Summary of the S1 Test and S2 Test Living Trust

This article-by-article explanation is a brief summary of the provisions of your trust agreement. It is not a legal document. You should read the actual trust agreement carefully. In the event of a conflict, the terms of the actual trust agreement control.

Article One
Establishing Our Trust

Article One creates your trust and identifies as the initial Trustee.

The name of your trust is the **S1 Test and S2 Test Living Trust dated ________________________, 20___**.

A more formal name for your trust is **", Trustee of the S1 Test and S2 Test Living Trust dated ________________________, 20___, and any amendments thereto."** But for purposes of transferring property to your trust or to identify your trust in any beneficiary or pay-on-death designation, any description permitted by law referring to your trust will be effective. A description may refer either to the name of your trust or to the name of at least one Trustee, with an indication that the Trustee holds the property as Trustee.

This Article also contains language allowing you or a Trustee to prove the existence of your trust through use of a Certification of Trust. This provision protects the privacy of your trust, by allowing third parties to rely on the Certification of Trust, rather than needing a copy of the whole trust agreement.

To ensure that your trust is valid, the trust is initially funded with the assets listed on the schedules attached to your trust agreement.

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

Because you retain the right to amend and revoke your trust, the trust is classified as a *Grantor Trust* under the Internal Revenue Code. For this reason, you will be treated as the owner of all the assets held in your trust as though you owned them in your own name. While your trust is a Grantor Trust, the taxpayer identification number of your trust will be either S1 Test's or S2 Test's Social Security number.

Article Two
Family Information

Article Two contains information about family members or other persons important to you.

You have no children.

Article Three
Trustee Succession and Trust Protector Provisions

Article Three contains provisions for the removal and replacement of Trustees, referred to as Trustee Succession. Trustee Succession provisions are a very personal and important issue. After all, your Trustee must carry out your instructions. You should review the provisions of this Article frequently, to make sure they are consistent with your current wishes.

Article Three also lists the Trustees to serve for the other trusts created upon your death.

Article Three also describes how Trustee vacancies are to be filled in the event there is no successor Trustee named in the agreement.

While you are alive, you have the right to remove and replace Trustees as you choose.

If one of you is incapacitated, the other may serve as sole Trustee. If the other of you is unable to serve for any reason, then will serve as successor Trustee.

If either of you is incapacitated, the other may remove any Trustee. If both of you are incapacitated, a Trustee may be removed only for cause, which must be approved by a court of competent jurisdiction.

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

When the first of you dies, the survivor may serve as sole Trustee of all trusts. If the survivor is unable to serve, then will serve as successor Trustee.

After one of you dies, the survivor may remove any Trustee for any reason.

If a beneficiary is a minor or incapacitated, the legal representative of such beneficiary may act on behalf of such beneficiary.

Any individual Trustee may appoint a Co-Trustee. An individual Trustee may want to appoint a Co-Trustee if the responsibilities of serving as Trustee are too burdensome.

If there is a need for an Independent Trustee for any specific purpose, a provision is included allowing a Trustee to appoint an Independent Special Trustee for that purpose.

Article Three also includes provisions for the appointment of a Trust Protector.

The Trust Protector is specifically empowered to correct any errors or ambiguities found in the trust agreement and to respond to changes in the law that affect any trusts created under the agreement.

Article Four
Administration of Our Trust During a Grantor's Incapacity

Article Four contains the instructions on how your Trustee is to manage your trust during any period of time you are incapacitated. This Article ensures that your Trustee has the discretion and authority to manage your affairs the way you want them managed.

You are deemed incapacitated if two licensed physicians give the medical opinion that you are unable to effectively manage your property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs, or other substances, or any other medical cause; or a court has declared you to be disabled, incompetent, or legally incapacitated; or you cannot effectively manage your property or financial affairs due to your unexplained disappearance or absence for more than 30 days, or whenever you are detained under duress.

Your Trustee must make distributions for the benefit of the incapacitated Grantor under the circumstances existing at the time the Trustee makes each distribution.

The Trustee may make distributions for the other Grantor's health, education, maintenance, or support. In making distributions, the Trustee must consider your needs first, and only then the needs of the other Grantor.

Article Five
Administration of Our Trust Upon the Death of a Grantor

Upon the death of the first of you to die, all of the survivor's trust property shall be allocated to the Survivor's Trust to be held and administered under the provisions of Article Eight. The trust becomes irrevocable as it pertains to the deceased's trust property and may have its own Tax ID number. Article Five contains the instructions for the payment of debts, administrative expenses, and taxes. This procedure is commonly referred to as trust administration and the deceased's trust property is sometimes referred to as an *Administrative Trust* during this period. For convenience however, your trust will continue to be referred to as the S1 Test and S2 Test Living Trust.

Because of the possibility of a probate estate to handle assets not owned by your trust at the time of your death, Article Five contains provisions for the coordination of your probate estate administration and the administration of your trust.

Article Six
Disposition of Tangible Personal Property

Article Six includes provisions for you to use a written memorandum to provide for the distribution of tangible personal property. If you decide to use a written memorandum for this purpose it must be signed and dated by you. It should list the items of tangible personal property designating who is to receive such property. Your Estate Planning Portfolio includes a form for you to use to create such a written memorandum.

Should you leave multiple written memoranda, the last dated memorandum shall control any items that are in conflict. If the memorandum with the most recent date conflicts with a provision of this instrument as to the specific distribution of any item of tangible personal property, the provisions of this instrument will control as to those items that are in conflict.

If the writing is not legally binding, you specifically request that your Trustee follows your wishes and distribute your tangible personal property in accordance with such memorandum.

You have instructed your Trustee to distribute any tangible personal property not disposed of by a written memorandum to the survivor. If both of you are deceased, the property will be distributed under the remaining terms of your trust.

The deceased's remaining property will be administered under the provisions of the following Articles.

Article Seven
Creating Trust Shares upon the Death of a Grantor

If the survivor determines it would be advisable for estate tax purposes, the survivor may disclaim any property otherwise passing to the Survivor's Trust. If the survivor disclaims any portion of the property that would otherwise be allocated to the Survivor's Trust, your Trustee is directed to allocate the disclaimed property to the Non-Marital Share and to administer the disclaimed property as provided in Article Nine.

Upon the death of the first of you to die, your Trustee will allocate all of the deceased's remaining trust property to the Survivor's Trust and administer the Survivor's Trust as provided in Article Eight.

This technique allows you and your advisors to wait until after the first of you dies to determine what portion, if any, of the remaining trust property should be allocated to the Non-Marital Share.

Article Eight
The Survivor's Trust

The survivor will be the Trustee of the Survivor's Trust. The survivor may designate Co-Trustees or successor Trustees.

The survivor also has the absolute right to amend, restate, or revoke the Survivor's Trust's terms, in whole or in part, for any purpose.

If the Survivor's Trust becomes the beneficiary of death benefits under any qualified retirement plan, your Trustee will hold that property in a separate share of the Survivor's Trust during the lifetime of the survivor, and the survivor will have no right to amend the terms of the separate share. The survivor may direct your Trustee to distribute the principal and accumulated income of the separate share to the main share of the Survivor's Trust.

The purpose of the separate share is to keep the deceased spouse's trust property, together with all accumulated income from that property, separate during the lifetime of the survivor from the main account to allow the separate share to qualify as a designated beneficiary under qualified retirement plans.

The survivor receives all of the income of the Survivor's Trust and as much of the principal of the Survivor's Trust as the survivor may request in writing for any reason.

When the survivor is incapacitated, the Survivor's Trust will be administered as outlined in Article Four.

Upon the death of the survivor, the property remaining in the Survivor's Trust will be administered as outlined in Article Five.

Your Trustee will administer the balance of the Survivor's Trust as provided in Article Ten.

Article Nine
The Family Trust

Your Trustee will administer the Non-Marital Share in what is commonly referred to as a *Bypass, Credit-Shelter or Family Trust*. In your trust agreement, the trust is referred to as the *Family Trust*.

The purpose of the Family Trust is to make the income and assets of the trust available for the benefit of the survivor.

During the lifetime of the surviving Grantor, the income and principal of the Family Trust is available to the surviving Grantor for the survivor's needs.

While the survivor is alive, the income and principal of the Family Trust is available to the surviving Grantor.

The Family Trust terminates upon the death of the survivor. Upon the death of the survivor, your Trustee will administer the balance of the Family Trust as provided in Article Ten.

Article Ten
Our Descendants' Trusts

Article Ten contains the provisions for administration of the remaining trust property upon the death of the survivor of you.

The remaining trust property will be administered as outlined in this Article.

Your Trustee will divide the remaining trust property into separate trusts for your children. If a child is deceased, that child's share will be divided into shares for the child's descendants.

Your Trustee may distribute the income and principal of a beneficiary's trust to the beneficiary for the beneficiary's needs.

After attaining age 21 years, a beneficiary has the right to withdraw amounts not to exceed in the aggregate 25% of the trust property calculated as of the date the beneficiary attains the age of 21.

A beneficiary's right to withdraw will be increased by 25% of the trust property not already subject to withdrawal (calculated by taking the trust property and deducting any amount already subject to withdrawal but not actually withdrawn), after attaining age 25 years.

After attaining age 30 years, a beneficiary has the right to withdraw all of the property.

If a beneficiary should die before the complete distribution of the beneficiary's trust, any property remaining in that beneficiary's trust will be distributed to the beneficiary's descendants in separate trusts. If the beneficiary has no descendants, the balance of the trust property will be distributed to your descendants. If you have no descendants, the balance of the trust property will be distributed as provided in Article Eleven.

Article Eleven
Remote Contingent Distribution

In the unlikely event that there is no one identified to receive a final distribution of any portion of your trust estate, one-half of the property will be distributed to those persons who would have inherited it if S1 Test had died without an estate plan and one-half to those persons who would have inherited it had S2 Test died without an estate plan.

Article Twelve
Distributions to Underage and Incapacitated Beneficiaries

Article Twelve provides your Trustee with various distribution options when property would otherwise be distributed to an individual who is under the age of 21, incapacitated or otherwise unable to manage the property. These options include distributing the property to the individual's legal representative or continuing to hold the property in trust.

Article Thirteen
Retirement Plans and Life Insurance Policies

Generally, retirement plans and life insurance policies will not be owned by your trust; however, it is not uncommon for your trust to be designated as beneficiary of retirement plans or life insurance policies.

Article Thirteen contains provisions to ensure that your Trustee has the right to receive distributions from retirement plans and life insurance policies as well as the right to make any necessary elections.

Article Thirteen also contains provisions instructing your Trustee to administer a trust for your minor child or an individual who is not more than ten years younger than you, which is designated as a beneficiary of any retirement plan benefits, as a conduit trust requiring your Trustee to immediately distribute the minimum required retirement plan distributions to the beneficiaries of the trust. This allows the trust to qualify as a designated beneficiary of the retirement plan for determining the amount of the required minimum distributions.

Except as otherwise provided in your Trust document, Article Thirteen contains provisions instructing your Trustee to administer any other trust designated as a beneficiary of any retirement plan benefits as an accumulation trust allowing your Trustee to accumulate the minimum required retirement plan distributions in the trust and to make distributions to the trust beneficiaries as directed by the Trust document. The accumulation trust provisions allow the trust to qualify as a designated beneficiary of the retirement plan for determining the amount of the required minimum distributions.

Article Fourteen
Trust Administration

Article Fourteen contains provisions to ensure that your trust will be administered efficiently according to your wishes. This includes provisions for your trust to be administered free of court intervention; freeing your Trustee from the costly requirement of obtaining a surety bond; entitling your Trustee to reasonable compensation; and making sure your Trustee won't be wrongfully sued when carrying out your intent.

Your Trustee has the right to employ other professionals such as accountants, attorneys, and investment advisors to make sure your trust is properly managed. Your Trustee may be required to provide an annual accounting. For convenience, one Trustee may delegate authority to another Trustee.

If any trust created after your deaths becomes so small that it no longer makes economic sense to administer it, the Trustee may terminate the trust and distribute the remaining property to the beneficiary then entitled to income.

You have given the Trustee of any trust the discretion to make distributions of principal to the beneficiaries of the trust to allow the beneficiaries to take full advantage of the aggregate basis increase allowed under Section 1014 of the Internal Revenue Code.

Before making principal distributions, the Trustee should determine whether there are good reasons to retain the property in trust. These reasons may include the fact that the asset may be sold in the near future, creditor protection, protection from failed marriages and protection of assets for future generations.

Article Fifteen
Our Trustee's Powers

Article Fifteen contains provisions granting your Trustee investment and administrative powers necessary to ensure that your trust and any trusts created after your deaths can be administered according to your wishes.

Your trust agreement includes special provisions to ensure that your Trustee can effectively manage a closely held business and operate farm or ranch properties.

Your trust agreement includes provisions to deal with S Corporation stock held by a trust after your deaths.

Article Sixteen
General Provisions

Article Sixteen contains various miscellaneous provisions as well as a Definitions section that explains the meaning of many of the words used in the trust agreement.

There is also a provision to protect the assets of a trust from a beneficiary's creditors. The effectiveness of this clause will depend upon state law.

There is a provision designed to ensure that beneficiaries will not try to defeat your intent by challenging your trust. Basically, this provision states that a beneficiary stands to lose all rights to distributions from your trust if the beneficiary contests any provisions of your trust.

If either of you file a petition for legal separation or dissolution of marriage, each of you will cease to be a beneficiary of the other's trust property and each of you will be treated as though you predeceased your spouse for purposes of determining how property will be distributed.

One important definition is the term *incapacity*. This term may apply to any person named in the trust, unless a different definition is otherwise specifically provided for that person in the trust document. Generally, a person is *incapacitated* if that determination is made by two licensed physicians, by a court having jurisdiction, or if the person has disappeared or is absent without explanation for more than 30 days.

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