiary by depositing the same in an account in the beneficiary's name in a bank, trust company or other financial or investment institution, with or without interest.

d. The Fiduciaries are expressly prohibited from paying or reimbursing any amounts that would otherwise be expenses paid by any public or private assistance program or programs for any purpose for any beneficiary of any trust hereunder; and any decision as to whether any distribution or payment shall be made or shall not be made from any such trust shall be made in the sole and absolute discretion of the Fiduciaries and such decision shall be final and legally binding on all interested persons.

e. The receipt of any person to whom a distribution is made pursuant to this provision shall be a sufficient and complete discharge of the Fiduciaries with respect to such distribution.

**7. Allocation of obligation of beneficiary.** The Fiduciaries may allocate any indebtedness, including any note or mortgage obligation, due from a beneficiary under the Will, first to such beneficiary's share, or to the share made for their descendants, if such beneficiary is not then-living.

**8. Allocation of insurance proceeds.** The Fiduciaries shall pay to the Testator's spouse or to an appropriate marital trust such portion of any life insurance proceeds payable to the Trustees as the Personal Representatives certify to be the amount necessary to satisfy any marital bequest under the Will; provided, however, that no such insurance proceeds shall be paid over if they are not includible in the Testator's gross estate for federal estate tax purposes. The Trustees shall have no duty or obligation to inquire into the correctness of any amount so certified by the Personal Representatives, and the payment of such amount shall be a full and complete discharge to the Trustees with respect to such payment.

**9. *Principal and Income Act.*** Notwithstanding anything to the contrary that may be contained in the Governing State Uniform Principal and Income Act (the "UPIA"), as amended and applicable at the relevant time:

**a.** Subject to the provisions of the Paragraph herein entitled 'Marital Deduction,' upon the termination of an income interest, the Fiduciaries shall not apportion income among the persons having an interest therein, but instead shall pay all accrued and undistributed income to the beneficiary, or ratably to the beneficiaries, next entitled to receive the income or principal of the trust.

**b.** The Fiduciaries shall not be required to establish reserves for depreciation.

**c.** The Fiduciaries are authorized to determine what portion of any partnership distribution represents income and what portion represents the return of principal.

**d.** The Fiduciaries are authorized to determine whether any interest paid on all federal, state or foreign estate or inheritance taxes payable by reason of the Testator's death is a charge against principal or income.

**e.** Notwithstanding the treatment of distributions from any qualified retirement plan or Individual Retirement Account (IRA) for federal income tax purposes, the Trustees of any trust (other than a trust intended to qualify for the marital deduction) named as beneficiary of such plan or IRA may allocate to income the portion of any distribution from such plan or IRA that represents the lesser of *(i)* the minimum distribution required under the Code, and *(ii)* fiduciary accounting income from assets held in the plan or IRA, and may allocate the balance of the distribution to principal.

**10. *Separate shares.***

**a.** The Fiduciaries may divide, distribute, or partition the Testator's estate or any trust created under the Will into two or more separate shares, in cash, in kind, or partly in cash and partly in kind, or in undivided shares in property different in kind from any other share.

**b.** If, at any time after any such division, a share thus created shall have no beneficiaries, the Fiduciaries shall divide such share among the then-living descendants, *per stirpes*, of the nearest living ancestor of the descendant for whom such share was created who has then-living descendants.

c. With respect to divisions, the Fiduciaries may hold the assets comprising such shares as (i) a common fund in which the separate shares have undivided interests, making the necessary accounting adjustments to reflect the division, or (ii) separate trusts, governed by the law of any one or more jurisdictions in the world, for the benefit of any one or more of the beneficiaries.

d. When a trust is divided into separate trusts under this provision, each trust shall have the same provisions as the original trust from which it is established, and references in the Will to the original trust shall collectively refer to the separate trusts derived from it.

**11. *Combination of trusts.*** The Fiduciaries may deliver all of the assets of any trust created under the Will to the trustees of any other trust created under the Will or under any other will or trust instrument so as to consolidate the trusts if, in the discretion of the Fiduciaries, the terms and provisions of the two trusts are the same or substantially similar, exclusive of provisions for the disposition of the trust estate in the event of the death of all primary beneficiaries; provided that each portion of the merged, combined or consolidated trust shall terminate and vest in possession no later than the date required for the separate trust from which it came. In the event of such a consolidation, and for the sole purpose of preserving the rights of any persons who might be adversely affected by the consolidation, the trustees of the consolidated trust may adopt such records, methods of valuation, and other procedures as will permit a fair and equitable division of the consolidated trust in the event a division ever becomes necessary upon the death of all primary beneficiaries. Without in any way limiting the discretion of the Trustees granted by this Subparagraph, the Testator envisions that the Trustee will not elect to merge, combine, or consolidate two or more trusts with different inclusion ratios for generation-skipping transfer tax purposes.

**12. *Termination of trusts.*** If the Fiduciaries decide that terminating a trust is advisable because of its small size, the circumstances of the beneficiaries, the anticipated distribution of the trust due to a rule against perpetuities, changes in tax law, or other changed circumstances not anticipated by the Testator which have caused it to be no longer practicable to continue such trust, the Independent Fiduciary may, in their sole and absolute discretion, distribute the trust to such one or more of the current beneficiaries in such proportions as the Independent Fiduciary decides is advisable for their respective best interests and welfare. The Independent Fiduciary shall not be liable to any person for any action taken or omitted in good faith under this Subparagraph.

**13. *Trust Amendment by Independent Trustee.*** Federal transfer tax or income tax laws may change or be interpreted differently, a trust hereunder may be considered not to qualify for an intended tax benefit, or the personal or financial circumstances of one or more beneficiaries may change. Accordingly, the Independent Trustee, if any, may from time to time amend only

those provisions of the Will which the Independent Trustee reasonably determines to require amendment to carry out the Testator's intent (also as reasonably determined by the Independent Trustee) in a practical, tax-efficient manner under the federal tax laws then in existence. The Independent Trustee may amend *(a)* any power of appointment by will to include the power holder's estate as a possible appointee or *(b)* any power of appointment by will that includes as a possible appointee the power holder's estate or the creditors of the power holder's estate to exclude as potential appointees only the power holder, their estate and the creditors of either. No such amendment shall *(a)* materially affect the substance of dispositive provisions of the Will or *(b)* alter the terms of the Will so as to change the "inclusion ratio" of a trust, as that term is defined by Section 2642 of the Code. Each amendment shall be by signed instrument filed with the trust records, with a copy delivered to each current beneficiary and to any co-Trustee. The Independent Trustee shall not be liable to any person for any action taken or omitted in good faith under this Subparagraph.

**14. *Additions to estate or trusts.*** The Fiduciaries may receive additions to the Testator's estate or any trusts created under the Will from any person by gift or will or from any other source.

**15. *Claims.*** The Fiduciaries may pay, demand, sue for, collect, foreclose upon, compromise, adjust, abandon, submit to arbitration, renew, settle, defend, sell, release and otherwise deal with any claims or demands of the Testator's estate or of any trust created under the Will against others, or of others against the estate or trust, in such manner as the Fiduciaries may determine.

**16. *Tax and other options.*** The Fiduciaries may exercise, or consent to the exercise of, any tax and other options or elections allowed by any law now in effect or hereafter enacted, including any option to elect or choose *(a)* the time of payment of death taxes, including generation-skipping taxes and taxes on life interests or remainder interests, *(b)* payment of such taxes in installments, *(c)* S Corporation treatment, *(d)* installment sale treatment, *(e)* fiscal years, *(f)* valuation of the Testator's gross estate as of the alternate valuation date for federal or state estate tax purposes, *(g)* qualified terminable interest property ("QTIP") treatment or *(h)* deduction of expenses for either income tax or estate tax purposes. Notwithstanding any provision of the Governing State UPIA as to the elections referred to in *(f)* or *(h)*, the Fiduciaries, in their discretion, may allocate a receipt or charge a disbursement to income or to principal in such manner as the Fiduciaries deem fair and reasonable to all beneficiaries, even if such allocation or charge produces a result different from a result required or permitted by the Governing State UPIA; provided, however, that no Fiduciary shall have the authority to make such an adjustment if possessing or exercising such power would either:

a. Cause such Fiduciary to be treated as the owner of all or part of any trust or trusts created under the Will for federal income tax purposes, if such Fiduciary would not otherwise be so treated; or

b. Cause all or any part of any trust or trusts created under the Will to be included for federal estate tax purposes in the gross estate of such Fiduciary (or another individual who has the power to remove or appoint a Trustee), if such trust or trusts would not otherwise be included in the gross estate of such Fiduciary (or such other individual).

c. Cause a reduction in the amount of the marital deduction.

**17. Joint returns.** If the Testator is married at the time of their death, the Fiduciaries may join with the Testator's surviving spouse or the personal representatives of the Testator's surviving spouse in filing joint income tax returns for the Testator's surviving spouse and the Testator for any period for which such a return may be permitted. The Fiduciaries may agree with the Testator's surviving spouse or the personal representatives of the Testator's surviving spouse as to how to allocate (a) the burden of the liability for such taxes, or interest and penalties thereon, arising out of the filing of such a joint return, or (b) any refund or credit of (i) any such tax, or interest thereon, based on the filing of such joint return, and (ii) any amount paid on account of any joint declaration of estimated income tax filed by the Testator's surviving spouse and the Testator and of the interest on any such refund. The Fiduciaries may consent, for federal gift tax purposes, to treat gifts made by the Testator's surviving spouse as having been made one-half (1/2) by the Testator and one-half (1/2) by the Testator's surviving spouse.

**18. Tax options.** The Fiduciaries may exercise, or consent to the exercise of, any tax options or elections allowed by any tax law now in effect or hereafter enacted, including the option to elect or choose installment sale treatment or S Corporation treatment.

**19. Retirement plans.** The Fiduciaries are authorized, in their sole discretion, (a) to make any elections that the Testator was entitled to make as a plan participant, including the election under §402(e)(4)(B) of the Code to exclude from gross income the net unrealized appreciation attributable to the part of any distribution that consists of securities of the employer corporation, or (b) to join with the fiduciary of any qualified retirement plan or IRA to amend such plan.

**20. Fiduciaries' accounts.** The Fiduciaries shall not be required to file annual or other accounts with any court. Nevertheless, the Fiduciaries shall, if requested by any adult income beneficiary or adult remainderman, render an annual account and may, at any other time during the course of the administration of the estate or any trust created under the Will, including at the time of the death, resignation or removal of any Fiduciary, render an intermediate account of estate or trust proceedings to the then-current adult income beneficiaries and to those of the adult

remaindermen who would take if the trust terminated at such time. Standard transaction and asset statements rendered annually or more often by the Fiduciaries shall be deemed sufficient to satisfy this requirement. The written approval of such account or statements by all such income beneficiaries and remaindermen shall, pursuant to the provisions of the Paragraph herein entitled 'Virtual Representation,' bind all persons then having or thereafter acquiring or claiming any interest in any trust, and shall be a complete discharge to the Trustees with respect to all matters set forth in the account as fully as though the account had been judicially settled in an action or proceeding in which all persons having, acquiring, or claiming any interest were duly made parties and duly represented.

**21. *Personal liability.*** No Fiduciary shall be personally liable for the action or lack of action of any other Fiduciary or of any agent appointed by the Fiduciaries. No Fiduciary shall be liable for failure to contest the accounts or prior acts of any other Fiduciary or otherwise to compel any other Fiduciary to redress a breach of a trust, unless a beneficiary or a guardian *ad litem* for a beneficiary (i) requests the Fiduciary in writing so to contest or compel redress, and (ii) advances funds (or the beneficiaries and remaindermen of the estate or trust unanimously agree to charge the estate or trust) for costs, expenses and fees (including attorneys' fees) reasonably anticipated to be incurred in such matter.

**22. *Liability for safekeeping of assets.*** The Corporate Fiduciary, if any, shall be responsible for custody of all assets of any trust created under the Will, and the individual Fiduciaries shall be excused from any liability on account thereof.

**23. *Relief from duty of inquiry.*** No purchaser or mortgagee from, or other person dealing with, the Fiduciaries shall be responsible for the application of any purchase money, loan, or other thing of value paid or delivered to the Fiduciaries. The receipt of the Fiduciaries shall be a full discharge, and no purchaser from or other person dealing with the Fiduciaries, and no issuer, registrar, or transfer agent or other agent of any issuer of any securities shall be under any obligation to ascertain or inquire into the power of the Fiduciaries. No party to or having any dealings with any instrument in writing signed by the Fiduciaries shall be obligated to inquire into its validity or to ascertain or inquire into the power of the Fiduciaries.

**24. *Compensation of Trustees.*** Unless otherwise agreed upon, any Corporate Fiduciary for purposes of this Subparagraph shall be entitled to compensation for its services as calculated under its schedule of fees published from time to time. Nothing in this Subparagraph shall be construed to prevent any individual Fiduciary from receiving reasonable compensation for their services.

**25. *Change of situs of estate or trust.*** The Independent Fiduciaries may, at any time and from time to time, change the situs of the Testator's estate or any trust created under the Will for

administrative, tax, construction, or other fiduciary purposes, and such Fiduciaries may also designate the governing law and jurisdiction that shall apply to the trust, in whole or in part, as they deem advisable. To the extent permitted by applicable law, such Fiduciaries may elect to have a single jurisdiction govern all aspects of the trust's validity, interpretation, construction, and administration, in order to avoid the risk of multiple state laws applying to different provisions of the trust. Any such change of situs, governing law, or jurisdiction shall require that the Independent Fiduciaries deem such change to be reasonable and appropriate under the circumstances. Such changes shall be made by written instrument signed by the Independent Fiduciaries and maintained with the trust records.

**26. "S" Corporation Stock.** If any trust created under the Will acquires stock in an "S" corporation, as defined in §1361(a)(1) of the Code, such trust shall in all events be administered so as to qualify such trust as an eligible shareholder under §1361 of the Code, and, by written instrument, the then-serving disinterested Trustees may amend such trust in any manner necessary to ensure qualification of such trust as an eligible Subchapter S shareholder under said Section of the Code (including, requiring that payments be made only to the descendant who is the primary beneficiary of such trust).

**27. Non-Judicial Settlement Agreements.** Notwithstanding anything to the contrary contained in these Universal Will Provisions or the Will, and in accordance with applicable state law, all parties with an interest in the estate or any trust created under the Will, including but not limited to the Fiduciaries, beneficiaries, and any other interested parties, are expressly authorized to enter into and execute a Non-Judicial Settlement Agreement ("NJSA") to resolve any matters related to the interpretation, administration, modification, or distribution of the estate or such trust. Such an agreement may be executed without the need for court approval, provided that it does not violate a material purpose of the Will or trust created therefrom and includes terms and conditions that could otherwise be approved by a court under applicable law. Any NJSA entered into by all necessary parties shall be binding upon the Will or trust as applicable, and all beneficiaries, present and future, to the fullest extent permitted by law. The Fiduciaries are hereby authorized and directed to carry out the terms of any such agreement, and all actions taken by the Fiduciaries in good faith reliance on the NJSA shall be conclusive and binding on all parties. The execution of an NJSA by all necessary parties, as determined under applicable law, shall be deemed as conclusive evidence of the binding nature of the agreement upon the trust, and no further approval or ratification shall be required.

**28. Closely-Held Businesses.** Subject to the applicable laws of the Governing State, one or more trusts established under the Will may be largely invested in one or more closely-held business or real estate enterprises (whether operated in the form of a corporation, a partnership, a limited liability company, a sole proprietorship or in any other form) in which the Testator or members of the Testator's immediate family (or a trust under which such persons may have

beneficial interests) is or was a principal owner (any such stock, membership or partnership interest, or proprietorship being hereinafter referred to as “Business Interests”). Notwithstanding anything to the contrary contained in these Universal Will Provisions or the Will, Fiduciaries shall not be required to dispose of such Business Interests for the sole purpose of diversification of investments. In case there shall be rights to subscribe for additional equity in the underlying entity of which such Business Interests represent an ownership interest, Fiduciaries are authorized to exercise such rights, using any other funds for the purpose of such investment or if necessary, selling rights in order to exercise other rights. The foregoing provisions shall not prevent Fiduciaries from disposing of all or part of the Business Interests in case there shall be some compelling reason other than diversification of investment for doing so.

**a.** With respect to the Business Interests, the Fiduciaries shall, subject to the governing instrument of an issuer of the Business Interest, be authorized as follows:

**i.** To control, direct, and manage the Business Interests. In this regard, the Fiduciaries, in their absolute discretion, shall determine the manner and extent of their active participation in the operation, and the Fiduciaries may delegate all or any part of their power to supervise and operate, to such person or persons as they may select, including any associate, partner, member, officer or employee of the Business Interests.

**ii.** To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate, and discharge agents, attorneys, consultants, accountants, and such other representatives as the Fiduciaries may deem appropriate; including the right to employ any beneficiary (or individual Fiduciaries) in any of the foregoing capacities.

**iii.** To invest other assets in the Business Interests; to pledge other assets of any trust or trusts hereunder as security for loans made to the Business Interests; and to loan funds from any trust established hereunder to the Business Interests.

**iv.** To organize a corporation, limited partnership, limited liability company, or other form of business entity under the laws of this or any other state or country and to transfer thereto all or any part of the Business Interests or other property held in any trust subsisting hereunder, and to receive in exchange therefore such stocks, bonds and other securities as Fiduciaries may deem advisable.

v. To take any action required to convert any corporation into a partnership, limited liability company, sole proprietorship, or any other form the Fiduciaries deem appropriate.

vi. To sell or liquidate all or any part of any Business Interests at such time and price and upon such terms and conditions (including credit) as the Fiduciaries may determine. The Fiduciaries are specifically authorized and empowered to make such sale to any partner, shareholder, member, officer or employee of the Business Interests (or to any individual Fiduciary) or to any beneficiary hereunder.

b. If any Business Interests operated by the Fiduciaries pursuant to the authorization contained in these Universal Will Provisions or the Will shall be unincorporated, then the Testator directs that all liabilities arising therefrom shall be satisfied, first, out of the Business Interests itself and, second out of the other assets of such trust. If the Fiduciaries shall be held personally liable because of any liability incurred by them in the operation of the Business Interests, their right to indemnification shall be satisfied, first, out of the Business Interests and second, out of the other assets of such trust

**29. *Other acts.*** The Fiduciaries may do all other acts and things required or convenient in the administration of the Testator's estate that the Testator could do, if living.

**30. *Right of Occupancy.*** If one or more trusts created under the Will acquires an interest in property that the Testator's spouse and the Testator were occupying as their home at the time of the Testator's death ("the Home"), the Testator directs the Trustees to permit the Testator's spouse to occupy the Home free of rent so long as the Testator's spouse desires. The Testator's spouse shall be responsible for paying the costs of operation, including property taxes, utilities, condominium fees and the like. The Testator's spouse shall not be chargeable with waste or be required to establish a reserve for depreciation. The Trustees shall pay the cost of repairs, improvements, assessments, fire insurance coverage and other expenses incurred in preserving the value of the property and maintaining it in good condition. If the Testator's spouse so requests, the Trustees shall sell any interest in the Home owned by the trust and reinvest the net proceeds in any other home which the Testator's spouse desires to occupy, either as a tenant-in-common with the Testator's spouse or as sole owner, and shall permit the Testator's spouse to occupy any such replacement home on the same terms as are set forth herein.

**31. *Pet Trusts and Care for Companion Animals.*** If the Testator owned or cared for any companion animals at the time of their death, the Fiduciaries may use estate funds to establish a separate pet trust or otherwise provide for the care, support, medical treatment, and housing of such animals. The Fiduciaries may designate a caregiver and allocate funds for their benefit, and

may make distributions to any person or organization providing such care. The Fiduciaries may determine the reasonable cost of care and adjust as needed. Upon the death of the last surviving animal, any remaining funds may be added back to the residuary estate.

#### **D. THE OFFICE OF FIDUCIARY**

##### **1. *Powers appurtenant to office.***

**a.** All powers given to the Fiduciaries shall be construed to be appurtenant to the fiduciary office and shall pass to and be exercisable by the Fiduciaries acting at any time.

**b.** The Fiduciaries' powers and duties shall continue until all of the assets of the fiduciary estate or trust have been distributed.

##### **2. *Appointment of additional or successor Trustees.***

**a.** If any individual is serving as sole individual Trustee and no successor Trustee has been designated (or a successor individual Trustee has been designated but such individual is unable to serve for any reason), the individual may appoint, at any time or times, one or more persons to serve with them or as their successors.

**b.** If any individual serving as Trustee is empowered, under the Will or Subsection a of the Subparagraph entitled 'Appointment of additional or successor Trustees' above, to appoint any one or more successors or to act jointly or successively as Trustees for any one or more trusts, said appointment may be made (i) by an *inter vivos* instrument of writing delivered to the remaining Trustees or, if none, to the then-living adult beneficiaries of the trust, or (ii) by such Trustee's will.

**c.** Any instrument by which a Trustee appoints an additional or successor Trustee shall be revocable at any time before the additional or successor Trustee takes office (i) by an *inter vivos* instrument of writing, delivered as provided above, or (ii) by such Trustee's will.

**d.** If the sole individual Trustee (i) fails for any reason to qualify, or (ii) ceases to serve as Trustee of any trust created under the Will without appointing a successor, and there are no successor Trustees named in the Will, a majority of the current income beneficiaries who are then entitled or would be entitled to income and who are *sui juris* shall have the right to elect one or more successor individual Trustees of such trust; provided, however, that all such votes shall be weighted on a stirpital basis.

e. If any individual Trustee has executed more than one instrument appointing a successor Trustee or Trustees, then the instrument which shall bear the most recent date and shall be unrevoked shall govern.

**3. Resignation of Fiduciaries.** Any Fiduciary may resign at any time from serving as Executor or Personal Representative of the Testator's estate or as Trustee of any one or more trusts under the Will by giving written notice of such resignation to all remaining or successor Fiduciaries of such estate or trust and, if such Fiduciary shall then be serving as the sole Fiduciary, to the beneficiaries to whom the fiduciaries are authorized to distribute income and principal who are then *sui juris*; provided, however, that, if there is no such beneficiary and the Fiduciary is then-serving as sole Fiduciary, the Fiduciary's resignation shall not be effective until a successor Fiduciary has been appointed and has executed and delivered to the resigning Fiduciary a written acceptance of the appointment. When any resignation becomes effective, the resigning Fiduciary shall promptly transfer the Testator's estate or trust property and any records then in their hands to any other Fiduciary who is then-acting, and shall thereafter be discharged from all powers, trusts, duties, or obligations arising under the Will.

**4. Renunciation as Fiduciary.** Any Fiduciary may renounce the right to serve as a Fiduciary under the Will prior to having received any assets or having performed any services in a fiduciary capacity.

**5. Delegation of duties to Co-Fiduciary.** A Fiduciary may delegate to a Co-Fiduciary any of such Fiduciary's powers and authorities.

### **6. Deadlock Resolution.**

a. In the event of a deadlock between two or more Fiduciaries of equal status, where no majority decision can be reached on a matter requiring Trustee action, the matter shall be resolved as follows:

i. First, if a Trust Protector is then serving and available, the Trust Protector shall act as a tie-breaker and make the final decision, which shall be binding upon the Trustees.

ii. Second, if no Trust Protector is serving or available, the Trustees may submit the matter to non-binding mediation, and if unresolved, to a court of competent jurisdiction for determination.

b. The Trustees may, by unanimous written agreement made in advance, establish alternative deadlock resolution procedures for specific types of decisions.

**7. *Directed Trust Structure.*** The Trustees may divide fiduciary responsibilities such that certain Trustees are responsible only for specific functions, and may serve as "Investment Trustee," "Distribution Trustee," or any other functional designation. Any Trustee acting in accordance with written direction from a designated co-Trustee or from an advisor appointed under this Trust Instrument shall have no duty to review, second-guess, or evaluate the substance of such direction, and shall not be liable for actions taken or omitted in reliance on such direction. A Trustee may serve in a directed capacity as to some powers and in a discretionary capacity as to others. Each Trustee shall have fiduciary liability only for the functions they are charged to carry out under this Trust Instrument.

**8. *Record of change of Fiduciary.***

a. The appointment or removal of any Fiduciary shall be effected by written instrument, signed by all persons exercising the right of removal or appointment and delivered to any individual to be appointed and to all other Fiduciaries.

b. A copy of any document pertaining to any change (including, appointment, removal or resignation) of Fiduciary or the delegation of duties to any Fiduciary shall be filed among the permanent records of the estate or trust.

**9. *No court proceeding required.*** No court proceeding shall be required for any appointment, resignation or removal of Fiduciary otherwise authorized in the Will or herein.

**10. *Acceptance of books and records of trust or estate.*** Any Fiduciary who accepts appointment as a Co-Fiduciary or successor Fiduciary or agrees to accept the delegation of duties of another Fiduciary or to resume duties previously delegated to a Co-Fiduciary is authorized to accept, without audit, the books and records of the estate or trust and shall be free of all liability with respect to the administration of the trust during such time as they were not serving.

**11. *Separate trusts.*** If, in the Will, the Testator created more than one trust, the Trustees acting from time to time for the various trusts shall exercise their powers or discretion as Trustees of each such trust separately and shall not be required to act uniformly for all of the trusts.

**12. *Majority vote.*** All actions and decisions of the Fiduciaries shall require and become effective upon the vote or written consent of a majority of the Fiduciaries then qualified to act in such matter; provided, however, that, if (a) a Corporate Fiduciary is then-acting and there is only one individual Fiduciary qualified to act in such matter, and (b) there is a disagreement between the individual Fiduciary and the Corporate Fiduciary, the determination of the individual Fiduciary shall govern and be binding upon the Corporate Fiduciary. No dissenting or

non-assenting Fiduciary shall be responsible for or incur any liability resulting from any action taken or not taken by the majority or by the individual Fiduciary, as the case may be. Joint action of both the Personal Representatives and Trustees is not required unless expressly set forth in the Will.

**13. Trust Protector.** If a Trust Protector is named in the Will, the Trust Protector may, from time to time, remove any Trustee with or without cause, without the need for a replacement Trustee to be appointed unless the office of Trustee would be thereby left vacant. Any Trust Protector for whom no successor is designated (or a successor Trust Protector has been designated but such individual is unable to serve for any reason) may designate one or more successor Trust Protectors to serve consecutively. The Trust Protector is not a fiduciary and shall not be liable to any person for any act or omission as Trust Protector. Notwithstanding anything to the contrary contained herein, in the event that state law requires a Trust Protector to fulfill fiduciary duties, all such duties shall be owed solely to the Testator and to no other persons. Only an individual who could serve as an Independent Trustee shall be eligible to serve as Trust Protector.

## **E. SELF-DEALING**

**1. Fiduciary as beneficiary.** Notwithstanding any provision to the contrary in the Will or in these Universal Will Provisions, no individual Fiduciary may distribute or participate in any vote involving making or withholding any discretionary distribution of income or principal to themselves (except for payments limited by an ascertainable standard pursuant to §2041(b)(1)(A) of the Code) from any trust other than a trust which would in any event be includible in their gross estate. Under no circumstances shall any individual Fiduciary have any right or power **(a)** to make any discretionary payment of income or principal that would relieve them, in, whole or in part, of any legal obligation, or **(b)** to exercise any power hereunder involving any insurance on their life owned by the Testator's estate or any trust created under the Will.

**2. Fiduciary as agent or affiliate of agent.** Subject to the provisions of the Paragraph herein entitled 'Charitable Split Interest,' the Testator specifically authorizes the following acts which shall not be prohibited as acts of self-dealing or a conflict of interest:

**a.** Provision of services to the estate or to any trust under the Will by any Fiduciary, directly or through any of the Fiduciary's partners, direct or indirect subsidiaries, affiliates, employees, agents, officers, or directors (collectively, "Affiliated Entities and Persons"). Without limiting this general authorization, the Fiduciary is specifically authorized to engage the Fiduciary or Affiliated Entities and Persons (i) to manage or advise on the investments of the estate or any trust under the Will; (ii) to invest in mutual funds or other commingled funds offered or managed by any Affiliated

Entities; (iii) to act as broker or dealer to execute transactions and to provide other services with respect to property of the Testator's estate or any part or all of any trust established by the Will, including purchasing, in the Fiduciary's discretion as Fiduciary, any securities currently distributed, underwritten, or issued by Affiliated Entities; or (iv) to provide legal, accounting or other professional services.

**b.** Payment, credit or other compensation from any Affiliated Entities to the Fiduciary for any services the Fiduciary may perform and may exchange services with any Affiliated Entities. As appropriate, the Fiduciary may pay for services rendered by the Fiduciary or by Affiliated Entities and Persons as an expense of administration.

## **F. MARITAL DEDUCTION**

GENERAL NOTE: TO QUALIFY FOR THE ESTATE TAX MARITAL DEDUCTION (AND TO ENSURE A BASIS ADJUSTMENT AT THE DEATH OF THE SURVIVING SPOUSE) THE FIDUCIARIES OF A QTIP TRUST MUST MAKE AN ELECTION ON A VALID AND TIMELY FILED FEDERAL ESTATE TAX RETURN.

**1. *Marital deduction provisions are paramount.*** In no event shall any power conferred or devolving upon the Fiduciaries be so construed as to prevent any marital bequest in the Will, or any portion thereof, from qualifying for the marital deduction provided in the Code, and all powers conferred upon the Fiduciaries shall be subject to the provisions of this 'Marital Deduction' Paragraph hereunder.

**2. *Marital bequest definitions.*** As used in the Will and in these Universal Will Provisions, (a) the term "marital bequest" shall be defined as any bequest that qualified for the marital deduction, and (b) the terms "marital deduction," "gross estate," "adjusted gross estate" and "passes or has passed" shall be defined as provided In those sections of the Code applicable to the determination of the Testator's Federal Estate Tax.

**3. *Assets used to satisfy marital bequest.*** In satisfying any marital bequest, the Fiduciaries shall not distribute assets, or the proceeds of assets, that do not qualify for the marital deduction.

**4. *Powers for Marital Trust.*** The Fiduciaries shall exercise the powers conferred upon them and the powers devolving upon them by operation of law so as to confer upon the Testator's spouse that degree of beneficial enjoyment of any Marital Trust that would be accorded by the principles of the law of trusts to a person who was unqualifiedly designated as the life beneficiary of a trust, and, to that end, the Fiduciaries shall exercise all powers conferred or devolving upon them in connection with said trust so as to resolve all doubts of fact or of law in

favor of the Testator's spouse. For example, to the extent the statutes and Rules of Court of the Governing State are inapplicable or ambiguous, the Fiduciaries shall resolve all doubts or questions arising in connection with the allocation of expenses or receipts between principal and income by ordinary trust accounting rules, and, in all instances where such rules do not resolve the doubts or questions, the Fiduciaries shall resolve them in favor of the Testator's spouse as the principal, absolute, and preferred beneficiary. Notwithstanding anything to the contrary otherwise contained herein, however, the Trustees of a Marital Trust shall not create depreciation or amortization reserves out of income.

**5. Discretionary distributions from Federal and State Exemption Marital Trusts.** In the absence of overriding considerations, the Trustees shall exercise the discretion granted to them to distribute principal from the Federal and State Exemption Marital Trusts, if such trusts are created under the Will, in such a way as to minimize the future estate tax liability of the Testator's spouse's estate wherever possible and appropriate. For example, if the Trustees exercise their discretion to pay principal to the Testator's spouse, the Trustees shall generally make any such payments first from property that is held in the Federal Marital Trust.

**6. Unproductive property.** If, at any time or times, the Marital Trust holds any unproductive property or interest, the Trustees shall, upon the spouse's written request within a reasonable time, cause such unproductive property to be made productive or convert it into productive or income-producing property or distribute such assets to the spouse as will provide the degree of beneficial enjoyment required by §2056 of the Code.

**7. Partial QTIP elections.** The Personal Representatives are authorized to elect to treat a fractional or percentage share of any eligible Marital Trust as Qualified Terminable Interest Property ("QTIP"), as that term is defined in the Code. The Fiduciaries may divide such Marital Trust into separate shares to reflect any partial QTIP election; provided, however, that the division shall be made according to the fair market value of the assets of the trust at the time of the division. In determining whether to make a QTIP election for less than all property qualifying for QTIP treatment, the Personal Representatives may take into consideration the anticipated incremental estate taxes that will result upon the death of the Testator's spouse, their remaining life expectancy, and any other factors likely to affect the aggregate estate tax payable by the estates of the Testator and the Testator's spouse, future income taxes, and the identities of the persons who will ultimately bear such taxes. The Personal Representatives shall not be liable for any good faith decision they make with respect to any such election. Any incremental death tax incurred by the Testator's estate as a result of a partial QTIP election shall be paid from the property as to which such election was not made.

**8. Distributions from retirement plans.** Unless the Testator directs otherwise, the Fiduciaries shall treat as fiduciary accounting income the portion of any distribution to the

Marital Trust from a qualified retirement plan or IRA that represents the greater of **(a)** the minimum distribution required by the plan or IRA and **(b)** fiduciary accounting income from assets held in the plan or IRA. To the extent the income generated or deemed to be generated by the plan or IRA exceeds the distribution, the Testator's spouse shall have the power to compel the Fiduciaries to withdraw such excess from the plan or the IRA and to distribute such excess to the Testator's spouse. In the event that the plan or IRA prohibits such distribution, the Fiduciaries shall distribute to the Testator's spouse other assets from the Marital Trust equal in value to such excess.

**9. QTIP Election and Post-Mortem Allocation (Clayton Election).** Notwithstanding anything to the contrary contained in these Universal Will Provisions or the Will, if an Independent Fiduciary is acting at the time the federal estate tax return is filed, **(a)** only the Independent Fiduciary may decide whether and to what extent the election to qualify property of any Marital Trust for the federal estate tax marital deduction in the Testator's estate ("federal QTIP election") and any similar election for state death tax purposes ("state QTIP election") will be made for the Testator's estate, and **(b)** except as provided in the following sentence, the Independent Fiduciary shall allocate to the Family Trust any property of the Marital Trust for which no federal QTIP election is made. However, if the state QTIP election in the state of the Testator's domicile at the Testator's death may be made differently from the federal QTIP election, the Independent Fiduciary shall make the allocation required under the immediately preceding sentence only if neither a federal QTIP election nor such state QTIP election is made for that property. A reallocation to the Family Trust under this Subparagraph shall not be taken into account in determining the optimal amount.

**10. Disclaimer by spouse.** In order for any disclaimer to be treated as a qualified disclaimer under applicable state and federal law—and to avoid a taxable gift by the disclaiming spouse—the disclaimer must be made in writing, irrevocably, and within the time limits set forth by IRC §2518 and state law. The Fiduciaries and the surviving spouse are strongly advised to consult with qualified counsel promptly following the Testator's death to ensure proper execution and tax compliance. Notwithstanding anything to the contrary contained in these Universal Will Provisions or the Will, in the event of a disclaimer by the Testator's spouse or the Personal Representatives of their estate, as the case may be, of **(i)** their entire interest in all or any portion of the State Exemption Marital Trust or Federal Marital Trust, the property as to which such interests shall have been disclaimed shall be held by the Trustees in a separate trust, referred to as the "Disclaimer Trust" and held pursuant to the terms set forth in Subparagraph **a** below. The disclaimed property shall bear any incremental death taxes imposed upon the Testator's estate as a result of the disclaimer, notwithstanding the provisions of any tax apportionment clause in the Will.

- a.** The Trustees shall hold the Disclaimer Trust pursuant to the following terms:

i. The Trustees may pay to the Testator's spouse or any of the Testator's descendants any or all of the net income or principal of Disclaimer Trust I, if in the sole and absolute discretion of the Trustees, such payment may be necessary, desirable or advisable for such person's health, education, maintenance or support in reasonable comfort and accustomed manner of living, without the necessity of making equal or *pro rata* distributions among such persons. The Trustees shall add any undistributed income to the principal of the Disclaimer Trust.

ii. Upon the death of the Testator's spouse, the Trustees shall distribute the Disclaimer Trust to those persons who would be entitled to the Testator's residuary estate if the Testator died on the date of the Testator's spouse's death; provided, however, that the Testator's spouse shall have no power of appointment over any assets distributed thereunder.

b. Notwithstanding anything to the contrary contained in the Universal Will Provisions or the Will, the Testator's spouse shall not have any power over the disclaimed property in the Disclaimer Trust if the retention of that power would cause the Testator's spouse's disclaimer not to be a "qualified disclaimer" under the Code.

c. Notwithstanding anything to the contrary contained in these Universal Will Provisions or the Will, if the Testator's spouse or the Trustees of the Disclaimer disclaim all or any portion of the Disclaimer Trust, the Trustees shall distribute such disclaimed portion, or all of the Disclaimer Trust, as the case may be, to those persons who would be entitled to the Testator's residuary estate if the Testator died on the date of the Testator's spouse's death; provided, however, that (i) the Testator's spouse shall have no power of appointment over any assets distributed thereunder and (ii) if the Testator's spouse's disclaimer is limited to all or any portion of the income of the Disclaimer Trust, the Trustees shall add such undistributed income to the principal of the Disclaimer Trust.

## G. GENERATION-SKIPPING TRANSFERS

1. ***Allocate exemption.*** If any portion of the Testator's Generation-Skipping Transfer ("GST") tax exemption under §2631(a) of the Code remains unallocated at the time of the Testator's death, the Personal Representatives may allocate such portion either (a) to transfers made during the Testator's lifetime for which no allocation had been made at the time of the Testator's death (or on the Testator's final gift tax return) or (b) to transfers becoming effective upon the Testator's death under the provisions of the Will or otherwise, and may make any election available under §2652(a)(3) of the Code.

**2. Automatic Division of Trusts.** If any property is added or contributed to a trust under the Will in such a way as would result in that trust having an inclusion ratio, as defined in §2642 of the Code, other than zero or one, that trust shall be automatically divided, *ab initio*, into two separate trusts as of the date of such addition or contribution, so as to create one trust (the “Exempt Trust”) with an inclusion ratio of zero, and one trust (the “Non-Exempt Trust”) with an inclusion ratio of one, and each separate trust shall have terms identical to those of the original trust created or governed by the Will.

**3. Distributions from Exempt and Non-Exempt Trusts.** Any distributions to be made to a non-skip person beneficiary as defined for federal generation-skipping transfer tax purposes shall be made first from the Non-Exempt Trust, and then from the Exempt Trust only if the Non-Exempt Trust is insufficient or there is a compelling reason not to do so.

**4. Funding Exempt Trusts.** The Fiduciaries shall fund any Exempt Trust in a manner that complies with the Code, so that the Exempt Trust maintains an inclusion ratio of zero.

## **H. SUPPLEMENTAL NEEDS TRUST**

### **1. When Applicable.**

**a.** In the Will, should there be directions for the Fiduciaries to hold any property for the benefit of a person pursuant to the terms of a Supplemental Needs Trust, such property shall be held as a separate trust and administered pursuant to the terms of this Paragraph entitled ‘Supplemental Needs Trust,’ of which such person shall be the “Beneficiary.”

**b.** Notwithstanding any other provision of the Universal Will Provisions or the Will to the contrary, during any period that a beneficiary of a trust created or governed by the Will is eligible to receive or is receiving any Government Benefits (as defined below in subparagraph 2.k.i of this Paragraph), any distribution from a trust for such person shall be held as a separate trust and administered pursuant to the terms of this Paragraph entitled ‘Supplemental Needs Trust,’ of which such person shall be the “Beneficiary.”

**2. Terms of Supplemental Needs Trust.** The Trustees shall hold the Supplemental Needs Trust pursuant to the following terms:

**a.** *Payment of Benefits.* The Independent Fiduciaries may, at any time and from time to time, apply for the benefit of the Beneficiary, so much (even to the extent of the whole) of the income or principal of this trust as the Independent Fiduciaries may

deem advisable, subject to the limitations set forth below. The Fiduciaries shall add to the principal of this trust the balance of net income not so applied.

**b.**     *Intent of Trust.* It is the intent of the Testator to create a Supplemental Needs Trust. The Testator intends that the trust assets be used to supplement and not supplant, impair or diminish, any benefits or assistance of any Federal, state, county, city, or other governmental entity for which the Beneficiary may otherwise be eligible or which the Beneficiary may be receiving. Consistent with that intent, it is the desire of the Testator that, before expending any amounts from net income or principal of this trust, the Trustee consider the availability of all benefits from government or private assistance programs for which the Beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee endeavors to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of the Beneficiary.

**c.**     *No Reduction of Benefits.* Notwithstanding any other provisions in this Paragraph entitled ‘Supplemental Needs Trust,’ none of the income or principal of this trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any Federal, state, county, city, or other governmental entity for which the Beneficiary may otherwise be eligible or which the Beneficiary may be receiving.

**d.**     *No Revocation or Assignment.* The Beneficiary does not have, and shall not be deemed to have, the legal authority or power: (1) to revoke or terminate the trust, or (2) to compel or direct the use or distribution of the trust assets. Additionally, the Beneficiary cannot assign, encumber or sell the Beneficiary’s beneficial interest in the trust.

**e.**     *Use of Income and Principal.* The trust income and principal may, in the sole and absolute discretion of the Independent Trustees, be used to provide the Beneficiary with extra and supplemental care, maintenance, support and education and will not be made available to provide primary support for the Beneficiary, including, but not limited to, basic food, shelter or health care. The Independent Trustees are authorized to make trust distributions to or on the Beneficiary’s behalf in such a manner that the Beneficiary’s life will be enriched and made more enjoyable, including, but not limited to, recreational and vacation opportunities away from places of residence, expenses for traveling companions, if requested or necessary, entertainment expenses and social services expenses. The Trustees are authorized to expend the trust property to obtain more sophisticated or extensive medical or dental treatment than may otherwise be available to the Beneficiary and to seek private rehabilitative or educational training. For purposes of this Subparagraph, basic “health care” shall not include health insurance premiums, and the Trustees are explicitly authorized to pay such premiums if Independent Trustees determine, in the exercise of sole and absolute discretion, that it is in the Beneficiary’s best interest to do so. The Testator desires that the Beneficiary be

able to maintain contact with their children and other family members, and Independent Trustees are authorized to expend trust income or principal for transportation costs for the Beneficiary or other family members to facilitate such contacts. The Testator desires, but does not direct, that the Trustees exercise the discretionary powers conferred in this Paragraph in such a manner as will provide flexibility in the administration of the trust, and, in exercising such powers, the decision of the Trustees shall be conclusive as to the advisability of any distribution of income or principal, and as to the person or persons to or for whom such distribution is to be made, and such decision, to the extent not prohibited by law, shall not be subject to judicial or governmental review.

**f.**     *Use of Residence.* To the extent consistent with a Supplemental Needs Trust, the Trustees may acquire, hold, and maintain any residence (whether held as real property, condominium, cooperative apartment or otherwise) for investment or for the use and benefit of the Beneficiary of this trust, as the Independent Trustees, in the exercise of sole and absolute discretion, determine, including allowing the Beneficiary the exclusive right to occupy and use the real property and to permit members of the Beneficiary's family or friends or medical or household employees (including independent contractors) for the Beneficiary also to occupy the property with the Beneficiary. If the Independent Trustees determines that it would be in the best interests of the Beneficiary to maintain a residence for the use of the Beneficiary but that the residence owned by the Trustees should not be used for such purpose, the Trustees are authorized to sell said residence and to apply the net proceeds of sale, or a portion of such net proceeds, to the purchase of such other residence or residences or to make such other arrangements as the Independent Trustees may deem suitable for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above are to be added to the principal of the trust and thereafter held, administered, and disposed of as a part thereof. The Trustees shall use the proceeds to pay all carrying charges of such residence, including but not limited to any taxes, assessments, and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of household employees (including independent contractors), and other expenses incident to the maintenance of a household for the benefit of the Beneficiary of the trust, to make such improvements to the residence as the Trustees may, in the exercise of sole and absolute discretion, determine to be appropriate to make the residence suitable for the Beneficiary, and to expend such amounts as the Independent Trustees may determine to be appropriate to maintain the current lifestyle of the Beneficiary, or to improve the lifestyle of the Beneficiary, including, but not limited to, providing for the personal care and comfort of the Beneficiary in any manner.

**g.**     *Discretionary Distributions.* Notwithstanding any other provisions contained in this Paragraph, the Independent Trustees may make distributions to meet the Beneficiary's need for food, shelter or health care even if such distributions may result in

an impairment, diminution or elimination of the Beneficiary's receipt or eligibility for Government Benefits but only if the Trustee determines that (1) the Beneficiary's needs will be better met if such distribution is made, and (2) it is in the Beneficiary's best interest to experience the consequent effect, if any, on the Beneficiary's eligibility for or receipt of Government Benefits; provided, however, that if the mere existence of the Trustees' authority to make distributions pursuant to this Subparagraph shall result in the Beneficiary's loss of Government Benefits, regardless of whether such authority is actually exercised, this Subparagraph shall be null and void and the Trustee's authority to make such distributions shall cease and shall be limited as otherwise provided elsewhere in this Paragraph, without exception.

**h.** *Limited Power to Amend.* The Independent Trustees may, by an instrument in writing, amend this Trust in any manner required to protect the Beneficiary's eligibility for public benefits or assistance including Medicaid or SSI, or to meet any of the Testator's intentions or objectives set forth in this Trust. This includes amending this Trust to conform the Trust to current federal or state law. No amendment under this Subparagraph may increase the class of beneficiaries. Any expenses in this regard, including reasonable attorneys' fees, shall be a proper charge to the Trust. No Trustee shall be liable for any loss of Trust assets by reason of the exercise or failure to exercise the authority under this Subparagraph, except for any loss caused by the Trustee's bad faith, wanton conduct or negligence.

**i.** *Death of a Beneficiary.* If property directed to be held as a Supplemental Needs Trust for a Beneficiary pursuant to this Paragraph entitled 'Supplemental Needs Trust' was first directed to be held in trust (the "Original Trust") under another Article in the Will, then upon the death of such Beneficiary, the Trustee shall distribute the remaining principal and undistributed income of the Supplemental Needs Trust in accordance with the provisions applicable to the Original Trust, as though the SNT Beneficiary had predeceased the time for such distribution, and as though the provisions of this Paragraph had never applied.

**j.** *Definition of Beneficiary.* For purposes of this Paragraph entitled 'Supplemental Needs Trust,' the term "Beneficiary" shall mean the person for whose benefit the property was directed to be held in a Supplemental Needs Trust hereunder.

**k.** *Terms Relating to Supplemental Needs Trust.* The technical terms contained in the Supplemental Needs Trust shall be defined as follows:

**i.** "Government Benefits" refers to any program funded with either local, state, or federal funds which is only available to individuals who meet certain means tested criteria, as a result of having attained a certain age or as a result of a Persistent Disability. This includes, however, is not limited to,

Medicaid programs, Medicaid waiver programs, and Supplemental Security Income. The term Government Benefits is not intended to include programs such as Social Security and Medicare. The Trustee shall, in the exercise of sole and absolute discretion, determine whether an individual is receiving or is eligible to receive Government Benefits, and may determine that an individual is eligible to receive Government Benefits regardless of whether the agency or agencies administering such Government Benefits has made a final determination as to such individual's eligibility.

**ii.** “Developmental Disability” means a disability of a person which **(a)** originates before such person attains age twenty-two (22), **(b)** has continued or can be expected to continue indefinitely, and **(c)** results in a substantial impairment in the person's language ability, mobility, ability to learn, or ability to live independently. Such disability may be a result of cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, Fragile X, autism, or any other intellectual disability or condition closely related to intellectual disability which results in similar impairment of general intellectual functioning or adaptive behavior.

**iii.** “Mental Illness” means an affliction with a mental disease or mental condition that is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation to live independently.

**iv.** “Persistent Disability” means a Mental Illness, Developmental Disability, or other physical and mental impairment, which is expected to, or does, give rise to a long-term need for social services, specialized health or mental health services, services related to developmental disabilities, or other related services.

**I.** Notwithstanding anything hereinabove to the contrary, under no circumstances shall the Trustees exercise their discretion to utilize the income or principal of this trust or any trusts created under the Will for the payment of any services for a beneficiary that would otherwise be borne by a publicly funded program or service or program that is provided by the Federal, state or local government.

## **I. CHARITABLE SPLIT-INTEREST TRUSTS**

**1. Trustees' powers limited by Code.** Notwithstanding anything to the contrary contained in these Universal Will Provisions or the Will, in exercising any powers over any charitable remainder trust, charitable lead trust, or pooled income fund, as those terms are defined in §§664,

170(f)(2)(B), and 642(c)(5), respectively, of the Code, the Fiduciaries shall be subject to those provisions of the Code and Regulations which define such trusts or fund.

**2. Release of powers of Trustees.** If any trust created under the Will contains charitable and non-charitable interests, and if the exercise of any power or discretion conferred upon the Fiduciaries shall, in the opinion of the Fiduciaries, cause the trust to fail to qualify as a charitable split-interest trust under the Code, the Fiduciaries are authorized to release such power or discretion, in whole or in part, in order to preserve the status of the trust.

**3. Dividing trust.** The Fiduciaries are authorized to divide any charitable split-interest trust into separate trusts so as to create one trust for the non-charitable interest and one trust for the charitable interest, and, if the non-charitable interest is in the nature of an annuity or unitrust, to allocate the principal between the two trusts on a fractional basis, as of the division date, reflecting the present value of the non-charitable and charitable interests.

**4. Additions to pooled income funds.** The Fiduciaries are authorized to refuse any additions to a pooled income fund.

## **J. RULES OF CONSTRUCTION AND GENERAL APPLICATION**

**1. Conflicts in provisions.** In the Will, the Testator may modify any part of these Universal Will Provisions. In the event of any conflict between the Will and these Universal Will Provisions (except as provided in the Paragraphs entitled ‘Marital Deduction’ and ‘Charitable Split-Interest Trusts’ herein, where required to assure the marital or charitable estate tax deduction, where required to assure the marital or charitable estate tax deduction), the provisions of the Will shall control.

**2. Invalid provision.** If any provision of the Will or these Universal Will Provisions shall be found to be invalid for any reason, such invalidity shall not affect any of the other provisions thereof, and all such other provisions shall be considered as in full force and effect as though such invalid provisions had not been included therein.

**3. Powers of appointment exercised by the Testator.** If (a) any instrument in which the Testator is granted a power of appointment contains limitations on the exercise of such power, and (b) any provision of the Will violates such limitations, then, after applying the doctrine of marshaling, the Fiduciaries shall apply such rules as they determine are necessary, desirable or advisable to validate to the fullest extent possible the exercise of any such power of appointment, including the following:

**a.** If the Testator has appointed any property to or for the benefit of any person, who is not a permissible appointee, such person shall, solely with regard to such property, be deemed to have predeceased the Testator.

**b.** If the Testator has appointed more than an income interest in property to any person to whom the Testator is not entitled to appoint more than an income interest, such appointment shall be construed as an appointment of an income interest only.

**c.** If the Testator exercises any power of appointment by creating a new power of appointment in favor of another person, the property subject to the new power of appointment shall be subject to all limitations contained in the instrument granting such power to the Testator.

**4. Powers of appointment created by Testator.** Any testamentary power of appointment created by the Testator in the Will shall be exercised only **(a)** by specific reference to the power in the donee's will, whether such will is executed before or after the Testator's death, and **(b)** by appointing all or any part of the property (or interest in the property) subject to the power outright or in trust to or for the benefit of a permissible beneficiary. If such appointment is in trust, the donee may specify such terms and duration as they desire, including the creation of additional powers of appointment, subject to any limitations contained in the Will. The donee shall not have the power to appoint the proceeds of any insurance on their life owned by a trust under the Will. Under no circumstances may the donee of a power of appointment appoint shares of the stock of a corporation for which an S election is in effect under §1362(a) of the Code in a manner that would render the corporation ineligible to continue such election. If the donee's will is not offered for probate within six (6) months after the donee's death, the donee shall be deemed conclusively not to have exercised any power of appointment conferred by the Testator.

**5. Release of powers.** Any beneficiary or Trustee under the Will may, at any time, by written instrument, signed and acknowledged by the holder thereof and delivered to the Trustees (or other Trustees), release, in whole or in part, any one or more powers, including any power of appointment, power to appoint a successor Trustee or any other power given to such beneficiary or Trustee by any provision of the Will, these Universal Will Provisions or of any statute or rule of court. Such power may be released with or without consideration and in such a manner as to restrict or limit the class of persons or objects in whose favor the power would otherwise be exercisable. In the event of the release of any power by any Trustee pursuant to this Subparagraph, the remaining Trustees (including any successor Trustees to the Trustee releasing such power) may thereafter exercise such power, unless they are otherwise prohibited from doing so.

**6. Reciprocal will of spouse.** Unless specifically stated therein, the Wills of the Testator and the Testator's spouse are not intended to be, and shall not be construed to be, contractual, even though certain provisions may appear to be reciprocal. Each will shall be subject to revocation by its maker.

**7. Rule Against Perpetuities.**

a. If governing law applicable to the Testator's estate, the Will, or any trust created thereby (including, but not limited to, a trust created pursuant to the exercise of a power of appointment granted in the Will), whether common law rule or otherwise, requires the application of a rule requiring that an interest created or administered under the Will in property that is subject to such law must vest or be distributed within a particular period of time, such rule shall be referred to herein as the "rule against perpetuities."

b. If governing law applicable to the Testator's estate, the Will, or any trust created thereby (including, but not limited to, a trust created pursuant to the exercise of a power of appointment granted in the Will), does not require the application of a rule against perpetuities, this Subparagraph shall be construed as an affirmative declaration that no rule against perpetuities shall apply to any trust held pursuant to the Will or created pursuant to a power of appointment outlined in the Will.

c. If governing law applicable to the Testator's estate, the Will, or any trust created thereby (including, but not limited to, a trust created pursuant to the exercise of a power of appointment granted in the Will), requires the application of a rule against perpetuities, and any interest in property or in a trust governed by the Will is determined to violate the rule against perpetuities or any other analogous rule of law under the relevant Estates and Trusts Laws, then:

i. such interest or trust shall be reformed, construed, and interpreted to give effect to the intent of the Testator to allow the Trustees to hold such interest for the longest period of time possible while avoiding such violation; or

ii. should the trust reformation described in Subsection c.i of this Subparagraph entitled 'Rule Against Perpetuities' not be permitted by the governing law applicable to such trust, then the Trustees shall divide such interest or the remaining trust balance among the trust's then-living beneficiaries, *per stirpes*.

**8. *Incorporation of terms of inactive trust.*** If the Testator directs that certain assets be distributed to a trust in existence at the time the Testator executed the Will (the "recipient trust") and for any reason the recipient trust is not in existence at the time any payment thereto is required under the Will, the Testator incorporates by reference all of the terms of the recipient trust and directs the Fiduciaries to hold the assets in a separate trust under the Will, to be administered and disposed of pursuant to the terms of the recipient trust and these powers, except that the Fiduciaries under the Will shall serve as Fiduciaries under such trust.

**9. *Captions not controlling.*** The captions and headings to each Paragraph, Subparagraph, or Subsection of these Universal Will Provisions or the Will are inserted for convenience of reference only.

**10. *Gender and number.*** Where appropriate herein and in the Will, **(a)** any gender reference shall include the feminine, masculine or neuter, as appropriate, and **(b)** any reference in or to the singular shall include the plural and *vice versa*.

**11. *Court jurisdiction.*** The Testator intends that **(a)** no court shall assume general or continuing jurisdiction over any trust created under the Will, and **(b)** if a proceeding is commenced in any court to resolve any matter concerning a trust, the court shall assume jurisdiction only to resolve such matter, and shall not retain jurisdiction thereafter.

**12. *Governing law.*** The Will and each trust created thereunder, including any trust created pursuant to the exercise of a power of appointment granted by the Testator, shall be construed in accordance with the laws of the Governing State, unless specifically provided to the contrary in the Will.

**13. *Final determinations.*** Any decisions made by any Fiduciary herein shall be final and legally binding on all interested persons.

**14. *Power to amend Universal Will Provisions.***

**a.** Notwithstanding anything to the contrary in the Will, a majority of the Independent Trustees may amend these Universal Will Provisions at any time or from time to time, by a written instrument executed by the Independent Trustees, to achieve the objectives of the Testator as expressed in the Will.

**b.** The Trustees shall give notice to all beneficiaries of any such amendment within a reasonable time after its adoption.

**15. Powers of appointment.** Any power of appointment under the Will that permits the exercise of such power in favor of one or more individuals, or for their benefit, shall also be exercisable in favor of *(a)* the descendants of any such individuals, *(b)* any trust or trusts for the benefit of such individuals, or their descendants, and *(c)* any charitable organization, if such power of appointment is not a general power of appointment, as defined in §2041(b) of the Code.

**16. Application of Code.** All references to the Code shall be deemed to include any corresponding provisions of subsequent revisions to the Internal Revenue Code.

**17. Fiduciaries' discretion in allocation of income and principal.** Notwithstanding any provision in the Will or these Universal Will Provisions to the contrary, the Fiduciaries, in their sole and absolute discretion, are authorized to allocate receipts or disbursements as between income and principal in any manner deemed reasonable, even though such allocation is contrary to the Governing State Uniform Principal and Income Act or any similar statute then in effect.

**18. Virtual representation.** To the extent permitted under the laws of the Governing State:

**a.** If an interest in a trust will pass to persons who compose a class upon the happening of a certain event, those living adult persons who would constitute the class if the event happened on the effective date of an agreement among the parties (or on the date of a notice of intention to arbitrate) shall act as virtual representatives for all members of the class (including those members of the class yet to be born) and shall be the only required parties to the dispute with respect to the interest.

**b.** If an interest in a trust will pass to a living person, and the same interest, or a share in it, will pass to that living person's surviving spouse or to persons who are, or may be, the distributees, descendants, heirs or appointees of that living person upon the happening of a future event, such living person shall act as a virtual representative for all such persons (including those yet to be born) and shall be the only required party to the dispute with respect to their interests.

**c.** Except as otherwise provided in Subsection b of this Subparagraph entitled 'Virtual Representation,' if an interest in a trust will pass to a person, a class of persons or both upon the happening of any future event, and the same interest or a share of such interest will pass to another person, class of persons or both upon the happening of an additional future event, the living person or persons who would take the interest upon the happening of the first event shall act as virtual representatives for all such other persons (including those yet to be born) and shall be the only required parties to the dispute with respect to the interests of such other persons.

d. Notwithstanding the provisions of Subsections a, b and c of this Subparagraph entitled ‘Virtual Representation,’ if a person acting as virtual representative has a conflict of interest with a person or persons represented by such virtual representative involving the interest in dispute at the particular time in which the person is acting as virtual representative, the persons with whom the virtual representative has the conflict of interest shall be required parties to the dispute. If the matter in dispute is administrative in character, no conflict exists for purposes of this provision.

**19. *Waiver of Statutory Obligations.*** To the extent allowed by the laws of the Governing State, all waivable duties of the Fiduciaries under the Estates and Trusts Law, or any other applicable law, to give notice, information, and reports to one or more beneficiaries of the estate or any trust created by the Will, are expressly waived for the full term of such estate administration or trust term.

## **K. RETIREMENT BENEFITS**

**1. *Retirement Assets Held as Separate Trust Share.*** Notwithstanding anything to the contrary contained in these Universal Will Provisions or the Will, should any trust held or administered pursuant to the Will hold Retirement Benefits, the Trustees must hold and administer such Retirement Benefits as a separate share pursuant to this Paragraph. This separate trust share shall be treated as a conduit trust, or “see-through trust,” for the purpose of managing and distributing the Retirement Benefits.

**2. *Administration of Retirement Benefits For Marital Trusts.*** If the Retirement Benefits are to be held in a Marital Trust, the Trustee must annually withdraw and distribute directly to the spouse the required minimum distribution (RMD) if then applicable, or, if not then applicable, such greater amount (if any) as the Trustee shall be required to withdraw under the laws then applicable to such Retirement Benefits to avoid penalty, from the separate share of Retirement Benefits. The spouse may also compel the withdrawal of all income from the Retirement Benefits each year.

**3. *Administration of Retirement Benefits for Non-Marital Trusts.*** If the Retirement Benefits are to be held in a trust other than a Marital Trust, the Trustee must annually withdraw and distribute directly to the primary beneficiary of such trust the required minimum distribution (RMD) if then applicable, or, if not then applicable, such greater amount (if any) as the Trustee shall be required to withdraw under the laws then applicable to such Retirement Benefits to avoid penalty, from the separate share of Retirement Benefits. Should there be no sole primary beneficiary of such trust, then the Trustees shall divide and distribute such amount, *pro rata*, among all then-living and available beneficiaries of such trust.

**4. *Trustee Authority to Create Accumulation Trust Status.*** Notwithstanding any other provision of this Agreement to the contrary, the Independent Fiduciary, if then serving, shall have the sole and exclusive authority to elect whether any trust receiving Retirement Benefits shall be treated as a “conduit trust” or an “accumulation trust” for federal income tax purposes, including to preserve “see-through trust” status under the Internal Revenue Code and applicable Treasury Regulations. The Independent Fiduciary shall further have the authority to amend, reform, or otherwise modify the terms of any trust receiving Retirement Benefits to the extent the Independent Fiduciary deems reasonably necessary or desirable to cause such trust to qualify as an accumulation trust under federal law, including, but not limited to, modifying provisions governing distributions to or for the benefit of beneficiaries, adjusting remainder beneficiary interests, or altering timing or manner of distributions. This authority may not be exercised by any Fiduciary who is or may become a current or remainder beneficiary of such trust, or who is a related or subordinate party with respect to any such beneficiary, within the meaning of Internal Revenue Code §672(c). Any such amendment or modification shall be made by written instrument signed by the Independent Fiduciary and maintained with the trust records, and shall be effective without court approval or beneficiary consent unless required by applicable law.