# **Administration of Our Trust Upon the Death of a Trustor**

## Surviving Trustor’s Trust Property and Deceased Trustor’s Trust Property

After the first of us dies, our Trustee shall determine the value of all of our community property in the aggregate at the time of the deceased Trustor’s death, including all of our community property held by, or otherwise distributable to this Trust, upon the deceased Trustor’s death, and all of our community property on the deceased Trustor’s death, and all of our community property held by us outside of this Trust that is not subject to disposition to this Trust upon the deceased Trustor’s death but instead is otherwise subject to disposition by will, intestacy, right of survivorship, other trust instrument, or beneficiary designation, including life insurance and retirement plan designations, one-half of the value of which shall be referred to as the surviving Trustor’s share of our community property, and the other one-half of the value of which shall be the deceased Trustor’s share of our community property.

Our Trustee shall then distribute into a trust, know as the Marital Trust, and all of the surviving Trustor’s separate trust property held by this Trust and the surviving Trustor’s share of our community property to the extent the surviving Trustor’s share of our community property has not, and will not be, distributed to the Surviving Trustor otherwise than through this Trust as a result of the deceased Trustor’s death, whether by will, another trust, intestacy, right of survivorship, or beneficiary designation, including life insurance and retirement plan beneficiary designations, which share of the trust property shall be referred to herein as the surviving Trustor’s trust property and shall be administered and distributed as provided in Article Eight. The remainder of the trust property shall then be referred to herein as the deceased Trustor’s trust property, which shall be distributed as provided in Article Seven.

After the first of us dies, the surviving Trustor’s interest in any community property of our trust and the surviving Trustor’s separate trust property will be referred to as the surviving Trustor’s trust property. The surviving Trustor’s trust property will be referred to as the Marital Trust, and our Trustees shall administer the Marital Trust as provided in Article Eight.

The deceased Trustor’s interest in any community property of our trust and the deceased Trustor’s separate trust property will be referred to as the deceased Trustor’s trust property.

## Administrative Trust

Upon a Trustor’s death, our trust will become irrevocable as it pertains to the administration and distribution of the deceased Trustor’s trust property. Our Trustee may need to apply for a separate Taxpayer Identification Number for the deceased Trustor’s trust property.

Before the distribution of the deceased Trustor’s trust property as provided in this trust, the deceased Trustor’s trust property will be referred to as the *administrative trust*, but may continue to be known as the {{ trust\_name }} Trust during the administration period. The administrative trust will exist for the period reasonably necessary to complete the administrative tasks set forth in this Article.

## Payment of Expenses and Taxes

Our Trustee may pay from the deceased Trustor’s trust property:

expenses of the deceased Trustor’s last illness, funeral, and burial or cremation, including expenses of memorials and memorial services;

legally enforceable claims against the deceased Trustor or the deceased Trustor’s estate;

expenses of administering the trust and the deceased Trustor’s estate; and

court-ordered allowances for those dependent upon the deceased Trustor.

These payments are discretionary with our Trustee. Our Trustee may make decisions on these payments without regard to any limitation on payment of the expenses and may make payments without any court’s approval. No third party may enforce any claim or right to payment against the trust by virtue of this discretionary authority.

If payment would decrease the federal estate tax charitable deduction available to the deceased Trustor’s estate, our Trustee may not pay any administrative expenses from assets passing to an organization that qualifies for the federal estate tax charitable deduction.

If payment would decrease the federal estate tax marital deduction available to the deceased Trustor’s estate or violate the provisions of Treasury Regulation Section 20.2056(b)-4(d), our Trustee may not pay any administrative expenses from the net income of property qualifying for the federal estate tax marital deduction.

Our Trustee shall pay death taxes out of the trust property’s principal, as provided in Section 5.06. But if a probate estate is opened within six months after the date of the deceased Trustor’s death, the deceased Trustor’s Personal Representative shall pay any outstanding claims and expenses as authorized by the Personal Representative, as well as any death taxes from the deceased Trustor’s probate estate to the extent that the cash and readily marketable assets in the deceased Trustor’s probate estate are sufficient.

## Restrictions on Certain Payments from Retirement Plans

Qualified retirement benefits payable to the trust may not be used or applied on or after the designation date for payment of the deceased Trustor’s debts, taxes, expenses of administration, or other claims against the deceased Trustor’s estate, or for payment of estate, inheritance, or similar transfer taxes due because of the deceased Trustor’s death, other than those directly attributable to and the legal obligation of a particular qualified retirement plan. This Section does not apply to any bequest or expense that is specifically directed to be funded with qualified retirement benefits.

## Excluding Life Insurance Proceeds from Creditors

Despite anything to the contrary in this instrument, any life insurance proceeds payable to the Trustee under this instrument must never be or become part of our probate or testamentary estate. Nothing in this instrument directs that these life insurance proceeds be used to pay our debts or expenses.

## Payment of Death Taxes

For the purposes of this Article, the term *death taxes* refers to any taxes imposed by reason of the deceased Trustor’s death by federal, state, or local authorities, including estate, inheritance, gift, and direct-skip generation-skipping transfer taxes. For purposes of this Section, *death taxes* does not include any additional estate tax imposed by Internal Revenue Code Section 2031(c)(5)(C) or Section 2032A(c), or any other comparable recapture tax imposed by any taxing authority. Nor does the term include any generation-skipping transfer tax, other than a direct-skip generation-skipping transfer tax.

Except as to qualified retirement benefits and as otherwise specified in this Article or elsewhere in this trust, our Trustee shall apportion death taxes among the beneficiaries as those beneficiaries are determined for the purpose of the tax. In doing this, our Trustee shall charge the death taxes only against the property generating the tax, taking into consideration the applicable provisions of the Internal Revenue Code, other applicable laws apportioning the death taxes, and the provisions of any instrument governing the property. The values used in determining the tax are to be used for tax apportionment purposes.

To the extent practicable, the Trustee shall deduct the death taxes from the property distributable under this trust, and must recover the allocable share of death taxes from the beneficiaries of property passing other than under this trust, unless the Trustee determines that the cost of recovery is greater than warranted. If death taxes are not collected from the beneficiaries of property passing other than under this trust, the Trustee shall apportion this unrecovered amount equitably among the beneficiaries who are subject to apportionment.

If our Trustee or the surviving Trustor’s Personal Representative waives any right of recovery granted by Internal Revenue Code Section 2207A and corresponding provisions of applicable state law, no death taxes paid as a result of including property held in a qualified terminable interest property (QTIP) trust created by the first Trustor to die and included in the taxable estate of the second Trustor to die will be apportioned to or collected from the assets of the QTIP as provided in Internal Revenue Code Section 2207A.

## Coordination with the Personal Representative

The following provisions are intended to help facilitate the coordination between the deceased Trustor’s Personal Representative and our Trustee. These provisions apply even if the Personal Representative and the Trustee are the same person or entity.

* + 1. Reliance on Information from the Personal Representative

Our Trustee may rely upon the written request of the deceased Trustor’s Personal Representative for payments authorized under this Article and the amounts included in those payments without computing the sums involved. If a payment is made under this Article to the deceased Trustor’s Personal Representative, our Trustee will have no duty to inquire into the application of the payment.

* + 1. Receipt of Probate Property

Our Trustee may accept or decline any distributions of property tendered to our Trustee by the deceased Trustor’s Personal Representative. If our Trustee accepts the property, our Trustee may do so without audit, and will not be required to review the Personal Representative’s records.

* + 1. Discretionary Distributions to the Deceased Trustor’s Personal Representative

Our Trustee may distribute cash, accrued income, or other trust property to the deceased Trustor’s probate estate as a beneficiary of this trust, to the extent our Trustee determines that doing so is in the best interests of the trust beneficiaries.

## Authority to Make Tax Elections

After a Trustor’s death, our Trustee may make tax elections as provided in this Section. But if a Personal Representative is appointed for the deceased Trustor’s probate estate, the discretionary authority granted to our Trustee as to any tax election will be subordinate to the Personal Representative’s statutorily delegated authority.

* + 1. Tax Elections

Our Trustee may make any tax elections necessary for the efficient administration of the deceased Trustor’s estate, including:

valuing assets according to an alternate valuation date;

electing whether to take administration expenses as estate tax deductions or income tax deductions;

allocating a Trustor’s unused generation-skipping exemption to any portion of the trust property;

electing special-use valuation;

deferring payment of all or any portion of any taxes; and

treating any portion of the deceased Trustor’s administrative trust as part of the deceased Trustor’s estate for federal or state income tax purposes, or both.

In addition, our Trustee, in its sole and absolute discretion, may elect to waive, in whole or in part, the surviving Trustor’s right to have the surviving Trustor’s estate reimbursed for any tax paid as a result of the inclusion in the surviving Trustor’s taxable estate of property held in a qualified terminable interest property (QTIP) trust created for the surviving Trustor by the deceased Trustor.

Our Trustee may make equitable adjustments between income and principal because of any tax elections made by our Trustee.

* + 1. Qualified Terminable Interest Property

Our Trustee, other than an Interested Trustee, may elect to have any trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under Internal Revenue Code Section 2056(b)(7) (the *QTIP election*) and for any state death tax marital deduction under any state’s law (the *state QTIP election*). Our Trustee is not required to make the same election for both federal estate tax purposes and for state death tax purposes. If our Trustee makes a partial QTIP election, our Trustee will divide the trust on the basis of the fair market value of the trust assets at the time of the division.

Our Trustee is indemnified and held harmless from any loss, claim, or damage incurred as a result of any action taken by a beneficiary against our Trustee arising out of our Trustee’s decision regarding the QTIP election for any portion of the trust property. Our Trustee is specifically authorized to use trust property to pay directly or to reimburse himself or herself for any expenses incurred to defend any threatened or actual legal action arising under this provision.

Our Trustee may make the special election under Internal Revenue Code Section 2652(a)(3) to treat all of the property of a trust created under this trust for which the QTIP election is made as if that election had not been made, making the deceased Trustor the transferor of the property for purposes of the generation-skipping transfer tax. We desire that our Trustee set apart the property to which the election has been made as a separate trust, so that the inclusion ratio of the separate qualified trust, as defined in the Internal Revenue Code, is zero.

* + 1. Allocation of GST Exemption

Our Trustee may elect to allocate or not allocate any portion of the Available GST Exemption under Internal Revenue Code Section 2631, or a counterpart exemption under any applicable state law to any property of which the deceased Trustor is considered the transferor for generation-skipping transfer tax purposes. This includes any property transferred by the deceased Trustor during the deceased Trustor life for which the deceased Trustor did not make an allocation prior to death. The exercise of our Trustee’s discretion should be based on the transfers, gift tax returns, and other information known to our Trustee, with no requirement that allocations benefit the various transferees or beneficiaries in any particular manner.

* + 1. Qualified Conservation Easements

Our Trustee may create a qualified conservation easement, as defined in Internal Revenue Code Section 2031(c)(8)(A), in any land held by the trust and may make the necessary election provided by Section 2031(c)(6).

## Authority to Elect Portability

The applicable exclusion amount is defined in Internal Revenue Code Section 2010(c)(2). After the death of one of us, if the deceased Trustor’s applicable exclusion amount cannot be fully used, and the deceased Trustor does not have a duly appointed Personal Representative for the deceased Trustor’s estate, then we nominate our Trustee to serve as the deceased Trustor’s executor or administrator for purposes of Internal Revenue Code Section 2203.

We authorize our Trustee, in its sole and absolute discretion, when acting as the deceased Trustor’s executor or administrator for purposes of Internal Revenue Code Section 2203, to make a timely election under Internal Revenue Code Section 2010(c)(5)(A) so that the surviving Trustor may take the deceased Trustor’s deceased spousal unused exclusion amount (*DSUE*) as defined in Internal Revenue Code Section 2010(c)(4), if any, into account in calculating the surviving Trustor’s applicable exclusion amount.

In determining whether or not a DSUE election should be made, our Trustee, acting as the deceased Trustor’s executor or administrator for purposes of Internal Revenue Code Section 2203, may take into account the overall size of the surviving Trustor’s estate, the projected inclusion of the deceased Trustor’s trust estate due to the use of QTIP elections, and general powers of appointment granted by the deceased Trustor to the surviving Trustor.

Our Trustee, acting as executor or administrator for purposes of Internal Revenue Code Section 2203, will not be liable to the beneficiaries of our Trust or the beneficiaries of the surviving Trustor’s estate for the failure to make a DSUE election under Internal Revenue Code Section 2010(c)(5)(A).

## Payment of Charitable Bequests

To the extent possible, our Trustee must make all charitable distributions from property that constitutes *income in respect of a decedent* (IRD) as that term is defined under the U.S. income tax laws. The distribution will qualify for the income tax charitable deduction under Internal Revenue Code Section 642(c)(1), (2), as amended.