

Amendment

The instant application is amended to provide the executed Trust formation document.

## **THE GÜENTER MARKSTEINER REVOCABLE TRUST**

I, GÜENTER MARKSTEINER, as Settlor, create THE GÜENTER MARKSTEINER REVOCABLE TRUST, a revocable trust for my primary benefit this 23 day of February, 2023 (the "Trust"). I am the Trustee of the Trust and in that capacity, I and my successors are collectively referred to in this instrument as the "Trustee."

### **ARTICLE 1 FAMILY**

I am married to SONIA MARKSTEINER, who is referred to as "my spouse" in this instrument. My spouse and I are both citizens of the United States. I have two children, ABRIELLE MARKSTEINER and NIKLAS MARKSTEINER. References to "my children" mean ABRIELLE MARKSTEINER and NIKLAS MARKSTEINER; references to "my descendants" mean my children and their descendants.

### **ARTICLE 2 TRANSFERS TO TRUST**

I hereby convey to the Trustee all my interest in the assets listed on Schedule A, which together with any assets later added to the Trust are referred to as the "Trust Estate." Any person may transfer assets to the Trust Estate, if the Trustee agrees to accept them. Assets do not have to be listed on Schedule A to be part of the Trust Estate. Unless otherwise specified in writing at the time of the transfer, those assets will be held as provided in this instrument. The Trustee accepts the responsibility of the Trustee, acknowledges receipt of the current Trust assets, and agrees to hold the Trust Estate as set forth in the Trust.

### **ARTICLE 3 RESERVED RIGHTS**

I reserve the following personal rights with respect to the Trust during my lifetime:

- To amend or revoke this instrument;
- To remove a Trustee (whether then acting or named herein to act as a successor Trustee), to appoint additional Trustees, and to appoint (one or more or successive) successor Trustees;
- To withdraw assets, whether income or principal, from the Trust Estate;
- To require changes in the investments of the Trust Estate;
- To direct the Trustee to perform any act of administration, whether or not contrary to the terms of this instrument; and
- To direct the Trustee to make distributions during my lifetime to any person named by me.

**3.1 By Whom Exercisable.** Except as provided below, all rights described above may be exercised only by me personally, from time to time, evidenced by a written instrument I signed, delivered to the Trustee. These powers, and any other powers conferred by law on a trust settlor, may not be exercised by any guardian who may be appointed for me or by my attorney-in-fact, except that my legal guardian may amend (but not revoke) the Trust only to the extent necessary to preserve a tax deduction, exemption, or credit consistent with my beneficial intentions as stated in this instrument. The Trustee is to be held harmless and indemnified from any liability for any of its actions or omissions made in reliance on my actions or instructions under this Article.

**3.2 Suspension of Rights.** My personal rights under this Article will be suspended immediately if I become disabled. For these purposes, my disability is determined as follows:

(a) **Court Decision.** If I am determined to be incapacitated by a court having jurisdiction, my personal rights reserved in this Article will be suspended until my legal capacity is restored.

(b) **Private Decision.** In the absence of a judicial determination, if both of my children reasonably believe that I am suffering from any mental or physical disability that would affect my judgment concerning management of the Trust, and if such individual(s) obtain written confirmation of that opinion from a licensed physician, then my spouse (or if my spouse is not living or able to act, then a majority of my then living children) may give me written notice to that effect. Upon delivery to me of that written notice, my personal rights reserved in this Article will be suspended immediately until my legal capacity is determined by a court or until my physician confirms in writing that I am no longer suffering from any mental or physical incapacity that would affect my judgment concerning management of the Trust.

(c) **Other Facts.** My personal powers will be suspended if the persons described in Section 3.2(b) give written notice to the Trustee gives written notice to the Trustee (or the successor Trustee, if applicable) that they have received credible and timely evidence that I have disappeared, am unaccountably absent, or am being detained under duress so that I am unable to look after my financial interests.

(d) **HIPAA.** For purposes of this Section 3.2, I appoint my children as my personal representative under 45 CFR § 164.502(g), a portion of the regulations implementing the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), to demand, obtain, review, and release to others medical records or other documents protected by the patient-physician privilege, attorney-client privilege, or any similar privilege, including all records subject to, and protected by, HIPAA.

**3.3 Homestead Rights.** Despite any other provision of this Trust, I reserve the right to reside on any real property owned by the Trust during my lifetime. I will be entitled to claim any available homestead tax exemption for any real property in the Trust, and, for purposes of that exemption, my interest in such property will be deemed an interest in real property and not an interest in personal property. This provision does not restrict the Trustee from selling, leasing, or encumbering that property without my joinder in any deed or other instrument.

I acknowledge that I may have transferred to this trust real property that constitutes my Homestead property under the Florida Statutes. The purpose of said transfer is for ease of administration at the time of my death and probate avoidance purposes only and is not intended to defeat all of the protections afforded an individual for their Homestead real property granted under the Florida Statutes and the Florida Constitution. I confirm that under the terms of the Trust I have not less than a beneficial interest for life and I am entitled to a homestead exemption pursuant to the provisions of Florida Statute 196.041(2).

In the event that I am under such circumstances that the creditor protections which inure to the benefit of Florida residents under the Florida Statutes and the Florida Constitution as they relate to Homestead real property will be defeated by retention of the subject real property in this trust instrument, I direct the Trustee to convey the subject real property back to my individual name so that such creditor protections are not defeated.

#### **ARTICLE 4**

#### **PAYMENTS DURING MY LIFETIME**

The Trustee shall make the following payments during my lifetime:

**4.1 For My Benefit.** The Trustee shall pay to or apply for my benefit (without obligation to any guardian who may be appointed for me) whatever income and principal that the Trustee, in its discretion, deems necessary or advisable for my best interests. Any undistributed income shall be accumulated and added to principal.

**4.2 For My Descendants.** If my personal rights are suspended as provided in Article 3 ("Reserved Rights"), the Trustee also shall pay to my descendants or apply for their benefit any income and principal that the Trustee in its discretion deems necessary or advisable for their health, education, support, and maintenance, either individually or collectively. If an Independent Trustee is then serving, it may make such distributions to my descendants as it determines to be in their best interests, either individually or collectively. Any undistributed income shall be accumulated and added to principal.

**4.3 Preference for Home Care.** The Trustee is authorized to provide for the finest available support and health care for me and my descendants, even if this leaves no assets of the Trust remaining for other beneficiaries. It is my desire that I not be maintained in a nursing home if reasonably possible and, in furtherance of this desire, the Trustee is specifically authorized to use assets of the Trust Estate as necessary to provide for my care at home, including payments for nursing care and the purchase of any equipment or facilities required for this purpose.

**4.4 Gifts.** For planning purposes, the Trustee shall make gifts from the Trust, upon my direction, to or in trust for any person or any one or more charitable organizations as are then described in Sections 2055(a), 2522(a), 170(c), and 170(b)(1)(A) of the Code, or in the Trustee's discretion, to or in trust for any one or more of my spouse and my descendants; provided, that, unless I direct otherwise, (i) such gifts to or in trust for my descendants shall be specifically limited to annual exclusion gifts and payments under Sections 2503(b) and 2503(e) of the Code, and (ii) gifts to or in trust for the Trustee shall not in any calendar year exceed the lapse protection amount provided in Section 2514(e) of the Code.

## **ARTICLE 5 DISTRIBUTIONS AFTER MY DEATH**

Upon my death and after making provision for the payments of obligations, expenses, and taxes, the Trustee shall distribute the remaining Trust Estate as follows:

**5.1 Gifts Under Will.** If my Will makes a gift of a specific asset that is held in this Trust when I die, and if this instrument does not make a specific gift of that asset, the Trustee shall distribute that asset to the beneficiary named in my Will. If my Will gives my residuary probate estate to the Trust, and if my probate estate is insufficient to satisfy any other preresiduary gift under my Will, the Trustee shall satisfy the balance of that gift from the Trust.

**5.2 If Spouse Survives.** If my spouse survives me, the Trustee shall set aside, as a separate trust for administration under the terms specified in Article 6 (the "Marital Trust"), one-third (1/3) of the Trust Estate in satisfaction of the Elective Share of the Florida Statutes, and shall be administered so as to qualify under Section 732.2025 of the Florida Statutes (including the right for my spouse to require the Trustee to make the trust property productive of income or to convert it within a reasonable time). The Trustee shall hold the balance of the assets distributable under this Section 5.2 as a separate trust (the "Family Trust") for administration as provided in Article 7 ("Administration of Family Trust").

**5.3 If Spouse Does Not Survive.** If my spouse does not survive me, the Trustee shall distribute all the remaining Trust Estate as provided in Section 7.2 of this instrument.

## **ARTICLE 6 ADMINISTRATION OF MARITAL TRUST**

The Trustee shall hold, administer, and distribute the Marital Trust in accordance with the powers granted under the Trust as follows:

**6.1 Distribution of Income.** The Trustee shall pay to my spouse all income of the Marital Trust at least annually during my spouse's lifetime. Any accrued income at my spouse's death is to be paid to my spouse's estate. My spouse shall have the right to require the Trustee to make the trust property productive of income or otherwise convert it within a reasonable time.

**6.2 Distribution of Principal.** The Trustee, in its discretion, may pay to or for the benefit of my spouse, such sums from the Trust Estate as the Trustee shall deem necessary for my spouse's health, support, and maintenance.

**6.3 Testamentary Special Power of Appointment.** Upon the death of my spouse, the Trustee shall distribute the assets of the Marital Trust to or in trust for such one or more of my descendants as my spouse directs by exercise of this testamentary special power of appointment.

**6.4 Disclaimed Property.** If any portion of the Marital Trust constitutes property disclaimed by my spouse (or by my spouse's legal representative) pursuant to a qualified disclaimer, then such disclaimed assets shall be held as a separate and segregated share of the Marital Trust under the same terms as the Marital Trust; provided, however, that my spouse shall not have the power to appoint such disclaimed assets under Section 6.3 of this Article.

**6.5 Distribution of Remaining Assets.** After my spouse's death and after making provision for the payment of estate taxes on the Marital Trust, the Trustee shall distribute all remaining trust assets not effectively appointed by my spouse as provided in Section 7.2 of this instrument.

## **ARTICLE 7 ADMINISTRATION OF FAMILY TRUST**

The Trustee shall hold, administer, and distribute the Family Trust in accordance with the powers granted under this instrument as follows:

**7.1 During Spouse's Lifetime.** During my spouse's lifetime, the Trustee, in its discretion, may pay or apply such sums of income and principal to or for the benefit of such one or more of my spouse and my descendants, in equal or unequal shares, that the Trustee deems advisable or necessary for their respective health, education, support and maintenance. If an Independent Trustee is then serving, the Independent Trustee may pay or apply such sums of income and principal to or for the benefit of such one or more of my spouse and my descendants, in equal or unequal shares, as the Independent Trustee, in its absolute discretion, determines to be in their best interests. Despite the foregoing, all distributions to my spouse will be suspended during any period in which she is married.

**7.2 At Death of Spouse.** Upon the death of my spouse, the Trustee shall divide all remaining assets of the Family Trust (and all other assets required to be disposed of under this Section 7.2 on my spouse's death, or, if my spouse fails to survive me, then all the remaining Trust Estate) into separate and equal trust shares for each of my children, **ABRIELLE MARKSTEINER** and **NIKLAS MARKSTEINER**, per stirpes; otherwise, to my living descendants, per stirpes. The Trustee shall hold each beneficiary's share as a separate trust under Article 8 ("Trusts for Descendants").

## **ARTICLE 8 TRUSTS FOR DESCENDANTS**

The Trustee shall hold, administer, and distribute any trust created for a descendant of mine (including my children) as follows:

**8.1 Discretionary Distributions.** The Trustee may pay or apply such sums of income and principal from each beneficiary's separate trust that the Trustee, in its discretion, deems necessary or advisable for that beneficiary's health, education, support, and maintenance. If an Independent Trustee is then serving, the Independent Trustee may pay to or for the benefit of the beneficiary such sums of income and principal as the Independent Trustee, in its absolute discretion, determines for the beneficiary's best interests. Any undistributed income shall be added to principal.

**8.2 Payments to Family.** After being reasonably assured that a beneficiary has sufficient means for his or her continued support, the Trustee also may pay any income and principal that the Trustee in its discretion deems necessary or advisable for the health, education, support, and maintenance of such beneficiary's descendants.

**8.3 Testamentary General Power of Appointment.** If any portion of the beneficiary's separate trust is not wholly exempt from generation-skipping tax, he or she may appoint that portion by exercise of this testamentary general power of appointment as provided in Section 14.8 of this instrument.

**8.4 Testamentary Special Power of Appointment.** Upon the death of the beneficiary, the Trustee shall distribute the trust assets to or in trust for such one or more of my descendants as the beneficiary directs by exercise of this testamentary special power of appointment.

**8.5 Distribution of Remaining Assets.** Upon the death of the beneficiary, the Trustee shall divide the trust assets not effectively appointed by the beneficiary into separate shares for that beneficiary's descendants, per stirpes; or if there are none, for the descendants, per stirpes, of that beneficiary's closest ancestor in degree who is also a descendant of mine; or if there are none, for my descendants, per stirpes. The Trustee shall hold the shares for those descendants as separate trusts as provided in this Article. If any assets are then being held in trust for that descendant pursuant to the provisions of this Article, the assets passing to that descendant under this Section 8.5 may be added to the trust held for that descendant and disposed of as a part thereof.

## **ARTICLE 9 ALTERNATIVE DISTRIBUTION**

In the remote contingency that upon my death or upon the termination of any trust hereunder any part of the then principal of said trust is not effectively disposed of pursuant to the foregoing provisions of this instrument, the Trustee shall distribute that property to my heirs at law, determined under Florida law then in effect as if I had died intestate and unmarried on that date as a resident of Florida.

## **ARTICLE 10 PROVISIONS GOVERNING FIDUCIARIES**

The following provisions apply to all Trusts created under this instrument and all Trustees appointed hereunder, including me, while I serve as Trustee:

**10.1 Successor Trustees.** If I cease to serve as Trustee for any reason, JEFFREY M. BROWN, shall serve as successor trustee. In the event JEFFREY M. BROWN fails or ceases to serve as Trustee for any reason, or in the event of a complete vacancy in office where there is no specified successor, a successor Trustee shall be appointed by a majority in interest of the permissible current income beneficiaries. Any serving Trustee must at all times be legally qualified to hold a Federal Communications Commission ("FCC") license for such period of time as an FCC license(s) makes part of the trust estate.

**10.2 Power to Appoint Independent Trustee as Co-Trustee.** After my death, if there is no then serving Independent Trustee, the then serving Trustee (the "Appointing Trustee") may, in its discretion, appoint another Trustee that is an Independent Trustee to serve as Co-Trustee (the "Appointed Trustee") with the Appointing Trustee. The Appointing Trustee shall also have the power, in its discretion, to remove the Appointed Trustee at any time. If the Appointing Trustee fails to serve or ceases to serve as Trustee for any reason, then the Appointed Trustee shall simultaneously be deemed to resign as Trustee, and a successor Trustee shall be appointed pursuant to the foregoing provisions of this Article that are applicable to such trust.

**10.3 Incapacity of Trustee.**

(a) **Disability.** If my personal rights are suspended as provided in Article 3 ("Reserved Rights"), I will cease to serve as Trustee while those rights are suspended. If any other Trustee becomes disabled, he or she will immediately cease to act as Trustee.

(b) **Suspension of Trustee.** If a Trustee fails to sign a release of relevant medical information necessary to determine his or her capacity, that Trustee will be suspended thirty (30) days after the request for such a release is delivered to him or her by the named successor Trustee, or if none, by the persons then entitled to appoint successor Trustees.

(c) **Reinstatement.** If a Trustee who ceases to serve because of a disability, or who is suspended as provided above, thereafter recovers from that disability or consents to the release of relevant medical information, he or she may elect to become a Trustee again by giving written notice to the then serving Trustee, and the last Trustee who undertook to serve will then cease to be a Trustee until another successor Trustee is required.

**10.4 Resignation.** Any Trustee may resign by giving thirty-days' written notice delivered personally or by mail to me, if I am living and my rights have not been suspended; otherwise to the qualified beneficiaries (as defined under the Florida Trust Code).

**10.5 Removal.** Notwithstanding any provision herein to the contrary, any Independent Trustee may be removed from office at any time by a majority in interest of the permissible current income beneficiaries, provided if an Independent Trustee is removed, then a majority in interest of the permissible current income beneficiaries must replace such removed Independent Trustee with another Independent Trustee.

**10.6 Powers of Successor Trustees.** Successor Trustees will have all powers granted to the original Trustee, except that only a successor Independent Trustee will succeed to the powers vested exclusively in the Independent Trustee. Unless another then acting Trustee continues to serve, a Trustee ceasing to serve for any reason has the duties and powers necessary to protect the Trust Estate until it is delivered to a successor Trustee.

**10.7 Acts by Other Fiduciaries.** The Trustee shall take reasonable steps to compel a former Trustee or other person to deliver trust property to the Trustee, but otherwise is not required to question any acts or failures to act of the fiduciary of any other trust or estate, and will not be liable for any prior fiduciary's acts or failures to act. The Trustee can require a beneficiary who requests an examination of another fiduciary's actions or omissions to advance all costs and fees incurred in the examination, and if the beneficiary does not, the Trustee may elect not to proceed



or may proceed and offset those costs and fees directly against any payment that would otherwise be made to that beneficiary.

**10.8 No Bond.** I waive compliance by the Trustee with any law requiring bond.

**10.9 Corporate Trustee.** If a bank, trust company, or other entity is appointed to serve as Trustee of any trust herein (the "Corporate Trustee"), it must have at least Five Hundred Million Dollars (\$500,000,000) of assets under trust management (which may include assets managed by affiliated or subsidiary banks or trust companies). A Corporate Trustee that does not meet this requirement cannot serve as Trustee. Notwithstanding any provision of this Article, after my death, any Corporate Trustee may be removed from office at any time by a majority in interest of the permissible current income beneficiaries; provided a majority in interest of the permissible current income beneficiaries replaces such removed Trustee with another Corporate Trustee.

**10.10 Compensation.** Each Trustee is entitled to be paid reasonable compensation for services rendered under the provisions of this instrument. Reasonable compensation for an Independent Trustee (that is not a Corporate Trustee) will be based on its standard hourly rate for professional services rendered. Reasonable compensation for a Corporate Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows: any fees paid to a Corporate Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. To the extent sufficient, Trustees' fees are to be charged wholly against income.

**10.11 Multiple Trustees.** During such time as there are multiple Trustees serving, the following provisions shall apply:

(a) If two Trustees are then serving, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees.

(b) If more than two Trustees are then serving, and unless unanimous agreement is specifically required by the terms of this instrument, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees.

(c) Notwithstanding any provision of this instrument, (1) only an Independent Trustee may exercise the power and discretion vested exclusively in the Independent Trustee; and (2) an Independent Trustee may not delegate any power or discretion vested exclusively in an Independent Trustee to a Trustee who is not an Independent Trustee.

(d) **Dissents.** A Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

**10.12 Beneficiary Under Disability.** The parent or guardian of a beneficiary under disability shall receive notice and have authority to act for the beneficiary (other than as a fiduciary) under this Article.

**10.13 U.S. Trustee.** At least one Trustee must be either an individual who is a citizen of the United States or a U.S. domestic corporation qualified to administer trusts.

**10.14 Exculpatory Provision.** No Trustee acting hereunder shall be liable for any loss or damage arising from the execution of his or her duties under this instrument, unless such loss or damage be occasioned by his or her own bad faith or reckless indifference to the purposes of this instrument or the interests of the beneficiaries.

## **ARTICLE 11 FUNDING AND QUALIFICATION OF MARITAL TRUST**

The following provisions will apply with respect to the administration of the Marital Trust:

**11.1 Qualifying Assets.** Only assets that can qualify for the marital deduction are to be used in funding the Marital Trust.

**11.2 Preference of Funding.** If other assets are available to fund the Marital Trust, the Trustee should (but is not required to) use those assets first before any of the following assets:

- Property for which a tax credit is allowable for estate tax purposes;
- Any life insurance policy insuring my spouse;
- Appreciated property received from my spouse within one year before my death; or
- Shares of stock that qualify for redemption under Section 303 of the Code.

**11.3 Tentative and Final Allocations to Marital Trust.** The Trustee may tentatively allocate assets to the Marital Trust. The Trustee shall make final adjustments as necessary when my estate tax liability is finally determined.

**11.4 Investment of Trust Assets.** Notwithstanding any other provisions of this instrument, my spouse shall have the right to require the Trustee to invest the Marital Trust so that it is productive as a whole, as contemplated by the Treasury Regulations promulgated under the Code.

**11.5 Partial Election.** If an election is made to qualify only a portion of the Marital Trust for the marital deduction, the Trustee shall divide that trust on a fractional basis according to its fair market value on the date of division, so that the qualifying and nonqualifying portions will be held as separate trusts. Unless compelling circumstances require otherwise, all distributions of principal are to be made first from the trust that is elected to qualify for the marital deduction, and after that trust is exhausted, from the trust that is not elected to qualify for the marital deduction.

**11.6 Payment of Estate Taxes.** If any portion of the Marital Trust is included in my spouse's gross estate for Federal estate tax purposes, unless my spouse specifically directs to the contrary in my spouse's Last Will, the Trustee shall pay from that portion the amount certified by my spouse's Personal Representative that state and Federal estate taxes (including penalties and interest) for my spouse's estate are increased over the amount of those taxes computed as if that portion were not included in my spouse's gross estate (as provided in Section 2207A of the Code). The Trustee may pay those taxes directly or to the Personal Representative of my spouse's estate, and the Trustee is to be held harmless from any liability for making payments in reliance on that certification.

## **ARTICLE 12 SURVIVAL PROVISIONS**

**12.1 Deaths of Settlor and Settlor's Spouse.** If my spouse and I die under circumstances in which there is insufficient evidence to determine the order of our deaths, I shall be deemed to have survived my spouse for all purposes, including the determination of ownership of all nonprobate assets (to the extent not otherwise prohibited by law).

**12.2 Other Survivorship.** If any beneficiary (other than my spouse) is required to survive me or another person to receive a distribution, and if the beneficiary does not survive me or that other person by ninety (90) days, the beneficiary will be treated as if he or she died before me or that other person.

## **ARTICLE 13 SPENDTHRIFT PROVISION**

The interest of any beneficiary under this instrument (other than myself), or any trust hereunder, in either income or principal, may not be voluntarily or involuntarily anticipated, alienated, or in any other manner assigned by the beneficiary and will not be subject to any legal process, bankruptcy proceedings, or the interference or control of the beneficiary's creditors or others.

## **ARTICLE 14 GST PROVISIONS**

I intend for this instrument to be interpreted and administered in a way that will minimize generation-skipping transfer ("GST") taxes, but in a manner consistent with directions for division and distribution of the Trust Estate. This is to be achieved by the proper allocation of my GST exemption and, to the greatest extent possible, the creation of trusts having a GST inclusion ratio of either zero or one. All other provisions of this instrument are subject to this Article.

**14.1 Definitions.** The terms used in this Article have the meaning given to them in Chapter 13 of the Code. "Exempt trust" or "exempt property" means a trust (or trust equivalent) or property that has a GST inclusion ratio of zero. "Nonexempt trust" or "nonexempt property" means a trust (or trust equivalent) or property that has a GST inclusion ratio greater than zero.

**14.2 Division into Separate Trusts.** If the value (for purposes of allocating GST exemption) of any trust under the Trust exceeds the amount of GST exemption to be allocated to it, the Trustee shall divide that trust into Exempt and Nonexempt trusts. The Exempt trust will consist of a fractional share of the trust assets. The numerator of the fraction for the Exempt trust will be the amount of GST exemption to be allocated to the trust, and the denominator will be the Federal estate tax value of the property held in the trust. The Nonexempt trust will consist of the remaining fraction of the trust assets. The Exempt and Nonexempt trusts will be administered as provided under the terms that govern the trust that was divided. The Trustee may make different decisions with respect to the trusts concerning tax elections, the exercise of the Trustee's discretionary powers and authority (including decisions whether to make discretionary distributions), investment decisions, and any other actions consistent with treatment as separate trusts.

**14.3 Trust Additions.** Exempt or nonexempt property can be added only to a trust of the same character. If because of this rule a trust cannot receive property, the property will be held as a separate Exempt or Nonexempt trust by the Trustee of the trust designated to receive the property and administered and distributed as provided for that trust.

**14.4 Multiple Transferors.** If portions of a single trust are attributable to transfers from different transferors, the Trustee shall maintain sufficient records to preserve the treatment of those portions as separate trusts under Section 2654(b)(1) of the Code.

**14.5 Exemption Allocation.** I direct my Personal Representative and the Trustee to allocate my GST exemption so as to maximize the benefit of that exemption. I anticipate that, absent unusual circumstances, my exemption would be best allocated to transfers in the order of priority listed below, but I do not restrict my Personal Representative and the Trustee from allocating my GST exemption in a different manner if more beneficial. If my Personal Representative and the Trustee do not otherwise validly allocate my GST exemption on a timely filed return, I direct that my GST exemption be allocated as follows:

(a) **Direct Skips.** To my "direct skip" transfers if those transfers do not qualify for any other exemption or exclusion from the GST tax, but if a nonskip person makes a disclaimer of property, no GST exemption is to be allocated to that property.

(b) **Family Trust.** If my spouse survives me, to the Family Trust, or to the Exempt Family Trust if separate Exempt and Nonexempt Family Trusts are established.

(c) **Marital Trust.** If my spouse survives me, to the Marital Trust, or to the Exempt Marital Trust if separate Exempt and Nonexempt Marital Trusts are established. I direct the Trustee (or my Personal Representative, if one) to make the "reverse QTIP election" for the Marital Trust that is elected to qualify for the marital deduction, or for the Exempt Marital Trust that is elected to qualify for the marital deduction if separate Exempt and Nonexempt Marital Trusts are established.

(d) **Spouse's Trust.** To any Nonexempt trust included in my gross estate under Section 2044 of the Code if that trust will then become an Exempt trust. If the value of that trust exceeds the GST exemption to be allocated to it, and if the Trustee of that trust divides it into separate trusts, GST exemption will be allocated so that one of those trusts will have a GST inclusion ratio of zero.

(e) **Other Transfers.** Thereafter, to other transfers as the Trustee deems appropriate.

**14.6 Appropriate Interest.** If GST exemption is allocated to a residuary gift and a pecuniary gift is not entitled to income or interest under state law, the Trustee must allocate to that pecuniary gift a pro rata share of the income of the Trust Estate between my date of death and the date of payment, unless that pecuniary gift is paid in full (or irrevocably segregated and held in a separate account pending distribution) within fifteen (15) months after my death.

**14.7 Spouse's Exemption.** Upon my spouse's death if my spouse survives me, the Trustee shall divide the Nonexempt Marital Trust on a fractional basis to create a separate trust equal to the amount of my spouse's GST exemption that my spouse's Personal Representative certifies will be allocated to that trust. The separate trust will be known as the "Spouse's Exempt Trust," and it will be held and distributed as otherwise provided for the Exempt Family Trust.

**14.8 General Power of Appointment.** The following rules apply if another provision of this Trust gives a beneficiary a general power of appointment over a nonexempt trust exercisable upon death, but only if that other provision specifically refers to this Article. If GST tax would be owed upon a distribution of trust assets to the takers in default if the beneficiary did not exercise the power (whether or not the beneficiary actually exercises the power), the beneficiary also can appoint the assets of the trust to bona fide creditors of the beneficiary's estate, subject to the following limit. This additional power of appointment is limited to the minimum amount that will cause the least aggregate amount of transfer taxes to be incurred by reason of the beneficiary's death (whether as estate tax in the beneficiary's estate or as GST tax), taking into account all applicable credits, deductions, exclusions and exemptions.

**14.9 Distributions from Multiple Trusts.** If a trust has been divided into Exempt and Nonexempt trusts, the following rules will govern how distributions are made as between those trusts.

(a) **Marital Trust.** Discretionary distributions to my spouse are to be made first from the Nonexempt Marital Trust that was elected to qualify for the marital deduction until it is exhausted. Those distributions are to be made next from the Nonexempt Marital Trust that was not elected to qualify for the marital deduction, or from the Exempt Marital Trust that was elected to qualify for the marital deduction, as the Trustee in its discretion deems appropriate. Thereafter, those distributions are to be made from the Exempt Marital Trust that was not elected to qualify for the marital deduction.

(b) **Nonexempt Trust Primary.** If the Trustee has discretion to make a distribution from more than one trust to or for the benefit of the same person, the distribution is to be made from the Nonexempt trust unless it would be a taxable distribution to that person, in which case the distribution is to be made from the Exempt trust, unless compelling circumstances require otherwise.

(c) **Allocating Charges.** If a trust charged with the payment of taxes or expenses is divided into Exempt and Nonexempt trusts, those taxes and expenses are to be paid first from the Nonexempt trust, and from the Exempt trust only after the Nonexempt trust has been exhausted.

**14.10 Paying GST Tax.** Except as otherwise specifically provided in this instrument, if a Federal or state GST tax is imposed with respect to any transfer under this instrument, the amount of the tax will be charged to the property constituting the transfer as provided in Section 2603(b) of the Code.

## **ARTICLE 15**

### **PAYMENTS OF OBLIGATIONS, EXPENSES, AND TAXES**

The Trustee shall pay all of my obligations, expenses, and taxes as follows:

**15.1 Obligations.** I direct that my legally enforceable obligations (except those secured by mortgages or other security instruments) be paid in the order and manner prescribed by law.

**15.2 Expenses.** The term “expenses” includes all estate transmission or management expenses of my probate estate, all administrative expenses of the Trust, and all costs of my last illness and funeral. I direct that all expenses be paid as follows:

(a) If my spouse survives me, then expenses shall be paid first from the Family Trust and, to the extent insufficient, then from that portion of the Marital Trust that does not qualify for the Federal estate tax marital deduction. If any expenses remain, the balance is to be paid from the remaining portion of the Marital Trust.

(b) If my spouse fails to survive me, then expenses shall be paid from the Trust Estate.

Payments may be made from and charged to either income or principal, at the discretion of the Trustee. The Trustee shall not seek reimbursement from any party for expenses that it pays.

**15.3 Taxes.** The term “estate taxes” means all state and Federal estate, inheritance, or transfer taxes payable by reason of my death (including the GST tax on a direct skip taking effect at the time of my death created by the express terms of the Trust rather than by disclaimer), plus any related interest and penalties attributable to these taxes, but excluding any other GST taxes.

(a) **Source of Taxes.** I direct that all of my estate taxes be paid and apportioned as provided by law, except as follows:

(i) **Deductibility.** No estate taxes are to be apportioned to any interest if that would diminish the aggregate estate tax deductions available.

(ii) **Deferrable Retirement Benefits.** No estate taxes shall be apportioned against Deferrable Retirement Benefits (as hereinafter defined).

(iii) **Credits.** If any credit under Sections 2012 or 2014 of the Code is attributable to property in my gross estate, that credit is to be applied against the tax apportioned to the property as to which the credit is attributable.

(b) **Interest on Tax.** All taxes apportioned under this Article also are to include interest from thirty (30) days after my Personal Representative or the Trustee makes a written demand for payment upon the recipient of the property against which tax has been apportioned until the tax is paid, provided that the Federal estate tax return has already been filed. This interest is to be calculated at the same rate and in the same manner as for the underpayment of taxes under Section 6621 of the Code. For the purposes of such demand and the payment by the recipient, the amount of the estate taxes shown on the Federal and state estate tax return initially will be deemed to be correct, subject to appropriate adjustment when the estate taxes are finally determined and paid. If the amount so apportioned (together with any interest) is not paid within three (3) months of the final determination of tax, it will become an offset against any amount otherwise due to the beneficiary under the Trust. To the extent that the amount so apportioned (together with the interest) is fully offset by the amounts due the beneficiary, interest is to cease at the end of the three-month period. Alternatively, the beneficiary may notify my Personal Representative or the Trustee of his or her desire to offset a portion (or all) of that beneficiary's interest under the Trust to pay those taxes. In that event, interest will not be charged against that beneficiary for the amount offset.

(c) **Method of Payment.** The Trustee may rely on a written statement signed by my Personal Representative as to the amount of those expenses and taxes. The Trustee may make payment directly or to my Personal Representative, as my Personal Representative requests. The Trustee will be held harmless from any liability in making payments as so directed.

(d) **Excluded Property.** If any funds become available to the Trustee of any trust, including without limit, life insurance, qualified employee benefit plans, individual retirement accounts, or other property from sources specified in Section 2039 of the Code, and those funds are not otherwise included in my gross estate for Federal estate tax purposes, then none of those funds may be used to pay any debts, taxes, or expenses of mine, this Trust, or my estate. Additionally, any life insurance that becomes available to the Trustee of any trust (whether or not such funds are included in my gross estate for Federal estate tax purposes) shall not be used to pay any debts or expenses of mine, this Trust, or my estate.

## ARTICLE 16 FIDUCIARY POWERS

I grant to the Trustee full power to deal freely with any property held as an asset under this instrument. The Trustee may exercise these powers independently and without the approval of any court. No person dealing with the Trustee need inquire into the propriety of any of its actions or into the application of any funds or assets. The Trustee, however, shall exercise all powers in a fiduciary capacity in good faith, as a prudent person would using reasonable care, skill, and caution, for the best interest of the beneficiaries. Without limiting the generality of the foregoing, the Trustee is given the following discretionary powers in addition to any other powers conferred by law:

**16.1 Type of Assets.** Except as otherwise provided herein to the contrary, to hold funds uninvested for such periods as the Trustee deems prudent, and to invest in any assets the Trustee deems advisable, without responsibility for depreciation or loss on account of those investments, or because those investments are non-productive, as long as the Trustee acts in good faith; to invest and reinvest the trust property in bonds, stocks, mortgages, notes, bank deposits, options, futures, limited partnership interests, limited liability company interests, membership interests, real estate, closely held business interests, shares of registered investment companies and real estate investment trusts, or other property of any kind, real or personal, domestic or foreign, including purchases on margin; to trade in covered calls and options; without liability, even though such investment is not of a type, quality, marketability, or diversification considered proper for trust investments.

**16.2 Original Assets.** Except as otherwise provided herein to the contrary, to collect and retain the original assets it receives for as long as it deems best, and to dispose of those assets when it deems advisable, as more specifically set out in Article 17 ("Special Business Provisions"), even though such assets, because of their character or lack of diversification, would otherwise be considered improper investments for the Trustee.

**16.3 Tangible Personal Property.** To receive and hold tangible personal property; to pay or refrain from paying storage and insurance charges for such property; and to permit any beneficiaries to use such property without either the Trustee or beneficiaries incurring any liability for wear, tear, and obsolescence of the property.

**16.4 Financial Accounts.** To deposit trust money in one or more accounts in regulated financial service institutions, including but not limited to banks, savings institutions, and brokerage houses, and to draw checks, drafts, or other forms of withdrawal, including electronic transfers, from those accounts.

**16.5 Specific Securities.** To invest in assets, securities, or interests in securities of any nature, whether obtained in domestic or foreign markets, including (without limit) commodities, options, futures, precious metals, and currencies; to invest in mutual or investment funds, including funds for which the Trustee or any affiliate performs services for additional fees, whether as manager, custodian, transfer agent, investment advisor, or otherwise, or in securities distributed, underwritten, or issued by the Trustee, its affiliates, or syndicates of which it is a member, and I specifically authorize the Trustee to invest in the instruments described in Section 736.0802(5) of



the Florida Statutes (including assets other than qualified investment instruments) without notice to or consent from any beneficiary; to trade on credit or margin accounts (whether secured or unsecured); and to pledge assets of the Trust Estate for that purpose.

**16.6 Property Transactions.** To buy, sell, pledge, exchange, or lease any real or personal property, publicly or privately, for cash or credit, without court approval and upon the terms and conditions that the Trustee deems advisable; to execute deeds, leases, contracts, bills of sale, notes, mortgages, security instruments, and other written instruments; to grant, acquire, or exercise options; to abandon or dispose of any real or personal property that has little or no monetary or useful value; to improve, repair, insure, subdivide, and vacate any property; to erect, alter, or demolish buildings; to adjust boundaries; and to impose easements, including conservation easements, restrictions, and covenants as the Trustee sees fit. An instrument described in this Section will be valid and binding for its full term even if it extends beyond the full duration of the trust.

**16.7 Borrow Money.** To borrow money from any source (including the Trustee in its nonfiduciary capacity), to guarantee indebtedness, and to secure the loan or guaranty by mortgage or other security interest.

**16.8 Maintain Assets.** To expend whatever funds it deems proper for the preservation, maintenance, or improvement of assets. The Trustee in its discretion may elect any options or settlements or exercise any rights under all insurance policies that it holds. Notwithstanding the foregoing, no fiduciary (other than me) who is the insured of any insurance policy held hereunder may exercise any rights or have any incidents of ownership with respect to the policy, including the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke any assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy. All such power is to be exercised solely by the then acting Trustee, who is not the insured of such insurance policy held hereunder, if any, or if none, by a special fiduciary appointed for that purpose by a court having jurisdiction.

**16.9 Insurance.** To obtain property, casualty, liability, or any other insurance for the trust, including insurance for the Trustee and its agents against damage or liability arising from administration under this instrument.

**16.10 Advisors.** To employ and compensate attorneys, accountants, advisors, financial consultants, managers, agents, and assistants (including any individual or entity who provides investment advisory or management services, or who furnishes professional assistance in making investments for the trust) without liability for any act of those persons, if they are selected and retained with reasonable care. Fees may be paid from the Trust Estate even if the services were rendered in connection with ancillary proceedings. The Trustee may serve in any of these capacities and be compensated separately for its services in each.

**16.11 Indirect Distributions.** To make distributions, whether of principal or income, to any person under age twenty-one (21) or to any person the Trustee reasonably believes is incapacitated according to the terms of this instrument by (i) making distributions directly to that person whether or not that person has a guardian; to the parent, guardian, or spouse of that person; to a custodial account established by the Trustee or others for that person under an applicable Uniform Gift to Minors Act or Uniform Transfers to Minors Act; to any adult who resides in the same household with that person or who is otherwise responsible for the care and well-being of that person; (ii) managing the amount as a separate fund on that person's behalf, subject to his or her continuing right to withdraw that amount; or (iii) applying any distribution for the benefit of that person in any manner the Trustee deems proper. Additionally, if the Trustee has the absolute discretion to distribute trust assets to or for the benefit of a beneficiary, then the Trustee may also distribute trust assets in further trust for the benefit of the beneficiary. The receipt of the person to whom payment is made will constitute full discharge of the Trustee with respect to that payment. Notwithstanding the foregoing, the above powers specified in this Section shall not apply (i) to the Trustee's requirement to distribute all of the income of the Marital Trust to my spouse annually, (ii) to the extent any such power would disqualify any property passing to the Marital Trust from any Federal marital deduction otherwise allowed to my estate, or (iii) to the extent any such power would prevent a trust from remaining or becoming a Qualified Subchapter S Trust or will prevent or disqualify any Federal transfer tax exemption, deduction, or exclusion available to my estate or any trust created herein.

**16.12 Non-Pro Rata Distribution.** To make any division or distribution in money or in kind, or both, without allocating the same kind of property to all shares or distributees, and without regard to the income tax basis of the property. Any division will be binding and conclusive on all parties.

**16.13 Custodian.** To employ a custodian or agent (the "Custodian") located anywhere within the United States, at the discretion of the Trustee but at the expense of the trust, whether or not such Custodian is an affiliate of the Trustee or any person rendering services to the Trust; to register securities in the name of the Custodian or a nominee thereof without designation of fiduciary capacity; and to appoint the Custodian to perform such other ministerial functions as the Trustee may direct. While such securities are in the custody of the Custodian, the Trustee will be under no obligation to inspect or verify such securities nor will the Trustee be responsible for any loss by the Custodian.

**16.14 Administer Claims.** To contest, compromise, arbitrate, or otherwise adjust claims in favor of or against the trust, including paying those claims in full; to agree to any rescission or modification of any contract or agreement; and to refrain from instituting any suit or action unless indemnified for reasonable costs and expenses.

**16.15 Corporate Rights.** To vote and exercise any option, right, or privilege to purchase or to convert bonds, notes, stock (including shares or fractional shares of stock of any Corporate Trustee), securities, or other property; to borrow money for the purpose of exercising any such option, right, or privilege; to delegate those rights to an agent; to enter into voting trusts and other agreements or subscriptions; to participate in any type of liquidation or reorganization of any enterprise; and to write and sell covered call options, puts, calls, straddles, or other methods of buying or selling securities, as well as all related transactions.

**16.16 Business Interests.** To hold interests in sole proprietorships, general or limited partnerships, joint ventures, business trusts, land trusts, limited liability companies, and other domestic and foreign forms of organizations; and to exercise all rights in connection with such interests as the Trustee deems appropriate, including any powers applicable to a non-admitted transferee of any such interest.

**16.17 Self-Dealing.** To exercise all its powers even though it may also be acting individually or on behalf of any other person or entity interested in the same matters. The Trustee, however, shall exercise these powers at all times in a fiduciary capacity, primarily in the interest of the beneficiaries. Notwithstanding any provisions herein to the contrary, no Trustee may participate in the decision to make a discretionary distribution that would discharge a legal support obligation of that Trustee. No Trustee who has made a disclaimer, either individually or as a Trustee, may exercise any discretion in determining the recipient of the disclaimed property, except pursuant to an ascertainable standard. All power to make such unlimited distributions, or to determine recipients of disclaimed property, will be exercised solely by the remaining Trustees, if any, or if there are no other Trustees then serving, by the person or persons named to serve as the next successor Trustee, or if there are none, by a special Trustee appointed for that purpose by a court having jurisdiction.

**16.18 Elections.** If no Personal Representative is serving for my estate, and to the extent permitted by law, to perform in a fiduciary capacity any act and make any and all decisions or elections under state law or the Code on behalf of me or my estate, including but not limited to, joining in the filing of income and gift tax returns with my spouse, claiming the whole or any part of the expenses of administration as income tax deductions for my estate or this Trust, electing the marital deduction in whole or in part, making allocations of my exemption from the Federal GST tax, adopting alternate values for estate tax purposes, and selecting taxable years and dates of distribution. The Trustee is specifically excused from making equitable adjustments among beneficiaries because of any election.

**16.19 Qualified Property.** To manage any qualified real property or qualified family-owned business interests so as to avoid imposition of the additional estate tax under Sections 2032A or 2057 of the Code, and to furnish security for the payment of any additional estate taxes imposed under those sections.

**16.20 Expenses.** To pay all expenses of administration for the Trust Estate, including all taxes, assessments, compensation of the Trustee and its employees and agents, and reimbursements for expenses advanced (with interest as appropriate).

**16.21 Terminate Small Trusts.** After my death, to exercise its discretion, without court approval, to refrain from funding or to terminate any trust whenever the value of the principal of that trust (or if a trust has been divided into Exempt and Nonexempt trusts, the principal value of those combined trusts) would be or is less than Fifty Thousand Dollars (\$50,000), and to distribute the remaining principal and all accumulated income of the trust to the beneficiaries then entitled to receive income in proportion to their shares of that income, or, if their interests are indefinite, then in equal shares. The Trustee shall exercise this power to terminate in its discretion as it deems prudent for the best interest of the qualified beneficiaries at that time.

**16.22 Allocations to Income and Principal.** To allocate any receipts or disbursements between principal and income; provided, however, in exercising the foregoing judgment, the Trustee shall act in a fair and impartial manner with respect to all beneficiaries.

**16.23 Use of Income.** Except as otherwise provided in this instrument, and in addition to all other available sources, to exercise its discretion in the use of income to satisfy the liabilities described herein, without accountability to any beneficiary.

**16.24 Sever or Join Trusts.** To sever any trust on a fractional basis into two or more separate trusts, and to segregate by allocation to a separate account or trust a specific amount from, a portion of, or a specific asset included in any trust. The Trustee may consolidate two or more trusts (including trusts created by different transferors) having substantially the same beneficial terms and conditions into a single trust. The Trustee may take into consideration differences in Federal tax attributes and other pertinent factors in administering any separate account or trust, in making applicable tax elections, and in making distributions. A trust created by severance or consolidation will be treated as a separate trust for all purposes from the date on which the severance or consolidation is effective (which may be before the exercise of this power), and will be held on the same beneficial terms and conditions as those before the severance or consolidation. Income earned on a consolidated or severed amount, portion, or specific asset after the consolidation or severance is effective will pass with that amount, portion, or specific asset.

**16.25 Consolidated Funds.** Unless inconsistent with other provisions of this instrument, to hold two or more trusts or other funds in one or more consolidated funds, in which the separate trusts or funds have undivided interests, except that an accounting must be rendered to each trust showing its undivided interests in those funds.

**16.26 Valuations.** In making distributions or allocations under the terms of this instrument to be valued as of a particular date, the Trustee may use asset valuations obtained for a date reasonably close to that particular date (such as a quarterly closing date before or after that date) if, in the Trustee's judgment, obtaining appraisals or other determinations of value on that date would result in unnecessary expense, and if in the Trustee's judgment, the fair market value as determined is substantially the same as on that actual date. This Section will not apply if valuation on a specific date is required to preserve a qualification for a tax benefit, including any deduction, credit, or most favorable allocation of an exemption.

**16.27 Incorporation.** To incorporate any business or venture, and to continue any unincorporated business that the Trustee determines to be not advisable to incorporate.

**16.28 Loans; Advances.** To make loans to a beneficiary (or to a corporation, partnership, limited liability company, or other entity in which a beneficiary owns an interest whether direct or indirect) on such terms as the Trustee, in its absolute discretion, deems appropriate, and to make loans to other individuals or entities under commercially reasonable terms. The Trustee may retain a lien on future distributions to a beneficiary to repay those loans.

**16.29 Election of Benefits.** Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights under such plan, annuity, or insurance, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

**16.30 Investment Manager.** To employ any investment management service, financial institution, or similar organization to advise the Trustee and to handle all investments and to render all accountings of funds held on its behalf under custodial, agency, or other agreements. If the Trustee is an individual, these costs may be paid as an expense of administration in addition to fees and commissions.

**16.31 Depreciation.** To deduct from all receipts attributable to depreciable property a reasonable allowance for depreciation, computed in accordance with generally accepted accounting principles consistently applied.

**16.32 Related Parties.** To enter into any transaction on behalf of a trust administered under this instrument, notwithstanding the fact that another party to that transaction may be: (i) a business or trust controlled by the Trustee, or of which the Trustee, or any director, officer, or employee of the Corporate Trustee, is also a director, officer, or employee; (ii) an affiliate or business associate of any beneficiary or the Trustee; or (iii) a beneficiary or Trustee under this instrument acting individually, or any relative of such a party.

**16.33 Additional Powers for Income-Producing Real Estate.** In addition to the other powers set forth above or otherwise conferred by law, the Trustee has the following powers with respect to any agricultural property or any other income-producing real property that is or may become a part of the Trust Estate:

- To retain and operate the property for as long as it deems advisable;
- To control, direct, and manage the property, determining the manner and extent of its active participation in these operations, and to delegate all or any part of its supervisory power to other persons that it selects;
- To hire and discharge employees, fix their compensation, and define their duties;
- To invest funds in agricultural property or other land holdings and to use those funds for all improvements, operations, or other similar purposes;
- Except as otherwise provided with respect to mandatory income distributions, to retain any amount of the net earnings for working capital and other purposes that it deems advisable in conformity with sound and efficient management;
- To purchase and sell machinery, equipment, and supplies of all kinds as needed for the operation and maintenance of the properties and other land holdings; and

- To take all necessary steps to ensure that the agricultural property receives the proper cultivation, irrigation, spraying, pruning, and fertilization and that the crop or yield produced is properly harvested, processed, and marketed.

**16.34 Winding Up.** On termination of a trust, to exercise the powers appropriate to wind up the administration of that trust and distribute the remaining assets to the persons entitled to them, and to retain a reasonable reserve for the payment of debts, expenses, and taxes.

**16.35 Trustee Disclaimer.** Any Trustee hereunder may disclaim or release any fiduciary power granted to said Trustee or under applicable law or any property or interest in property that would otherwise pass to any trust created hereunder.

**16.36 Powers and Authorizations Regarding Digital Property.** The Trustee may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of the following items, whether originally owned by the Trust or transferred to the Trust: (1) any kind of computing device; (2) any kind of data storage device or medium; (3) any electronically stored information; (4) any user account; and (5) any domain name. The Trustee may obtain copies of any electronically stored information of mine that is subsequently transferred to the Trust by me or my estate from any individual or entity that possesses, has custody of, or controls that information. I hereby authorize any individual or entity (a) that possesses, has custody of, or controls any electronically stored information of mine that is subsequently transferred to the Trust by me or my estate, or (b) that has provided to me an electronic communication service or remote computing service, whether public or private, to the extent my rights to such services have been subsequently transferred to the Trust by me or my estate, to divulge to the Trustee: (1) any electronically stored information of mine; (2) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service; and (3) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Florida Fiduciary Access to Digital Assets Act; the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable Federal or state data privacy law or criminal law. The Trustee may employ any consultants or agents to advise or assist the Trustee in decrypting any encrypted electronically stored information or in bypassing, resetting, or recovering any password or other kind of authentication or authorization, and I hereby authorize the Trustee to take any of these actions to access the following items, whether originally owned by the Trust or transferred to the Trust: (1) any kind of computing device; (2) any kind of data storage device or medium; (3) any electronically stored information; and (4) any user account. The terms used in this Section are to be construed as broadly as possible, and the term “user account” includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

**ARTICLE 17**  
**SPECIAL BUSINESS PROVISIONS**

The following provisions apply to any closely-held stock or other business interests held in this Trust.

**17.1 Subchapter S Stock.** Notwithstanding any provisions herein to the contrary, if a trust administered under this instrument is to become the owner of, or already owns, stock in a corporation that has an election in effect (or one that proposes to make an election) under Section 1362 of the Code (an "S Corporation"), and that trust would not otherwise be permitted to be an S Corporation shareholder, the following provisions will apply:

(a) **ESBT.** The Trustee in its discretion may elect for the trust to become an Electing Small Business Trust ("ESBT") as defined in the Code.

(b) **QSST.** If the Trustee does not cause the trust to become an ESBT, the Trustee shall set aside the S Corporation stock in a separate trust for the current income beneficiary of such trust, so that a Qualified Subchapter S Trust ("QSST") election under Section 1361 of the Code can be filed with respect to that trust. If a trust has more than one permissible current income beneficiary, the following will apply: (i) if my spouse is a permissive beneficiary, my spouse will be the sole beneficiary of the QSST; (ii) otherwise, the Trustee shall divide that S Corporation stock into shares so that there is an equal share for those permissible income beneficiaries, per capita. The Trustee shall hold each share as a separate QSST for the persons described above, and each such person will be the sole beneficiary of his or her QSST. To the greatest extent possible, the Trustee shall administer each QSST under the terms of the trust from which it was derived, but subject to the following overriding provisions:

(i) **Consent.** The Trustee shall notify the beneficiary of each separate trust promptly that a QSST election must be filed with the Internal Revenue Service. Thereafter, each beneficiary shall file a timely and proper QSST election with the Internal Revenue Service. If a beneficiary fails or refuses to make the QSST election, the Trustee shall make an ESBT election for that trust. If the beneficiary does make the QSST election, then his or her separate trust will be administered as set forth below.

(ii) **Income Payments.** During the beneficiary's life, the Trustee shall pay all net income of the trust to the beneficiary (and only to that beneficiary) in quarterly or more frequent installments. The beneficiary's income interest in the trust will terminate on the earlier of his or her death or the termination of the trust under its terms.

(iii) **Principal Invasions.** If the beneficiary is otherwise entitled to receive principal distributions, the Trustee may distribute principal from that separate trust during the beneficiary's life only to or for the benefit of that beneficiary (and no one else).

(iv) **Final Distribution.** If the QSST is terminated during the beneficiary's life, the Trustee shall distribute all remaining assets of that separate trust to that beneficiary. If the beneficiary dies before that trust's termination, all remaining assets of the QSST are to be distributed as provided in the original trust, but subject to this Section.

(v) **Termination of QSST Status.** If a separate trust would cease to qualify as an S Corporation shareholder, the Trustee in its discretion may: (i) make an ESBT election for that separate trust; or (ii) distribute all S Corporation stock to the beneficiary. The Trustee in its discretion also may convert a QSST to an ESBT, whether or not the beneficiary has consented to QSST treatment and, if the beneficiary consents, may convert an ESBT into a QSST.

**17.2 Management and Sale of Business Interests.** In the event that the Trust Estate consists of one or more interests in various closely held corporations, partnerships, and limited liability companies (collectively referred to as the “Business Entities”), if the disposition of these Business Entities has not otherwise been provided for at my death, then, in addition to any other authority granted under this instrument, the following will apply:

(a) **Operation and Sale.** The Trustee shall use its discretion in participating in the operation of the Business Entities and in selling the interest in the Business Entities. The Trustee is specifically authorized to sell an interest in the Business Entities to any partner, officer, or employee of the business, to any individual Trustee, or to any beneficiary under this instrument.

(b) **Partnerships.** In addition to the powers described above, the Trustee is directed to determine whether the effecting of any measures with respect to any partnership interests would be of benefit to the beneficiaries of the Trust or of my estate. If it is determined that one or more measures should be effected, the Trustee shall take such actions as are required to effect these measures. The measures that may be effected include, but are not limited to:

- the continuation of the trust as a partner in any of the partnerships;
- the distribution of selected property by the partnerships to the trust or its beneficiaries;
- the acquisition of any additional ownership interest in the partnerships;
- the liquidation of any interest in the partnerships; and
- the filing by the partnerships of a timely election under either Sections 754 or 732(d) of the Code to adjust the basis of partnership property.

(c) **Supplemental Powers.** In addition to the powers previously given and the powers enumerated to the Trustees in Article 16 (“Fiduciary Powers”), I give the Trustee the following additional powers with regard to any transactions relating to the Business Entities:

(i) **Employment of Personnel.** To hire and discharge officers and employees for the Business Entities, fix their compensation, and define their duties, including the right to employ any beneficiary (or individual Trustee) in any capacity.

(ii) **Investment in Business.** To invest other trust funds in the Business Entities; to pledge other assets of the trust as security for loans made to the Business Entities; and to loan funds from the trust to the Business Entities.



(iii) **Sale or Purchase of Offerings.** To participate as seller or purchaser in public or private offerings for the sale of any securities or partnership interests in the Business Entities; to enter into any related agreements containing representations, warranties, and indemnity provisions; and to incur liabilities in connection with these transactions.

(iv) **Change of Business Form or Scope.** To convert any corporation into a partnership, sole proprietorship, or limited liability company, and to diminish, enlarge, or change the scope or nature of any business.

(v) **Business as Separate Entity; Accountings.** To treat each of the Business Entities as an entity separate from each trust administered under this instrument. In its accountings, the Trustee may report the earnings and condition of the Business Entities in accordance with standard business accounting practices.

(vi) **Retention of Earnings.** To retain in the business such net earnings for working capital and other purposes as the Trustee deems advisable.

(vii) **Additional Fees.** To receive additional compensation for its extra efforts and expertise relating to the Business Entities. Such compensation may be paid as a director's or manager's fee or as a guaranteed payment, all of which will be remitted to the Trustee, or may be charged directly as a management consultation fee by the Trustee.

## **ARTICLE 18 INSURANCE PROVISIONS**

Any insurance policies acquired by or payable to the Trustee are to be administered as follows:

**18.1 Payment of Premiums.** The Trustee may pay from the net income or principal of the trust any premiums or assessments upon any insurance policies that it holds under the terms of such trust.

**18.2 Collection of Policy Proceeds.** Upon the death of an insured, the Trustee shall process all claims for payment of death benefits payable to the Trustee. If payment of any policy is contested, however, the Trustee will not be obligated to begin legal proceedings for collection unless it is indemnified to its satisfaction for all costs, including attorneys' fees. The Trustee may repay any person, including itself, from such trust for any advances or expenses incurred in attempting to collect death benefits on such policies.

**18.3 Trustee Protection.** The Trustee will have no liability or responsibility for any loss resulting from the failure of any insurance company and its inability to pay a claim under any insurance policy acquired by the Trustee. The Trustee will be under no obligation to invest any cash value accumulated in any life insurance policy owned by the trust, regardless of the investment yield on such value within the policy as compared to the net investment yield that could be obtained outside the policy. The Trustee will not be liable or accountable to anyone for the exercise or nonexercise of any rights, benefits, options, or privileges under any policy held in this Trust, including the option to borrow against the cash values to obtain a higher investment yield outside the policy.

**18.4 Responsibilities of Insurance Companies.** No insurance company will be responsible for the application of any insurance proceeds by the Trustee. Payment to the Trustee of the benefits due with respect to any insurance policy held as part of such trust will completely discharge the insurance company from any further liability under that policy.

**18.5 No Duty of Trustee.** Notwithstanding any provision of this instrument or any provision of Florida law or the law of any jurisdiction, pursuant to Section 736.0902 of the Florida Statutes, with respect to any contract of life insurance acquired or retained by the Trustee on behalf of the trust on the life of a “qualified person” (as defined under Section 736.0902(2) of the Florida Statutes), the Trustee has no duty to, and shall be relieved of any liability with respect thereto, to:

- (a) Determine whether such trust has an insurable interest in the life of the insured;
- (b) Determine whether any contract of life insurance is or remains a proper investment;
- (c) Investigate the financial strength of the life insurance company;
- (d) Determine whether to exercise any policy option available under the contract of life insurance;
- (e) Diversify any such contract of life insurance or diversify the assets of the trust with respect to the contract of life insurance; or
- (f) Inquire about or investigate the health or financial condition of any insured or insureds.

## **ARTICLE 19 SAVINGS CLAUSES**

**19.1 Perpetuities Provision.** Notwithstanding any provisions herein to the contrary, the share of each beneficiary will vest (in the beneficiary or his or her estate) immediately prior to the expiration of the longest fixed period allowable under Florida law in effect at the date of my death.

**19.2 Marital Savings Clause.** In conferring discretion under this instrument to make elections under state law or the Code, I intend that the Trustee produce the greatest tax benefit for my and my spouse’s combined estates (whether or not my spouse is then living) and our beneficiaries, considering both income tax and transfer tax consequences to our estates and beneficiaries, but regardless of the effect such an election might have on any gift made under this Trust. I authorize the Trustee to elect to treat all, part, or none of the Marital Trust as property qualifying for the marital deduction, based on the criteria stated above. Without limiting the Trustee’s discretion to make these elections, I intend that my estate be entitled to claim the optimum available marital deduction for Federal estate tax purposes, as may be elected by my Personal Representative, if my spouse survives me. All provisions of this instrument are to be interpreted and limited accordingly.

**19.3 Withdrawal Power for Marital Property.** Notwithstanding any provision of this instrument to the contrary, if my personal rights under this instrument have been suspended as provided in this instrument and transfers are made to the Trust that would qualify for a Federal estate or gift tax marital deduction but for that suspension, my power of withdrawal will remain in effect as to those transferred assets.

**19.4 Qualified Plan Proceeds.** If any funds from qualified employee benefit plans, individual retirement accounts, or other property from sources specified in Section 2039 of the Code (collectively referred to as the “Accounts”) become available to the Trustee of any trust administered under this instrument, the provisions of this Section 19.4 will apply to these trusts and the Accounts paid to them.

(a) **Designated Beneficiaries.** I wish to allow the maximum deferral of distributions from the Accounts and discretion for the Trustee in adjusting or controlling income tax consequences of accelerated distributions under the SECURE Act of 2019. Therefore, unless a contrary intent appears in the appropriate beneficiary designation form, I intend and direct that any trust to which one or more of the Accounts are payable qualify as a “see-through” trust and its beneficiaries be treated as qualified recipients (as hereinafter defined within the meaning of the minimum distribution rules under Section 401(a)(9) of the Code and applicable regulations, as amended. No portion of the Accounts will be payable to an entity, such as my estate or a tax-exempt organization, unless there are no qualified recipients eligible to receive those funds

(b) **Conduit Trust.** Unless a contrary intent appears in the appropriate beneficiary designation form, if any trust to which any Accounts are payable is held for a beneficiary who qualified as an Eligible Designated Beneficiary under Sections 401(a)(9)(E)(ii)(I), (II) or (V) of the Code, I direct that trust be administered as a “Conduit Trust” for that person, as permitted under applicable IRS guidance. To this end, the Trustees of that beneficiary’s trust must distribute to that beneficiary, immediately upon receipt, all amounts paid to that trust from the Accounts, net of expenses directly attributable to that trust or Account, even if that distribution is in excess of the trust’s fiduciary accounting income. Although I prefer that the assets in the Accounts remain intact for the longest period allowed by law so as to permit the beneficiary to receive them over the longest permissible period, the Trustees may withdraw additional assets from the Accounts as needed for the beneficiary’s support, as may be specified in the beneficiary’s trust, provided those assets are then distributed to, or used for the benefit of, that beneficiary.

(c) **Restrictions on Accounts.** No portion of the Accounts payable to a trust may be used, paid, or appointed in such a way as to disqualify the trust beneficiaries as qualified recipients. By way of example and not in imitation:

(i) No portion of the Accounts may be used to pay, directly or indirectly, any debts or expenses of mine or of my estate, including any share of estate taxes payable from this Trust or chargeable to my estate.

(ii) No portion of the Accounts may be used to satisfy a gift to a beneficiary other than the conduit trust beneficiary during his or her lifetime.

(d) **Qualified Recipients.** The term “qualified recipient” means an individual or a trust whose beneficiaries are individuals and that is treated as a see-through trust (either accumulation or conduit, as appropriate to the circumstances) so that its beneficiaries are recognized as designated beneficiaries (or eligible designated beneficiaries) under Sections 409(a)(9)(E) and (H) of the Code and the Treasury Regulations.

(e) **Separate Trust.** For ease of administration, the Trustee may hold payments to a trust designated (or allowed) to receive distributions from the Accounts as a separate trust, to be administered under the same terms as the larger trust entitled to those payments, subject to the special terms of this Section.

(f) **Trustee Power to Distribute Proceeds to Beneficiaries.** I understand that proceeds from the Accounts may be distributed to a trust in an accelerated fashion either at my death or at the termination of an eligible designated beneficiary’s interest under the SECURE Act. Except to the extent distribution of those proceeds is required or prohibited by another provision of this Trust, I intend the Trustee to have the power to make discretionary distributions to beneficiaries other than the Trustee to balance the impact of the increased income tax the Trust might otherwise pay because of them. If the Trustee is also a beneficiary, he or she may appoint an Independent Trustee for the sole purpose of making such distributions, unless an Independent Trustee is already serving, in which case it will have the exclusive power to make such balancing distributions. For purposes of the ten-year statutory limitations under Section 409(a) of the Code, the Trustee may take distributions from Accounts in its discretion ratably over the period, or at any time or times during the deferral period, without liability for its timing choices. The Trustee may also use its discretion not to take such distributions, without liability to the beneficiaries in any case.

**19.5 Productive Property.** If any trust is otherwise eligible to qualify for the Federal or any state marital deduction, or as an elective share trust under Section 732.2025 of the Florida Statutes, but would not qualify because my spouse does not have the right to require the Trustee to make the trust property productive or to convert it to income producing property, I specifically give my spouse that right.

## **ARTICLE 20**

### **ADMINISTRATION AND CONSTRUCTION**

**20.1 Funding Gifts.** The following rules will apply to funding gifts under the Trust.

(a) **Pecuniary Gifts.** All pecuniary gifts under this instrument that are paid by an in-kind distribution of assets must use values having an aggregate fair market value at the date or dates of distribution equal to the amount of this gift as finally determined for Federal estate tax purposes.

(b) **Fractional Gifts.** Any allocation of a fractional share of assets need not be pro rata nor include any particular asset, and may be made subject to encumbrances, pre-existing or newly created, as the Trustee in its discretion determines.

(c) **Adjustments.** The Trustee shall select one or more dates of allocation or distribution for purposes of satisfying gifts and funding shares or trusts. The Trustee may make allocations before the final determination of Federal estate tax, with those allocations being based upon the information then available to the Trustee, and may thereafter adjust properties among the shares or trusts if it is determined that the allocation should have been made differently.

**20.2 Estate Tax on Included Property.** Except as provided for in the Marital Trust, if assets of any trust administered under this instrument are included in a beneficiary's estate for Federal estate tax purposes, the following will apply.

(a) **Appointed Assets.** If the beneficiary exercises a power of appointment over those assets, the Trustee is authorized to withhold from those assets the amount of estate taxes apportioned to them by applicable law if the beneficiary does not make provisions for the payment of those taxes from other sources.

(b) **Certification and Payment.** The Trustee may rely upon a written certification by the beneficiary's personal representative of the amount of the estate taxes, and may pay those taxes directly or to the personal representative of the beneficiary's estate. The Trustee will not be held liable for making payments as directed by the beneficiary's personal representative.

(c) **Transactions with Other Entities.** The Trustee may buy assets from other estates or trusts, or make loans to them, so that funds will be available to pay claims, taxes, and expenses. The Trustee can make those purchases or loans even if it serves as the fiduciary of that estate or trust.

**20.3 Legal Obligations and Discretionary Powers.** Notwithstanding any other provision herein to the contrary, I hereby limit the general discretionary powers of the Trustee so that (i) no Trustee with a beneficial interest in the trust income or principal (other than me) shall participate in any decision regarding a discretionary distribution to that Trustee personally or to any other beneficiary, except for purposes of health, support, maintenance, and education, to the extent such standard constitutes an ascertainable standard within the meaning of Sections 2041 and 2514 of the Code, and (ii) no Trustee may use trust income or principal to discharge the legal obligation of that Trustee individually to support or educate a beneficiary hereunder. The benefits under this instrument are in addition to, and not in substitution for, any obligation of support owed to a beneficiary. A Trustee shall only exercise discretionary powers, including making discretionary distributions to himself or herself, in the Trustee's fiduciary capacity.

**20.4 Retain Residences in Trust.** The Trustee is authorized to retain as part of any trust hereunder of which my spouse is a beneficiary any real property (including any buildings thereon and appurtenances thereto), condominiums, and cooperative apartments (together with the shares of stock and proprietary leases related thereto) used by me and my spouse as residences or places of abode at my death (collectively, the "Residences"). During the trust term, my spouse shall be permitted to occupy the Residences, rent free, so long as my spouse shall pay all carrying charges chargeable to income in connection with the Residences so occupied, including, without limitation, repairs, taxes, utilities, and premiums on liability, fire, and other appropriate insurance. My spouse shall not be required to furnish any bond or other security in connection with the occupancy of the

Residences. The Trustee is directed, at the written request of my spouse, to sell or exchange any Residence and, if requested to do so by my spouse, purchase an appropriate replacement to be held pursuant to the provisions of such separate trust and this Section 21.4. To the extent a replacement residence is not purchased, or if the net proceeds from the sale of such residence exceeds the purchase price of the replacement residence, the net proceeds from the sale of such Residence (or the balance thereof, as the case may be) shall be held pursuant to the provisions of such separate trust. The Trustee may not sell or exchange any Residence without the written consent of my spouse (or my spouse's attorney-in-fact) unless my spouse ceases to reside in such Residence or the Trustee is directed to do so by an order of a court of competent jurisdiction.

## **ARTICLE 21**

### **APPLICABLE LAW; TRUST SITUS**

All questions regarding the law to be applied or the appropriate situs of any trust will be governed by the terms of this Article as follows:

**21.1 Validity; Construction.** All matters involving the validity, interpretation, construction, and meaning (or effect) of this instrument are to be governed by the laws of the State of Florida, which is currently my domicile.

**21.2 Principal Place of Administration.** All matters involving the administration of each trust administered under this instrument are to be governed by the laws of the State of Florida, which is currently my domicile and the initial principal place of administration (the "situs") of those trusts. A Trustee may change the principal place of administration of any trust as provided below.

**21.3 Determining Situs.** The Trustee will have a continuing duty to administer each trust administered under this instrument at a place appropriate to its purposes and its administration. In exercising this duty, the Trustee should consider the factors specified in Section 736.0108 of the Florida Statutes and the impact of a change to a different situs on the following: state and local taxes; compensation of fiduciaries; investment authority; duties, responsibilities and liabilities of the Trustee; and any other factor appropriate to the new jurisdiction.

**21.4 Transferring Situs.** The Trustee, acting from time to time and without court approval, may transfer the situs of a trust administered hereunder to any jurisdiction within the United States, subject to the notice requirements contained in Section 736.0108(6) of the Florida Statutes.

## **ARTICLE 22**

### **MISCELLANEOUS PROVISIONS**

**22.1 Definitions.** As used in this instrument, the following terms have the meanings set forth below:

(a) **Independent Trustee** means, with respect to each separate trust administered under this instrument, a Trustee that is neither a beneficiary of such trust nor a related or subordinate party (as defined in Section 672(c) of the Code) to me or a beneficiary of such trust.

(b) **U.S. Trustee** means a Trustee who is a United States citizen having a tax home (as defined in Section 911(d)(3) of the Internal Revenue Code) in the United States, or which is a U.S. domestic corporation.

(c) **Internal Revenue Code Terms.**

(i) **Code** means the Internal Revenue Code of 1986, as amended from time to time, or successor provisions of future Federal internal revenue laws.

(ii) **Gross estate** means gross estate for Federal estate tax purposes as defined in Section 2031 of the Code.

(iii) The terms **health, education, support, and maintenance** are intended to set forth an “ascertainable standard” as described in the Code and its associated Regulations. To the extent not inconsistent with the foregoing, the following provisions shall apply whenever the Trustee has discretion under this instrument to make distributions of income and/or principal based on the health, education, support, and maintenance of an individual:

(A) **Health.** “Health” shall include, but not be limited to, medical, dental, hospital, drug, and nursing costs, as well as all expenses of invalidism and costs of medically prescribed equipment and travel.

(B) **Support and Maintenance.** “Support” and “maintenance” shall mean the support and/or maintenance of the individual in accordance with his or her accustomed manner of living.

(C) **Education.** “Education” shall include, but not be limited to, private or preparatory school tuition, under-graduate school or post-graduate school tuition, professional and vocational school tuition, room and board, fees, supplies, books, and travel to and from the educational institution. It is intended that the Trustee liberally construe and interpret references to “education” to provide the best possible education commensurate with the beneficiary’s abilities and desires.

(D) **Remainder Interests.** In making principal distributions, the Trustee may ignore the interests of any vested or contingent remainder beneficiaries.

(E) **Trustee’s Determinations.** In making distributions to beneficiaries, the Trustee may take into account any other income and assets known by the Trustee to be reasonably available to the beneficiaries but shall not be required to do so unless the trust provisions so specify. The Trustee may rely on information furnished by the beneficiaries as to other income and assets reasonably available to them.

(F) **Termination.** The Trustee is authorized to make such distributions even though they may deplete the trust fund, thereby causing the trust to terminate.

(d) **Other Terms.**

(i) Distributions that are to be made to a person's **descendants, per stirpes**, will be divided into equal shares, so that there will be one share for each living child (if any) of that person and one share for each deceased child who has then living descendants. The share of each deceased child will be further divided among his or her descendants on a stirpital basis, by reapplying the preceding rule to that deceased child and his or her descendants as many times as necessary.

(ii) **Disabled or under a disability** (other than with respect to me) means (i) being under the legal age of majority, (ii) having been adjudicated to be incapacitated, or (iii) being unable to manage properly personal or financial affairs because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by a licensed physician confirming that person's impairment will be sufficient evidence of disability under item (iii) above, and all persons may rely conclusively on such a certificate.

**22.2 Powers of Appointment.** The following provisions relate to all powers of appointment created by me at any time and to any power exercisable under this instrument:

(a) A **general power of appointment** granted to a person is one that can be exercised in favor of any one or more of the following: that person or his or her estate, his or her creditors, or the creditors of his or her estate.

(b) A **special power of appointment** is any power that is not a general power; it may be exercisable in favor of a specified class (outright or in trust) or, if no class is specified, in favor of any person or entity (outright or in trust); provided, however, a special power of appointment may not be exercised in favor of the holder of the special power of appointment, the holder's estate, the holder's creditors, or the creditors of the holder's estate.

(c) A **testamentary power of appointment** (either general or special) is exercisable upon the powerholder's death by his or her Last Will, by a revocable trust agreement established by that person, or by a written instrument signed by the powerholder with the same formalities for the execution of a Will under Florida law, but only by specific reference to the instrument creating the power. A testamentary power of appointment may not be exercised in favor of the person possessing the power.

In determining whether a person has exercised a testamentary power of appointment, the Trustee may rely upon an instrument admitted to probate in any jurisdiction as that person's Last Will or upon any trust agreement certified to be valid and authentic by sworn statement of the Trustee who is serving under that trust agreement or the written instrument signed by the powerholder with the same formalities for the execution of a Will under Florida law. If the Trustee has not received written notice of such an instrument within six (6) months after the powerholder's death, the Trustee may presume that the powerholder failed to exercise that power and will not be liable for acting in accordance with that presumption. Notwithstanding any provisions of this instrument, (i) no holder of any power of appointment may appoint any assets disclaimed by such person pursuant to this instrument, and (ii) no power of appointment may be exercised beyond the period permitted by any applicable rule of law relating to perpetuities.



(d) A **lifetime power of appointment** (either general or special) is exercisable by the powerholder during his or her life, but only by specific reference to the instrument creating the power in a writing executed with the formalities of a deed and delivered to the Trustee prior to the powerholder's death.

**22.3 Notices.** Any person entitled or required to give notice under this instrument shall exercise that power by a written instrument clearly setting forth the effective date of the action for which notice is being given. The instrument may be executed in counterparts.

#### **22.4 Certifications.**

(a) **From Personal Representative.** For some purposes, the Trustee is authorized to rely on a certificate from my Personal Representative as to certain facts. That certificate must be in writing and witnessed by two impartial persons, but need not be notarized. It is to be delivered to the Trustee in the same fashion as provided for other notices.

(b) **Copy.** Any person may rely on a copy of this instrument (in whole or in part) certified to be a true copy by me or by any then serving Trustee.

**22.5 Adopted Children.** Notwithstanding any provision herein, a legally adopted child (and any descendants of that child) will be regarded as a descendant of the adopting parent only if the petition for adoption was filed with the court before the child's eighteenth (18<sup>th</sup>) birthday.

**22.6 Gender and Number.** Reference in this instrument to any gender includes either masculine or feminine, as appropriate, and reference to any number includes both singular and plural where the context permits or requires. Use of descriptive titles for articles and paragraphs is for the purpose of convenience only and is not intended to restrict the application of those provisions.

**22.7 Binding Effect.** This instrument extends to and is binding upon my Personal Representative, successors, and assigns, and upon the Trustee.

### **ARTICLE 23 RESTRICTED BEHAVIORS**

If the Trustee reasonably believes that a beneficiary of any trust:

- routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,
- is unable to refrain from gambling or other addictive behavior (whether or not legal) to the point that, in the Trustee's judgment, the beneficiary's financial well-being is endangered,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions will apply:

**23.1 Suspension for Substance Abuse or Addictive Behavior.** If mandatory distributions are suspended because of known or suspected substance abuse, gambling abuse, or other addictive behavior as described above, the Trustee will request the beneficiary to submit to one or more examinations by qualified experts chosen by the Trustee.

(a) In the case of suspected substance abuse, the Trustee will request the beneficiary to submit to examinations (including laboratory tests of tissue and bodily fluids) determined to be appropriate by a board certified medical doctor chosen by the Trustee, and to consent to full disclosure to the Trustee of the results of the examination. If the examination indicates current or recent use of a drug or substance as described above (in the opinion of the examining doctor), the Trustee will request the beneficiary to consult with a medical doctor, psychiatrist, psychologist, or other licensed and qualified counselor chosen by the Trustee with expertise in substance abuse, and to consent to disclosure to the Trustee of the therapeutic recommendations for rehabilitation of the beneficiary.

(b) In the case of suspected gambling abuse or other addictive behavior, the Trustee will request the beneficiary to submit to examination by a psychiatrist, psychologist, or other licensed and qualified counselor with expertise in addictive behavior, and to consent to disclosure to the Trustee of the diagnostic results and if applicable, any therapeutic recommendations.

(c) The Trustee must follow procedures to maintain strict confidentiality of all information disclosed to it, and it may not disclose that information to anyone other than the beneficiary except as provided in Section 23.5 below.

(d) If the beneficiary fails to comply with any such request by the Trustee within 60 days, the Trustee may suspend all distributions to or for the benefit of the beneficiary.

**23.2 Administer as a Support Trust.** Unless all distributions are suspended as provided in Section 23.1(d), while mandatory distributions are suspended for any of the reasons set forth above, the beneficiary's separate trust will be administered to provide for his or her support and health.

**23.3 Resumption of Mandatory Distributions.** Any rights to mandatory distributions, withdrawal rights, and rights to participate in decisions concerning the removal and appointment of Trustee will resume:

- in the case of use or consumption of an illegal substance, when examinations indicate no continued use for a period of 12 months, and in all cases (whether the use or consumption is legal or illegal), when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and to manage his or her financial affairs;
- in the case of gambling abuse or other addictive behavior, when the consulting expert chosen by the Trustee indicates a belief that the beneficiary's financial well-being is no longer endangered as a result of the beneficiary's behavior, and when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and to manage his or her financial affairs.

When mandatory distributions to the beneficiary are resumed, the remaining balance, if any, of any mandatory distributions that were suspended will be distributed to the beneficiary at that time, but the beneficiary may exercise any withdrawal rights that were suspended only if they are still exercisable under the other terms of this Trust. If a beneficiary dies before distribution or withdrawal of the suspended amounts or assets, the Trustee will distribute the balance of the suspended amounts or assets to the persons who would be the alternate beneficiaries of those amounts or assets as otherwise provided in this Trust.

**23.4 Exoneration and Indemnification.** No Trustee (nor any doctor, psychiatrist, psychologist, or other counselor or consultant chosen by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to monitor a beneficiary's behavior or to inquire whether any of the conditions identified in this article exist. I relieve the Trustee (and each doctor, psychiatrist, psychologist, or other counselor or consultant chosen by the Trustee) from all liability and direct that each of them be indemnified from the assets of the beneficiary's trust for any damages, attorney's fees, expenses, and other costs for exercising their judgment and authority under this clause, including any failure to request a beneficiary to submit to examination, and including a decision to distribute suspended amounts to a beneficiary.

**23.5 Disclosure of Results.** The Trustee shall maintain the confidentiality of testing results and other information unless the beneficiary consents to release or unless disclosure is required by law, regulation, or judicial order; unless the Trustee is prohibited under that authority from notifying the affected beneficiary, the Trustee must give notice of any legally required disclosure to the affected beneficiary no later than 10 business days after the disclosure is made. The Trustee has no duty to either support or oppose any actions taken by law enforcement or other governmental agencies seeking to compel the disclosure of a beneficiary's test results and other information obtained under this article, but the Trustee in its discretion may support or oppose such actions and may expend funds from the beneficiary's trust to do so, including the appeal of any subpoenas, court orders, or other legally binding instruments compelling disclosure.

**23.6 Tax Savings Provision.** Despite the provisions of this article, the Trustee cannot suspend any mandatory distributions that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust; or to qualify for extended payouts to Eligible Designated Beneficiaries under Section 401(a) of the Internal Revenue Code.

## **ARTICLE 24**

### **SPOUSE AS INELIGIBLE BENEFICIARY**

My spouse's rights as a beneficiary under this instrument shall terminate at such time (and my spouse shall be deemed to have predeceased), if ever that, other than due to my death, (i) my spouse and I are not married, or (ii) either my spouse or I have commenced a legal action to terminate our marriage by the filing of any action or complaint with any court of competent jurisdiction; provided, however, if such action or complaint is withdrawn prior to my death, then my spouse's rights as a beneficiary shall be reinstated at the time of such withdrawal.

*[SIGNATURES AND ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING PAGES]*

Executed on the 23 day of FEBRUARY, 2023.

SETTLOR and TRUSTEE

  
GÜENTER MARKSTEINER

This instrument was signed, sealed, published, and declared by GÜENTER MARKSTEINER, the Settlor and Trustee, as THE GÜENTER MARKSTEINER REVOCABLE TRUST in our presence, and at GÜENTER MARKSTEINER's request as the Settlor's and Trustee's, we have signed our names as attesting witnesses in the presence of GÜENTER MARKSTEINER and in the presence of each other on the date first written above.

  
Witness Signature

Address: 3744 SAVOY Lane D2  
West Palm Beach, FL

  
Witness Signature

Address: 7810 S. Playler Q  
W. P. B.



**THE GÜENTER MARKSTEINER REVOCABLE TRUST**

**Schedule A  
Initial Transfers to Trust**

**Cash - \$10.00**