**The {{ trust\_name }}**

**{{ trust\_date }}**

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**The {{ trust\_name }}**

# Establishing Our Trust

The date of this trust is {{ trust\_date }}. The parties to this trust are {{ client.name }} and {{ spouse.name }} (the *Trustors*) and {{ client.name }} and {{ spouse.name }} (collectively, our *Trustee*).

The Trustors are the lifetime beneficiaries of the {{ trust\_name }} dated {{ trust\_date }}.

We intend to create a valid trust under the laws of {{ state\_name(address.state) }} and under the laws of any state in which any trust created under this trust document is administered. The terms of this trust prevail over any provision of {{ state\_name(address.state) }} law, except those provisions that are mandatory and may not be waived.

## Identifying Our Trust

For convenience, our trust may be referred to as:

“{{ trust\_name }} dated {{ trust\_date }}.”

To the extent practicable, for the purpose of transferring property to our trust or identifying our trust in any beneficiary or pay-on-death designation, our trust should be identified as:

“{{ client.name }} and {{ spouse.name }}, Trustees of the {{ trust\_name }} dated {{ trust\_date }}.”

For all purposes concerning the identity of our trust or any property titled in or payable to our trust, any description referring to our trust will be effective if it reasonably identifies our trust and indicates that the trust property is held in a fiduciary capacity.

## Reliance by Third Parties

Third parties may require documentation to verify the existence of this trust, or particular provisions of it, including the name of our Trustee or the powers held by our Trustee. To protect the confidentiality of this instrument, our Trustee may use an affidavit, a certificate, or a certification of trust that identifies our Trustee and sets forth the authority of our Trustee to transact business on behalf of our trust instead of providing a copy of this instrument. The affidavit, certificate, or certification may include pertinent pages from this instrument, including title or signature pages.

A third party may rely upon an affidavit, certificate, or certification of trust that is signed by our Trustee with respect to the representations contained in it. A third party relying upon an affidavit, certificate, or certification of trust will be exonerated from any liability for actions the third party takes or does not take in reliance upon the representations contained in the affidavit, certificate, or certification of trust.

A third party dealing with our Trustee will not be required to inquire into this trust’s terms or the authority of our Trustee, or to see to the application of funds or other property received by our Trustee. Our Trustee’s receipt of any money or property paid, transferred, or delivered to our Trustee will be a sufficient discharge to the third party from all liability in connection with its application. A written statement by our Trustee is conclusive evidence of our Trustee’s authority. Third parties are not liable for any loss resulting from their reliance on a written statement by our Trustee asserting our Trustee’s authority or seeking to effect a transfer of property to or from the trust.

## Transferring Property to Our Trust

Any person or entity may transfer any property to our trust in any manner authorized by law.

### Funding of Our Trust

{%p if community\_property %}

{{p include\_docx\_template(‘funding\_our\_trust\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘funding\_our\_trust\_sp.docx’) }}

{%p endif %}

life insurance policies, unless the ownership of a policy is transferred to our trust by a separate instrument that specifically refers to the policy;

corporate and self-employed (Keogh) pension, profit-sharing, and stock bonus plans;

qualified retirement plans;

commercial annuities;

Section 1244 (small business) stock; and

any property, the transfer of which would result in the immediate recognition of income subject to income or other taxes, would result in the loss of a homestead exemption, or would violate a restriction on transfer agreement.

### Acceptance by Our Trustee

By executing this instrument, our Trustee accepts and agrees to hold the property transferred to the trust as trust property. All property transferred to our trust after the date of this trust must be acceptable to our Trustee. Our Trustee may refuse to accept any property. Our Trustee shall hold, administer, and dispose of all accepted trust property for our benefit and for the benefit of our beneficiaries, in accordance with the terms of this trust.

{%p if community\_property == True %}

{{p include\_docx\_template(‘marital\_property\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘marital\_property\_sp.docx’) }}

{%p endif %}

### Joint Property

If joint tenancy property with right of survivorship is transferred to our trust, we will be considered to have severed the joint tenancy immediately before transferring the property, and no right of survivorship will exist with respect to this property.

### Marital Property Agreement Controls

If we have entered into or in the future enter into a marital property agreement, the terms of that agreement will control the characterization of property titled in the name of our trust. In the absence of a marital property agreement, property titled in the name of our trust will be governed by the terms of this trust.

## Powers Reserved by Us as Trustors

As Trustors, we retain the powers set forth in this Section in addition to any powers that we reserve in other provisions of this instrument.

### Action on Behalf of Our Trust

Whenever both of us are serving as Trustee, either or both of us may act for and conduct business on behalf of our trust without the consent of any other Trustee.

Whenever one of us is alive but not serving as Trustee, and the other is serving as Trustee, the one who is serving as Trustee may act for and conduct business on behalf of our trust without the consent of any other Trustee.

After one of us dies, the ability of the survivor of us, when serving as Trustee, to conduct business on behalf of us without the consent of any other Trustee is subject to the terms and conditions of our trust.

### Amendment, Restatement, or Revocation

Acting jointly, we may amend, restate, or revoke this instrument, in whole or in part, for any purpose.

Each of us individually retains the right to revoke any term or provision of this trust in whole or in part as to each of our separate property.

Any amendment, restatement, or revocation must be made in a signed and notarized writing and delivered to the then-serving Trustee.

### Addition or Removal of Trust Property

{%p if community\_property %}

{{p include\_docx\_template(‘trust\_property\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘trust\_property\_sp.docx’) }}

{%p endif %}

### Control of Income and Principal Distributions

We retain the right to control the distribution of income and principal from our trust. We may direct our Trustee to distribute as much of the net income and principal of the trust property as we consider advisable to us or to other persons or entities. Our Trustee may distribute the net income and principal to us or for our unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed net income is to be added to the principal of our trust.

{%p if community\_property == True %}

{{p include\_docx\_template(‘control\_of\_income\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘control\_of\_income\_sp.docx’) }}

{%p endif %}

### Approval of Investment Decisions

{%p if community\_property == True %}

{{p include\_docx\_template(‘approval\_of\_investment\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘approval\_of\_investment\_sp.docx’) }}

{%p endif %}

## Grantor Trust Status

{%p if community\_property == True %}

{{p include\_docx\_template(‘grantor\_trust\_status\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘grantor\_trust\_status\_sp.docx’) }}

{%p endif %}

During any period that our trust is a Grantor Trust, the Taxpayer Identification Number of our trust will be either of our Social Security numbers, in accordance with Treasury Regulation Section 301.6109-1(a)(2).

## Statement of Our Intentions (Material Purposes of Our Trust)

We created this trust to facilitate the management of our assets during our lifetimes, to provide a structured method of caring for us if we become incapacitated, and to establish the manner and time in which we want our assets to be distributed to our beneficiaries. In addition, our specific intentions in creating this trust include, but are not limited to the following:

To the extent permitted by law, having the assets of the trust estate excluded for federal estate tax purposes from our gross estate and the gross estates of our trust beneficiaries except to the extent we have explicitly granted a general power of appointment to a trust beneficiary;

{%p if distribution\_type == ‘subtrust’ %}

{{p include\_docx\_template(‘intentions\_st.docx’) }}

{%p else %}

{{p include\_docx\_template(‘intentions\_ot.docx’) }}

{%p endif %}

# Family Information

We were married on {{ client.marriage\_date }}. {{ client.name }} is referred to in this trust as *{{ relationshipstatuss }}*, and {{ spouse.name }} is referred to in this trust as *{{ relationshipstatusc }}*.

{%p if cnum == 0 %}

We have no children.

{%p elif cnum == 1 %}

We have one child whose name is {{ children[0].name }}, born on {{ format\_date(children[0].birthdate, format='MMMM d, YYYY') }}.

{{ afterborntrustone }}

{%p if childrenhnum == 1 %}

{{ children[0].name }} is {{ client.name }}’s child and not the biological or adopted child of {{ spouse.name }}. But for the purposes of this trust, {{ children[0].name }} will be considered to be the child of {{ spouse.name }} and included in references to our child.

{%p endif %}

{%p if childrenwnum == 1 %}

{{ children[0].name }} is {{ spouse.name }}’s child and not the biological or adopted child of {{ client.name }}. But for the purposes of this trust, {{ children[0].name }} will be considered to be the child of {{ client.name }} and included in references to our child.

{%p endif %}

References to *our descendants* are to our child and their descendants, including any deceased child’s descendants.

{%p else %}

We have {{ children\_number }} children. Their names are:

{%p macro summarize(child) %}

{{ child.name }}, born on {{ format\_date(child.birthdate, format='MMMM d, YYYY') }};

{%p endmacro %}

{%p for child in children %}

{{p summarize(child) }}

{%p endfor %}

{{ afterborntrust }}

{%p if childrenhnum == 1 %}

{{ childrenh[0].name }} is {{ client.name }}’s child and not the biological or adopted child of {{ spouse.name }}. But for the purposes of this trust, {{ childrenh[0].name }} will be considered to be the child of {{ spouse.name }} and included in references to our children.

{%p endif %}

{%p if childrenhnum >= 2 %}

{{ comma\_and\_list(childrenh) }} are {{ client.name }}’s children and not the biological or adopted children of {{ spouse.name }}. But for the purposes of this trust, {{ comma\_and\_list(childrenh) }} will be considered to be the children of {{ spouse.name }} and included in references to our children.

{%p endif %}

{%p if childrenwnum == 1 %}

{{ childrenw[0].name }} is {{ spouse.name }}’s child and not the biological or adopted child of {{ client.name }}. But for the purposes of this trust, {{ childrenw[0].name }} will be considered to be the child of {{ client.name }} and included in references to our children.

{%p endif %}

{%p if childrenwnum >= 2 %}

{{ comma\_and\_list(childrenw) }} are {{ spouse.name }}’s children and not the biological or adopted children of {{ client.name }}. But for the purposes of this trust, {{ comma\_and\_list(childrenw) }} will be considered to be the children of {{ client.name }} and included in references to our children.

{%p endif %}

References to *our descendants* are to our children and their descendants, including any deceased child’s descendants.

{%p endif %}

{%p if childrendnum == 1 %}

However, we are specifically disinheriting {{ childrend[0].name }} and {{ childrend[0].name }}’s descendants. Therefore, for the purposes of this trust, {{ childrend[0].name }} and {{ childrend[0].name }}’s descendants will be considered to have predeceased us.

{%p endif %}

{%p if childrendnum >= 2 %}

However, we are specifically disinheriting {{ comma\_and\_list(childrend) }} and their descendants. Therefore, for the purposes of this trust, {{ comma\_and\_list(childrend) }} and their descendants will be considered to have predeceased us.

{%p endif %}

{%p if othernamed %}

We have also provided for the following individuals in this trust:

|  |  |
| --- | --- |
| **Name** | **Relationship** |
| {%tr for person in beneficiaries %} | |
| {{ person }} | {{ person.relationship }} |
| {%tr endfor %} | |

{%p endif %}

Except as otherwise provided in this trust, I, {{ client.name }}, am intentionally disinheriting, omitting, and not providing for any other person or persons who claim to be my descendants or heirs under any circumstances and without regard to the nature of any evidence which may indicate status as descendants or heirs. I acknowledge and understand that, except as otherwise provided in this trust, I am generally disinheriting, omitting, and not providing for any person or persons that may qualify as a pretermitted or omitted heir, spouse, or child.

Except as otherwise provided in this trust, I, {{ spouse.name }}, am intentionally disinheriting, omitting, and not providing for any other person or persons who claim to be my descendants or heirs under any circumstances and without regard to the nature of any evidence which may indicate status as descendants or heirs. I acknowledge and understand that, except as otherwise provided in this trust, I am generally disinheriting, omitting, and not providing for any person or persons that may qualify as a pretermitted or omitted heir, spouse, or child.

{%p if trust\_protector %}

# Trustee Succession and Trust Protector Provisions

{%p else %}

# Trustee Succession Provisions

{%p endif %}

## Resignation of a Trustee

A Trustee may resign by giving written notice to either of us. If we are both incapacitated or deceased, a resigning Trustee shall give written notice to the Trust’s Income Beneficiaries and any other then-serving Trustee.

## Trustee Succession while Both of Us Are Alive

While we are both alive, this Section governs the removal and replacement of our Trustees.

### Removal and Replacement by Both of Us

By joint agreement, we may remove any Trustee at any time, with or without cause. If a Trustee is removed, resigns, or cannot continue to serve for any reason, either or both of us may serve as Trustee, we may appoint a Trustee to serve with either or both of us, or we may appoint a successor Trustee.

### Removal and Replacement by One of Us

If one of us is incapacitated, the non-incapacitated Trustor may remove any Trustee at any time, with or without cause. If a Trustee is removed, resigns, or cannot continue to serve for any reason, the non-incapacitated Trustor may serve as sole Trustee, appoint a Trustee to serve with the non-incapacitated Trustor, or appoint a successor Trustee.

### Successor Trustee during Incapacity of a Trustor

During the incapacity of a Trustor, the other Trustor may serve as sole Trustee.

{%p if trustee\_number == ‘1’ %}

If the other Trustor is unable or unwilling to serve for any reason, then we name {{ successortrustees[0].name }} to serve as successor Trustee.

{%p else %}

If the other Trustor is unable or unwilling to serve for any reason, then we name the following to serve as successor Trustee in this order:

{%p for trustee in successortrustees %}

{{ trustee }};

{%p endfor %}

{%p endif %}

### Removal of Trustee during Incapacity of Both of Us

During any time both of us are incapacitated, a Trustee may be removed only for cause; an interested party must petition a court of competent jurisdiction and receive approval from the court for the Trustee removal to be effective.

{%p if trust\_protector %}

Nothing in this Subsection limits the authority of a Trust Protector to remove a Trustee under the provisions of Section 3.11(f) of this Article.

{%p endif %}

### Default of Designation

If the office of Trustee of a trust created under this instrument is vacant and no designated Trustee is able and willing to act during any time that one of us is incapacitated, the other Trustor may appoint a successor Trustee.

If the other Trustor is unable or unwilling to appoint a successor Trustee, our Trust Protector may appoint an individual or a corporate fiduciary to serve as successor Trustee.

The Legal Representative of either of us may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy lasting longer than 30 days. The petitioned court acquires jurisdiction over the trust only to the extent necessary to make the appointment. The trust is not subject to the court’s continuing jurisdiction.

All appointments, removals, and revocations must be by signed written instrument.

## Trustee Succession after the Death of Either or Both of Us

After the death of either or both of us, this Section governs the removal and replacement of our Trustees.

### Upon the Death of a Trustor

Upon the death of a Trustor, the other Trustor may serve as sole Trustee of all trusts created under this instrument.

{%p if trustee\_number == ‘1’ %}

If the other Trustor is unable or unwilling to serve for any reason, we name {{ successortrustees[0].name }} to serve as successor Trustee.

{%p else %}

If the other Trustor is unable or unwilling to serve for any reason, we name the following to serve as successor Trustee in this order:

{%p for trustee in successortrustees %}

{{ trustee }};

{%p endfor %}

{%p endif %}

### Appointment of Successor Trustees by the Surviving Trustor

After the death of one of us, the surviving Grantor may appoint the current or successor Trustees for any trust created under this instrument. The surviving Grantor may amend or revoke this appointment. Except for the Trustee of the Marital Trust, any Trustee appointed by the surviving Grantor to a trust of which the surviving Grantor is a beneficiary must be an individual or corporate fiduciary that is not related or subordinate to the surviving Grantor within the meaning of Internal Revenue Code Section 672(c).

{%p if co\_trustee %}

### Trustees of the Separate Trusts

The Primary Beneficiary of a separate trust created under this instrument, at any time after attaining {{ ctage }} years of age, my appoint himself or herself as a Co-Trustee of his or her separate trust to serve with the then-serving successor Trustee. Any time the beneficiary is serving as a Trustee of his or her trust, at least one other Trustee must be serving with the beneficiary. If a Trustee vacancy occurs and no designated successor Trustee is available to serve, the vacancy is to be filled as provided in Subsection (e) of this Section.

Notwithstanding the previous provisions, the Primary Beneficiary of any trust administer as a supplemental needs trust under this instrument may never appoint himself or herself as a Co-Trustee of his or her separate trust.

{%p endif %}

{%p if sole\_trustee %}

### Trustees of the Separate Trusts

The Primary Beneficiary of a separate trust created under this instrument, at any time after attaining {{ stage }} years of age, my appoint himself or herself as a Co-Trustee of his or her separate trust, may serve as the sole Trustee of the trust, and may name any one or more individual or corporate fiduciaries to serve as current or successor Trustee or Co-Trustee.

If the interest of a beneficiary will be merged into a life estate or an estate for years because the beneficiary is serving as sole Trustee, the beneficiary must appoint a Co-Trustee to avoid this merger. Similarly, if the interest of a beneficiary becomes or is likely to become subject to the claims of any creditor or to legal process as a result of serving as sole Trustee, the beneficiary must appoint an Independent Trustee to serve as Co-Trustee.

Notwithstanding the previous provisions, the Primary Beneficiary of any trust administer as a supplemental needs trust under this instrument may never appoint himself or herself as a Co-Trustee of his or her separate trust, and may not serve as the sole Trustee of his or her separate trust.

{%p endif %}

{%p if cosole\_trustee %}

### Trustees of the Separate Trusts

The Primary Beneficiary of a separate trust created under this instrument, at any time after attaining {{ ctage }} years of age, my appoint himself or herself as a Co-Trustee of his or her separate trust with the then-serving successor Trustee. Upon reaching the {{ stage }} years of age, the Primary Beneficiary may serve as sole Trustee and may name any one or more individual or corporate fiduciaries to serve as current or successor Trustee or Co-Trustee. If a Trustee vacancy occurs and no designated successor Trustee is available to serve, the vacancy is to be filled as provided in Subsection (e) of this Section.

If the interest of a beneficiary will be merged into a life estate or an estate for years because the beneficiary is serving as sole Trustee, the beneficiary must appoint a Co-Trustee to avoid this merger. Similarly, if the interest of a beneficiary becomes or is likely to become subject to the claims of any creditor or to legal process as a result of serving as sole Trustee, the beneficiary must appoint an Independent Trustee to serve as Co-Trustee.

Notwithstanding the previous provisions, the Primary Beneficiary of any trust administer as a supplemental needs trust under this instrument may never appoint himself or herself as a Co-Trustee of his or her separate trust, and may not serve as the sole Trustee of his or her separate trust.

{%p endif %}

{%p if trustee\_blocking\_power %}

Notwithstanding the preceding paragraph, in the event that the then-serving non-beneficiary Trustee determines, in its sole and absolute discretion, that the Primary Beneficiary is involved in substance abuse, or is financially irresponsible, or is mentally or emotionally unstable, or has a creditor or gambling problem, or an existing judgment against them, or is in the midst of a divorce, or otherwise in the judgment of the non-beneficiary Trustee is not suited to fulfilling the responsibilities of acting as a Co-Trustee or sole Trustee, the then-serving non-beneficiary Trustee shall state in writing that it would not be in the best interest of the Primary Beneficiary to serve as Trustee, in which case the non-beneficiary Trustee will continue to serve as sole Trustee until such time as the non-beneficiary Trustee determines that serving as a trustee would be in the Primary Beneficiary’s best interest.

{%p endif %}

{%p if pass\_baton\_early %}

Notwithstanding the proceeding paragraph, in the event that the then-serving Trustee determines, in its sole and absolute discretion, that the Primary Beneficiary is capable and well suited to fulfilling the responsibilities of acting as Trustee prior to attaining {{ stage }} years of age, the then-serving Trustee may state in writing (referencing this provision) that it consents to having the Primary Beneficiary serve as Trustee, in which case upon the resignation of the then-serving Trustee, the Primary Beneficiary may serve as the Trustee of his or her separate trust share.

{%p endif %}

### Removal of a Trustee

After the death of one of us, the surviving Trustor may remove any Trustee, with or without cause. If the surviving Trustor is incapacitated, a Trustee may be removed only for cause, and only if a court of competent jurisdiction approves the removal upon the petition of an interested party.

After the death of both of us, any beneficiary may remove a Trustee only for cause, and with approval from a court of competent jurisdiction. The petition may subject the trust to the jurisdiction of the court only to the extent necessary to make the appointment.

The right to remove a Trustee under this Subsection is not to be interpreted to grant the person holding that right any of the powers of that Trustee.

A minor or incapacitated beneficiary’s parent or Legal Representative may act on his or her behalf.

{%p if trust\_protector %}

Nothing in this Subsection limits the authority of a Trust Protector to remove a Trustee under the provisions of Section 3.11(f) of this Article.

{%p endif %}

### Default of Designation

If the office of Trustee of a trust created under this instrument is vacant and no designated Trustee is able and willing to act, the surviving Trustor may appoint an individual or corporate fiduciary that is not related or subordinate to the person or persons making the appointment within the meaning of Section 672(c) of the Internal Revenue Code as successor Trustee.

{%p if trust\_protector %}

If the surviving Trustor is unable or unwilling to name a successor Trustee or if both of us are deceased, our Trust Protector may appoint the successor Trustee.

If our Trust Protector is unable or unwilling to name a successor Trustee, the trust’s Primary Beneficiary may appoint an individual or corporate fiduciary that is not related or subordinate to the person or persons making the appointment within the meaning of Section 672(c) of the Internal Revenue Code as successor Trustee.

{%p else %}

If the surviving Trustor is unable or unwilling to name a successor Trustee or if both of us are deceased the trust’s Primary Beneficiary may appoint an individual or corporate fiduciary that is not related or subordinate to the person or persons making the appointment within the meaning of Section 672(c) of the Internal Revenue Code as successor Trustee.

{%p endif %}

Any beneficiary may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy lasting longer than 30 days. The petition may subject the trust to the jurisdiction of the court only to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

A minor or incapacitated beneficiary’s parent or Legal Representative may act on his or her behalf.

## Notice of Removal and Appointment

Notice of removal must be in writing and delivered to the Trustee being removed, along with any other then-serving Trustees. The removal notice will become effective in accordance with its provisions.

Notice of appointment must be in writing and delivered to the successor Trustee and any other then-serving Trustees. The appointment will become effective at the time of acceptance by the successor Trustee. A copy of the notice may be attached to this instrument.

## Appointment of a Co-Trustee

Any individual Trustee may appoint an individual or a corporate fiduciary as a Co-Trustee. This Co-Trustee will serve only as long as the appointing Trustee serves, or as long as the last to serve if more than one Trustee appointed the Co-Trustee. This Co-Trustee will not become a successor Trustee upon the death, resignation, or incapacity of the appointing Trustee, unless appointed under the terms of this instrument. Although this Co-Trustee may exercise all the powers of the appointing Trustee, the combined powers of this Co-Trustee and the appointing Trustee may not exceed the powers of the appointing Trustee alone. The Trustee appointing a Co-Trustee may revoke the appointment at any time, with or without cause.

## Corporate Fiduciaries

Any corporate fiduciary serving under this instrument as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal or state law and that is not related or subordinate to any beneficiary within the meaning of Internal Revenue Code Section 672(c).

## Incapacity of a Trustee

If any individual Trustee becomes incapacitated, the incapacitated Trustee need not resign as Trustee. For Trustees other than one of us, a written declaration of incapacity by the Co-Trustee or, if none, by the party designated to succeed the incapacitated Trustee if made in good faith will terminate the trusteeship. If the Trustee designated in the written declaration objects in writing to termination of the trusteeship within 10 days of receiving the declaration of incapacity, a written opinion of incapacity signed by a physician who has examined the incapacitated Trustee must be obtained before the trusteeship will be terminated. The Trustee objecting to termination of trusteeship must sign the necessary medical releases needed to obtain the physician’s written opinion, or the trusteeship will be terminated without it.

## Appointment of Independent Special Trustee

If for any reason the Trustee of any trust created under this instrument is unwilling or unable to act with respect to any trust property or any provision of this instrument, our Trust Protector shall appoint, in writing, a corporate fiduciary or an individual to serve as an Independent Special Trustee as to this property or with respect to this provision. The Independent Special Trustee appointed may not be related or subordinate to any trust beneficiary within the meaning of Internal Revenue Code Section 672(c). Our Trust Protector may revoke any appointment of this kind at any time.

An Independent Special Trustee will exercise all fiduciary powers granted by this trust unless expressly limited elsewhere in this instrument or by our Trust Protector in the instrument appointing the Independent Special Trustee. An Independent Special Trustee may resign at any time by delivering written notice of resignation to our Trust Protector. Notice of resignation will be effective in accordance with the terms of the notice.

## Rights of Successor Trustees

Each successor Trustee serving under this instrument, whether individual or corporate, will have all of the title, rights, powers and privileges granted to our initial Trustees named under this instrument as to the trust of which he or she is named Trustee. In addition, each successor Trustee will be subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to the original Trustees.

## Prohibited Trustees

Notwithstanding anything in this instrument to the contrary, a beneficiary of a supplemental needs trust established under this instrument may not, at any time, serve as Trustee of the supplemental needs trust. If a beneficiary has been nominated to serve as a Trustee of the supplemental needs trust, that nomination will be null and void and the remaining provisions of this instrument with respect to Trustee succession will apply.

{%p if trust\_protector %}

## Provisions for Trust Protector

The function of the Trust Protector is to direct our Trustee in matters concerning the trust, and to assist, if needed, in achieving our objectives as manifested by the other provisions of our estate plan.

Any Trust Protector named or appointed under this Section must be a corporate fiduciary or an individual who is not related or subordinate to either of us while we are still living, or to any beneficiary within the meaning of Internal Revenue Code Section 672(c). Notwithstanding any provision that may seem to the contrary, a Trust Protector shall only act during the period of the incapacity of or after the death of one or both of us. But the Trust Protector’s authority to act will not extend to any portion of the trust over which the survivor or non-incapacitated party has the power to revoke or amend the trust provisions.

### Designation of Trust Protector

During any period in which this instrument authorizes or requires a Trust Protector to act, {{ firm }}, or its successor in interest may appoint a corporate fiduciary or individual of a type described in Section 3.11 as Trust Protector.

This authority shall include the authority to appoint {{ firm }}, its successor in interest, or an individual employed by {{ firm }}, or its successor in interest, as Trust Protector.

Furthermore, {{ firm }}, or its successor in interest, may designate, in writing, another person or law firm who shall have the authority to appoint a Trust Protector. The person or law firm so designated and authorized to appoint the Trust Protector must be an individual or entity who is not related or subordinate to the Trustors while a Trustor is still living, or to any beneficiary within the meaning of Internal Revenue Code Section 672(c).

During any period this instrument requires a Trust Protector to act and no Trust Protector is then serving, if {{ firm }}, or its successor in interest is unable, unwilling, or otherwise fails to make the appointment after 30 days, any beneficiary may petition a court of competent jurisdiction to appoint a Trust Protector.

The court acting to appoint a Trust Protector will acquire jurisdiction or authority over the trust only to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

A minor or incapacitated beneficiary’s parent or Legal Representative may act on his or her behalf.

### Resignation of Trust Protector

A Trust Protector may resign by giving notice to the trust’s Income Beneficiaries and the then-serving Trustee.

A Trust Protector’s resignation takes effect on the date set forth in the notice, but never earlier than 30 days after the date of delivery of the resignation notice, unless an earlier effective date is agreed to by either of us or by the Trustee. A resigning Trust Protector will not be liable or responsible for the act of any successor Trust Protector.

### Removal and Replacement by the Trustors

If either of us is incapacitated or deceased, the living, non-incapacitated Trustor may remove any Trust Protector at any time, with or without cause, but only if the Trustor appoints a successor Trust Protector that commences service simultaneously.

If a Trust Protector is removed, resigns, or cannot continue to serve for any reason and either of us is incapacitated or deceased, the living, non-incapacitated Trustor may appoint a successor Trust Protector.

### Authority of Our Trust Protector to Appoint a Successor Trust Protector

Any Trust Protector, including successor Trust Protectors, may appoint a successor Trust Protector in writing. The appointment of a successor will take effect upon the death, resignation, or incapacity of the appointing Trust Protector.

### Rights of Successor Trust Protectors

A successor Trust Protector has all of the authority of any predecessor Trust Protector, but will not be responsible for its predecessor’s acts, omissions, or forbearances.

### Power to Remove and Appoint Trustees

Our Trust Protector may remove any Trustee of a trust under this instrument other than one of us.

Without limiting the generality of the foregoing, our Trust Protector may remove a Primary Beneficiary acting as Trustee of a separate trust created for his or her benefit under the terms of this trust and may replace the Primary Beneficiary with an Independent Trustee.

In the event that trust income or principal becomes subject to an Involuntary Action, our Trust Protector shall remove any Interested Trustee, if serving, and appoint an Independent Trustee, to serve and the ascertainable standards for health, education, maintenance and support shall not apply.

If the office of Trustee of a trust is vacant and no successor Trustee is designated, our Trust Protector may appoint an individual or a corporate fiduciary to serve as Trustee.

A Trust Protector may not appoint itself as a Trustee, and may not simultaneously serve as both Trust Protector and Trustee.

### Good Faith Standard Imposed

The authority of our Trust Protector is conferred in a nonfiduciary capacity, and our Trust Protector is not liable for any action taken in good faith. Our Trust Protector is not liable for any act, omission, or forbearance. Our Trust Protector must be reimbursed promptly for any costs incurred in defending or settling any claim brought against it in its capacity as Trust Protector, unless it is conclusively established that the act, omission, or forbearance was motivated by an actual intent to harm the trust beneficiaries or was an act of self-dealing for personal benefit.

### Power to Amend Trust Provisions

Our Trust Protector may amend any provision of this instrument as it applies to any trust to which the Trust Protector is serving as Trust Protector to:

alter the administrative and investment powers of our Trustee;

reflect tax or other legal changes that affect trust administration. We recognize that the gift, estate, generation-skipping transfer tax, and income tax provisions of the Internal Revenue Code and Treasury Regulations are subject to change. We grant our Trust Protector the authority to amend this trust instrument’s terms in this manner as will, in our Trust Protector’s sole and absolute discretion, eliminate or minimize the state and federal taxes payable by either of our estates and provide the maximum benefit to our beneficiaries as expressed in this instrument. This includes dividing trust property into separate shares or funds;

add or modify terms of any trust created under this instrument so that the trust will protect the financial resources governed by this instrument and comply with the Trustors' intent that the trust assets not be considered income or resources for all entitlement benefits from any government agency, such as {{ benefits\_trust }}, and any other special-purpose benefits for which the beneficiary is eligible;

amend the dispositive provisions for any beneficiary of any trust created under this instrument;

maximize income tax efficiency with respect to trust assets or trust distributions;

direct our Trustee to modify the distribution rights of any beneficiary created by this instrument; or make, withhold, or amend the terms of any distribution for any beneficiary of a trust created under this instrument;

correct ambiguities, including scrivener errors, that might otherwise require court construction or reformation; and

grant a beneficiary of any trust created under this instrument the testamentary power to appoint all or part of the beneficiary’s trust or trust share to the creditors of the beneficiary’s estate. As a condition for the beneficiary’s exercise of this power, our Trust Protector may require that the beneficiary first obtain the consent of our Trust Protector. Any testamentary power of appointment granted by our Trust Protector may only be exercised personally by the beneficiary, must be exercised in writing and may be revoked by our Trust Protector throughout that beneficiary’s lifetime. We suggest that our Trust Protector exercise this authority to subject trust property to estate tax instead of the generation-skipping transfer tax or when it appears that it may reduce overall taxes.

Our Trust Protector may not amend this instrument in any manner that would result in a reduction in the estate tax marital deduction under Internal Revenue Code Section 2056 or the estate tax charitable deduction under Section 2055, to which either of our estates would otherwise be entitled.

Any amendment made by our Trust Protector in good faith is conclusive on all persons interested in the trust, and our Trust Protector is not liable for the consequences of making or not making any amendment. Any amendment to this instrument made by our Trust Protector must be made in a written instrument signed by our Trust Protector. Our Trust Protector must deliver a copy of the amendment to the Income Beneficiaries and our Trustee.

### Not a General Power of Appointment

Our Trust Protector may not participate in the exercise of a power or a discretion conferred under this instrument that would cause our Trust Protector to possess a general power of appointment within the meaning of Internal Revenue Code Sections 2041 and 2514. Specifically, our Trust Protector may not use these powers for his or her personal benefit, nor for the discharge of his or her financial obligations.

### Release of Powers

Acting on behalf of it and all successor Trust Protectors, our Trust Protector may irrevocably release, renounce, suspend, or reduce any or all powers and discretions conferred on our Trust Protector by this instrument by a written instrument delivered to our Trustee.

### No Duty to Monitor

Our Trust Protector has no duty to monitor any trust created under this instrument in order to determine whether any of the powers and discretions conferred by this instrument on our Trust Protector should be exercised. Further, our Trust Protector has no duty to be informed as to the acts, omissions, or forbearances of others or to take any action to prevent or minimize loss. Any exercise or non-exercise of the powers and discretions granted to our Trust Protector is in the sole and absolute discretion of our Trust Protector, and will be binding and conclusive on all persons. Our Trust Protector is not required to exercise any power or discretion granted under this instrument.

### Compensation

Though not required to accept, any Trust Protector serving under this instrument is entitled to receive reasonable compensation for services as determined by our Trustee. Our Trust Protector is entitled to reimbursement for all expenses incurred in the performance of its duties as Trust Protector, including travel expenses.

Serving in the capacity of Trust Protector does not prevent our Trust Protector from also providing legal, investment, or accounting services on behalf of the trust or the trust beneficiaries. If our Trust Protector is providing professional services, our Trust Protector may charge its typical fees for professional services and may also be compensated for its services as Trust Protector.

### Right to Examine

The books and records of each trust created under this instrument, including all documentation, inventories, and accountings, must be open and available for inspection by our Trust Protector at all reasonable times.

{%p endif %}

# Administration of Our Trust During a Trustor’s Incapacity

## Definition of a Trustor’s Incapacity

A Trustor will be considered incapacitated during any time when the Trustor is unable to effectively manage the Trustor’s property or financial affairs because of age, illness, mental disorder, dependence on prescription medication or other substances, or any other cause.

## Determination of a Trustor’s Incapacity

For purposes of this instrument, a Trustor is incapacitated if determined to be so under any one of the following Subsections.

{%p if disability\_panel\_type == ‘two physicians’ %}

### Determination by Physicians

A Trustor will be considered incapacitated if two licensed physicians have determined the Trustor’s then-existing circumstances fall within the definition of incapacity as provided in Section 4.01.

A Trustor will be considered restored to capacity if the Trustor’s personal or attending physician signs a written opinion that the Trustor can effectively mange the Trustor’s property and financial affairs.

{%p elif disability\_panel\_type == ‘attending physician’ %}

### Determination by Attending Physician

A Trustor will be considered incapacitated if the Trustor’s attending physician has determined the Trustor’s then-existing circumstances fall within the definition of incapacity as provided in Section 4.01.

A Trustor will be considered restored to capacity if the Trustor’s personal or attending physician signs a written opinion that the Trustor can effectively mange the Trustor’s property and financial affairs.

{%p else %}

### Determination by the Other Trustor and Attending Physician

A Trustor will be considered incapacitated if the then-existing circumstances fall within the definition of incapacity as provided in Section 4.01 in the opinion of the other Trustor and the incapacitated Trustor’s attending physician.

### Private Determination

If the other Trustor is unable to make this determination, a Trustor will be considered incapacitated if our incapacity panel, by unanimous written opinion, signed by each member of the incapacity panel, determines that the Trustor’s then-existing circumstances fall within the definition of incapacity as provided in Section 4.01.

If the Trustor has been determined incapacitated by an incapacity panel, the Trustor will be considered restored to capacity if each member of the incapacity panel signs a written opinion that the Trustor can effectively manage the Trustor’s property and financial affairs.

#### Incapacity Panel

Our incapacity panel consists of these individuals:

{%p if trustee\_number == 1 %}

{{p include\_docx\_template(‘dp\_one.docx’) }}

{%p elif trustee\_number == 2 %}

{{p include\_docx\_template(‘dp\_two.docx’) }}

{%p else %}

{{p include\_docx\_template(‘dp\_three.docx’) }}

{%p endif %}

Our incapacity panel may consult with a Trustor’s primary care physician, attending physician, or any medical specialist for assistance in determining the Trustor’s incapacity.

#### Replacement of Incapacity Panel Members

If any member of the disability panel is unable to serve for any reason, then the disability panel will consist of the remaining named individuals. If all of the named individuals are unable to serve, then the disability panel will consist of the Trustor’s primary care physician or attending physician.

{%p endif %}

### Court Determination

A Trustor will be considered incapacitated if a court of competent jurisdiction determines that the Trustor is legally incapacitated, incompetent, or otherwise unable to effectively manage the Trustor’s property or financial affairs.

### Detention, Disappearance, or Absence

A Trustor will be considered incapacitated if the Trustor has an unexplained disappearance or absence for more than 30 days, or is detained under duress. A Trustor’s disappearance, absence, or detention under duress may be established by an affidavit of our Trustee, or, if no Trustee is then serving under this trust, by the affidavit of any beneficiary of any trust created under this instrument. The affidavit must describe the circumstances of the Trustor’s disappearance, absence, or detention under duress. A third party dealing with our Trustee in good faith may always rely on the representations contained in the affidavit.

If the Trustor has been determined incapacitated due to detention, disappearance, or absence, the Trustor will be considered restored to capacity upon written notice by the missing or detained Trustor to the successor Trustee that the Trustor can manage the Trustor’s property and financial affairs.

## Trust Distributions during a Trustor’s Incapacity

{%p if community\_property %}

{{p include\_docx\_template(‘trustor\_incapacity\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘trustor\_incapacity\_sp.docx’) }}

{%p endif %}

Our Trustee shall administer the incapacitated Trustor’s trust property as follows.

### Distributions for the Incapacitated Trustor’s Benefit

Our Trustee shall regularly and conscientiously make appropriate distributions of income and principal for the benefit of the incapacitated Trustor under the circumstances existing at the time each distribution is made.

Appropriate distributions under this Subsection include the payment of any of the incapacitated Trustor’s enforceable legal obligations and premiums for insurance policies owned by the incapacitated Trustor or by our trust, including life, medical, disability, property and casualty, errors and omissions, and long-term health care policies.

Our Trustee is authorized to honor pledges and continue to make gifts to charitable organizations that the incapacitated Trustor has regularly supported in the customarily given amounts.

The examples included in this Subsection are for purposes of illustration only and are not intended to limit the authority of our Trustee to make any distribution for the incapacitated Trustor’s benefit that our Trustee determines appropriate.

### Manner of Making Distributions

Our Trustee may make distributions for the incapacitated Trustor’s benefit in any one or more of the following ways:

to the incapacitated Trustor, but only to the extent the incapacitated Trustor is able to manage these distributions;

to other persons and entities for the incapacitated Trustor’s use and benefit;

to an agent or attorney in fact authorized to act for the incapacitated Trustor under a legally valid durable power of attorney executed by the incapacitated Trustor before the Trustor’s incapacity; and

to the incapacitated Trustor’s guardian or conservator who has assumed responsibility for the incapacitated Trustor under any court order, decree, or judgment issued by a court of competent jurisdiction.

### Distributions for the Other Trustor’s Benefit and for the Benefit of Our Dependents

Our Trustee may distribute as much of the net income and principal of the incapacitated Trustor’s trust as our Trustee considers necessary for the health, education, maintenance, and support of the other Trustor.

Our Trustee may also distribute as much of the net income and principal of the incapacitated Trustor’s trust as our Trustee considers necessary for the health, education, maintenance, and support of other persons who our Trustee determines are dependent on the incapacitated Trustor for support.

### Guidance for Our Trustee Regarding Distributions

{%p if community\_property == True %}

{{p include\_docx\_template(‘incapacity\_distributions\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘incapacity\_distributions\_sp.docx’) }}

{%p endif %}

### Distributions to Agents under General Durable Power of Attorney

Under a valid power of attorney executed by the incapacitated Trustor, our Trustee may make distributions to any agent for the purpose of making gifts as authorized in the power of attorney, or to assist our agent in carrying out our estate planning objectives.

{%p if marital\_share == ‘all\_marital’ %}

{{p include\_docx\_template(‘all\_marital\_a.docx’) }}

{%p elif marital\_share == ‘disclaim’ %}

{{p include\_docx\_template(‘disclaim\_a.docx’) }}

{%p elif marital\_share == ‘fraction’ %}

{{p include\_docx\_template(‘fraction\_a.docx’) }}

{%p elif marital\_share == ‘clayton’ %}

{{p include\_docx\_template(‘clayton\_a.docx’) }}

{%p elif marital\_share == ‘pecuniary’ %}

{{p include\_docx\_template(‘pecuniary\_a.docx’) }}

{%p elif marital\_share == ‘fractional’ %}

{{p include\_docx\_template(‘fractional\_a.docx’) }}

{%p elif marital\_share == ‘shelter’ %}

{{p include\_docx\_template(‘shelter\_a.docx’) }}

{%p else %}

{{p include\_docx\_template(‘allnon\_a.docx’) }}

{%p endif %}

# Disposition of Our Tangible Personal Property

{%p if cashoutrightadc %}

{{p include\_docx\_template(‘cashdistributionotadc.docx’) }}

{%p endif %}

{%p if cashtrustadc %}

{{p include\_docx\_template(‘cashdistributiontradc.docx’) }}

{%p endif %}

{%p if specificpropertyadc %}

{{p include\_docx\_template(‘personalpropertyadc.docx’) }}

{%p endif %}

{%p if roodistributionadc %}

{{p include\_docx\_template(‘occupancydistributionadc.docx’) }}

{%p endif %}

{%p if cashoutrightads %}

{{p include\_docx\_template(‘cashdistributionotads.docx’) }}

{%p endif %}

{%p if cashtrustads %}

{{p include\_docx\_template(‘cashdistributiontrads.docx’) }}

{%p endif %}

{%p if specificpropertyads %}

{{p include\_docx\_template(‘personalpropertyads.docx’) }}

{%p endif %}

{%p if roodistributionads %}

{{p include\_docx\_template(‘occupancydistributionads.docx’) }}

{%p endif %}

{%p if cashoutrightadb %}

{{p include\_docx\_template(‘cashdistributionotadb.docx’) }}

{%p endif %}

{%p if cashtrustadb %}

{{p include\_docx\_template(‘cashdistributiontradb.docx’) }}

{%p endif %}

{%p if specificpropertyadb %}

{{p include\_docx\_template(‘personalpropertyadb.docx’) }}

{%p endif %}

{%p if roodistributionadb %}

{{p include\_docx\_template(‘occupancydistributionadb.docx’) }}

{%p endif %}

{%p if no\_personal\_property\_memo == False %}

## Distribution of Tangible Personal Property by Memorandum

Each of us may dispose of items of tangible personal property by a signed written memorandum executed after we sign this instrument. The memorandum must refer to our trust and must reasonably identify the items and the beneficiary designated to receive each item. If either or both of us executes a memorandum, our Trustee shall incorporate the memorandum by reference into this instrument to the extent permitted by law.

Our Trustee shall distribute the items of tangible personal property listed in the memorandum as promptly as practicable after the death of a Trustor who completed the memorandum, together with any insurance policies covering the property and any claims under those policies, as provided in the memorandum. If either or both of us leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date will control as to that item.

If the law does not permit incorporation of the memorandum by reference, the memorandum will then serve as an amendment to our trust, but only to the extent this amendment solely disposes of tangible personal property. We request that our Trustee follow our wishes and distribute the items of tangible personal property listed in the memorandum according to its terms.

## Distribution of Remaining Tangible Personal Property

Our Trustee shall distribute any of the deceased Trustor’s remaining tangible personal property not disposed of by a written memorandum to the Marital Trust to be administered as provided in Article in the following Articles.

{%p else %}

## Distribution of Remaining Tangible Personal Property

Our Trustee shall distribute any of the deceased Trustor’s remaining tangible personal property as provided in the following Articles.

{%p endif %}

## Definition of Tangible Personal Property

For purposes of this Article, the term *tangible personal property* includes household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, apparel and jewelry, books, sporting goods, and hobby paraphernalia. The term does not include any property that our Trustee, in its sole and absolute discretion, determines to be part of any business or business interest owned by the deceased Trustor or our trust.

After the death of a Trustor, if our Trustee receives property to be distributed under this Article from the deceased Trustor’s probate estate or in any other manner, our Trustee shall distribute the property in accordance with this Article’s terms. The fact that an item of tangible personal property was not received by our trust until after the death of a Trustor does not diminish the validity of the gift. If property to be distributed under this Article is not part of the trust property upon the death of a Trustor and is not subsequently transferred to our Trustee from the deceased Trustor’s probate estate or in any other manner, then the specific distribution of property made in this Article is null and void, without any legal or binding effect.

## Incidental Expenses and Encumbrances

Until property distributed in accordance with this Article is delivered to the appropriate beneficiary or his or her Legal Representative, our Trustee shall pay the reasonable expenses of securing, storing, insuring, packing, transporting, and otherwise caring for the property as an administration expense. Except as otherwise provided in our trust, our Trustee shall distribute property under this Article subject to all liens, security interests, and other encumbrances on the property.

## Residuary Distribution

The deceased Trustor’s remaining property will be administered as provided in the following Articles.

{%p if marital\_share == ‘all\_marital’ %}

{{p include\_docx\_template(‘all\_marital\_b.docx’) }}

{%p elif marital\_share == ‘disclaim’ %}

{{p include\_docx\_template(‘disclaim\_b.docx’) }}

{%p elif marital\_share == ‘fraction’ %}

{{p include\_docx\_template(‘fraction\_b.docx’) }}

{%p elif marital\_share == ‘clayton’ %}

{{p include\_docx\_template(‘clayton\_b.docx’) }}

{%p elif marital\_share == ‘pecuniary’ %}

{{p include\_docx\_template(‘pecuniary\_b.docx’) }}

{%p elif marital\_share == ‘fractional’ %}

{{p include\_docx\_template(‘fractional\_b.docx’) }}

{%p elif marital\_share == ‘shelter’ %}

{{p include\_docx\_template(‘shelter\_b.docx’) }}

{%p else %}

{{p include\_docx\_template(‘allnon\_b.docx’) }}

{%p endif %}

{%p if distribution\_type == ‘subtrust’ %}

{{p include\_docx\_template(‘subtrust.docx’) }}

{%p elif distribution\_type == ‘common trust’ %}

{{p include\_docx\_template(‘common.docx’) }}

{%p else %}

{{p include\_docx\_template(‘outright.docx’) }}

{%p endif %}

# Remote Contingent Distribution

If at any time no person or entity is qualified to receive final distribution of any part of our trust estate, this portion of our trust estate must be distributed one-half to those persons who would inherit it had {{ client.name }} then died intestate owning this property, and one-half to those persons who would inherit it had {{ spouse.name }} then died intestate owning this property. This distribution will be as determined and proportioned under the laws of {{ state\_name(address.state) }} then in effect.

# Distribution to Underage and Incapacitated Beneficiaries

## Supplemental Needs Trust

If under any provision of this trust our Trustee is directed to distribute to or for the benefit of any beneficiary when that person is receiving or applying for needs-based government benefits, our Trustee shall retain and administer the trust property as follows:

### Conduit Trust Distributions Not Included

Distributions from qualified retirement plans subject to the conduit trust provisions set forth in {{ refone }} are excluded from the application of this {{ reftwo }}.

### Distributions for Supplemental Needs

In their sole, absolute, and unreviewable discretion, our Trustee may distribute discretionary amounts of net income and principal for supplemental needs of the beneficiary not otherwise provided by governmental financial assistance and benefits, or by the providers of services.

*Supplemental needs* refers to the basic requirements for maintaining the good health, safety, and welfare when, in the discretion of our Trustee, these basic requirements are not being provided by any public agency, office, or department of any state or of the United States.

*Supplemental needs* will also include medical and dental expenses; annual independent checkups; clothing and equipment; programs of training, education, treatment, and rehabilitation; private residential care; transportation, including vehicle purchases; maintenance; insurance; and essential dietary needs. *Supplemental needs* may include additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and the purchase of appropriate gifts for relatives and friend.

Our Trustee will have no obligation to expend trust assets for these needs. But if our Trustee, in its sole, absolute and unreviewable discretion, decides to expend trust assets, under no circumstances should any amounts be paid to or reimbursed to the federal government, any state, or any governmental agency for any purpose, including for the care, support, and maintenance of the beneficiary.

### Objective to Promote Independence of the Beneficiary

While actions are in our Trustee’s sole, absolute, and unreviewable discretion, all parties to this trust should be mindful that our wish is that the beneficiary live as independently, productively, and happily as possible.

### Trust Assets not to be Considered Available Resource to the Beneficiary

The purpose of the provisions of this {{ reftwo }} is to supplement any benefits received, or for which the beneficiary may be eligible, from various governmental assistance programs, and not to supplant any benefits of this kind. All actions of our Trustee shall be directed toward carrying out this intent, and our Trustee’s discretion granted under this instrument to carry out this intent is sole, absolute, and unreviewable.

For purposes of determining the beneficiary’s eligibility for any of these benefits, no part of the trust estate’s principal or undistributed income will be considered available to the beneficiary for public benefit purposes. The beneficiary must not be considered to have access to the trust’s principal or income, or to have ownership, right, authority, or power to convert any asset into cash for his or her own use.

Our Trustee shall hold, administer, and distribute all property allocated to this trust for the exclusive benefit of the beneficiary during his or her lifetime. All distributions from this trust share are in the sole, absolute, and unreviewable discretion of our Trustee, and the beneficiary is legally restricted from demanding trust assets for his or her support and maintenance.

In the event our Trustee is requested to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or to petition a court or any other administrative agency for the release of trust principal or income for this purpose, our Trustee is authorized to deny this request and to take whatever administrative or judicial steps are necessary to continue the beneficiary’s eligibility for benefits. This includes obtaining legal advice about the beneficiary’s specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to the beneficiary for eligibility purposes. Any expenses incurred by our Trustee in this regard, including reasonable attorney fees, will be a proper charge to the trust estate.

### Distribution Guidelines

Our Trustee shall be responsible for determining what discretionary distributions will be made from this trust. Our Trustee may distribute discretionary amounts of income and principal to or for the benefit of the beneficiary for those supplemental needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services. Any undistributed income will be added to principal. In making distributions, our Trustee must:

consider any other known income or resources of the beneficiary that are reasonably available;

consider all entitlement benefits from any government agency, including Social Security disability payments, Medicare, Medicaid (or any state Medicaid program equivalent), Supplemental Security Income (SSI), In-Home Support Service (IHSS), and any other supplemental purpose benefits for which the beneficiary is eligible;

consider resource and income limitations of any assistance program;

make expenditures so that the beneficiary’s standard of living will be comfortable and enjoyable;

not be obligated or compelled to make specific payments;

not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by this governmental agency or reimbursement is required by the state; and

not be liable for any loss of benefits.

### No Seeking of Order to Distribute

For purposes of determining the beneficiary’s state Medicaid program equivalent eligibility, no part of the trust estate’s principal or undistributed income may be considered available to the beneficiary. Our Trustee shall deny any request by the beneficiary to:

release trust principal or income to or on behalf of the beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or

petition a court or any other administrative agency for the release of trust principal or income for this purpose.

In its sole, absolute, and unreviewable discretion, our Trustee may take necessary administrative or legal steps to protect the beneficiary’s state Medicaid program equivalent eligibility. This includes obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to the beneficiary for purposes of determining state Medicaid program equivalent eligibility. Expenses for this action, including reasonable attorney fees, will be a proper charge to the trust estate.

### Indemnification of Trustee When Acting in Good Faith

Our Trustee will be indemnified from the trust property for any loss or reduction of public benefits sustained by the beneficiary as a result of our Trustee exercising the authority granted to our Trustee under this Section in good faith.

### Distribution upon the Death of the Beneficiary

Upon the beneficiary’s death, our Trustee shall distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this {{ reftwo }} had not been effective. If the other provisions of this trust provide for the beneficiary’s share to be held in trust, then those provisions will be interpreted as though the beneficiary died after the establishment of that trust.

If the other provisions of this trust do not provide for the distribution or retention of the remaining property, then the beneficiary will have the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary’s trust at his or her death among one or more individuals. But the beneficiary may not exercise this limited power of appointment to appoint to himself or herself, his or her estate, his or her creditors or the creditors of his or her estate.

We intend to create a limited power of appointment and not a general power of appointment as defined in Internal Revenue Code Section 2041.

If any part of the beneficiary’s trust is not effectively appointed, our Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary’s descendants. If the beneficiary has no then-living descendants, our Trustee shall distribute the unappointed balance *per stirpes* to the descendants of the beneficiary’s nearest lineal ancestor who was a descendant of ours or, if there is no then-living descendant, *per stirpes* to our descendants.

If we have no then-living descendants, our Trustee shall distribute the balance of the trust property as provided in {{ refnineteen }}.

## Underage and Incapacitated Beneficiaries

If our Trustee is authorized or directed under any provision of this trust to distribute net income or principal to a person who has not yet reached {{ minorage }} years of age or who is incapacitated as defined in {{ reffive }}, our Trustee may make the distribution by any one or more of the methods described in {{ refsix }}. Alternatively, our Trustee may retain the trust property in a separate trust to be administered by our Trustee under {{ refsix }}.

We request that before making a distribution to a beneficiary, our Trustee consider, to the extent reasonable, the ability the beneficiary has demonstrated in managing prior distributions of trust property.

## Methods of Distribution

Our Trustee may distribute trust property for any beneficiary’s benefit, subject to the provisions of {{ refseven }} in any one or more of the following methods:

Our Trustee may distribute trust property directly to the beneficiary.

Our Trustee may distribute trust property to the beneficiary’s guardian, conservator, parent, other family member, or any person who has assumed the responsibility of caring for the beneficiary.

Our Trustee may distribute trust property to any person or entity, including our Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act or similar statute.

Our Trustee may distribute trust property to other persons and entities for the beneficiary’s use and benefit.

Our Trustee may distribute trust property to an agent or attorney in fact authorized to act for the beneficiary under a valid durable power of attorney executed by the beneficiary before becoming incapacitated.

## Retention in Trust

Our Trustee may retain and administer trust property in a separate trust for any beneficiary’s benefit, subject to the provisions of {{ refseven }}as follows.

### Distribution of Net Income and Principal

Our Independent Trustee may distribute to the beneficiary as much of the net income and principal of any trust created under this Section as our Independent Trustee may determine advisable for any purpose. If there is no then-serving Independent Trustee, our Trustee shall distribute to the beneficiary as much of the net income and principal of the trust created under this Section as our Trustee determines is necessary or advisable for the beneficiary’s health, education, maintenance, and support. Any undistributed net income will be accumulated and added to principal.

### Right of Withdrawal

When the beneficiary whose trust is created under this Section either reaches {{ minorage }} years of age or is no longer incapacitated, the beneficiary may withdraw all or any portion of the accumulated net income and principal from the trust.

### Distribution upon the Death of the Beneficiary

Subject to the terms of the next paragraph, the beneficiary whose trust is created under this Section may appoint all or any portion of the principal and undistributed net income remaining in the beneficiary’s trust at the beneficiary’s death among one or more persons or entities, and the creditors of the beneficiary’s estate. The beneficiary has the exclusive right to exercise this general power of appointment.

The beneficiary may not exercise this power of appointment to appoint to the beneficiary, the beneficiary’s estate, the beneficiary’s creditors, or creditors of the beneficiary’s estate from the *limited share* of the beneficiary’s trust. For purposes of this power of appointment, the *limited share* of the beneficiary’s trust is that portion of the beneficiary’s trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or that without the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at the beneficiary’s death. If the generation-skipping tax does not then apply, the limited share will be the beneficiary’s entire trust.

If any part of the beneficiary’s trust is not effectively appointed, our Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary’s descendants. If the beneficiary has no then-living descendants, our Trustee shall distribute the unappointed balance *per stirpes* to the descendants of the beneficiary’s nearest lineal ancestor who was a descendant of ours or, if there is no then-living descendant, *per stirpes* to our descendants.

If we have no then-living descendants, our Trustee shall distribute the balance of the trust property as provided in {{ refeight }}.

## Application of Article

Any decision made by our Trustee under this Article is final, controlling, and binding upon all beneficiaries subject to the provisions of this Article.

The provisions of this Article do not apply to distributions to either of us from any trust established under this trust.

Except as provided in {{ reftwo }}, the provisions of this Article do not apply to distributions that are required to be made to a beneficiary under the provisions of {{ refone }} except to the extent that a beneficiary qualifies as a chronically ill or disabled eligible designated beneficiary under Internal Revenue Code Section 401(a)(9).

# Retirement Plans and Life Insurance Policies

The provisions of this Article apply to qualified retirement plans and insurance policies owned by or made payable to our trust.

## Retirement Plans

Notwithstanding any contrary provision in this trust, this Section’s provisions apply to qualified retirement plans.

### Rights of Our Trustee

Subject to the provisions below pertaining to distributions from qualified retirement plans, our Trustee may exercise the right to determine the manner and timing of payments of qualified retirement plan benefits that are permitted and are consistent with the federal income tax rules regarding required minimum distributions under Internal Revenue Code Section 401(a)(9).

Our Trustee may make a qualified disclaimer of any qualified retirement benefits or non-qualified annuity benefits payable to our trust.

No beneficiary may hold our Trustee liable for any decision regarding the selection of the death benefit election or the disclaimer of any qualified retirement benefits payable to our trust.

Our Trustee may not change or designate beneficiaries under any retirement plan. Any power extended to our Trustee under the terms of a retirement plan that gives or appears to give our Trustee the power to change the identity or rights of any beneficiaries under the plan is void *ab initio*.

### Distributions from Qualified Retirement Plans to a Trust that Qualifies for the Federal Estate Tax Marital Deduction

To the extent that any part of any tax-favored retirement plan is allocated to the Marital Trust, our Trustee may (or must, if so requested by the surviving Trustor) cause the plan or part of the plan to be paid directly to the surviving Trustor as beneficiary, or must (if so required by the surviving Trustor) cause the plan or part of the plan to be transferred directly into another retirement plan in the surviving Trustor’s name, without the intervening step of transferring it to the Marital Trust.

If any trust that qualifies for the federal estate tax marital deduction (a *Marital Deduction Trust*) becomes the beneficiary of death benefits under any qualified retirement plan, each year, beginning with the year of the deceased Trustor’s death, our Trustee must withdraw at least the greater of

the net income earned on such Marital Deduction Trust’s share of the plan during the year, and

the required minimum distribution to be withdrawn from such Marital Deduction Trust’s share of the plan under Internal Revenue Code Section 401(a)(9).

Our Trustee may withdraw additional amounts from the Marital Deduction Trust’s share of the plan as our Independent Trustee may determine advisable for any purpose. If no Independent Trustee is then serving, our Trustee may withdraw any additional amounts from the Marital Deduction Trust’s share of the plan that our Trustee determines necessary or advisable for the surviving Trustor’s health, education, maintenance, and support. Our Trustee must immediately distribute all amounts withdrawn to the surviving Trustor.

In the year of the surviving Trustor’s death, any amount that would have been required to be distributed to the surviving Trustor but for the surviving Trustor’s death must be distributed to the remainder beneficiary. Thereafter, all remaining assets must be withdrawn by December 31 of the year that contains the tenth anniversary of the surviving Trustor’s death.

This subsection’s purpose is to ensure that the life expectancy of the surviving Trustor may be used to calculate the required minimum distributions to be made to the surviving Trustor by the Internal Revenue Code and that the distributions required to be withdrawn for remainder beneficiaries comply with the requirements of Internal Revenue Code Section 401(a)(9). Our intent is that the Marital Deduction Trust will be a conduit trust and that the surviving Trustor will qualify as an eligible designated beneficiary under Internal Revenue Code Section 401(a)(9). This subsection is to be interpreted consistent with this intent, despite any direction to the contrary in this trust.

Notwithstanding any other provision of this trust, our Trustee shall treat annuity and other periodic payments from any qualified retirement plans in any given year as income, to the extent the distribution represents income generated and treated as generated by any qualified retirement plan for that year. If income information is not available, then our Trustee shall apportion the annuity and other periodic payments between principal and income in an equitable and practical manner under {{ refthree }}.

### Distributions from Qualified Retirement Plans to Trusts Other Than Trusts that Qualify for the Federal Estate Tax Marital Deduction

Except as specifically provided otherwise in this instrument, if any trust created under this instrument other than a Marital Deduction Trust becomes the beneficiary of death benefits under any qualified retirement plan, our Trustee must annually withdraw from the trust’s share of the plan the required minimum distribution under Internal Revenue Code Section 401(a)(9). This subsection applies to any administrative trust created under this instrument. Our Trustee may withdraw additional amounts from the trust’s share of the plan as our Independent Trustee may determine advisable for any purpose. If no Independent Trustee is then serving, our Trustee may withdraw any additional amounts from the trust’s share of the plan that our Trustee determines necessary or advisable for the beneficiary’s health, education, maintenance, and support.

Our Trustee shall immediately distribute all amounts withdrawn to:

the surviving Trustor, if a trust beneficiary;

if the surviving Trustor is not a trust beneficiary, to our descendants, per stirpes, who are trust beneficiaries; and

if the surviving Trustor is not a trust beneficiary and no descendant of ours is a trust beneficiary, then equally to the trust’s Income Beneficiaries.

Amounts withdrawn and distributed under this subsection will reduce mandatory distribution amounts under other provisions of this trust that otherwise require distribution of all the trust’s income.

This subsection’s purpose is to ensure that our Trustee may withdraw all required distributions within the maximum time period allowed by Internal Revenue Code Section 401(a)(9). Our intent is that any such trust will be a conduit trust, the beneficiaries of which qualify as designated beneficiaries under Internal Revenue Code Section 401(a)(9). This subsection is to be interpreted consistent with our intent, despite any direction to the contrary in this trust.

### Required Minimum Distribution

In administering any trust where life expectancy may be used to calculate the applicable distribution period under Internal Revenue Code Section 401(a)(9), the required minimum distribution for each qualified retirement plan for any year is the greater of

the value of the qualified retirement plan determined as of the preceding year end, divided by the applicable distribution period, and

the amount that our Trustee is required to withdraw under the laws then applicable to the trust to avoid penalty.

For purposes of determining the applicable distribution period, the designated beneficiary whose life expectancy must be used shall be determined as provided in Section 401(a)(9) of the Internal Revenue Code and applicable United States Treasury Regulations.

In administering any trust, where life expectancy may not be used to determine the applicable distribution period, the required minimum distribution for each qualified retirement plan for any year shall be the amount that our Trustee is required to withdraw under the laws then applicable to the trust under Internal Revenue Code Section 401(a)(9) to avoid penalty.

*Life expectancy*, *applicable distribution period, required minimum distribution,* and other similar terms used in this subsection, are to be determined in accordance with Internal Revenue Code Section 401(a)(9) and applicable United States Treasury Regulations.

## Life Insurance Policies

The following provisions apply to life insurance policies owned by or made payable to our trust.

### Provisions during Our Lives

During our lives, each of us individually reserves all of the rights, powers, privileges, and options, with respect to any insurance policy, annuity, or any other third-party beneficiary contract owned by or made payable to our trust. This includes the rights to designate and change beneficiaries, to borrow money, to surrender the policy, to receive any payments as owner, and to make any available elections.

Our Trustee does not have a duty to exercise or to not exercise any rights, powers, privileges, or options with respect to any insurance policy, annuity contract, or other third-party beneficiary contract. Our Trustee does not have an obligation to pay premiums or other contractual amounts that may be payable under any policy.

### Provisions after Our Death

After the death of a Trustor, our Trustee may make all appropriate elections with respect to these policies and may collect all sums made payable to our trust or to our Trustee under all these policies or contracts.

Our Trustee may exercise any settlement options or other options or rights that may be available under the terms of any policy or contract. No beneficiary may hold our Trustee liable because of any election our Trustee has made with respect to any policy or contract.

## Liability of Payor

Persons or entities dealing in good faith with our Trustee are not required to verify the proper application of proceeds delivered to our Trustee, or to inquire into any provision of this trust.

A receipt signed by our Trustee for any proceeds or benefits paid will be a sufficient discharge to the person or entity making the payment.

## Collection Efforts

Our Trustee shall make reasonable efforts to collect all life insurance policy proceeds and qualified retirement benefits payable to our trust.

Our Trustee may commence legal or administrative proceedings to collect any life insurance policy proceeds or qualified retirement benefits to which the trust is entitled. Our Trustee need not begin these proceedings until our Trustee is satisfactorily indemnified for any expenses and liabilities our Trustee may incur in connection with the proceeding.

Our Trustee may settle any claims with respect to the collection of any life insurance proceeds or qualified retirement benefits to which our trust may be entitled. A settlement made by our Trustee is binding on all beneficiaries.

## No Obligation to Purchase or Maintain Benefits

Nothing in this trust imposes any obligation on either of us or on our Trustee to purchase, invest, or maintain any qualified retirement plan or life insurance policy.

# Trust Administration

## Distributions to Beneficiaries

Whenever this trust authorizes or directs our Trustee to make a net income or principal distribution to a beneficiary, our Trustee may apply any property that otherwise could be distributed directly to the beneficiary for his or her benefit. Our Trustee is not required to inquire into the beneficiary’s ultimate disposition of the distributed property unless specifically directed otherwise by this trust.

Our Trustee may make cash distributions, in-kind distributions, or distributions partly in each, in proportions and at values determined by our Trustee. Our Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that our Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

Our Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

## Trust Decanting; Power to Appoint in Further Trust

Whenever an Independent Trustee may distribute assets to or for the benefit of a beneficiary, our Trustee may appoint the property subject to our Trustee’s power of distribution in trust for the benefit of one or more beneficiaries of any trust created under this instrument under the terms established by the Independent Trustee. Any trust established by the Independent Trustee and funded by the exercise of the power granted under this Section must meet these requirements:

the trust must not reduce any fixed income, annuity, or unitrust right provided by this trust instrument to any beneficiary;

the trust must provide for one or more of the beneficiaries of a trust created under this instrument; and

the interests of remainder beneficiaries of the trust created under this instrument must not be accelerated under the terms of the new trust.

Any trust created under this provision must not contain any provision that, if applicable, would cause the trust to fail to qualify for the marital deduction or charitable deduction, fail to qualify any gift to the trust for any gift, estate, or generation-skipping transfer annual exclusion, or disqualify the trust as a qualified subchapter S corporation shareholder.

If any beneficiary holds a presently exercisable right to withdraw property from this trust, that right may not be defeated by the exercise of the Independent Trustee’s powers granted under this Section.

The Independent Trustee’s powers granted under this Section are not diminished by the revocability or subsequent irrevocability of the trust created under this trust.

## Beneficiary’s Status

Until our Trustee receives notice of the incapacity, birth, marriage, death, or other event upon which a beneficiary’s right to receive payments may depend, our Trustee will not be held liable for acting or not acting with respect to the event, or for disbursements made in good faith to persons whose interest may have been affected by the event. Unless otherwise provided in this trust, a parent or Legal Representative may act on behalf of a minor or incapacitated beneficiary.

Our Trustee may rely on any information provided by a beneficiary with respect to the beneficiary’s assets and income. Our Trustee will have no independent duty to investigate the status of any beneficiary and will not incur any liability for not doing so.

## Mandatory Payments of a Pecuniary Amount

If any person holds the right to receive a pecuniary amount from our trust upon our death, our Trustee must either:

satisfy the entire pecuniary amount or irrevocably set aside property to satisfy the entire pecuniary amount within 15 months of our death; or

pay appropriate interest, as defined in Treasury Regulations Section 26.2642-2(b)(4)(ii)(B), to the person.

If our Trustee satisfies the pecuniary amount with an in-kind distribution, our Trustee will allocate assets to satisfy the pecuniary amount in a manner that fairly reflects net appreciation or depreciation in the value of the available assets, as measured from the valuation date to the payment date.

## No Court Proceedings

Our Trustee shall administer this trust with efficiency, with attention to the provisions of this trust, and with freedom from judicial intervention. If our Trustee or another interested party institutes a legal proceeding, the court will acquire jurisdiction only to the extent necessary for that proceeding. Any proceeding to seek instructions or a court determination may only be initiated in the court with original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination is not to be construed as subjecting this trust to the court’s continuing jurisdiction.

We suggest, but do not require, that any questions or disputes that arise during the administration of this trust be resolved by mediation and, if necessary, arbitration in accordance with the Uniform Arbitration Act. Each interested party involved in the dispute, including any Trustee involved, may select an arbiter and, if necessary to establish a majority decision, these arbiters may select an additional arbiter. The decision of a majority of the arbiters selected will control with respect to the matter.

## No Bond

Our Trustee is not required to furnish any bond for the faithful performance of the Trustee’s duties unless required by a court of competent jurisdiction, and only if the court finds that a bond is needed to protect the beneficiaries’ interests. No surety will be required on any bond required by any law or court rule, unless the court specifies its necessity.

## Exoneration of Our Trustee

No successor Trustee is obligated to examine the accounts, records, or actions of any previous Trustee or the Personal Representative of a deceased Trustor. No successor Trustee may be held responsible for any act, omission, or forbearance by any previous Trustee or of the Personal Representative of a deceased Trustor. Absent clear and convincing evidence of willful bad faith on the part of our Trustee, our Trustee is exonerated from any liability for the acts, omissions, or forbearances of any {{ tp }} and from any liability for our Trustee’s own acts, omissions, or forbearances directed by the {{ tp }}.

Any Trustee may obtain written agreements from the beneficiaries or their Legal Representatives releasing and indemnifying the Trustee from any liability that may have arisen from the Trustee’s acts, omissions, or forbearances. If acquired from all the trust’s living beneficiaries or their Legal Representatives, any agreement is conclusive and binding on all parties, born or unborn, who may have or who may later acquire an interest in the trust.

Our Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal, and may withhold distribution or allocation pending determination or release of a tax or other lien. This refunding agreement provision will not apply to any distribution that qualifies for the federal estate tax unlimited marital deduction or the federal estate tax charitable deduction.

## Trustee Compensation

An individual serving as Trustee is entitled to fair and reasonable compensation for the services provided as a fiduciary. A corporate fiduciary serving as Trustee will be compensated by agreement between an individual serving as Trustee and the corporate fiduciary. In the absence of an individual Trustee or an agreement, a corporate fiduciary will be compensated in accordance with the corporate fiduciary’s current published fee schedule. Any Trustee serving as a Trustee under this agreement may from time to time waive all or any amount of compensation in that Trustee’s discretion.

A Trustee may charge additional fees for services provided that are beyond the ordinary scope of duties, such as fees for legal services, tax return preparation, and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out the Trustee’s duties under this trust.

## Employment of Professionals

Our Trustee may appoint, employ, and remove investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, advisors, agents, and employees to advise or assist in the performance of our Trustee’s duties. Our Trustee may act on the recommendations of the persons or entities employed, with or without independent investigation.

Our Trustee may reasonably compensate an individual or entity employed to assist or advise our Trustee, regardless of any other relationship existing between the individual or entity and our Trustee.

Our Trustee may compensate providers of contracted services at the usual rate out of the trust’s income or principal, as our Trustee deems advisable. Our Trustee may compensate an individual or entity employed to assist or advise our Trustee without diminishing the compensation the Trustee is entitled to under this trust. A Trustee who is a partner, stockholder, officer, director, or corporate affiliate in any entity employed to assist or advise our Trustee may still receive the Trustee’s share of the compensation paid to the entity.

## Exercise of Testamentary Power of Appointment

A testamentary power of appointment granted under this trust may be exercised by a will or living trust specifically referring to the power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and may designate the terms and conditions, whether outright or in trust. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

Our Trustee may conclusively presume that any testamentary power of appointment granted to any beneficiary of a trust created under this trust has not been exercised by the beneficiary if our Trustee has no knowledge of the existence of a will or living trust exercising the power within three months after the beneficiary’s death.

## Determination of Principal and Income

Our Trustee shall determine how all Trustee fees, disbursements, receipts, and wasting assets will be credited, charged, and apportioned between principal and income in a fair, equitable, and practical manner. Our Trustee may allocate capital gain to income rather than principal.

Our Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and the equalization of payments to or for the beneficiaries. Our Trustee may select appropriate accounting periods for the trust property.

Notwithstanding the preceding provisions of this trust or {{ state\_name(address.state) }} law to the contrary, our Trustee shall treat distributions from any qualified retirement account to any trust established under this trust in any given year as income to the extent the distribution represents income generated or treated as generated by any qualified retirement account for that year.

### Annuity and Other Periodic Payments

*Annuity and other periodic payments* refers to distributions made to our Trustee over a fixed number of years or during the life of one or more individuals because of services provided or property transferred to the payor in exchange for future payments. This includes payments made in money or property from the payor’s general assets or from a separate fund created by the payor, including a private or commercial annuity, individual retirement annuity, pension, profit-sharing plan, stock-bonus plan, stock-ownership plan, or similar arrangement. Our Trustee shall treat annuity and other periodic payments to any trust established under this trust in any given year as income to the extent the distribution represents income generated and treated as generated by the annuity or other periodic payment for that year. If income information is not available, then our Trustee shall apportion the annuity and other periodic payments between principal and income in a fair, equitable and practical manner under the guidelines set forth in this Section.

To the extent an annuity or other periodic payment is characterized as interest, dividend, or other item of income, or an annuity or other periodic payment is made instead of interest, dividend, or other item of income, our Trustee shall allocate the payment to income. Our Trustee shall allocate to principal the balance of the annuity or other periodic payment as well as any other payment received in the same accounting period that is not characterized as interest, dividend, or other item of income.

To the extent annuity and other periodic payments are made and no part of the payments are characterized as interest, dividend, or other item of income, our Trustee shall use the present value of the annuity and other periodic payments as finally determined for federal estate tax purposes, and the Internal Revenue Code Section 7520 rate used to determine the value for federal estate tax purposes to prepare an annuitization table to allocate the payments between income and principal.

If the amounts of annuity and other periodic payments change because of changes in the investment markets or other changes, our Trustee shall allocate the change in the amount of the payments between income and principal in a fair, equitable, and practical manner.

### Protection of Estate Tax Marital Deduction

If, to obtain an estate tax marital deduction for a trust established under this trust, our Trustee must allocate more of a payment to income than provided for by this Section, then our Trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

## Distribution from Roth IRAs

Prior to taking any distribution from a qualified retirement plan, our Trustee will first determine the date that any Roth IRA was established, and then determine whether a distribution from that Roth IRA would be a qualified distribution as defined in Internal Revenue Code Section 408A(d)(2) or would be subject to any state or federal penalty taxes. Our Trustee shall take all reasonable precautions to ensure that a distribution from any Roth IRA is treated as a qualified distribution and reduce or avoid application of state or federal penalty taxes to the distribution.

## Determination of Required Minimum Distributions

We encourage our Trustee to seek the advice of a competent CPA, attorney, investment counselor or manager, or financial advisor and not to rely on the retirement account administrator, Trustee, or custodian to determine the required minimum distributions or any other federal or state tax issues associated with any qualified retirement plan assets payable to this trust.

## Trust Accounting

Except to the extent required by law, our Trustee is not required to file accountings in any jurisdiction. During our lifetimes or the lifetime of the survivor of us, and as long as at least one of us is serving as a Trustee, our Trustee is not required to provide an accounting to any person. If neither of us is serving as Trustee, our Trustee must provide an accounting to us at least annually unless waived. If both of us are incapacitated, or if one of us is deceased and the other is incapacitated, then our Trustee must provide the accounting to our Legal Representatives, unless waived by our Legal Representatives. After the death of the first of us to die, our Trustee must provide an annual accounting to the Qualified Beneficiaries of any trust created under this trust unless waived by the Qualified Beneficiaries.

A beneficiary whose only interest in the trust is a specific distribution is not entitled to an accounting.

The annual accounting must include the receipts, expenditures, and distributions of income and principal and the assets on hand for the accounting period. A copy of the federal fiduciary tax return filed for a trust during the accounting will satisfy this reporting requirement.

In the absence of fraud or obvious error, assent by all Qualified Beneficiaries to a Trustee’s accounting will make the matters disclosed in the accounting binding and conclusive upon all persons, including those living on this date and those born in the future who have or will have a vested or contingent interest in the trust property. In the case of a Qualified Beneficiary who is a minor or incapacitated, the beneficiary’s natural guardian or Legal Representative may give the assent required under this Section.

In all events, a beneficiary’s Legal Representative may receive any notices and take any action on behalf of the beneficiary as to an accounting. If any beneficiary’s Legal Representative fails to object to any accounting in writing within 60 days after our Trustee provides the accounting, the beneficiary’s Legal Representative will be considered to assent to the accounting.

## Information to Beneficiaries

Privacy is an important issue to us. This Section defines our Trustee’s duties to inform, account, and report to beneficiaries of various trusts created under this trust, and to other individuals during our lifetime and after our death. Except to the extent required by law, our Trustee is not required to comply with a request to furnish a copy of this trust to a Qualified Beneficiary at any time, and our Trustee is not required to send annual reports or reports upon termination of the trust to any Permissible Distributee or Qualified Beneficiary who requests the report. If our Trustee decides, in our Trustee’s sole and absolute discretion, to provide any information to a Permissible Distributee or Qualified Beneficiary, our Trustee may exclude any information that our Trustee determines is not directly applicable to the beneficiary receiving the information. Any decision by our Trustee to make information available to any beneficiary does not constitute an obligation to provide any information to any beneficiary in the future.

### Providing Information while Either of Us is Alive and Not Incapacitated

We waive all our Trustee’s duties to give notice, information, and reports to any Qualified Beneficiaries other than us while either of us is alive and able to manage our financial resources effectively. Our Trustee is not required to keep Qualified Beneficiaries of any trust created under this trust other than us informed of the administration of our trust in any manner. Further, our Trustee is not required to respond to any request for information related to the administration of the trust from anyone who is not a Qualified Beneficiary, other than us.

### Providing Information while Both of Us Are Incapacitated and after Our Deaths

Our Trustee shall deliver any notice, information, or reports which would otherwise be required to be delivered to either of us or to a Qualified Beneficiary to our {{ tp }} during any period that both of us are alive but incapacitated, during any period when one of us is deceased and the other is incapacitated, and after the death of both us. To preserve our privacy and the privacy of Qualified Beneficiaries under our trust, we request that while either of us is alive, our Trustee not provide any copies of our trust or any other information which may otherwise be required to be distributed to any beneficiary under {{ state\_name(address.state) }} law to any beneficiary to whom the information is not directly relevant. Our {{ tp }} may, in his or her sole and absolute discretion and without waiver, distribute copies of all or any part of our trust or other relevant information about our trust to one or more Qualified Beneficiaries or other interested parties during any period that we are both incapacitated or one of us is deceased and the other is incapacitated.

## Action of Trustees and Delegation of Trustee Authority

When neither of us is serving as a Trustee, if two Trustees are eligible to act with respect to a given matter, they must agree unanimously for action to be taken unless the express terms of the Trustees’ appointment provide otherwise. If more than two Trustees are eligible to act with respect to a given matter, the Trustees must agree by majority for action to be taken.

If our Trustees are unable to agree on a matter for which they have joint powers, we request that the matter be settled by mediation and then by arbitration, if necessary, in accordance with the Uniform Arbitration Act. Each of our Trustees may select an arbiter, and these arbiters may select an additional arbiter if necessary to establish a majority decision. The decision of a majority of the arbiters will control with respect to the matter.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee will be absolved from personal liability by registering the dissent or abstention in the trust records. After doing so, the dissenting Trustee must then act with our other Trustees in any way necessary or appropriate to effect the majority decision.

Subject to the limitations set forth in {{ refnine }}, any Trustee may, by written instrument, delegate to any other Trustee the right to exercise any power, including a discretionary power, granted to our Trustee in this trust. During the time a delegation under this Section is in effect, the Trustee to whom the delegation is made may exercise the power to the same extent as if the delegating Trustee has personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice to the Trustee to whom the power was delegated.

## Trustee May Disclaim or Release Any Power

Notwithstanding any provision of this trust to the contrary, any Trustee may relinquish any Trustee power in whole or in part, irrevocably or for any specified period of time, by a written instrument. The Trustee may relinquish a power personally or may relinquish the power for all subsequent Trustees.

## Trustee May Execute a Power of Attorney

Our Trustee may appoint any individual or entity to serve as our Trustee’s agent under a power of attorney to transact any business on behalf of our trust or any other trust created under this trust.

## Additions to Separate Trusts

If upon the death of the survivor of us, or upon the termination of any trust created under this trust, a final distribution is to be made to a person who is the Primary Beneficiary of another trust established under this trust, and there is no specific indication whether the distribution is to be made in trust or outright, our Trustee shall make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, the distribution will be treated as though it had been an original part of the second trust.

## Authority to Merge or Sever Trusts

Our Trustee may merge a trust created under this trust with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and have at least one Trustee in common. Our Trustee may administer the merged trust under the provisions of the instrument governing the other trust, and this trust will no longer exist if it merges into another trust. Accordingly, in the event another trust is merged into this trust or a trust created under the provisions of this trust document, our Trustee may shorten the period during which this trust subsists to comply with {{ reften }}, if necessary, to effect the merger. But if a merger does not appear feasible, our Trustee may consolidate the trusts’ assets for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

Our Trustee may sever any trust on a fractional basis into two or more separate and identical trusts, or may segregate a specific amount or asset from the trust property by allocating it to a separate account or trust. The separate trusts may be funded on a *non pro rata* basis, but the funding must be based on the assets’ total fair market value on the funding date. After the segregation, income earned on a segregated amount or specific asset passes with the amount or asset segregated. Our Trustee shall hold and administer each severed trust upon terms and conditions identical to those of the original trust.

Subject to the trust’s terms, our Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the effective severance date; however, the effective severance date may be retroactive to a date before our Trustee exercises the power.

## Authority to Terminate Trusts

Our Independent Trustee may terminate any trust created under this trust at any time, if our Independent Trustee, in its sole and absolute discretion, determines that administering a trust created under this trust is no longer economical. Once distributed, our Trustee will have no further responsibility with respect to that trust property. Our Trustee will distribute the trust property from a terminated trust in this order:

to us, if we are both then living;

if one of us is deceased, to the surviving Trustor, if the surviving Trustor is then a trust beneficiary;

if we are both deceased or the surviving Trustor is not a trust beneficiary, to the beneficiaries then entitled to mandatory distributions of the trust’s net income, in the same proportions; and then

if none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of the trust’s net income, in the amounts and shares our Independent Trustee determines.

## Merger of Corporate Fiduciary

If any corporate fiduciary acting as the Trustee under this trust is merged with or transfers substantially all of its trust assets to another corporation, or if a corporate fiduciary changes its name, the successor will automatically succeed to the trusteeship as if that successor had been originally named a Trustee. No document of acceptance of trusteeship will be required.

## Funeral and Other Expenses of Beneficiary

Upon the death of an Income Beneficiary, our Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts, or other expenses incurred due to the death of the beneficiary from trust property. This Section only applies to the extent the Income Beneficiary has not exercised any testamentary power of appointment granted to the beneficiary under this trust.

Our Trustee may rely upon any request by the deceased beneficiary’s Legal Representative or family members for payment without verifying the validity or the amounts and without being required to see to the application of the payment. Our Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or court rule and without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary’s estate.

## Marital Deduction Qualification

The marital gift as described in {{ refthirteen }} of this trust is intended to qualify for the federal estate tax marital deduction, and the provisions of this trust are to be construed to reflect this intent. To the extent that exercising a provision of this trust would disqualify the marital gift from the federal estate tax unlimited marital deduction, that provision is void.

## Generation-Skipping Transfer Tax Provisions

If any trust created under this trust would be partially exempt from generation-skipping transfer tax after the intended allocation of Available GST Exemption to the trust, then our Trustee may divide the partially exempt trust so that the allocation of Available GST Exemption can be made to a trust that will be entirely exempt from generation-skipping transfer tax. If our Trustee chooses to divide a trust that would otherwise be a partially exempt trust, our Trustee must create and administer the separate trusts as provided in this Section.

### Division into Exempt and Non-Exempt Trusts

Our Trustee shall divide the property of the otherwise partially-exempt trust into two separate trusts, the *exempt trust* and the *nonexempt trust*. The exempt trust will consist of the largest fractional share of the otherwise partially exempt trust’s total assets that will permit the exempt trust to be entirely exempt from generation-skipping transfer tax. The *nonexempt trust* will consist of the balance of the otherwise partially exempt trust’s total assets.

To compute the fractional share, our Trustee will use asset values as finally determined for transfer tax purposes. Our Trustee must then apply the fraction to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of the fraction will include fluctuations in the trust property’s value. We request that our Trustee allocate the value of any Roth IRAs payable to our trust to the exempt trust to the extent possible.

### Administration of the Trusts

Our Trustee shall administer the exempt and nonexempt trusts created under this Section as separate and independent trusts, but under the same terms as the original trust. To the extent possible, our Trustee should make distributions to a non-skip person as defined by Internal Revenue Code Section 2613 from the nonexempt trust and distributions to a skip person as defined by Section 2613 from an exempt trust. Our Trustee may designate names for the exempt and nonexempt trusts.

If an exempt trust and a nonexempt trust are further divided under the terms of this trust, our Trustee may allocate property from the exempt trust first to the trust from which a generation-skipping transfer is more likely to occur.

### Expression of Our Intent

Our intent is to minimize the application of the generation-skipping transfer tax to the trust property, but not to affect the total amount of trust property to which any beneficiary may be entitled under this trust. This trust must be construed and interpreted to give effect to this intent.

### Additions of Property to Exempt and Non-Exempt Trusts

If at any time any property that has an inclusion ratio greater than zero for generation-skipping transfer tax purposes would be added to a trust with property that has an inclusion ratio of zero, then our Trustee will instead hold the property in a separate trust on the same terms and conditions as the original trust.

### Re-Allocation

If our Trustee’s determination of whether a trust in this trust is partially, entirely, or not exempt from GST taxes is later incorrect (for example, if the Congress by law or the Service by regulation or ruling applies the generation-skipping transfer tax retroactively to the trust), our Trustee may re-allocate the assets as of the initial division date, as provided in this Section.

## Special Instructions Regarding Criminal Behavior

At no time shall the separate trust share established for any beneficiary under this instrument be available for or distributed to any governmental agency to reimburse or repay such governmental agency, whether local, state, or federal, for the costs of the beneficiary’s incarceration. At no time shall the separate trust share established for any beneficiary be available for or distributed to any victim rights funds or to satisfy any claim of a victim or for a victim’s restitution.

## Delay of Distribution

Except as otherwise provided in Retirement Plans Section of this instrument, the Trustee of this trust may, in its sole and absolute discretion, totally or partially delay distribution to any beneficiary who in the opinion of the Trustee is involved in substance abuse, or is financially irresponsible, or is mentally or emotionally unstable, or has a creditor or gambling problem, or an existing judgment against them, or is in the midst of a divorce, or otherwise in the judgment of the Trustee is not suited to receiving distributions at that time. The Trustee may request any beneficiary to submit to medical testing and to provide medical or financial records, and the Trustee may consider the results of such investigation, together with the beneficiary’s cooperation, in making this determination. Refusal to cooperate by a beneficiary may be considered by the Trustee to be the equivalent of failing a substance abuse test, or having a pattern of financial irresponsibility, or other similar failure to qualify for distribution of benefits.

# Our Trustee’s Powers

## Introduction to Trustee’s Powers

Except as otherwise specifically provided in this trust, our Trustee may exercise the powers granted by this trust without prior approval from any court, including those powers set forth under the laws of the State of {{ state\_name(address.state) }} or any other jurisdiction whose law applies to this trust. The powers set forth in {{ trustee\_powers }} are specifically incorporated into this trust.

Our Trustee shall exercise the Trustee powers in the manner our Trustee determines to be in the beneficiaries’ best interests. Our Trustee must not exercise any power inconsistent with the beneficiaries’ right to the enjoyment of the trust property in accordance with the general principles of trust law.

Our Trustee may have duties and responsibilities in addition to those described in this trust. We encourage any individual or corporate fiduciary serving as Trustee to obtain appropriate legal advice if our Trustee has any questions concerning the duties and responsibilities as Trustee.

## Execution of Documents by Our Trustee

Our Trustee may execute and deliver any written instruments that our Trustee considers necessary to carry out any powers granted in this trust.

## Investment Powers in General

Our Trustee may invest in any type of investment that our Trustee determines is consistent with the investment goals of the trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account the overall investment portfolio of the trust.

Without limiting our Trustee’s investment authority in any way, we request that our Trustee exercise reasonable care and skill in selecting and retaining trust investments. We also request that our Trustee take into account the following factors in choosing investments:

the potential return from the investment, both in income and appreciation;

the potential income tax consequences of the investment;

the investment’s potential for volatility; and

the role the investment will play in the trust’s portfolio.

We request that our Trustee also consider the possible effects of inflation or deflation, changes in global and domestic economic conditions, transaction expenses, and the trust’s need for liquidity while arranging the trust’s investment portfolio.

Our Trustee may delegate his or her discretion to manage trust investments to any registered investment advisor or corporate fiduciary.

## Banking Powers

Our Trustee may establish any type of bank account in any banking institutions that our Trustee chooses. If our Trustee makes frequent disbursements from an account, the account does not need to be interest bearing. Our Trustee may authorize withdrawals from an account in any manner.

When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the account’s fiduciary nature or refer to any trust or Trustee.

## Power Regarding Safe-Deposit Boxes

The Trustee may contract with any institution to rent a safe-deposit box in the name of the trust. The Trustee may have access to any safe-deposit box in the name of the trust. This Section will apply whether or not the contract for the safe-deposit box was executed by a Trustor, or by the successor Trustee in the name of the trust. The Trustee may also add to or remove the contents of a safe-deposit box, or terminate any rental contract for a safe-deposit box. For purposes of this section, these powers also specifically apply to any successor Trustee.

## Business Powers

If the trust owns or acquires an interest in a business entity, whether as a shareholder, partner, general partner, sole proprietor, member, participant in a joint venture, or otherwise, our Trustee may exercise the powers and authority provided for in this Section. The powers granted in this Section are in addition to all other powers granted to our Trustee in this trust.

### No Duty to Diversify

Notwithstanding any duty to diversify imposed by state law or any other provision of this trust, our Trustee may acquire or indefinitely retain any ownership interest in or indebtedness of any closely held or nonpublicly traded entity in which the trust, we, our descendants, and the spouses of our descendants have an ownership interest (the *business interests*), and even though any business interest may constitute all or a substantial portion of the trust property. We specifically authorize our Trustee to invest or indefinitely retain all or any part of the trust property in these business interests, regardless of any resulting risk, lack of income, diversification, or marketability. We waive any applicable prudent investor rule, as well as the Trustee’s standard of care and duty to diversify with respect to the acquisition or retention of these business interests.

We recognize that the value of a noncontrolling interest in a business entity may be less than the underlying value of the entity’s net assets. Nevertheless, we authorize our Trustee to acquire or retain any noncontrolling business interests.

### Specific Management Powers

Our Trustee has all power and authority necessary to manage and operate any business owned by the trust, whether directly or indirectly, including the express powers set forth in this Subsection. Our Trustee may participate directly in the conduct of the business, by serving as a general partner of a limited partnership, a member, manager or managing member of a limited liability company, or a shareholder of a corporation, or may employ others to serve in that capacity.

Our Trustee may participate in the management of the business and delegate management duties and powers to any employee, manager, partner, or associate of the business, without incurring any liability for the delegation. To the extent that the business interest held by the trust is not one that includes management powers (such as a minority stock interest, limited partnership interest, or a membership interest in a limited liability company), our Trustee has no obligation to supervise the management of the underlying assets, and no liability for the actions of those who do manage the business.

Our Trustee may enter into management trusts and nominee trusts in which our Trustee and the trust may serve as the exclusive manager or nominee of property or property interests on behalf of any limited partnership, limited liability company, or corporation.

Our Trustee, individually, or if our Trustee is a corporate fiduciary, then an employee of our Trustee, may act as a director, general or limited partner, associate, or officer of the business.

Our Trustee may participate with any other person or entity in the formation or continuation of a partnership either as a general or limited partner, or in any joint venture. Our Trustee may exercise all the powers of management necessary and incidental to a membership in the partnership, limited partnership, or joint venture, including making charitable contributions.

Our Trustee may reduce, expand, limit, or otherwise adjust the operation or policy of the business. Our Trustee may subject the trust’s principal and income to the risks of the business for any term or period, as our Trustee determines.

For any business in which the trust has an interest, our Trustee may advance money or other property, make loans (subordinated or otherwise) of cash or securities, and guarantee the loans of others made to the business. Our Trustee may borrow money for the business, either alone or with other persons interested in the business, and may secure the loan or loans by a pledge or mortgage of any part of any trust property.

Our Trustee may select and vote for directors, partners, associates, and officers of the business. Our Trustee may enter into owners’ agreements with a business in which the trust has an interest or with the other owners of the business.

Our Trustee may execute agreements and amendments to agreements as may be necessary to the operation of the business, including stockholder agreements, partnership agreements, buy-sell agreements, and operating agreements for limited liability companies.

Our Trustee may generally exercise any powers necessary for the continuation, management, sale, or dissolution of the business.

Our Trustee may participate in the sale, reorganization, merger, consolidation, recapitalization, or liquidation of the business. Our Trustee may sell or liquidate the business or business interest on terms our Trustee deems advisable and in the best interests of the trust and the beneficiaries. Our Trustee may sell any business interest held by the trust to one or more of the beneficiaries of this trust or to any trust in which a majority of the beneficiaries are beneficiaries of this trust. Our Trustee may make the sale in exchange for cash, a private annuity, an installment note, or any combination of those.

Our Trustee may exercise all of the business powers granted in this trust even though our Trustee may be personally invested in or otherwise involved with the business.

### Business Liabilities

If any tort or contract liability arises in connection with a business titled in the name of the trust, and if the trust is liable, our Trustee will first satisfy the liability from the assets of that respective business, and only then from other trust property as determined by our Trustee.

### Trustee Compensation

In addition to the compensation set forth in {{ reffour }}, our Trustee may receive additional reasonable compensation for services in connection with the operation of the business. Our Trustee may receive this compensation directly from the business, the trust or both.

### Conflicts of Interest

Our Trustee may exercise all of the powers granted in this trust even though our Trustee may be involved with or have a personal interest in the business.

## Contract Powers

Our Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that our Trustee deems advisable. Our Trustee may grant options of any duration for any sales, exchanges, or transfers of trust property.

Our Trustee may enter into contracts, and may deliver deeds or other instruments, that our Trustee considers appropriate.

## Common Investments

For purposes of convenience with regard to the trust property’s administration and investment, our Trustee may invest part or all of the trust property jointly with property of other trusts for which our Trustee is also serving as a Trustee. A corporate fiduciary acting as our Trustee may use common funds for investment. When trust property is managed and invested in this manner, our Trustee will maintain records that sufficiently identify this trust’s portion of the jointly invested assets.

## Digital Assets

Our Trustee has the authority to access, modify, control, archive, transfer, and delete our digital assets.

Digital assets include our sent and received emails, email accounts, digital music, digital photographs, digital videos, gaming accounts, software licenses, social-network accounts, file-sharing accounts, financial accounts, domain registrations, Domain Name System (DNS) service accounts, blogs, listservs, web-hosting accounts, tax-preparation service accounts, online stores and auction sites, online accounts, and any similar digital asset that currently exists or may be developed as technology advances.

Our digital assets may be stored in the cloud or on our own digital devices. Our Trustee may access, use, and control our digital devices in order to access, modify, control, archive, transfer, and delete our digital assets—this power is essential for access to our digital assets that are only accessible through our digital devices. Digital devices include desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar hardware that currently exists or may be developed as technology advances.

## Environmental Powers

Our Trustee may inspect trust property to determine compliance with or to respond to any environmental law affecting the property. For purposes of this trust, *environmental law* means any federal, state, or local law, rule, regulation, or ordinance protecting the environment or human health.

Our Trustee may refuse to accept property if our Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to any Trustee.

Our Trustee may use trust property to:

conduct environmental assessments, audits, or site monitoring;

take remedial action to contain, clean up, or remove any hazardous substance including a spill, discharge, or contamination;

institute, contest, or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance;

comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement, or cleanup of any hazardous substance; and

employ agents, consultants, and legal counsel to assist our Trustee in these actions.

Our Trustee is not liable for any loss or reduction in value sustained by the trust as a result of our Trustee’s decision to retain property on which hazardous materials or substances requiring remedial action are discovered, unless our Trustee contributed to that loss through willful misconduct or gross negligence.

Our Trustee is not liable to any beneficiary or to any other party for any decrease in the value of property as a result of our Trustee’s actions to comply with any environmental law, including any reporting requirement.

Our Trustee may release, relinquish, or disclaim any power held by our Trustee that our Trustee determines may cause our Trustee to incur individual liability under any environmental law.

## Farm, Ranch, and Other Agricultural Powers

Our Trustee may retain, acquire, and sell any farm or ranching operation, whether as a sole proprietorship, partnership, or corporation.

Our Trustee may engage in the production, harvesting, and marketing of farm and ranch products, either by operating directly or indirectly with management agencies, hired labor, tenants, or sharecroppers.

Our Trustee may engage and participate in any government farm program, whether state or federally sponsored.

Our Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

Our Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; and acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

Our Trustee may do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries.

## Insurance Powers

Our Trustee may purchase, accept, hold, and deal with as owner, insurance policies on either or both of our lives, any beneficiary’s life, or any person’s life in whom any beneficiary has an insurable interest.

Our Trustee may purchase disability, medical, liability, long-term health care and other insurance on behalf of and for the benefit of any beneficiary. Our Trustee may purchase annuities and similar investments for any beneficiary.

Our Trustee may execute or cancel any automatic premium loan agreement with respect to any policy, and may elect or cancel any automatic premium loan provision in a life insurance policy. Our Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company issuing the policy or from another source. Our Trustee may assign the policy as security for the loan.

Our Trustee may exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy to reduce the amount of a policy, to convert or exchange the policy, or to surrender a policy at any time for its cash value.

Our Trustee may elect any paid-up insurance or extended-term insurance nonforfeiture option contained in a policy.

Our Trustee may sell any policy at its fair market value to anyone having an insurable interest in the policy, including the insured.

Our Trustee may exercise any other right, option, or benefit contained in a policy or permitted by the issuing insurance company.

Upon termination of the trust, our Trustee may transfer and assign the policies held by the trust as a distribution of trust property.

## Loans and Borrowing Powers

Our Trustee may make loans to, or guarantee the borrowing of, any person including a beneficiary, as well as an entity, trust, or estate, for any term or payable on demand, and secured or unsecured.

Our Trustee may encumber any trust property by mortgages, pledges, or otherwise, and may negotiate, refinance, or enter into any mortgage or other secured or unsecured financial arrangement, whether as a mortgagee or mortgagor. The term may extend beyond the trust’s termination and beyond the period required for an interest created under this trust to vest in order to be valid under the rule against perpetuities.

Our Trustee may enter into, negotiate, or modify the terms of any mortgage or any other secured or unsecured agreement granted in connection with any loan entered into by either or both of us or by any Trustee, and may release or foreclose on any mortgage or security interest payable to either or both of us or to the trust.

Our Trustee may borrow money at interest rates and on other terms that our Trustee deems advisable from any person, institution, or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

Our Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. Our Trustee may accept deeds instead of foreclosing.

## Nominee Powers

Our Trustee may hold real estate, securities, and any other property in the name of a nominee or in any other form, without disclosing the existence of any trust or fiduciary capacity.

## Oil, Gas, and Mineral Interests

Our Trustee may acquire, maintain, develop, and exploit, either alone or jointly with others, any oil, gas, coal, mineral, or other natural resource rights or interests.

Our Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell, and exchange any of those rights and interests on terms and for a price that our Trustee deems advisable.

Our Trustee may execute leases, pooling, unitization, and other types of agreements in connection with oil, gas, coal, mineral, and other natural resource rights and interests, even though the terms of those arrangements may extend beyond the trust’s termination.

Our Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it considers proper.

Our Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the trust’s principal and income.

## Payment of Property Taxes and Expenses

Except as otherwise provided in this trust, our Trustee may pay any property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments will be a charge against the trust property and will be paid by our Trustee out of income. If the income is insufficient, then our Trustee may make any payments of property taxes or expenses out of the trust property’s principal. Our Trustee’s determination with respect to this payment will be conclusive on the beneficiaries.

## Purchase of Assets from and Loans to a Deceased Trustor’s Probate Estate

Upon the death of a Trustor, our Trustee may purchase at fair market value and retain in the form received any property that is a part of the deceased Trustor’s probate or trust estate as an addition to the trust. In addition, our Trustee may make secured and unsecured loans to the deceased Trustor’s probate or trust estate. Our Trustee may not be held liable for any loss suffered by the trust because of the exercise of the powers granted in this Section.

Our Trustee may not use any trust property for the benefit of the deceased Trustor’s estate as defined in Code of Federal Regulations Title 26 Section 20.2042-1(b), unless the property is included in the deceased Trustor’s gross estate for federal estate tax purposes.

## Qualified Real Property Valuation

Our Independent Trustee has the power to amend the terms of a trust holding *qualified real property* as defined in Internal Revenue Code Section 2032A, in order to permit the qualified real property to qualify for special use valuation permitted under Section 2032A, even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

## Qualified Tuition Programs

Our Trustee may purchase tuition credits or certificates or make contributions to an account in one or more qualified tuition programs as defined under Internal Revenue Code Section 529 on a beneficiary’s behalf for the purpose of meeting the beneficiary’s qualified higher education expenses. With respect to an interest in any qualified tuition program, our Trustee may act as contributor, administering the interest by actions including:

designating and changing the designated beneficiary of the interest in the qualified tuition program;

requesting both qualified and nonqualified withdrawals;

selecting among investment options and reallocating funds among different investment options;

making rollovers to another qualified tuition program; and

allocating any tax benefits or penalties to the beneficiaries of the trust.

Notwithstanding anything in this provision to the contrary, the designated beneficiary must always be a beneficiary of the trust from which the funds were distributed to establish the interest in the qualified tuition program. Investment in a qualified tuition program will not be considered a delegation of investment responsibility under any applicable statute or other law.

## Real Estate Powers

Our Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve, and in general deal in and with real property in the manner and on the terms and conditions as our Trustee deems appropriate.

Our Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements to, and abandon any real property.

Our Trustee may manage real estate in any manner considered best, and may exercise all other real estate powers necessary to effect this purpose.

Our Trustee may enter into contracts to sell real estate. Our Trustee may enter into leases and grant options to lease trust property, even though the term of the agreement extends beyond the termination of any trusts established under this trust and beyond the period that is required for an interest created under this trust to vest in order to be valid under the rule against perpetuities. Our Trustee may enter into any contracts, covenants, and warranty agreements that our Trustee deems appropriate.

## Residences and Tangible Personal Property

Our Trustee may acquire, maintain, and invest in any residence for the beneficiaries’ use and benefit, whether or not the residence is income producing and without regard to the proportion that the residence’s value may bear to the trust property’s total value, even if retaining the residence involves financial risks that Trustees would not ordinarily incur. Our Trustee may pay or make arrangements for others to pay all carrying costs of any residence for the beneficiaries’ use and benefit, including taxes, assessments, insurance, maintenance, and other related expenses.

Our Trustee may acquire, maintain, and invest in articles of tangible personal property, whether or not the property produces income. Our Trustee may pay for the repair and maintenance of the property.

Our Trustee is not required to convert the property referred to in this Section to income-producing property, except as required by other provisions of this trust.

Our Trustee may permit any Income Beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that our Trustee determines, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

Our Trustee is not liable for any depreciation or loss resulting from any decision to retain or acquire any property as authorized by this Section.

## Retention and Abandonment of Trust Property

Our Trustee may retain any property constituting the trust at the time of its creation, at the time of the death of a Trustor, or as the result of the exercise of a stock option, without liability for depreciation or loss resulting from retention. Our Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

Our Trustee may hold property that is not income producing or is otherwise nonproductive if holding the property is in the best interests of the beneficiaries in the sole and absolute discretion of our Trustee. On the other hand, our Trustee will invest contributions of cash and cash equivalents as soon as reasonably practicable after the assets have been acquired by the trust.

Our Trustee may retain a reasonable amount in cash or money market accounts to pay anticipated expenses and other costs, and to provide for anticipated distributions to or for the benefit of a beneficiary.

Our Trustee may abandon any property that our Trustee considers of insignificant value.

## Securities and Brokerage Powers

Our Trustee may buy, sell, trade, and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, and other securities of any kind and in any amount, including short sales.

Our Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. Our Trustee may have all securities registered in the name of the bank or trust company or in the name of the bank’s nominee or trust company’s nominee. Our Trustee may appoint the bank or trust company as the agent or attorney in fact to collect, receive, receipt for, and disburse any income, and generally to perform the duties and services incident to a custodian of accounts.

Our Trustee may employ a broker-dealer as a custodian for securities held by the trust, and may register the securities in the name of the broker-dealer or in the name of a nominee; words indicating that the securities are held in a fiduciary capacity are optional. Our Trustee may hold securities in bearer or uncertificated form, and may use a central depository, clearing agency, or book-entry system, such as The Depository Trust Company, Euroclear, or the Federal Reserve Bank of New York.

Our Trustee may participate in any reorganization, recapitalization, merger, or similar transaction. Our Trustee may exercise or sell conversion or subscription rights for securities of all kinds and descriptions. Our Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution, and may vote or refrain from voting on any matter.

## Settlement Powers

Our Trustee may settle any claims and demands in favor of or against the trust by compromise, adjustment, arbitration, or other means. Our Trustee may release or abandon any claim in favor of the trust.

## Subchapter S Corporation Stock Provisions

During any period the trust is not treated as a grantor trust for tax purposes under Internal Revenue Code Section 671, this trust or any trust created under this trust may hold any S corporation stock held as a separate *Electing Small Business Trust*, or as a separate *Qualified Subchapter S Trust*, as provided in this Section.

For purposes of this Section, *S corporation stock* means all capital stock issued by a corporation (or other entity taxable as a corporation for federal income tax purposes) that is treated or is intended to be treated under Section 1361(a) as an *S corporation* for federal income tax purposes.

### Electing Treatment as an Electing Small Business Trust

If our Trustee elects under Internal Revenue Code Section 1361(e)(3) to qualify any portion of the trust as an *Electing Small Business Trust*, our Trustee shall:

apportion a reasonable share of the unallocated expenses of all trusts created under this trust to the Electing Small Business Trust under the applicable provisions of the Internal Revenue Code and Treasury Regulations; and

administer the trust as an Electing Small Business Trust, under Internal Revenue Code Section 1361(e).

### Electing Treatment as a Qualified Subchapter S Trust

If the current Income Beneficiary of the trust makes an election under Section 1361(d)(2) to qualify the trust as a Qualified Subchapter S Trust within the meaning of Section 1361(d)(3), our Trustee shall:

refer to the Qualified Subchapter S Trust using the same name as the trust to which the stock was originally allocated, plus the name of the current Income Beneficiary of the trust, followed by the letters QSST;

administer the Qualified Subchapter S Trust in accordance with the same provisions contained in the trust to which the Trustee allocated the S corporation stock, as long as the provisions of this Subsection control the trust administration to the extent that they are inconsistent with the provisions of the original trust; and

maintain the Qualified Subchapter S Trust as a separate trust held for the benefit of only one beneficiary as required in Section 1361(d)(3).

Our Trustee shall recommend that the current Income Beneficiary of the trust make a timely election to cause federal tax treatment of the trust as a Qualified Subchapter S Trust.

#### Current Income Beneficiary

The *current Income Beneficiary* of a Qualified Subchapter S Trust is the person who has a present right to receive income distributions from the trust to which the Trustee has allocated the S corporation stock. A Qualified Subchapter S Trust may have only one current Income Beneficiary.

If, under the terms of the trust, more than one person has a present right to receive income distributions from the trust originally holding the S corporation stock, our Trustee shall segregate the S corporation stock into separate Qualified Subchapter S Trusts for each of these people.

#### Distributions

Until the earlier of the death of the current Income Beneficiary or the date on which the trust no longer holds any S corporation stock (the *QSST termination date*), our Trustee shall distribute at least annually all of the trust’s *net income*, as defined in Internal Revenue Code Section 643(b) to the current Income Beneficiary.

The terms of the trust to which the S corporation stock was originally allocated govern distributions of principal from the Qualified Subchapter S Trust. But until the QSST termination date, our Trustee may distribute principal only to the current Income Beneficiary of the Qualified Subchapter S Trust and not to any other person or entity.

If the Qualified Subchapter S Trust terminates during the lifetime of the current Income Beneficiary, our Trustee shall distribute all assets of the Qualified Subchapter S Trust to the current Income Beneficiary outright and free of the trust.

#### Allocation of Income and Expenses

Our Trustee shall characterize receipts and expenses of any Qualified Subchapter S Trust in a manner consistent with Internal Revenue Code Section 643(b).

#### Trust Merger or Consolidation

Notwithstanding any other provision of this trust that may seem to the contrary, our Trustee may not merge any Qualified Subchapter S Trust with another trust’s assets if doing so would jeopardize the qualification of either trust as a Qualified Subchapter S Trust.

### Governance of the Trusts

The following additional provisions apply to any separate trust created under this Section.

#### Protection of S Corporation Status

Our Trustee must not administer a trust holding S corporation stock in a manner that would cause the termination of the S corporation status of the entity whose stock is held as part of the trust. Therefore, during any period that the trust holds S corporation stock, our Trustee must construe the terms and provisions of this trust in a manner that is consistent with the trust qualifying as an Electing Small Business Trust or as a Qualified Subchapter S Trust. Our Trustee must disregard any provision of this trust that cannot be so construed or applied.

#### Methods of Distribution

Our Trustee may not make distributions in a manner that would jeopardize the trust’s qualification as an Electing Small Business Trust or as a Qualified Subchapter S Trust.

#### Disposition of S Corporation Stock

If our Trustee believes the continuation of any trust would result in the termination of the S corporation status of any entity whose stock is held as a part of the trust property, our Trustee, other than an Interested Trustee, in addition to the power to sell or otherwise dispose of the stock, has the power to distribute the stock to the person who is then entitled to receive the income from the trust.

## Limitations on Our Trustee’s Powers

All powers granted to Trustees under this trust or by applicable law are limited as set forth in this Section, unless explicitly excluded by reference to this Section. The limitations set forth in this Section do not apply to either of us while we are both alive, and do not apply if either of us is serving as Trustee of the Marital Trust.

### An Interested Trustee Limited to Ascertainable Standards

An Interested Trustee may only make discretionary decisions when they pertain to a beneficiary’s health, education, maintenance, and support as described under Internal Revenue Code Sections 2041 and 2514.

### Interested Trustee Prohibited from Acting

Whenever this trust specifically prohibits or limits an Interested Trustee from exercising discretion or performing an act, then any Interested Trustee serving as our Trustee is prohibited from participating in the exercise of that discretion or performance of that act. If there is no Trustee serving who is not an Interested Trustee, then an Independent Special Trustee may be appointed under the provisions of Section 3.08 to exercise the discretion or perform the act.

### Exclusive Powers of Our Independent Trustee

Whenever a power or discretion is granted exclusively to our Independent Trustee, then any Interested Trustee who is then serving as our Trustee is prohibited from participating in the exercise of the power or discretion. If there is no Independent Trustee then serving, then an Independent Special Trustee may be appointed under the provisions of Section 3.08 to exercise the power or discretion that is exercisable only by our Independent Trustee.

### No Distributions in Discharge of Certain Legal Obligations

Our Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of our Trustee, including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove the Trustee, including that person’s obligation of support.

### Insurance Policy on the Life of Our Trustee

If the trust holds a policy that insures the life of a Trustee, that Trustee may not exercise any powers or rights with respect to the policy. Instead, a Co-Trustee or an Independent Special Trustee must exercise the powers and rights with respect to the policy.

If any rule of law or court decision construes the ability of the insured Trustee to name an Independent Special Trustee as an incident of ownership of the policy, then a majority of the then current Income Beneficiaries (excluding the insured Trustee if he or she is a beneficiary) will select the Independent Special Trustee.

### Insurance Policy on a Beneficiary’s Life

If the trust holds a policy that insures a beneficiary’s life, the beneficiary, individually or as Trustee, may not exercise any power over the policy, its cash value, or its proceeds. This denial of power is intended to prevent an insured beneficiary from holding any power that would constitute an incident of ownership of the policy.

In addition, no distribution of income or principal to the insured beneficiary may be satisfied out of the policy’s proceeds, cash value, or other economic benefit of the policy.

The limitations of this Subsection do not apply if, upon the beneficiary’s death, the policy’s proceeds would otherwise be included in the beneficiary’s gross estate for federal estate tax purposes.

# General Provisions

## Maximum Term for Trusts

Notwithstanding any contrary provisions and unless terminated earlier under other provisions of this trust, each trust created under this trust document will terminate at the expiration of the longest period that property may be held under this trust without violating the applicable rule against perpetuities.

If the applicable rule against perpetuities is determined by reference to the last death among a group of individuals living on the date of this trust, the group of individuals will consist of the descendants of our paternal and maternal grandparents who are living at the time of the first of us to die.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of the trust’s net income, in the same proportions. If none of the beneficiaries is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of the trust’s net income, in equal shares.

## Spendthrift Provision

No beneficiary may assign, anticipate, encumber, alienate, or otherwise voluntarily transfer the income or principal of any trust created under this trust. In addition, neither the income nor the principal of any trust created under this trust is subject to attachment, bankruptcy proceedings or any other legal process, the interference or control of creditors or others, or any involuntary transfer.

{%p if trust\_protector %}

### Involuntary Action Provision

Notwithstanding any other provision of this instrument, in the event of trust income or principal becomes subject to an Involuntary Action, the Trust Protector shall remove any Interested Trustee, if serving, and appoint an Independent Trustee, to serve and the Independent Trustee, in its sole and absolute discretion, may refrain from making any distributions to a beneficiary who is subject to an Involuntary Action.

{%p endif %}

### Effect on Disclaimer or Power of Appointment

This Section does not restrict a beneficiary’s right to disclaim any interest or exercise of any power of appointment granted in this trust. In addition, this Section does not limit the ability of an Independent Trustee to appoint property in further trust for any beneficiary as provided in the “Trust Decanting; Power to Appoint in Further Trust” Section of the Trust Administration Article of this instrument.

This Section does not restrict a beneficiary’s right to disclaim any interest or exercise of any power of appointment granted in this trust. In addition, this Section does not limit the ability of an Independent Trustee to appoint property in further trust for any beneficiary as provided in {{ refeighteen }}.

## Contest Provision

If any person attempts to contest or oppose the validity of this trust or any amendment to this trust, or commences, continues, or prosecutes any legal proceedings to set this trust aside, then that person will forfeit his or her share, cease to have any right or interest in the trust property, and will be considered to have predeceased the last of us to die for purposes of this instrument.

## Survivorship Presumption

{%p if community\_property %}

{{p include\_docx\_template(‘survivorship\_presumption\_cp.docx’) }}

{%p else %}

{{p include\_docx\_template(‘survivorship\_presumption\_sp.docx’) }}

{%p endif %}

## Changing the Governing Law and Situs of Administration

At any time, our {{ tp }} may change the governing law of the trust; change the situs of the administration of the trust; and remove all or any part of the property from one jurisdiction to another. Our {{ tp }} may elect, by filing an instrument with the trust records, that the trust will then be construed, regulated, and governed by the new jurisdiction’s laws. Our {{ tp }} may take action under this Section for any purpose our {{ tp }} considers appropriate, including the minimization of any taxes in respect of the trust or any trust beneficiary.

If considered necessary or advisable by our {{ tp }}, our {{ tp }} may appoint an Independent Trustee to serve as Trustee in the new situs.

If necessary and if our {{ tp }} does not appoint an Independent Trustee within 30 days of our {{ tp }}’s action to change the governing law or situs of the trust, the beneficiaries entitled to receive distributions of the trust’s net income may appoint a corporate fiduciary in the new situs by majority consent. If a beneficiary is a minor or is incapacitated, the beneficiary’s parent or Legal Representative may act on the beneficiary’s behalf.

## Antilapse Statutes

Whether existing now or enacted later, no antilapse statute of {{ state\_name(address.state) }} or any other jurisdiction will be applied in construing any provision of this trust.

## Definitions

For purposes of this trust, the following terms have these meanings:

### Adopted and Afterborn Persons

A person in any generation who is legally adopted before reaching 18 years of age and his or her descendants, including adopted descendants, have the same rights and will be treated in the same manner under this trust as natural children of the adopting parent. A person is considered legally adopted if the adoption was legal at the time when and in the jurisdiction in which it occurred.

A fetus *in utero* later born alive will be considered a person in being during the period of gestation.

### Available GST Exemption

The deceased Trustor’s *Available GST Exemption* means the GST exemption provided in Internal Revenue Code Section 2631 in effect at the deceased Trustor’s death; reduced by the aggregate of:

any amount of GST exemption allocated to the deceased Trustor’s lifetime transfers, including those allocations made at the time of the deceased Trustor’s death by the deceased Trustor’s Personal Representative, by the deceased Trustor’s Trustee, or by operation of law; and

any amount allocated to direct-skip persons as defined in Internal Revenue Code Section 2612(c)(1) that does not qualify for an exclusion from the generation-skipping transfer tax occurring at the deceased Trustor’s death to or for the benefit of the deceased Trustor’s descendants.

At the time of the deceased Trustor’s death, if the deceased Trustor has made a lifetime transfer to a trust with an inclusion ratio of greater than zero but has not filed a gift tax return and the due date for the gift tax return has not yet passed, the deceased Trustor’s Available GST Exemption will also be reduced so that the trust inclusion ratio is zero, in order to exempt the transfer from generation-skipping transfer tax.

### Descendants

The term *descendants* means persons who directly descend from a person, such as children, grandchildren, or great-grandchildren. The term *descendants* does not include collateral descendants, such as nieces and nephews.

### Designation Date

The term *designation date* means September 30 of the calendar year following the year of the deceased Trustor’s death, or any other date established by Treasury Regulations or other tax law authority as the final date for determining whether this trust meets the requirements for the trust beneficiaries to be treated as having been designated as beneficiaries under Internal Revenue Code Section 401(a)(9).

### Education

The term *education* is intended to be an ascertainable standard under Internal Revenue Code Sections 2041 and 2514 and includes:

enrollment at private elementary, junior, and senior high school, including boarding school;

undergraduate and graduate study in any field at a college or university;

specialized, vocational, or professional training or instruction at any institution, as well as private instruction; and

any other curriculum or activity that our Trustee considers useful for developing a beneficiary’s abilities and interests including athletic training, musical instruction, theatrical training, the arts, and travel.

The term *education* also includes expenses such as tuition, room and board, fees, books, supplies, computers and other equipment, tutoring, transportation, and a reasonable allowance for living expenses.

### Good Faith

For the purposes of this trust, a Trustee has acted in good faith if:

an action or inaction is not a result of intentional wrongdoing;

the Trustee did not make the decision to act or not act with reckless indifference to the beneficiaries’ interests; and

an action or inaction does not result in an improper personal benefit to the Trustee.

Further, all parties subject to the provisions of this trust will treat any action or inaction made in reliance on information, consent, or directions received from the Personal Representative of each of our estates as made in good faith for the purposes of this Section, except for cases of willful misconduct or malfeasance on the Trustee’s part.

### Incapacity

Except as otherwise provided in this trust, a person is considered incapacitated in any of the following circumstances.

#### The Opinion of One Licensed Physician

An individual is considered to be incapacitated whenever one licensed physician gives the opinion that the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age; illness; use of prescription medications, drugs, or other substances; or any other cause. If an individual whose capacity is in question refuses to provide necessary documentation or otherwise submit to examination by a licensed physician, that individual will be considered incapacitated.

An individual is considered restored to capacity whenever the individual’s personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

#### Court Determination

An individual is considered incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent, or legally incapacitated.

#### Detention, Disappearance, or Absence

An individual is considered to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual’s unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual’s disappearance, absence, or detention under duress may be established by an affidavit of our Trustee, or by the affidavit of any beneficiary if no Trustee is then serving. The affidavit must describe the circumstances of the individual’s disappearance, absence, or detention, and may be relied upon by any third party dealing in good faith with our Trustee.

### Include, Includes, Including

In this document, the words include, includes, and including mean include without limitation, includes without limitation and including without limitation, respectively. Include, includes, and including are words of illustration and enlargement, not words of limitation or exclusivity.

### Income Beneficiary

The term *Income Beneficiary* means any beneficiary who is then entitled to receive distributions of the trust’s net income, whether mandatory or discretionary.

Unless otherwise provided in this trust, the phrase *majority of the Income Beneficiaries* means any combination of Income Beneficiaries who would receive more than 50% of the accrued net income if that income were distributed on the day of a vote. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income receive the imputed income in equal shares.

References to a *majority* refer to a majority of the entire trust collectively until our Trustee allocates property to separate trusts or trust shares. After our Trustee allocates property to separate trusts or trust shares, references to a *majority* refer to a majority of each separate trust or trust share.

### Income in Respect of a Decedent (IRD)

The term *income in respect of a decedent* (IRD) means income received after a decedent’s death that would have been taxable to the decedent if the income had been received by the decedent during the decedent’s lifetime. For example, payments under qualified retirement plans and other deferred compensation arrangements are IRD. For purposes of this trust, IRD means any income that would be classified as IRD under Internal Revenue Code Section 691(a).

### Independent Trustee

The term *Independent Trustee* means any Trustee who is not an Interested Trustee as defined in Subsection (m) and includes an Independent Special Trustee appointed under the provisions of Section 3.08.

### Instrument

The term *this instrument* means this trust, and includes all trusts created under the terms of this trust.

### Interested Trustee

The term *Interested Trustee* means a Trustee who:

is a transferor or beneficiary;

is related or subordinate to a transferor or beneficiary;

can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor; or

can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.

For purposes of this Subsection, *transferor* means a person who transferred property to the trust during that person’s lifetime, including a person whose disclaimer resulted in property passing to the trust. A person is only a transferor during his or her lifetime. *Beneficiary* means a person who is or may become eligible to receive income or principal from the trust under the terms of the trust, even if this person has only a remote contingent remainder interest in the trust, but not if the person’s only interest is as a potential appointee under a power of appointment. *Related or subordinate* is used as defined in Internal Revenue Code Section 672(c).

### Internal Revenue Code and Treasury Regulations

References to the *Internal Revenue Code* or to its provisions are to the Internal Revenue Code of 1986, as amended, and any corresponding Treasury Regulations. References to the *Treasury Regulations*, are to the Treasury Regulations under the Internal Revenue Code in effect. If a particular provision of the Internal Revenue Code is renumbered or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is considered to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to our intent as expressed in this trust. The same rule applies to references to the Treasury Regulations.

### Involuntary Action

The term *Involuntary Action* means an event in which the income or the principal of any trust created under this trust is subject to attachment, bankruptcy proceedings or any other legal process, the interference or control of creditors or others, or any involuntary transfer.

### Legal Representative or Personal Representative

As used in this trust document, the term *Legal Representative* or *Personal Representative* means a person’s guardian, conservator, executor, administrator, Trustee, attorney in fact under a Durable Power of Attorney, or any other person or entity representing a person or the person’s estate. In the case of a minor beneficiary, the beneficiary’s parent or another adult with custody of the beneficiary, except for any transferor to a trust created under this instrument, will be considered the beneficiary’s Legal Representative for purposes of this trust.

### Per Stirpes

Whenever a distribution is to be made to a person’s descendants *per stirpes*, the distribution will be divided into as many equal shares as there are then-living children and deceased children who left then-living descendants. Each then-living child will receive one share, and the share of each deceased child will be divided among the deceased child’s then-living descendants in the same manner.

### Permissible Distributee

“Permissible Distributee” means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

### Primary Beneficiary

The *Primary Beneficiary* of a trust created under this trust is that trust’s oldest Income Beneficiary, unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

### Qualified Beneficiary

“Qualified Beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined:

(1) is a distributee or Permissible Distributee of trust income or principal; or

(2) would be a distributee or Permissible Distributee of trust income or principal if the trust terminated on that date.

### Qualified Retirement Benefits

The term *qualified retirement plan* means a plan qualified under Internal Revenue Code Section 401, an individual retirement arrangement under Section 408 or Section 408A, or a tax-sheltered annuity under Section 403. The term *qualified retirement benefits* means the amounts held in or distributed pursuant to a plan qualified under Section 401, an individual retirement arrangement under Section 408 or Section 408A, a tax-sheltered annuity under Section 403, or any other benefit subject to the distribution rules of Section 401(a)(9).

### Shall and May

Unless otherwise specifically provided in this trust or by the context in which used, we use the word *shall* in this trust to impose a duty, command, direct, or require, and the word *may* to allow or permit, but not require. In the context of our Trustee, when we use the word *shall* we intend to impose a fiduciary duty on our Trustee. When we use the word *may* we intend to empower our Trustee to act with the Trustee’s sole and absolute discretion unless otherwise stated in this trust. When we use the words *may not* in reference to our Trustee, we specifically mean our Trustee *is not permitted to*.

### Taxable Income

For purposes of this Instrument, “Taxable Income” for each year means “Total Income” including all capital gains or other taxable income that might be attributable to principal under trust accounting or applicable state uniform principal and income act laws.

### Trust

The terms *this trust,* *this document, instrument,* and *this trust document* refer to this trust and all trusts created under the terms of this trust.

### Trustee

The terms *our Trustee* and *Trustee* refer to the Initial Trustees named in Article One and to any successor, substitute, replacement, or additional person, corporation, or other entity that ever acts as the Trustee of any trust created under the terms of this trust. The term *Trustee* refers to singular or plural as the context may require.

### Trustor

*Trustor* has the same legal meaning as *Grantor*, *Settlor, Trustmaker,* or any other term referring to the maker of a trust.

### Trust Property

The term *trust property* means all property acquired from any source and held by a Trustee under this trust.

## General Provisions and Rules of Construction

The following general provisions and rules of construction apply to this trust.

### Multiple Originals; Validity of Paper or Electronic Copies

This trust may be executed in any number of counterparts, each of which will be considered an original.

Any person may rely on a paper or electronic copy of this trust that the Trustee certifies to be a true copy as if it were an original.

### Singular and Plural; Gender

Unless the context requires otherwise, singular words may be construed as plural, and plural words may be construed as singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word *or,* when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires.

### Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and Subsections used within this trust are included solely for the convenience of the reader. They have no significance in the interpretation or construction of this trust.

### Governing State Law

This trust is governed, construed, and administered according to the laws of {{ state\_name(address.state) }}, as amended except as to trust property required by law to be governed by the laws of another jurisdiction and unless the situs of administration is changed under {{ reftwelve }}.

### Notices

Unless otherwise stated, any notice required under this trust will be in writing. The notice may be personally delivered with proof of delivery to the party requiring notice and will be effective on the date personally delivered. Notice may also be mailed, postage prepaid, by certified mail with return receipt requested to the last known address of the party requiring notice. Mailed notice is effective on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If the party requiring notice is a minor or incapacitated individual, notice will be given to the parent or Legal Representative.

### Severability

The invalidity or unenforceability of any provision of this trust does not affect the validity or enforceability of any other provision of this trust. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this trust are to be interpreted as if the invalid provision had never been included.

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{%p if address.state == 'FL' %}

{{p include\_docx\_template(‘notary\_trust\_fl.docx’) }}

{%p elif address.state == 'GA' %}

{{p include\_docx\_template(‘notary\_trust\_ga.docx’) }}

{%p elif address.state == 'IL' %}

{{p include\_docx\_template(‘notary\_trust\_il.docx’) }}

{%p elif address.state == 'NC' %}

{{p include\_docx\_template(‘notary\_trust\_nc.docx’) }}

{%p elif address.state == 'TX' %}

{{p include\_docx\_template(‘notary\_trust\_tx.docx’) }}

{%p else %}

{{p include\_docx\_template(‘notary\_trust\_standard.docx’) }}

{%p endif %}

**Schedule J  
Joint Property**

Ten Dollars Cash

**Schedule T-1  
{{ client.name }}’s Separate Property**

**Schedule T-2  
{{ spouse.name }}’s Separate Property**