JOHN DOUGH LIVING TRUST

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

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John Dough Living Trust

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# Establishing My Trust

1. The date of this revocable trust agreement is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_. The parties to this agreement are John Dough (the “Grantor”) and John Dough and State of Texas (my “Trustees”).
2. By this agreement, I intend to create a valid trust under the laws of Texas and under the laws of any state in which any trust created under this agreement is administered.

## Identifying My Trust

1. My trust is called the "John Dough Living Trust." However, the following format should be used for taking title to assets: "John Dough and State of Texas, Trustees of the John Dough Living Trust, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, and any amendments thereto."
2. During any period that my trust is a Grantor Trust, the taxpayer identification number of my trust may be my Social Security number, in accordance with Treasury Regulation Sections 301.6109-1(a)(2)(i)(B) and 1.671-4(b)(2)(i)(A).

## Third-Party Reliance on Affidavit or Certification of Trust

1. My Trustees may provide an affidavit or certification of trust to third parties in lieu of providing a copy of this agreement. Third parties are exonerated from any liability for acts or omissions in reliance on the affidavit or certification of trust, and for the application that my Trustees make of funds or other property delivered to my Trustees.

## Transferring Property to My Trust

1. By execution of this agreement, I transfer, convey, and assign to my Trustee, the trust property described on Schedule A, attached to this agreement, and my Trustee accepts and agrees to hold such property under the terms of this agreement. My Trustee may accept any additional property transferred to my trust, at any time, including as the result of a beneficiary designation.
2. To the extent Texas law allows, any joint tenancy interest conveyed to my trust will sever the joint tenancy, creating a separate property interest.
3. To the extent Texas law allows, all community property conveyed to my trust will retain its character as community property to the same extent as if it had not been conveyed to my trust.
4. To the extent Texas law allows, all tenancy by the entirety property conveyed to my trust will retain its character as tenancy by the entirety property to the same extent as if it had not been conveyed to my trust.

## Distributions of Income and Principal

1. During my lifetime, my Trustee will distribute to me or for my benefit, as much of the income and principal of my trust as I demand, or, in the absence of a demand, as much as my Trustee determines, in my Trustee's sole discretion.

## Powers Reserved by Me as Grantor

1. I retain the powers set forth in this Section in addition to any powers that I reserve in other provisions of this agreement.

### Action on Behalf of My Trust

* + - 1. During any period that I am serving as a Trustee of my trust, I may act on behalf of my trust without the consent of any other Trustee.

### Amendment, Restatement, or Revocation

* + - 1. By a signed writing, I may amend, restate, or revoke this agreement, in whole or in part, for any purpose whatsoever, so long as neither my nor my wife's rights and interests in community property are modified, unless my wife joins in the amendment or restatement.
      2. An agent acting under a power of attorney for property may exercise the powers in this subsection (b) to the extent the power of attorney so authorizes. The agent's good-faith acts or omissions are conclusive on all persons interested in the trust and the agent will not be liable for the consequences.

### Addition or Removal of Trust Property

* + - 1. Without limitation, I may add and remove property from my trust.

### Approval of Investment Decisions

* + - 1. I may review and change my Trustee's investment decisions; however, my Trustee is not required to seek my approval before making investment decisions.

# Family Information

## My Wife

1. I am married to Jane Dough. Any reference in this agreement to "my wife" is to Jane Dough.

## My Children and Descendants

1. I have no children.

# Trustee Succession

## Definition of Incapacity

1. For purposes of this Article, any person, including me, is considered incapacitated if the requirements of Section 11.05(f) are satisfied.

## Trustee Succession During Incapacity

1. If I am incapacitated, I appoint the following to serve as Trustee of my trust, replacing the serving Trustee:
   * + 1. Jane Dough

## Trustee Succession After Death

1. After my death, I appoint the following to serve as Trustee of my trust, replacing the serving Trustee, and over any trust created under this agreement:
   * + 1. Jane Dough

## Trustee Resignation, Removal, and Appointment

1. If I am serving as Trustee, I may resign and appoint a replacement at any time. Any other Trustee may resign by giving notice to me, or if I am incapacitated, to my agent. If I am deceased, a resigning Trustee will give notice to the income beneficiaries of the trust and to any other Trustee then serving.
2. Any of the following may remove and replace any Trustee and fill a Trustee vacancy, with or without cause, at any time:
   1. me;
   2. if I am incapacitated, my wife;
   3. if I am incapacitated, the person acting as my agent under a power of attorney for property;
   4. if I am incapacitated, the person court-appointed for me as Conservator;
   5. the primary beneficiary of any trust created under this agreement as it relates to the Trustee of that trust; or
   6. a court, upon petition by a beneficiary, so long as the court does not acquire jurisdiction over the trust in excess of that necessary for the action requested.
3. Anyone listed may act and may negate the actions of those further down in the list. A primary beneficiary may not be self-appointed as Trustee.
4. The right to remove a Trustee under this Section may not be deemed to grant to any person holding that right any of the powers of that Trustee. If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.
5. The replacement of a Trustee under this Section 3.04 does not invoke the Trustee succession provisions of Section 3.02 or Section 3.03, rather the name of the appointed Trustee under this Section replaces the name of the removed Trustee under the Trustee succession provisions.
6. Notice of removal must be in writing and delivered to the Trustee being removed, to any other Trustees then serving, and to the primary beneficiary of the trust. The removal will become effective according to the provisions of the written notice.
7. Notice of appointment must be in writing and delivered to the appointed Trustee, to any other Trustees then serving, and to the primary beneficiary of the trust. The appointment will become effective at the time of acceptance by the appointed Trustee.
8. Other than me and anyone who otherwise has a then-exercisable general power of appointment over the trust in question, if any person holding the power to remove and replace a Trustee or fill a Trustee vacancy is a transferor or beneficiary (as defined in Section 11.05(i)) of the trust in question, then a replacement Trustee or a Trustee to fill a vacancy must not be related or subordinate to the person within the meaning of Section 672(c) of the Internal Revenue Code; and if a Trustee is removed and a replacement Trustee is appointed, the replacement Trustee must commence service simultaneously with the removal of the removed Trustee.

## Prohibition Against SNT Beneficiary Serving as Trustee

1. Notwithstanding any other provision of this agreement, under no circumstances may the beneficiary of a share of my trust estate that is being administered pursuant to the terms of Article Eight, entitled "Supplemental Needs Trust," serve as Trustee of that share.

# Administration of My Trust During Incapacity

1. While I am incapacitated, my Trustee will administer my trust and distribute its net income and principal as provided in this Article.

## Definition of My Incapacity

1. For purposes of this Article, I am considered incapacitated if I am unable to effectively manage my property or financial affairs because of age, illness, mental disorder, dependence on prescription medications or other substances, or any other cause, as determined by my Trustee, in my Trustee's sole discretion.

## Distributions for My Benefit

1. My Trustee may make distributions for my benefit to any one or more of the following:
   1. me, but only if I am able to manage the distributions;
   2. other persons and entities for my use and benefit;
   3. the person acting as my agent under a power of attorney for property; and
   4. the person court-appointed for me as Conservator.
2. My Trustee will distribute income and principal for my general welfare and comfort. In particular, my Trustee may make distributions for any of the following:

### If I am Hospitalized

* + - 1. My Trustee may make distributions to ensure that I have a level of care beyond that which would ordinarily be provided in a hospital. For example, my Trustee may pay for a private room or other more luxurious accommodations in the hospital. In addition, my Trustee may make distributions to pay for registered or practical nurses, or other caregivers, as appropriate to supplement the regular level of hospital care.

### If I Require Home Care

* + - 1. I prefer to remain in my own home and receive care at home as long as reasonably possible. My Trustee may make distributions to pay for aides, caregivers, nursing care, home improvements, and medical equipment that may be required for my care or to assist with daily living and to ensure that I can independently and safely live at home.

### If Assisted Living or Nursing Home is Required

* + - 1. If it is no longer safe or reasonable for me to receive care in my home, my Trustee may make distributions to pay for my care in an assisted living facility, nursing home, or other residential-care facility. My Trustee will personally monitor, or will hire, at the expense of the trust, a care manager or other qualified person who will monitor, or supervise the monitoring of my care to ensure that I am receiving the highest quality of care in the most comfortable surroundings reasonably available.

### Caregivers to be Hired as Needed

* + - 1. If I require assistance with my activities of daily living, whether at home, in an assisted living facility, nursing home, or other facility, my Trustee may use trust assets to hire supplemental nurses, aides, Hospice, or other caregivers.

### Spiritual Needs

* + - 1. My Trustee may provide for the involvement of clergy or spiritual leaders in my care. My Trustee may make distributions to pay for my memberships in religious or spiritual organizations. Also, my Trustee may arrange and pay for participation in activities of those organizations to derive comfort and spiritual satisfaction.

## Intent to Return Home

1. If I require care that prevents me from living at home, it is my intent to return home, regardless of the prognosis for being able to do so.

## Distributions for Gifting Purposes

1. My Trustee may make gifts to my descendants, including my Trustee, in order to carry out my estate and long term care planning objectives.

# Administration Upon My Death

## Irrevocability and Termination of Spousal Interest

1. Upon my death, any principal, income, or beneficial interest that my wife had in my trust estate shall terminate; however, my wife may still be a beneficiary under the provisions that follow.
2. My trust will become irrevocable upon my death, and my Social Security number may no longer be used to identify my trust. My Trustee will apply for a separate Taxpayer Identification Number for my trust, as needed.

## Payment of My Claims and Expenses

1. My Trustee, in my Trustee's sole discretion, is authorized, but not directed, to pay:
   1. expenses of my last illness, funeral, and burial or cremation, including expenses of memorials and memorial services;
   2. legally enforceable claims against me or my estate;
   3. expenses of administering my trust and my estate; and
   4. court-ordered allowances for those dependent upon me.
2. No third party may enforce any claim or right to payment against my trust by virtue of this discretionary authority.
3. If payment would increase the federal estate tax due from my estate, my Trustee may not pay any administrative expenses from assets passing to an organization that qualifies for the federal estate tax charitable deduction.
4. By authorizing my Trustee to make payments described in this Section, I do not thereby waive any statutory or common law exemption afforded to any asset from satisfaction of such payments (for example, from life insurance proceeds payable to my trust).

## Distribution to My Probate Estate

1. Upon my death, if my wife survives me and is a Supplemental Needs Person, my Trustee will distribute my trust estate to my probate estate, so that it may be administered under the terms of my Will and Testament. Otherwise, my Trustee will administer my trust estate according to the Articles that follow.

# Residuary Distribution

1. If my wife survives me and is not a Supplemental Needs Person, I give my trust estate to my wife outright, free of trust.
2. If my wife predeceases me, my Trustee will administer my trust estate according to the provisions of this Article and the Articles that follow.
3. My residuary trust estate will be distributed outright, free of trust to my descendants, per stirpes. However, if at the time of distribution, the descendant is a Supplemental Needs Person, then the descendant's share will be administered according to the provisions of Article Eight, entitled "Supplemental Needs Trust."

## Funding Shares on a Non–Pro Rata Basis

1. If my residuary trust estate is divided into two or more shares, my Trustee may fund the shares on a non–pro rata basis, provided that funding is based on the total fair market value of the assets when allocated.

# Remote Contingent Distribution

1. If, at any time, the other provisions of this agreement fail to provide for a beneficiary of any part of my trust estate, then that part will be distributed to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Texas then in effect.

# Supplemental Needs Trust

1. Trust property will be administered pursuant to the terms of this Supplemental Needs Trust Article when:
   1. another Article of this agreement directs that the property is to be administered as provided in this Supplemental Needs Trust Article; or
   2. the beneficiary of the property under another Article of this agreement, other than me and my wife, is a Supplemental Needs Person, unless the other Article directs the beneficiary's interest to be distributed to a trust not created under this document.
2. "Beneficiary" under this Supplemental Needs Trust Article refers to the beneficiary of the property under the other Article. The provisions of the other Article shall continue to apply to the extent they do not conflict with the provisions of this Supplemental Needs Trust Article; specifically, the provisions of this Supplemental Needs Trust Article shall control the distributions of income and principal.

## Distributions of Income and Principal

1. The Trustee shall collect income and, after deducting all charges and expenses attributed thereto, may apply for Beneficiary's benefit, in-kind, or in cash, so much of the income and principal (even to the extent of the whole) as the Trustee deems advisable in the Trustee's sole discretion, **subject to the limitations set forth below**. The Trustee shall add the balance of net income not paid or applied to the principal of the Supplemental Needs Trust.

### Maximize Benefits

* + - 1. Consistent with the purpose of the Supplemental Needs Trust, before expending any amounts from the net income and/or principal of this trust, the Trustee shall consider the availability of all benefits from government or private assistance programs for which Beneficiary may be eligible. The Trustee, where appropriate and to the extent possible, shall endeavor to maximize the collection and facilitate the distribution of these benefits for Beneficiary's benefit.

### No Reduction in Benefits

* + - 1. None of the income or principal of the Supplemental Needs Trust shall be applied in such a manner as to supplant, impair, or diminish any governmental benefits or assistance for which Beneficiary may be eligible or which Beneficiary may be receiving.

### No Assignment

* + - 1. Beneficiary shall not have the power to assign, encumber, direct, distribute, or authorize distributions from the Supplemental Needs Trust.

### Supplemental Needs Trust Savings Clause

* + - 1. Notwithstanding any provision of any Article herein to the contrary, in the event that the Supplemental Needs Trust is challenged or faces imminent invasion by any governmental department or agency in such a way as to affect Beneficiary's eligibility for benefits available under any governmental program, the Trustee may amend the trust so as to maintain Beneficiary's eligibility for benefits under such governmental program. However, if the Trustee is unable or unwilling to so amend the trust, then the Trustee may distribute the trust income and principal as if Beneficiary were then deceased.

## Objective to Promote Independence of Beneficiary

1. While actions are in the Trustee's sole discretion, the Trustee should be mindful that it is my wish that Beneficiary live as independently, productively, and happily as possible.

## Not Available Resource to Beneficiary

1. It is my intent to create a Supplemental Needs Trust that conforms to Texas law (or if Beneficiary is not a resident of Texas, to the law of the state where Beneficiary resides), in order to provide for Beneficiary's Supplemental Needs. I intend that the trust assets be used to supplement, not supplant, impair, or diminish, any benefits or assistance of any Federal, state, county, city, or other governmental entity for which Beneficiary may otherwise be eligible or which Beneficiary may be receiving.
2. Consistent with that intent, it is my desire that, before expending any amounts from net income and/or principal of the trust, the Trustee consider the availability of all benefits from government or private assistance programs for which Beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee endeavors to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of Beneficiary. All actions of the Trustee shall be directed toward carrying out this intent and the discretion granted the Trustee under this agreement to carry out this intent is absolute.
3. For purposes of determining Beneficiary's eligibility for any such benefits, no part of the principal or undistributed income of the Supplemental Needs Trust shall be considered available to Beneficiary for public benefit purposes. Beneficiary shall not be considered to have access to principal or income of the trust, and he or she has no ownership, right, authority, or power to convert any asset into cash for his or her own use.
4. The Trustee shall hold, administer, and distribute all property allocated to the Supplemental Needs Trust for the exclusive benefit of Beneficiary during his or her lifetime. All distributions from the trust are in the sole discretion of the Trustee, and Beneficiary is legally restricted from demanding trust assets for his or her support and maintenance.
5. In the event the Trustee is requested to release principal or income of the Supplemental Needs Trust to or on behalf of Beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or in the event the Trustee is requested to petition a court or any other administrative agency for the release of trust principal or income for this purpose, the Trustee is authorized to deny such request and is authorized in its sole discretion to take whatever administrative or judicial steps may be necessary to continue Beneficiary's eligibility for benefits, including obtaining legal advice about 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 Beneficiary for eligibility purposes. Any expenses of the Trustee in this regard, including reasonable attorney's fees, shall be a proper charge to the Supplemental Needs Trust.

## Distribution Guidelines

1. In making distributions, the Trustee will:
   1. consider any other known income or resources of Beneficiary that are reasonably available;
   2. take into consideration all entitlement benefits from any government agency, such as Social Security Disability payments (SSDI), Medicaid, Supplemental Security Income (SSI), and any other special purpose benefits for which Beneficiary is eligible;
   3. take into consideration resource and income limitations of any such assistance program;
   4. make expenditures so that Beneficiary's standard of living will be comfortable and enjoyable;
   5. not be obligated or compelled to make specific payments;
   6. not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by such governmental agency and reimbursement is required by the state; and
   7. not be liable for any loss of benefits.

## No Seeking of Order to Distribute

1. For purposes of determining Beneficiary's state Medicaid program equivalent eligibility, no part of the principal or undistributed income of the Supplemental Needs Trust may be considered available to Beneficiary. The Trustee will deny any request by Beneficiary to:
   1. release principal or income of the trust to or on behalf of Beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or
   2. petition a court or any other administrative agency for the release of trust principal or income for this purpose.
2. The Trustee may, in its sole discretion, take necessary administrative or legal steps to protect Beneficiary's state Medicaid program eligibility, including obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to Beneficiary for purposes of determining eligibility. Expenses for this purpose, including reasonable attorney's fees, are a proper charge to Beneficiary's Supplemental Needs Trust.

## Indemnification of Trustee When Acting in Good Faith

1. The Trustee shall be indemnified from the trust property for any loss or reduction of public benefits sustained by Beneficiary as a result of the Trustee exercising, in good faith, the authority granted to the Trustee under this Article.

## Distribution Upon the Death of Beneficiary

1. Upon the death of Beneficiary, the Trustee shall distribute or retain the remaining Supplemental Needs Trust property according to the other Article of this agreement that directed the property to be held pursuant to this Article.
2. If the other Article does not provide for distribution upon the death of Beneficiary, then the Trustee shall distribute or retain the remaining Supplemental Needs Trust property as though Beneficiary had predeceased me.

## Prohibition Against Beneficiary Serving as Trustee

1. Notwithstanding any other provision of this agreement, under no circumstances may Beneficiary serve as Trustee of any share that is being administered for his or her benefit under the provisions of this Supplemental Needs Trust Article.

## Limitation on Power to Remove and Replace Trustee

1. Notwithstanding any other provision of this agreement, Beneficiary does not have the power to remove or replace the Trustee of the Supplemental Needs Trust.

## Application of Article

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

# Administration of Trusts for Underage and Incapacitated Beneficiaries

## Distributions for Underage and Incapacitated Beneficiaries

1. If under another provision of this agreement any part of the trust property is directed or required to be distributed outright to an individual (other than me or my wife) who has not yet attained the age of 18 years or is incapacitated, then my Trustee may distribute or retain that part of the trust property as described in Section 9.02, unless the provisions of Article Eight, entitled "Supplemental Needs Trust," apply.
2. When making a distribution, I request, but do not require, that my Trustee consider the ability that the beneficiary demonstrated in managing prior distributions.
3. All decisions made by my Trustee under this Article are final, controlling, and binding upon all beneficiaries, subject to the provisions of this Article.

## Methods of Distribution

1. Property to which this Article applies may be—
   1. distributed directly to the beneficiary;
   2. distributed to the beneficiary's guardian, conservator, parent, family member, or other person who has assumed responsibility for his or her care;
   3. distributed to any person or entity, including my Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act, or similar statute;
   4. distributed to other persons or entities for the benefit of the beneficiary;
   5. distributed to an agent authorized to act for the beneficiary under a power of attorney for property;
   6. retained in trust, distributing income and principal for any purpose, in any amount, using any of the methods described above, all in my Trustee's sole discretion, and distributing the remainder outright to the beneficiary when he or she attains the age of 18 years (unless he or she is incapacitated), and upon the beneficiary's death distributing the remainder as appointed by the beneficiary, and if not appointed, as though the beneficiary had predeceased me;
   7. retained in trust pursuant to the provisions of Article Eight, entitled "Supplemental Needs Trust," for the benefit of the beneficiary; or
   8. distributed or retained in any combination of one or more of the above.

# Trust Administration and Trustee Powers

1. The terms of this agreement supplement the provisions of Texas law, and to the extent they conflict, the terms of this agreement prevail, unless the conflicting provisions of Texas law are mandatory and may not be waived.

## Apportionment of Death Taxes

1. Except as otherwise specified in this agreement, my Trustee will apportion death taxes as provided under the law of Texas in effect at the date of my death.

## Distributions to Beneficiaries

1. Whenever this agreement authorizes or directs my Trustee to make a distribution of income or principal to a beneficiary, my Trustee may apply for the benefit of the beneficiary any property that otherwise could be distributed directly to the beneficiary. My Trustee has no responsibility to inquire into the beneficiary’s ultimate disposition of the distributed property unless specifically directed otherwise by this agreement.

## No Court Proceedings

1. My trust will be administered expeditiously, consistent with the provisions of this agreement, free of judicial intervention, and without order, approval, or action of any court.

## No Bond

1. My Trustee is not required to furnish any bond for the faithful performance of my 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 interests of the beneficiaries. No surety will be required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

## Trustee Exoneration

1. No successor Trustee is obligated to examine the accounts, records, or actions of any previous Trustee or of the Personal Representative of my estate. No successor Trustee will be in any way or manner responsible for any act, omission, or forbearance on the part of any previous Trustee or the Personal Representative of my estate.

## Trustee Compensation

1. My Trustee, other than me or my wife, will be entitled to fair and reasonable compensation for the services rendered as a fiduciary. My Trustee may charge additional fees for services that are not within its duties as Trustee, such as fees for legal services, tax return preparation, and corporate finance or investment banking services.
2. In addition to receiving compensation, my Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out its duties under this agreement.

## Exercise of Testamentary Power of Appointment

1. A testamentary power of appointment granted under this agreement may be exercised by a valid will or living trust that specifically refers to the power of appointment. The power holder may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the power holder designates. Except where this agreement specifically provides otherwise, the power holder 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.
2. My Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this agreement has not been exercised by the beneficiary if my Trustee has no knowledge of the existence of a valid will or living trust exercising the power within 45 days after the beneficiary’s death.
3. If there is a conflict among multiple instruments exercising the same power, the latest instrument will control; and if it cannot be determined which conflicting instrument is the latest, then a will controls over a living trust.

## Determination of Principal and Income

1. Beneficiaries' rights among themselves in matters concerning principal and income are governed by Texas law related to the allocation of principal and income. If Texas law contains no provision concerning a particular item, then my Trustee will determine in a fair, equitable, and practical manner what will be credited, charged, and apportioned between principal and income.

## Appointment of Independent Trustee

1. If my Trustee is not an Independent Trustee, and another provision of this agreement requires an Independent Trustee to act, then my Trustee may appoint an Independent Trustee to act.

## Funeral and Other Expenses of Beneficiary

1. Upon the death of an income beneficiary of a trust created under this agreement, my Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts, and 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 him or her under this agreement.
2. My Trustee may rely upon any request by the personal representative or members of the family of the deceased beneficiary for payment without verifying the validity or the amounts and without being required to see to the application of the amounts so paid. My Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or rule of court and may be made without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary’s estate.

## Trust Accounting

1. Recognizing that the state of governing law could impose additional duties, this Section describes my Trustee's duties to account and provide information to beneficiaries.
2. My Trustee is not required to file accountings in any jurisdiction. Upon the written request of an income beneficiary of a trust created under this agreement, my Trustee must render an accounting to the income beneficiaries of that trust during the accounting period that includes the date of the written request.
3. The accounting must include the receipts, expenditures, and distributions from the trust for which the accounting is prepared occurring during the accounting period. If a tax return is prepared for a trust during a period for which a trust accounting is made, my Trustee's accounting must include a copy of that tax return. If there is no tax return prepared for the accounting period, my Trustee's accounting must include a balance sheet itemizing the trust property and my Trustee's reasonable estimation of the value of the assets held in the trust as of the date the accounting is completed.
4. A beneficiary may object to an accounting rendered by my Trustee only if the beneficiary gives written notice to my Trustee within 60 days after my Trustee renders the accounting. Any beneficiary who does not submit a written objection to the accounting is deemed to assent to the accounting.
5. My Trustee must make the trust's financial records and documentation available to beneficiaries at reasonable times and upon reasonable notice for inspection by the beneficiaries. My Trustee is not required to furnish any information regarding my trust to anyone other than a beneficiary. My Trustee may exclude any information that my Trustee determines is not directly applicable to the beneficiary receiving the information.

## Action of Cotrustees

1. Unless otherwise specified, if two Trustees are eligible to act with respect to a given matter, the concurrence of both is required; if more than two Trustees are eligible to act with respect to a given matter, the concurrence of a majority of the Trustees is required.
2. If an Interested Trustee joins in an action with respect to a given matter, then the authority of the Trustees for that action is limited to the authority given to an Interested Trustee with respect to the matter.
3. Even though an act may require the concurrence of more than one Trustee, any one Trustee may carry out the act on behalf of the trust with the same force and effect as if all Trustees had done so. Persons dealing with the acting Trustee in good faith may rely upon the Trustee's authority to act on behalf of the trust without inquiry as to the other Trustees’ concurrence.
4. A nonconcurring Trustee may dissent or abstain from any action of the other Trustee or Trustees. The nonconcurring Trustee is absolved from personal liability by registering his or her dissent or abstention in the records of the trust. After doing so, the nonconcurring Trustee will then act with the other Trustees in any way necessary or appropriate to effectuate the action of the other Trustees.

## Trustee Authority to Disclaim or Release Powers

1. Notwithstanding any provision of this agreement to the contrary, any Trustee may disclaim or release, in whole or in part, by an instrument in writing, any power held as Trustee, irrevocably or for any period of time that the Trustee may specify. The Trustee may make the relinquishment of a power personal to the Trustee or may relinquish the power for all subsequent Trustees.

## Appointment of a Cotrustee

1. My Trustee may appoint a Cotrustee to serve only while the appointing Trustee is serving. The appointing Trustee may revoke the appointment at any time, with or without cause.

## Appointment of Agent

1. My Trustee may execute a power of attorney appointing any person or entity as his or her agent to exercise any or all of the rights, powers, and discretions that my Trustee could have exercised.

## Additions to Separate Trusts

1. If upon my death, or upon the termination of any trust created under this agreement, a final distribution is to be made to a person who is the primary beneficiary of another trust created or provided for under this agreement, and there is no specific indication whether the distribution is to be made in trust or outright, free of trust, my Trustee will make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, my Trustee will treat the distribution as though it had been an original part of the second trust.

## Authority to Terminate Trusts

1. If, at any time, my Trustee determines that a trust created under this agreement is no longer economical or is otherwise inadvisable to administer as a trust, or if my Trustee deems it to be in the best interest of my beneficiaries, my Trustee, without further responsibility, may terminate the trust and distribute the trust property, including any undistributed net income, in the following order of priority:
   1. to me, if I am then living;
   2. if I am not then living, to my wife, if then a beneficiary of the trust;
   3. if I am not then living and my wife is not then a beneficiary of the trust, to the beneficiaries then entitled to mandatory distributions of net income of the trust and in the same proportions; and
   4. if none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of net income of the trust, in such amounts and shares as my Trustee may determine.
2. This power may only be exercised by an Independent Trustee. This power may not be exercised as it relates to any trust to which the provisions of Article Eight, entitled "Supplemental Needs Trust," apply.

## Beneficiary’s Status

1. Until my Trustee receives notice of the incapacity, birth, marriage, death, or other event upon which a beneficiary’s right to receive payments may depend, my Trustee will not be liable for acting or failing to act 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 agreement, the parent or legal representative may act on behalf of a beneficiary who is a minor or is incapacitated.
2. My Trustee may rely on any information provided by a beneficiary with respect to the beneficiary’s assets and income. My Trustee has no independent duty to investigate the status of any beneficiary and will not incur any liability for failure to do so.

## My Trustee’s Powers

1. My Trustee may exercise, without prior approval from any court, all the powers conferred by this agreement and any powers conferred by law, including, without limitation, those powers set forth under the common law or statutory law of Texas or any other jurisdiction whose law applies to this agreement. The powers conferred upon my Trustee by law are subject to any express limitations or contrary directions contained in this agreement.
2. Specifically, my Trustee has the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage, and deal with real and personal property interests of all kinds, including accounts at financial institutions.
3. My Trustee will exercise these powers in the manner that my Trustee determines to be in the best interests of the beneficiaries. My Trustee may not exercise any power in a manner that is inconsistent with the right of the beneficiaries to the beneficial enjoyment of the property, in accordance with general legal principles of beneficiaries and fiduciaries.
4. My Trustee may have duties and responsibilities in addition to those described in this agreement. I encourage my Trustee to obtain appropriate legal advice if my Trustee has any questions concerning its duties and responsibilities as Trustee.

# General Provisions

## Maximum Term for Trusts

1. Notwithstanding any other provision of this agreement to the contrary, unless terminated earlier under other provisions of this agreement, each trust created under this agreement terminates upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities.
2. If the maximum term for trusts under the applicable rule against perpetuities is determined by reference to the death of the last to die among a group of individuals, the group of individuals will consist of the descendants of my maternal and paternal grandparents and the descendants of my wife’s maternal and paternal grandparents, who are alive at the relevant time.
3. At that time, the remaining trust property will vest in and be distributed to the persons then entitled to receive mandatory distributions of net income of the trust and in the same proportions to which they are entitled to receive the net income. If no beneficiary is entitled to receive mandatory distributions of net income, then the remaining trust property will vest in and be distributed to the beneficiaries then entitled to receive discretionary distributions of net income of the trust, in equal shares.

## Spendthrift Provision

1. Neither the income nor the principal of any trust created under this agreement may be assigned, anticipated, encumbered, alienated, or otherwise voluntarily transferred in any manner by any beneficiary. In addition, neither the income nor the principal of any trust created under this agreement is subject to attachment, bankruptcy proceedings or any other legal process, to the interference or control of creditors or others, or otherwise subject to any involuntary transfer.
2. This section does not restrict a beneficiary's right to disclaim any interest or the exercise of any power of appointment granted in this agreement.

## Survivorship Presumption

1. If my wife and I die under circumstances in which the order of our deaths cannot be established, then my wife will be deemed to have survived me. If any other beneficiary dies within 45 days after my death, then the beneficiary will be deemed to have predeceased me for purposes of this agreement.

## Changing the Governing Law and Situs of Administration

1. My Trustee may, at any time, change the governing law of the trust, remove all or any part of the property or the situs of administration of the trust from one jurisdiction to another, or both. My Trustee may elect, by filing an instrument with the trust records, that the trust will thereafter be construed, regulated, and governed as to administration by the laws of the new jurisdiction. My Trustee may act under this Section for any purpose my Trustee deems appropriate, including the minimization of any taxes in respect of the trust or any beneficiary of such trust, and may do so with or without providing notice to any beneficiary.
2. If necessary, or if deemed advisable by my Trustee, my Trustee will appoint an Independent Trustee to serve as trustee in the new situs.
3. If necessary, and if my Trustee does not appoint an Independent Trustee within 30 days of changing the governing law or situs of the trust, the beneficiaries entitled to receive distributions of net income under the trust may, by majority consent, appoint a corporate fiduciary in the new situs. If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

## Definitions

1. For purposes of this agreement, the following terms have the following meanings:

### Adopted and Afterborn Persons

* + - 1. A legally adopted person in any generation and his or her descendants, including adopted descendants, has the same rights and shall be treated in the same manner under this agreement as would children born of the adopting parent, provided such person is legally adopted prior to attaining the age of 18 years. A person is deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.
      2. A fetus in utero that is later born alive shall be considered a person in being during the period of gestation.

### Agreement

* + - 1. The term "this agreement" means this trust agreement and includes all trusts created under the terms of this trust agreement.

### Community Property

* + - 1. The term "community property" means property characterized as such under the relevant state's property laws. The term "community estate" means that portion of the estate consisting of community property.

### Descendants

* + - 1. The term "descendants" means the lineal descendants of all generations of the identified person, and includes children whose relationships with their parents arose from any of the following:
         1. natural birth;
         2. legal adoption;
         3. court declaration of parentage; and
         4. recognition of parent-child relationship by state law for children born during a domestic partnership, civil union, or marriage.

### Grantor

* + - 1. The term "Grantor" has the same legal meaning as "Settlor," "Trustor," "Trustmaker," or any other term referring to the maker of a trust.

### Incapacity

* + - 1. Except as otherwise provided in this agreement, a person is deemed incapacitated in any one of the following circumstances.

#### The Opinion of a Licensed Physician

An individual is deemed incapacitated whenever, in the opinion of a licensed physician, 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.

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

#### Disappearance, Absence, or Detention

An individual is deemed incapacitated whenever, in my Trustee's sole discretion, he or she cannot effectively manage his or her property or financial affairs due to disappearance, absence, or detention (including incarceration).

A person's disappearance, absence, or detention (including incarceration), may be established by an affidavit of my Trustee describing the relevant circumstances. A third party dealing in good faith with my Trustee may rely on the affidavit as conclusive evidence of incapacity.

### Income Beneficiary

* + - 1. The term "income beneficiary" means any beneficiary to whom the trust's net income may be distributed, whether the distributions are mandatory or discretionary.

### Independent Trustee

* + - 1. The term "Independent Trustee" means a Trustee who is not an Interested Trustee as defined in subsection (i). Whenever a power is granted exclusively to an Independent Trustee or the phrase "other than an Interested Trustee" is used (or similar prohibitive language), then the power or discretion may be exercised only by an Independent Trustee.

### Interested Trustee

* + - 1. The term "Interested Trustee" means a Trustee who (1) is a transferor or beneficiary; (2) is related or subordinate to a transferor or beneficiary; (3) can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor; or (4) can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.
      2. For purposes of this subsection, (1) "transferor" means a person who transferred property to the trust, including a person whose disclaimer resulted in property passing to the trust; (2) "beneficiary" means a person who is or in the future may be eligible to receive income or principal from the trust pursuant to the terms of the trust, even if such 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; and (3) "related or subordinate" means related or subordinate within the meaning of Section 672(c) of the Internal Revenue Code.

### Internal Revenue Code and Treasury Regulations

* + - 1. References to the "Internal Revenue Code" or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the "Treasury Regulations" are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. 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 deemed 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 my intent as expressed in this agreement. The same rule applies to references to the Treasury Regulations.

### Per Stirpes

* + - 1. 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 of the person and deceased children of the person who left then-living descendants. Each then-living child will receive one share and the share of each deceased child will be divided among such child’s descendants in the same manner.

### Primary Beneficiary

* + - 1. The primary beneficiary of a trust created under this agreement is the oldest income beneficiary of that trust unless some other individual is specifically designated as the primary beneficiary of that separate trust.

### Qualified Retirement Plan

* + - 1. The term "qualified retirement plan" means a plan qualified under Section 401 of the Internal Revenue Code, 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, Must, and May

* + - 1. Unless otherwise specifically provided in this agreement or by the context in which used, the words "shall" and "must" are used interchangeably to command, direct, or require, and the word "may" to allow or permit, but not require. In the context of my Trustee, the word "may" is used to authorize my Trustee to act in my Trustee's sole discretion unless otherwise stated. In addition, unless otherwise specifically provided in this agreement or by the context in which used, the phrases "shall not," "must not," and "may not" are used interchangeably to prohibit or forbid.

### Supplemental Needs Person

* + - 1. The term "Supplemental Needs Person" means a person who:
         1. is disabled; or
         2. is receiving, or is eligible to receive, assistance or other benefits under a means-based government program (such as Medicaid or Supplemental Security Income).
      2. As used above, the term "disabled" means disabled as defined in United States Code Title 42, Section 1382c(a)(3), or any other federal law related to means-based government programs for the disabled, or under Texas law related to means-based government programs, or under the law related to means-based government programs in the state where the person resides if the person is not a resident of Texas.
      3. As used above, the term "assistance" means assistance or medical assistance as defined in United States Code Title 42, Section 1396d(a), or any other federal law related to means-based government programs for the disabled, or under Texas law related to means-based government programs, or under the law related to means-based government programs in the state where the person resides if the person is not a resident of Texas.

As used above, a person is "eligible to receive" assistance or other benefits under a means-based government program if the person has been deemed eligible by the agency overseeing the program, or if the Trustee, in the Trustee's sole discretion, determines that the person would be eligible to receive such assistance or other benefits if an application were made.

### Trust

* + - 1. The terms "trust," "my trust," "this trust," "this agreement," and similar terms refer to this agreement and all trusts created under the terms of this agreement.

### Trustee

* + - 1. The terms "Trustee" and "my Trustee" refer to the Trustees named in Article One, entitled "Establishing My Trust," and to any successor, substitute, replacement, or additional person, corporation, or other entity that is from time to time acting as the Trustee of any trust created under the terms of this agreement. The term "Trustee" refers to singular or plural as the context may require.

### Trust Estate and Trust Property

* + - 1. The terms "trust estate" and "trust property" mean all property (income and principal) held by my Trustee under this agreement, including all property that my Trustee may acquire from any source.

## General Provisions and Rules of Construction

1. The following general provisions and rules of construction apply to this agreement:

### Singular and Plural; Gender

* + - 1. Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context.

### Headings of Articles, Sections, and Subsections

* + - 1. The headings of Articles, Sections, and subsections used within this agreement are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of this agreement.

### Governing Law

* + - 1. Unless the Situs of Administration is changed as provided in Section 11.04, Texas law governs the validity and construction of this agreement.

### References to Provisions of Law

* + - 1. References to statutory, regulatory, or other provisions of law are to the referenced provision as amended periodically. If a referenced provision is renumbered or superseded by a subsequent provision, any reference is deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law.

### Severability

* + - 1. The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement.

Grantor and Trustees

1. I hereby execute this agreement on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.
2. I certify that I have read this agreement, that I understand it, and that it correctly states the provisions under which the trust property is to be administered and distributed by my Trustee.
4. **(signature)**
6. (printed name)
7. \*\*\*IF MC Notary state = "California"\*\*\*

**Schedule A**

1. Ten Dollars Cash