
THE LEON D. BLACK

1997 REVOCABLE DECLARATION OF TRUST

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DECLARATION OF TRUST made the 30th day of September, 1997, by
LEON D. BLACK, as Settlor and as Trustee.

ARTICLE I: DEFINITIONS AND RULES OF CONSTRUCTION

(A) *Settlor's Family.* The Settlor is married to DEBRA R. BLACK ("DEBRA"). The Settlor has four (4) children, BENJAMIN ELI BLACK, JOSHUA MAX BLACK, ALEXANDER SAMUEL BLACK and VICTORIA RACHEL BLACK, who together with all children born to or adopted by the Settlor after the date this Declaration of Trust is executed are collectively referred to as the "Settlor's Children."

(B) *Definitions.* For purposes of this Declaration of Trust, the following words and expressions shall have the following meanings and usages:

- (1) "Article": an Article of this Declaration of Trust.
- (2) "Code": the Internal Revenue Code of 1986.
- (3) "Death Taxes": all estate, inheritance, transfer, succession, legacy, or other death taxes (excluding generation-skipping transfer taxes), together with all interest and penalties thereon, if any, levied or assessed by reason of an individual's death by any governmental authority, domestic or foreign, with respect to (a) any property, whether that property is disposed of under or apart from or was disposed of apart from such individual's will and (b) any amount included in such individual's gross estate under § 2035(c) of the Code or any similar provision of state law.
- (4) "Declaration of Trust": this Declaration of Trust.
- (5) "disability": except as otherwise provided, an individual shall be deemed under a disability or to have suffered a disability if and for so long as such individual lacks sufficient understanding or capacity to make and communicate decisions about his or her property, his or her business affairs or matters concerning a Trust in or over which he or she

holds an interest or power. The existence of a disability shall be established (i) by the written opinion of two licensed physicians or psychiatrists appointed by the Trustees (other than such individual) that a disability (as defined in the preceding sentence) exists, or (ii) by the determination of a court of competent jurisdiction that such individual is under a legal disability.

(6) "EPTL": the New York Estates, Powers and Trusts Law.

(7) "generation," "GST exemption" and "inclusion ratio": the same meanings as those ascribed to them in chapter 13 of the Code.

(8) "Independent Trustees": the Trustees other than (a) the Settlor, (b) DEBRA, or (c) one of the Settlor's issue.

(9) "issue": all descendants of the designated ancestor who are descended from such ancestor by blood or adoption, provided that an individual adopted after his or her eighteenth (18th) birthday and his or her descendants shall be deemed not to be issue of the adopted individual's adoptive parent or parents or any ancestor of the adopted individual's adoptive parent or parents.

(10) "legal disability": an individual shall be deemed under a legal disability if he or she (i) is a minor, (ii) has been legally declared incompetent, or (iii) is an individual for whom a guardian, conservator or similar fiduciary (however denominated in the relevant jurisdiction) has been appointed.

(11) "personal representatives": as to a given individual, the person or persons, whether denominated as executors, administrators, personal representatives or otherwise, duly authorized to administer that individual's estate pursuant to that individual's Will in the jurisdiction in which such Will is admitted to original probate, or pursuant to the laws governing the administration of that individual's estate, if he or she died without a Will.

(12) "Qualified Charitable Organization": an organization that is described in § 170(c)(2), § 2055(a) and § 2522(a) of the Code, and that is an organization exempt from taxation under § 501(a) of the Code as an organization described in § 501(c)(3) of the Code on the date that any distribution is made to it under this Declaration of Trust.

(13) "Settlor's spouse": at any particular time, the individual to whom the Settlor is married and with whom the Settlor is living, or, if the Settlor is not living, the individual to whom the Settlor was married and with whom the Settlor was living at the time of the Settlor's death, whether or not that individual has remarried. For purposes of this subsection, separation for reasons other than marital discord shall be ignored. The Independent Trustees shall determine whether an individual is or was the Settlor's spouse at any particular time and any such determination shall be binding and conclusive on all persons who in any way may be affected thereby.

(14) "Settlor": LEON D. BLACK.

(15) "Trust": a particular one of the Trusts.

(16) "Trustees": each Trustee and all Trustees serving under this Declaration of Trust at any given time.

(17) "Trust Fund": as to any Trust, all property (principal plus accrued, accumulated and undistributed income) that, at any particular time, belongs to that Trust.

(18) "Trusts": all separate trusts held under this Declaration of Trust at a particular time.

(19) "Will": the Last Will and Testament of an individual, whenever executed, that is duly admitted to probate.

(C) *Rules of Construction.* For purposes of this Declaration of Trust, the following rules of construction shall apply:

(1) All references to a body of laws or regulations (such as the Code and the Treasury Regulations promulgated thereunder) or to any provision thereof, shall be deemed to refer to such body of laws or regulations, or provision thereof, as the same may be amended from time to time, and shall be deemed to refer as well to any subsequent body of laws or regulations or provisions thereof enacted in its place.

(2) All references to Articles, sections and other subdivisions refer to the corresponding Articles, sections and other subdivisions of this Declaration of Trust unless otherwise specifically provided.

(3) Except where the context otherwise requires, (i) words importing the masculine gender include the feminine and the neuter, if appropriate, (ii) words importing the singular number include the plural number and vice versa, and (iii) words importing persons include firms, associations, corporations and other entities.

(4) A document shall be deemed to have been delivered to a person at such time as it is actually received by such person.

(5) The titles of Articles and headings of sections contained in this Declaration of Trust are included solely for convenience of reference, and may not be used to construe any provision contained in this Declaration of Trust or for any other purpose.

(D) *New York Law.* Except as provided in Article XVI(A)(14), all questions pertaining to the validity, construction and administration of this Declaration of Trust and the Trusts shall be determined in accordance with the laws of the State of New York in effect from time to time.

ARTICLE II: THE TRUST FUND

The Settlor hereby declares that he holds the property described in Schedule "A" annexed hereto in trust in his capacity as Trustee under this Declaration of Trust, and agrees to manage and dispose of the same in accordance with the provisions of this Declaration of Trust. This property shall be the original Trust Fund of a Trust, the dispositive provisions of which are set forth in Article IV. This Trust may be identified as the "LEON D. BLACK 1997 REVOCABLE TRUST."

This Declaration of Trust may be identified as the "LEON D. BLACK 1997 REVOCABLE DECLARATION OF TRUST."

ARTICLE III: REVOCABILITY

This Declaration of Trust and the Trusts may be altered, amended, revoked or terminated by the Settlor, in whole or in part, at any time or from time to time, by instrument in writing, signed by the Settlor and duly acknowledged, and delivered prior to the Settlor's death to the Trustees other than the Settlor, or, if the Settlor is the only Trustee then serving, to the successor Trustees designated either by name in Article XIX(A)(1) or pursuant to Article XIX(B).

ARTICLE IV: THE LEON D. BLACK 1997 REVOCABLE TRUST

Following are the dispositive provisions of the LEON D. BLACK 1997 REVOCABLE TRUST:

(A) *Withdrawals by Settlor.* During the Settlor's life, the Trustees shall pay to him or apply for his benefit as much or all of the Trust Fund as the Settlor shall request, at

any time or from time to time. The Settlor may at any time require payment to himself of the entire Trust Fund notwithstanding that such action may result in the termination of the Trust.

(B) *Discretionary Distributions to Settlor.* (1) The Trustees, at any time or from time to time, may pay to the Settlor, or apply for his benefit, as much or all (or none) of the Trust Fund as the Trustees, in their sole discretion, shall determine, notwithstanding that such action would result in the termination of the Trust.

(2) The Trustees are authorized to direct the payment of any portion of the Trust Fund that they shall have decided to distribute to or for the benefit of the Settlor in accordance with the provisions of this section at any time and from time to time, irregularly or at fixed intervals, in such amounts and in equal or unequal payments, as the Trustees shall find convenient and appropriate. Any such payment may be made directly to the Settlor, or for the Settlor's benefit to any person with whom the Settlor resides or who is otherwise responsible for his custody and welfare, or for the Settlor's benefit to such other person as the Trustees, in their sole discretion, shall deem advisable. The Trustees are further authorized to pay any portion of such income and principal directly to the Settlor's creditors in payment of his obligations. In exercising the discretion conferred in this section, the Trustees need not, but may, take into account the Settlor's assets, income and other financial resources apart from this Trust.

(C) *Accumulations.* At the end of each calendar year, the Trustees shall accumulate and add to principal any net income not paid or applied pursuant to the preceding provisions of this Article.

(D) *Additions to Trust.* The Settlor may add property to this Trust (i) by lifetime transfers of additional property; (ii) by Will; (iii) by naming the Trustees as beneficiaries of one or more life insurance policies; or (iv) by any other means. The Trustees need not retain any additional property in the form received.

(E) *Termination.* This Trust shall terminate upon the Settlor's death, and the Trust Fund, together with any property distributed to the Trustees under the Settlor's Will (together, the "Trust Remainder"), shall be disposed of as provided in Articles V through XII.

ARTICLE V: DEBTS AND EXPENSES

(A) *Death Taxes.* (1) All of the Settlor's Death Taxes imposed with respect to all property comprising the Trust Remainder shall be paid from the balance of the Trust Remainder disposed of under Article IX, without apportionment within that portion of the Trust Remainder.

(2) The Trustees may either pay such Death Taxes directly to the appropriate governmental authority collecting the same or pay the same to the Settlor's personal representatives, and in either case, the Trustees may rely, without further investigation, upon a written statement submitted to the Trustees by the Settlor's personal representatives as to the amount of such Death Taxes and the time at which the same must be paid. The Trustees shall have no duty to inquire as to the propriety or correctness or of any such payment, or to see to the application thereof, and any payment to such personal representatives or to such governmental authority shall be a full and complete discharge to the Trustees with respect to such payment. The Trustees may subject themselves and the Trust Fund to the jurisdiction of any Court within or without the State of New York in order to determine or apportion such taxes, irrespective of the domicile of the Settlor at his death.

(B) *Insufficiency of Testamentary Property.* If the Settlor's personal representatives certify to the Trustees that the Settlor's testamentary property is insufficient to provide for the payment of the Settlor's debts, funeral expenses and the administration expenses of his estate, then the Trustees shall pay to the Settlor's personal representatives the amount that the Settlor's personal representatives certify is required to make up the deficiency.

Alternatively, the Trustees may pay such debts, funeral expenses and administration expenses directly, in whole or in part. Any such payment shall be charged against and paid as an administration expense from the Trust Remainder disposed of in Article IV(E). The Trustees shall have no duty or obligation to inquire as to the correctness or propriety of any amount so certified by the Settlor's personal representatives, or to see to the application thereof, and the payment of such amount to such personal representatives or directly to the obligee shall be a full and complete discharge to the Trustees with respect to such payment.

ARTICLE VI: TANGIBLE PERSONAL PROPERTY

Upon the death of the Settlor, all of the Settlor's tangible personal property that is held in or added to the Trust at the Settlor's death shall be disposed of as follows:

(A) *Disposition of Works of Art.* (1) If DEBRA survives the Settlor, the Trustees shall hold all of the Settlor's works of art, the Settlor's collection of first edition books and the Settlor's collection of canes (including cane stands and glass cases) in as many separate Trusts, each upon the terms set forth in Article XI, as the Trustees shall determine. If DEBRA does not survive the Settlor, the Trustees shall distribute this property among those of the Settlor's Children who survive the Settlor in shares of substantially equal value as the Independent Trustees, in their sole discretion shall determine, subject to the provisions of Article XII. If any of the Settlor's Children does not survive the Settlor but has issue who survive the Settlor, the share of this property that such child would have received if he or she had survived the Settlor shall be distributed to his or her issue who survive the Settlor, subject to the provisions of Article XII. The Settlor requests, but does not require, that the Independent Trustees take into account the Settlor's wishes as to how this property should be divided among the Settlor's Children and more remote issue as will be set forth in a letter the Settlor will deliver to them during the Settlor's lifetime.

(2) For purposes of this Declaration of Trust, the term "works of art" shall mean paintings, drawings, pictures, and sculptures, including archaic Chinese bronzes and Chinese terra cotta figures. The decision of the Independent Trustees as to whether any particular item of tangible personal property is a work of art shall be binding and conclusive upon all persons who may in any way be affected thereby.

(B) *Disposition of Remaining Tangible Personal Property.* If DEBRA survives the Settlor, the Trustees shall distribute to DEBRA all of the Settlor's remaining tangible personal property, together with all insurance policies thereon, if any. If DEBRA does not survive the Settlor, those of the Settlor's Children who survive the Settlor shall divide such remaining tangible personal property among themselves as they agree. If and to the extent they cannot agree as to any items of such property, or if any of these children is a minor, the Trustees shall distribute such items, in whole or in part, among those of the Settlor's Children who survive the Settlor in shares of substantially equal value as the Independent Trustees, in their sole discretion, shall determine. If only part or none of these items is distributed among the Settlor's surviving children, the Independent Trustees shall sell such portion of the undistributed balance as they, in their sole discretion, determine shall be sold (adding the proceeds of sale to the balance of the Trust Remainder disposed of under Article IX), and shall add the unsold portion of such undistributed balance to the balance of the Trust Remainder.

(C) *Definition of Tangible Personal Property.* For purposes of this Article, the term "my tangible personal property" shall include, but not be limited to, the Settlor's clothing, jewelry, personal effects, books, automobiles, household furniture and furnishings, silverware, china, and all other items of tangible personal property which the Settlor owns at his death, but shall exclude cash and coins that do not have numismatic value.

(D) *Expenses.* The Trustees shall pay the reasonable expenses of storing, insuring, packing, and shipping the Settlor's tangible personal property, and of delivering the same to the appropriate beneficiary as administration expenses from the Trust Remainder disposed of in Article IV(D).

ARTICLE VII: RESIDENTIAL PROPERTY

Upon the death of the Settlor, all of the Settlor's residential property that is held in or added to the Trust at the Settlor's death shall be disposed of as follows:

(A) *Disposition if DEBRA Survives the Settlor.* If DEBRA survives the Settlor, the Trustees shall distribute to DEBRA all of the Settlor's residential property.

(B) *Disposition if DEBRA Does Not Survive the Settlor.* If DEBRA does not survive the Settlor, the Trustees shall sell the Settlor's residential property and add the proceeds to the Settlor's residuary estate unless the Trustees believe that it would be in the best interests of the beneficiaries of the Trust Remainder (or any one or more of them) to add this property to the balance of the Trust Remainder, in which case this property shall be added to the balance of the Trust Remainder disposed of under Article IX.

(C) *Definition of Residential Property.* For purposes of this Declaration of Trust, the term "residential property" shall mean all of the Settlor's right, title and interest in and to any residence that the Settlor owns or in which the Settlor has an interest at his death that DEBRA or the Settlor use as a permanent or occasional residence, including any contiguous surrounding property, and together with all policies of insurance on such residences. The property referred to in the preceding sentence shall include real property (together with buildings, fixtures, and improvements thereon), interests in condominium units (including common areas), and cooperative apartments (together with proprietary leases and shares of stock relating thereto).

ARTICLE VIII: GENERAL DISPOSITIONS

(A) *Cash Dispositions.* (1) If DEBRA survives the Settlor, the Trustees shall pay DEBRA an amount equal to the difference between (a) TWENTY-FIVE MILLION (\$25,000,000) DOLLARS and (b) the proceeds of any life insurance policies DEBRA receives as a result of the Settlor's death.

(2) If the Settlor's sister JUDY BLACK ("JUDY") survives the Settlor, the Trustees shall hold the sum of FIVE MILLION DOLLARS (\$5,000,000) in a Trust upon the terms set forth under Article X.

(B) *Disposition of Remaining GST Exemption.* (1) If DEBRA does not survive the Settlor, the Trustees shall set aside an amount equal to the Settlor's remaining GST exemption. The Trustees shall divide such amount into as many equal shares as there are children of the Settlor who survive the Settlor and children of the Settlor who do not survive the Settlor but have issue who survive the Settlor. One such share shall be paid to (a) each child of the Settlor who survives the Settlor and (b) the issue who survive the Settlor of each child of the Settlor who does not survive the Settlor, subject, in each case, to the provisions of Article XII.

(2) The Settlor's "remaining GST exemption" is the maximum GST exemption allowed to an individual by § 2631(a) of the Code reduced by the aggregate amount of GST exemption allocated by the Settlor or by operation of law to transfers made by the Settlor during his life, or allocated by the Trustees or the Settlor's personal representatives to transfers made by the Settlor during his life, to property passing apart from this Declaration of Trust or to property passing under other provisions of this Declaration of Trust. In computing the Settlor's remaining GST exemption, property shall be valued as finally determined for federal estate tax purposes in the Settlor's estate. The Settlor recognizes that his remaining

GST exemption may be zero, in which case nothing shall pass pursuant to this section, and that the amount of the Settlor's remaining GST exemption may be affected by the actions of the Trustees or the Settlor's personal representatives in exercising certain tax elections.

ARTICLE IX: DISPOSITION OF BALANCE OF TRUST REMAINDER

The balance of the Trust Remainder, whether real or personal, and wherever located, shall be paid as follows:

(A) *Disposition if DEBRA Survives the Settlor.* If DEBRA survives the Settlor, the Trustees shall hold such property in as many separate Trusts, each upon the terms set forth in Article XI, as the Trustees shall determine.

(B) *Disposition if DEBRA Does Not Survive the Settlor.* If DEBRA does not survive the Settlor, the Trustees shall distribute such property to the Settlor's issue who survive the Settlor, subject to the provisions of Article XII.

ARTICLE X: TRUST FOR JUDY

Following are the dispositive terms of the Trust directed to be held for JUDY's benefit upon the terms set forth in this Article.

(A) *Income Paid Currently.* During the lifetime of JUDY, the Trustees shall pay to her, or apply for her benefit, the entire net income in quarter-annual installments or more frequent installments as may be convenient to the Trustees.

(B) *Principal Invasion.* The Trustees shall pay to JUDY, or apply for her benefit, for any reason or purpose whatsoever, as much or all (or none) of the principal as the Independent Trustees, in their sole discretion, shall determine at any time or from time to time. In exercising the discretion granted in this section, the Independent Trustees need not, but may, consider JUDY's assets and income apart from the Trust. The Settlor confirms that

pursuant to this section, the Trustees may, at any time, distribute the entire Trust Fund to JUDY, even though such distribution terminates the Trust, and without regard to the interest of any remainderman of the Trust.

(C) *Disposition on Termination.* Unless sooner terminated by the distribution of the entire Trust Fund, the Trust shall terminate upon JUDY's death. Upon such termination, the Trustees shall pay the Trust Fund to JUDY's issue then living, or, if there are none, to the Settlor's issue then living, subject to the provisions of Article XII, or, if there are none, to those of DEBRA's brothers, BRUCE RESSLER, JOHN RESSLER, RICHARD RESSLER and ANTHONY RESSLER, who are then living, in equal shares, provided that if a brother of DEBRA is not then living but has issue then living, the share such brother would have received had he survived JUDY shall be paid to his then living issue. Any property passing to any issue of the Settlor pursuant to this section "(C)" shall not be paid to such issue outright, but shall be paid to the Trustees, to be held in Trust upon the terms set forth in Article XII.

ARTICLE XI: THE DEBRA R. BLACK MARITAL TRUST OR TRUSTS

Following are the dispositive terms of each of the separate Trusts directed to be held upon the terms set forth in this Article. Each such Trust shall be known as the "DEBRA R. BLACK MARITAL TRUST" followed by such letter as is assigned to such Trust by the Trustees.

(A) *Income Paid Currently.* During the lifetime of DEBRA, the Trustees shall pay to her, or apply for her benefit, the entire net income in quarter-annual installments or more frequent installments as may be convenient to the Trustees.

(B) *Unproductive Property.* DEBRA shall have the power to require the Trustees to convert unproductive or under-productive property to income-producing property that produces a reasonable rate of return.

(C) *Principal Invasion.* (1) The Trustees shall pay to DEBRA, or apply for her benefit, for any reason or purpose whatsoever, as much (or none) of the principal as the Independent Trustees, in their sole discretion, shall determine at any time or from time to time. In exercising the discretion granted in this section, the Independent Trustees need not, but may, consider DEBRA's assets and income apart from the Trust.

(2) Notwithstanding the provisions of subsection "(1)" of this section "(C)," the aggregate value of all payments to or applications for the benefit of DEBRA made from principal during the term of the Trust shall not exceed TWENTY (20%) PERCENT of the value of the initial principal of the Trust as finally determined for federal estate tax purposes.

(D) *Use of Works of Art.* With respect to any works of art that become the property of this Trust, the Settlor directs the Trustees (in addition to the powers and authorities conferred upon the Trustees by law or by other provisions of this Declaration of Trust):

(1) To permit DEBRA to use and/or display such works of art, rent-free and without bond or other security, for as long as she wishes;

(2) To retain such property until the termination of the Trust, subject, however, in all events, to DEBRA's overriding power to require that the Trustees sell all or any part of such property or otherwise cause it to produce a reasonable rate of return; and

(3) To pay all expenses and carrying charges relating thereto from the Trust, or from any other Trust under this Article, including without limitation, all maintenance, improvements, insurance and repairs, charging against income only those expenses that are required to be charged against income under the EPTL.

(E) *Disposition on Termination.* The Trust shall terminate upon DEBRA's death. Upon such termination, the Trustees shall pay all accrued and undistributed income to DEBRA's executors or administrators. The then principal of the Trust shall be disposed of as provided in the following sentences of this section. The Trustees shall pay to DEBRA's executors or administrators such part or all of the "Excess Taxes" (as defined below) as the Trustees, in their sole discretion, shall deem advisable. The Trustees shall then pay the remaining principal to the Settlor's issue who survive DEBRA, subject to the provisions of Article XII. If at the time of DEBRA's death, the Trustees hold any property that they received pursuant to Article VI, the Settlor requests, but does not require, that the Independent Trustees take into account the Settlor's wishes as to how this property should be divided among the Settlor's issue as will be set forth in a letter the Settlor will deliver to them during his lifetime.

(F) *Definition of Excess Taxes.* For purposes of this Article, the term "Excess Taxes" shall mean the excess of DEBRA's Death Taxes over the sum of: (1) the amount that DEBRA's Death Taxes would have been had no property in any of the Trusts under this Article been included in her gross estate or in her adjusted taxable gifts for federal estate tax purposes, (2) the maximum amount that DEBRA's estate is entitled to recover from all such Trusts (after giving effect to DEBRA's will) pursuant to § 2207A of the Code or § 2-1.12 of the EPTL or any similar provision of the law of any other state, and (3) all of DEBRA's Death Taxes actually apportioned against such Trusts pursuant to § 2-1.8 of the EPTL or any similar provision of the law of any other state.

ARTICLE XII: TRUSTS FOR ISSUE

If any share of the property passing under Article IX or of the balance of the Trust Remainder or of any terminating Trust (including any Trust under this Article) would otherwise be payable (other than by reason of the exercise of a discretionary power or of a power of appointment granted under this Declaration of Trust) to any issue of the Settlor, such share shall not be paid outright to such issue (referred to in this Article as the "Beneficiary"), but shall, instead, be held by the Trustees in as many separate Trusts, each upon the terms set forth in this Article, as the Trustees shall direct. Notwithstanding the preceding provisions of this paragraph, all property with an inclusion ratio of zero shall be held in a separate Trust or Trusts and shall not be combined with a Trust which holds property with an inclusion ratio of more than zero.

(A) *Discretionary Distributions.* (1) The Trustees shall pay to the Beneficiary, or apply for his or her benefit, for any reason or purpose whatsoever, as much or all (or none) of the Trust Fund as the Independent Trustees, in their sole discretion, shall determine at any time or from time to time. In exercising the discretion granted in this section, the Independent Trustees need not, but may, consider the Beneficiary's assets and income apart from the Trust. At the end of each year, the Trustees shall add to principal any net income not so paid or applied. The Settlor confirms that pursuant to this section, the Trustees may, at any time, distribute the entire Trust Fund to or for the benefit of the Beneficiary, even though such distribution terminates the Trust, and without regard to the interest of any remainderman of the Trust.

(2) It is the Settlor's desire, but not the Settlor's direction, that when the Beneficiary attains thirty-five (35) years of age, the Trustees distribute to the Beneficiary TEN (10%) PERCENT of the Trust Fund.

(B) *Use of Works of Art.* With respect to any works of art that become the property of this Trust, the Settlor authorizes the Trustees (in addition to the powers and authorities conferred upon the Trustees by law or by other provisions of this Declaration of Trust):

(1) To permit the Beneficiary to use and/or display such works of art, rent-free and without bond or other security, for as long as he or she wishes;

(2) To retain such property until the termination of the Trust, whether or not he or she uses such property for personal purposes, and notwithstanding that it may not be of a kind or quality usually considered suitable for Trustees to select or hold; and

(3) To pay all expenses and carrying charges relating thereto from this Trust, including without limitation, all maintenance, improvements, insurance and repairs, charging against income only those expenses that are required to be charged against the income under the EPTL.

(C) *Right to Direct Payment.* (1) In each calendar year after the year in which the Beneficiary attains twenty-five (25) years of age and prior to the year of the Beneficiary's death, the Beneficiary shall have the absolute right, from time to time, to direct the Trustees to pay him or her out of the principal of the Trust an aggregate amount not exceeding three percent (3%) of the Trust Fund valued on the last day of the calendar year in which the Beneficiary submits such direction or directions (the "Annual Amount"). For purposes of this section, the term "calendar year" shall include the portion of the calendar year of the Settlor's death that follows the Settlor's death, but shall not include the portion of the year of the Beneficiary's death that precedes his or her death. The right to direct payment shall be noncumulative and shall be exercised by a written instrument signed by the Beneficiary alone and delivered to the Trustees prior to the close of such year.

(2) In any given calendar year, the Trustees are authorized to make payments to the Beneficiary on account of the Annual Amount based upon the value of the principal of the Trust at the time of such request, notwithstanding that (i) the Annual Amount cannot be precisely determined until the end of such year and (ii) the Beneficiary may not be living at the end of such year. If it is determined, after the end of such year, that there has been an overpayment, then the Beneficiary shall repay to the Trustees the amount by which the aggregate payments made in such year on account of the Annual Amount exceed the Annual Amount. The executor or administrator of the Beneficiary's estate shall repay to the Trustees an amount equal to the aggregate payments, if any, made to the Beneficiary during the year of his or her death.

(3) Subsections "(1)" and "(2)" of this section "(C)" shall not apply with respect to a Trust holding property which has an inclusion ratio for generation-skipping transfer tax purposes of zero.

(D) **Powers of Appointment.** (1) Upon reaching the age of twenty-five (25) years, the Beneficiary shall have the absolute power to appoint, by will which is duly admitted to probate and which makes specific reference to this section or by written instrument which takes effect at his or her death and which is signed and acknowledged by him or her, any part or all of the Trust Fund to or for the benefit of any individual other than the Beneficiary, his or her estate, his or her creditors, or the creditors of his or her estate, either outright or in further trust, upon such terms and conditions, as the Beneficiary shall determine.

(2) (a) The Independent Trustees, at any time, may grant to the Beneficiary a general power of appointment (as defined in § 2041 of the Code), which may be subject to such restrictions as the Independent Trustees set forth in the instrument by which the power is granted. However, (i) the Independent Trustees may not grant a general power of appointment to the Beneficiary unless the Trust has an inclusion ratio, for generation-skipping

transfer tax purposes, greater than zero and (ii) the Independent Trustees shall prohibit the Beneficiary from appointing during the Beneficiary's lifetime to or for the benefit of any person or entity assigned to a generation above the Beneficiary's generation. The grant of this power shall be effected by written instrument signed by a majority of the Independent Trustees and delivered to the Beneficiary, and may be revoked at any time during the Beneficiary's lifetime by written instrument of revocation signed by a majority of the Independent Trustees and delivered to the Beneficiary. If revoked, a new power of appointment may be granted as provided in the preceding provisions of this section.

(b) Without limiting the purposes for which the Independent Trustees may grant a general power of appointment to the Beneficiary, the Settlor requests that they give particular consideration to the likelihood that generation-skipping transfer taxes imposed on the Trust at the Beneficiary's death would exceed the estate taxes otherwise payable if the Trust Fund were included in the Beneficiary's gross estate for estate tax purposes. For this purpose, the Independent Trustees may rely conclusively on a statement provided by or on behalf of the Beneficiary as to the potential value of his or her gross estate.

(E) *Disposition on Termination.* Unless sooner terminated by the distribution of the entire Trust Fund, the Trust shall terminate upon the Beneficiary's death. The Trustees shall pay the Trust Fund, to the extent not effectively appointed by the Beneficiary pursuant to a power granted under this Article, (a) to the Beneficiary's issue who survive the Beneficiary, or, if there be no such issue, (b) to the then surviving issue of the Beneficiary's nearest ancestor who was descended from me and who has issue who survive the Beneficiary, or, if there be no such ancestor or issue, (c) to the Settlor's issue who survive the Beneficiary, subject, in each case, to the provisions of this Article.

(F) *Termination on Perpetuities Date.* Notwithstanding any other provision of this Declaration of Trust, each Trust under this Article shall terminate, unless it shall have

sooner terminated, twenty-one (21) years after the death of the last survivor of such of the issue of the Settlor's mother and such of the issue of DEBRA's mother as were living at the date of the Settlor's death, and the Trustees shall pay the Trust Fund to the Beneficiary of that Trust (free of trust).

ARTICLE XIII: SPECIAL DISTRIBUTION RULES

(A) *Distributions By Representation.* Except as otherwise provided, mandatory distributions or payments of property to the issue of a particular individual (whether or not subject to Article XII) shall be distributed to or paid to such issue by representation, as determined under the provisions of § 1-2.16 of the EPTL. The preceding sentence shall not apply to discretionary distributions or payments or to payments made pursuant to the exercise of a power of appointment granted under this Declaration of Trust.

(B) *Distributions to Persons Under a Legal Disability.* Distribution of any money or other property under this Declaration of Trust to a person who is a minor or who is under some other legal disability may, in the sole discretion of the Trustees, be made directly to that person, to that person's parent, or to that person's guardian, conservator, or committee in whatever jurisdiction appointed; or in the case of a person who is younger than twenty-one (21) years of age, whether or not a minor, and whether or not under legal disability, to a custodian (to be selected by the Trustees) for such person's benefit under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any jurisdiction and, if permitted by the applicable Act, a "minor" shall be deemed to attain majority at twenty-one (21) years of age; and the receipt of the one to whom distribution is made shall be a full discharge in respect of the distributed money or other property even though the issuer of the receipt is a Trustee.

(C) *Undisposed of Property.* If any share of the Trust Remainder or of any Trust or Trusts shall not be completely disposed of by the other provisions of this Declaration of Trust, then such undisposed of share or shares shall be disposed of as follows:

(1) FIFTY MILLION (\$50,000,000) DOLLARS shall be paid to JUDY, if she is then living;

(2) TWENTY MILLION (\$20,000,000) DOLLARS shall be paid to JON RESSLER, if he is then living;

(3) TWENTY MILLION (\$20,000,000) DOLLARS shall be paid to IRA and DOROTHY RESSLER, or the survivor of them, if either of them is then living;

(4) TEN MILLION (\$10,000,000) DOLLARS shall be paid to SAMANTHA RESSLER, if she is then living;

(5) TEN MILLION (\$10,000,000) DOLLARS shall be paid to JILLIAN RESSLER, if she is then living;

(6) TEN MILLION (\$10,000,000) DOLLARS shall be paid to ANDREW RESSLER, if he is then living;

(7) TEN MILLION (\$10,000,000) DOLLARS shall be paid to REBECCA RESSLER, if she is then living;

(8) TEN MILLION (\$10,000,000) DOLLARS shall be paid to MATTHEW RESSLER, if he is then living;

(9) TEN MILLION (\$10,000,000) DOLLARS shall be paid to MICHAEL RESSLER, if he is then living;

(10) TEN MILLION (\$10,000,000) DOLLARS shall be paid to OLIVER RESSLER, if he is then living;

(11) TEN MILLION (\$10,000,000) DOLLARS shall be paid to NICKOLAS RESSLER, if he is then living;

(12) TEN MILLION (\$10,000,000) DOLLARS shall be paid to JONATHAN LEVINE, if he is then living;

(13) FIVE MILLION (\$5,000,000) DOLLARS shall be paid to MARILYN STEWART, if she is then living;

(14) If the aggregate of the property to be disposed of in sections "(1)" through "(13)" inclusive, of this section "(C)" shall be insufficient to make the dispositions described therein, such dispositions shall be abated proportionately; and

(15) The balance of such undisposed of property, if any, after making the dispositions in subsections "(1)" through "(13)" of this section "(C)" inclusive, shall be paid to the LEON BLACK FAMILY FOUNDATION, INC. (the "Foundation"), if it is then a Qualified Charitable Organization. It is my desire that the directors of the Foundation expend this disposition for the following purposes:

(a) TWENTY-FIVE (25%) PERCENT thereof shall be used to promote medical research;

(b) TWENTY-FIVE (25%) PERCENT thereof shall be used to promote Judaica;

(c) TWENTY-FIVE (25%) PERCENT thereof shall be used to promote art and culture; and

(d) TWENTY-FIVE (25%) PERCENT thereof shall be used to promote education.

If the Foundation is not a Qualified Charitable Organization at the time of my death, the balance of such undisposed of property shall be paid to one or more Qualified Charitable Organizations in such amounts or proportions as the Trustees, in their sole discretion, shall determine, provided, however, that such undisposed of property shall be used for the purposes provided in paragraphs (a) through (d) inclusive of this subsection "(15)."

(D) *Assignment of Trust Interests.* With (but only with) the written consent of the Independent Trustees, (i) a disposition, charge, or encumbrance of the income or principal of any Trust, or any part thereof, by way of anticipation, alienation, or otherwise shall be valid and binding upon the Trustees and (ii) a beneficiary of any Trust may assign, transfer, encumber or otherwise dispose of such income or principal, or any part thereof, prior to its payment to such beneficiary by the Trustees. No income or principal of any Trust or any part thereof shall be liable to any claim of any creditor. This section shall apply notwithstanding any contrary provision of law.

(E) *Judicial Intervention.* Under no circumstances shall § 7-1.6 of the EPTL or any similar provisions of law apply to any Trust.

ARTICLE XIV: RENUNCIATIONS

If DEBRA renounces her income interest in any portion of the property in any DEBRA R. BLACK MARITAL TRUST, or her interest in any other disposition under this Declaration of Trust, the Trustees shall hold such property in as many separate Trusts as the Trustees shall determine, each upon the following terms:

(A) *Discretionary Distributions.* The Trustees shall pay or apply as much or all (or none) of the Trust Fund for any purpose whatsoever, as the Independent Trustees, in their sole discretion, shall determine at any time or from time to time, to or for the benefit of any one or more members of a class consisting of DEBRA and the Settlor's issue living from time to time, in such amounts or proportions, and to the exclusion of any one or more of them, as the Independent Trustees, in their sole discretion, shall determine. In exercising the discretion granted in this section, the Independent Trustees need not, but may, consider the assets and income apart from the Trust of the beneficiaries, or any of them. At the end of each calendar year, the Trustees shall accumulate and add to principal any net income not so

paid or applied. The Settlor confirms that pursuant to this section, the Independent Trustees may, at any time, distribute the entire Trust Fund to the beneficiaries, or any of them, even though such distribution terminates the Trust, and without regard to the interest of any remainderman of the Trust.

(B) *Disposition on Termination.* Unless sooner terminated by the distribution of the entire Trust Fund, the Trust shall terminate upon DEBRA'S death. Upon such termination, the Trustees shall pay the Trust Fund to the Settlor's issue who survive DEBRA, subject to the provisions of Article XII.

ARTICLE XV: SURVIVORSHIP PROVISIONS

(A) *Survivorship by the Settlor's Wife.* If DEBRA and the Settlor die under such circumstances that it is difficult or impossible to determine which one of DEBRA and the Settlor survived the other, then DEBRA shall be deemed to have predeceased the Settlor for purposes of Articles VI and VII, and to have survived the Settlor for all other purposes of this Declaration of Trust.

(B) *Survivorship by Others.* If any issue of the Settlor dies within ninety (90) days after the date of the Settlor's death, he or she shall be deemed to have predeceased the Settlor. In all other cases, if any beneficiary whose entitlement to property (whether income or principal and whether outright or in trust) depends under this Declaration of Trust upon his or her surviving the occurrence of some event, dies under such circumstances that it is difficult or impossible to determine whether or not he or she was alive upon the occurrence of such event, such beneficiary shall be deemed for all purposes of this Declaration of Trust to have died prior to the occurrence of such event.

(C) *DEBRA No Longer Spouse.* For all purposes of this Declaration of Trust, DEBRA shall be deemed to have predeceased the Settlor if she is not the Settlor's spouse at the time of the Settlor's death.

ARTICLE XVI: TRUSTEES' POWERS

(A) *General Powers.* The Settlor confers upon the Trustees all powers and discretion conferred generally upon fiduciaries by law. Without limiting the foregoing, the Settlor also gives to the Trustees the following powers and discretion as to all property of whatever kind at any time held by them, including income held by them, until final distribution, which they may exercise as they deem advisable:

(1) To sell, purchase, exchange, invest and reinvest in bonds, preferred or common stocks, mortgages, interests in any kind of investment trust, or other evidences of rights, interests or obligations, secured or unsecured, foreign or domestic, or any other property, real or personal and whether or not in the nature of a wasting asset, without any duty to diversify investments, and fully free of any and all restrictions imposed by law upon the investment of funds held by a fiduciary; and to retain the same for any period of time without liability therefor;

(2) To employ such one or more agents, accountants, custodians, experts and counsel, legal or investment (including any firm with which any of the Trustees or the Settlor may be affiliated), as the Trustees shall determine, to delegate discretionary powers to them and rely upon their information or advice, and to compensate them out of the property of the Trust (and not out of the Trustees' commissions);

(3) To improve, lease (for any term, whether or not beyond the term of the administration of the Trust or the term fixed by any law), partition or otherwise deal with or dispose of any real or personal property or any interest therein; to demolish or to make alterations in and extraordinary improvements to any building now or hereafter located on any such property; to construct new buildings; and to enter into contracts or grant options (for any period) as to any of the foregoing;

(4) To consent to the modification, renewal or extension of any note, whether or not secured, or any bond or mortgage, or any term or provision thereof, or any guarantee thereof, or to the release of such guarantee; to release obligors on bonds secured by mortgages or to refrain from instituting suits or actions against such obligors for deficiencies; to use property held under this Declaration of Trust for the protection of any investment in real property or in any mortgage on real property;

(5) To abandon any property, real or personal, that they deem to be worthless or not of enough value to warrant keeping or protecting; to abstain from the payment of taxes, water rents, assessments, repairs, maintenance and upkeep of it; to permit such property to be lost by tax sale or other proceeding, or to convey it for nominal or no consideration;

(6) To exercise or dispose of any or all options, privileges or rights appurtenant or incident to the ownership of any property, whether to vote, assent, subscribe, convert or of any other nature; to become a party to, or deposit securities or other property under, or accept securities issued under, any voting trust agreement;

(7) To assent to or participate in any reorganization, readjustment, recapitalization, liquidation, partial liquidation, consolidation, merger, dissolution, sale or purchase of assets, lease, mortgage, contract or other action or proceeding by any corporation and, in that connection, to subscribe to new securities, to exchange any property for any other property, and to pay any assessments or other expenses; to delegate discretionary powers to any reorganization, protective or similar committee;

(8) To borrow money from any party, including any of the Trustees, for any purpose whatsoever and to give or not to give security for the loan;

(9) To consent, or to decline to consent, to the election (including any that are now in effect) by any corporation to be taxed under subchapter S of the Code;

(10) To make any loans, either secured or unsecured, in such amounts, and upon such terms as to interest and repayment, and to such persons, firms or corporations as they determine in their discretion;

(11) To sell, liquidate, incorporate or carry on (for any period) any business conducted by the Settlor or in which the Settlor is interested as shareholder, partner or otherwise;

(12) To hold property in the name of a nominee or unregistered or in such form as will pass by delivery;

(13) To credit receipts (including, but not limited to, gains from the sale or exchange of property) and to charge expenditures and other disbursements to or between income and principal in such amounts and proportions as the Trustees deem advisable, without regard to any prior allocation made at any time and notwithstanding any contrary provision of law; provided that only the Independent Trustees may participate in the exercise of this power;

(14) To remove all or part of the assets or change the situs of administration of any Trust from one jurisdiction to another jurisdiction, and to elect, by an instrument signed by the Trustees and filed with the trust records, that the law of such other jurisdiction shall thereafter govern the same to such extent as may be necessary and appropriate, at any time or from time to time (and any number of times) as they deem advisable;

(15) To satisfy any disposition (other than a specific disposition) or effect any distribution of income or principal with any property not otherwise specifically disposed of, including an undivided interest in property, in kind or in cash or partly in each to any one or more beneficiaries, whether or not the same kind of property is distributed to other beneficiaries having comparable interests;

(16) To open and maintain bank accounts and brokerage accounts; and

(17) To do any and all acts, to exercise any and all rights, to enter into any and all proceedings, contracts (including contracts containing guarantees, warranties, representations and indemnifications of any kind or nature), and other instruments (whether or not specified above and including but not limited to the preparation and filing of any and all registration statements and papers, documents and instruments of whatever kind and nature with the Securities and Exchange Commission and the payment of any and all expenses in that connection) necessary or proper in their opinion in the administration of any Trust as fully as if they were the absolute owners of such property.

(B) *Reliance on Statement of Assets or Income.* If the Independent Trustees of a Trust decide to consider the assets or income (or both) of a Beneficiary in exercising their discretionary power to determine that distributions should be made from such Trust to or for the benefit of such individual, then they may, absolutely and without further investigation, rely

upon any written statement made by such individual, or on such individual's behalf, as to the nature and extent of such individual's assets or income.

(C) *Exoneration of Third Parties.* No person dealing with the Trustees shall be bound to see to the application or disposition of cash or other property transferred to them or to inquire into the authority for or propriety of any action by the Trustees.

(D) *Consolidation of Trust Property.* The Trustees shall not be required to segregate physically the property in any Trust, but may, in their discretion, maintain the trust property in one or more consolidated funds, the division of which into the various shares or parts comprising such fund need be made only on the Trustees' books of account.

(E) *Combination and Division of Trusts.* (1) The Trustees may combine any two or more Trusts having identical terms and identical beneficiaries and administer the combined Trusts as a single Trust. Notwithstanding the preceding sentence, the Trustees may not combine a Trust that holds property which has an inclusion ratio of zero with any Trust or Trusts holding property with an inclusion ratio of more than zero.

(2) The Trustees may divide any Trust into two or more separate Trusts of equal or unequal size, each having terms identical to the terms of the original Trust.

(3) If, pursuant to any authority granted in this Declaration of Trust, the Trustees direct that (a) any Trust shall be divided into two or more separate Trusts or (b) any share of my residuary estate or any Trust shall be held in more than one Trust, then the Trustees shall determine which property then allocated to or held in such Trust or share shall be allocated to each such separate Trust.

(F) *Powers to Deal with Closely Held Business and Investment Interests.* As to each and any corporation, partnership, limited liability company, or other business entity, public or private, in which the Trustees, as such, hold or acquire any equity interest

exceeding one percent (1%) of the net value of such corporation, partnership, limited liability company, or other business entity (each such corporation, partnership, limited liability company, or other business entity being hereafter referred to as the "Entity"), the Trustees are hereby authorized to retain the shares thereof or interest therein for as long as they deem to be in the best interests of the Settlor's estate or any Trust regardless of the fact that such shares or interest might produce no income, regardless of any duty to diversify investments, and notwithstanding any other fiduciary obligation which might require them to dispose of such shares or interest, other than the obligation to act with reasonable care.

In addition, the Settlor authorizes and empowers the Trustees, to the extent permitted by law, to exercise their rights and powers as holders of such shares or interest, to effect the continued operation of the Entity, or the sale or other disposition of its assets or business or, in their sole discretion, to sell, exchange, offer for redemption, or otherwise dispose of the shares of or interest in the Entity owned by the Settlor's estate or any Trust, or to effect the liquidation or dissolution of the Entity, at such time or times and upon such terms and conditions as shall, in the opinion of the Trustees, be in the best interests of my estate or the Trusts or any one or more of them.

So long as the Trustees continue to hold any interest in the Entity, the Settlor authorizes and empowers them to participate in the management of the Entity to the extent that their interest therein enables them to do so or to delegate their managerial authority to others, whether by means of employment agreements or other arrangements, and they may enter into voting trusts and grant irrevocable proxies, as they deem advisable.

Consequently and to these ends, the Settlor expressly authorizes the Trustees to select, vote for, and remove directors of the Entity (if the Entity is a corporation), to take part in the management of the Entity and, to the extent permitted by law, in their managerial capacity to fix, determine or change the policy thereof; to name or change officers, the

managing personnel, and/or the operating personnel; to employ new management; to reduce, expand, limit, or otherwise change the business or type of merchandise dealt in or property invested in and investments held by or product manufactured by or service rendered by the Entity; to require the employees and/or the officers of the Entity to file bonds for the faithful performance of their duties; to determine the amount of the bond or bonds to be secured; to select the bonding company; to employ expert outside and disinterested accountants or engineers to make a full and complete survey or appraisal of the Entity's business and its prospects in the trade; to employ investment or legal counsel (including any firm with which a Trustee may be affiliated) whenever the Trustees shall deem it advisable; to charge the cost of all such services against the interest in the Entity held by the Trustees or to vote or take other action to require the Entity owning said business to pay such expense; to contribute additional working capital or to subscribe to additional stock as they may see fit; and to take all steps and perform all acts which they shall deem necessary or advisable in connection therewith.

Any one or more of the Trustees may act as officer, partner, director, manager, or employee of the Entity, and the Trustees are specifically authorized to exercise their rights inhering in their ownership as Trustees for the election or appointment of any person or persons, including themselves, as directors, officers, managers, or the like. Any Trustee who serves as officer, partner, director, manager, or employee of the Entity shall be entitled to receive compensation for such services notwithstanding that the Trustees may themselves (whether individually and/or as Trustees) be in a position to determine, or control the determination of, the amount of such compensation, and the Settlor directs that no such person shall be required to furnish any bond in connection with any such employment.

The Settlor is aware that conflicts of interest may arise by reason of service on the part of the Trustees as such and as officer, partner, director, manager, or employee of the Entity and by reason of the Trustees owning an interest in the Entity in their own right. The

Settlor intends that the Trustees shall, in all respects, be free to exercise the powers and discretion herein conferred as fully and unrestrictedly as if there were no conflicting interests. With this thought in mind, the Settlor expressly exempts the Trustees from the adverse operation of any rule of law which might otherwise apply to them in the performance of their fiduciary duties by reason of conflict of interest. Without limiting the generality of the foregoing, the Settlor specifically directs that the Trustees shall not have any greater burden of justification in respect of their acts as Trustees by reason of conflict of interest than they would have in the absence of any conflict of interest.

(G) *Unusual Investments and Risk.* The Trustees shall have broad latitude to make and retain investments in real and personal property that are not ordinarily considered suitable for fiduciaries under the usual fiduciary investment standards and that may be speculative and involve unusual risks, including, without limitation, interests in any kind of business venture or enterprise, real estate development, minerals, commodities, and natural resources. The Trustees may in their sole discretion from time to time initiate such investments on behalf of my estate or any Trust, even though there may be a risk of loss to my estate or such Trust by reason thereof.

Any investment (notwithstanding any law or rule of law making fiduciaries' powers non-delegable or any other law) may take the form of securities of a corporation, a general or limited partnership interest, an interest in a joint venture, a future interest in property, shares of beneficial interest in a business trust, or any other form of investment, direct or indirect, even though there may be a limited market, or, in practice, no effective market, for the disposition of such investment. To this end, the Settlor authorizes the Trustees of any Trust to enter into any such investments with the Trustees of any other Trust or Trusts or with the trustees of any other trust.

(H) *Term and Remainder Interests.* The Trustees may make investments in the form of term interests in property (the right to possess or to receive income from property for a designated number of years or for the life of a designated individual) or in the form of remainder interests in property (the right to receive property after the expiration of a preceding interest in such property).

(I) *Advisors; Delegation.* The Trustees are specifically authorized to rely, without liability except for their own actual fraud or willful wrongdoing, on the advice of investment counsel or other appropriate advisors (including any firm with which any Trustee may be affiliated). They may, pursuant to a contract or contracts with an investment counsel or other appropriate advisor, delegate all or a portion of their investment powers to such investment counsel or other appropriate advisor (notwithstanding any law or rule of law making trustees' powers non-delegable or any other law), and, if they do so, they shall not be liable for losses incurred by reason of such delegation or incurred in acting or refraining from acting in reliance on the advice of such investment counsel or other appropriate advisor except for their own actual fraud or willful wrongdoing.

ARTICLE XVII: RESTRICTIONS ON TRUSTEE POWERS

Notwithstanding anything to the contrary contained in any other provision of this Declaration of Trust:

(A) *Powers Affecting Marital Deduction.* No power or discretion granted to the Trustees by this Declaration of Trust or by law, including, without limitation, any investment power, may be exercised if the authority to exercise such power or discretion would prevent property given to DEBRA outright or to any Trust under Article XI from qualifying for the federal estate tax marital deduction. All powers or discretion conferred upon the Trustees shall be subordinate to the overriding provisions of Article XI(B), and may be

exercised only in such manner as is consistent with the allowance of such marital deduction to my estate. This section shall be construed as a precedent (and not as a subsequent) limitation or condition. The provisions of this section shall not be construed as a direction to make the election authorized by § 2056(b)(7) of the Code or any similar provision of state law.

(B) *Distributions to or for the Benefit of Trustees.* (1) No Trustee shall participate in a discretionary decision to pay or apply trust property to himself or herself or for his or her benefit or to use the property of any Trust in such manner as to discharge any obligation of such Trustee, including, but not limited to, any obligation of support.

(2) No Trustee shall participate in a decision to distribute property to himself or herself in any capacity whatsoever, including, but not limited to, the capacity as a custodian for the benefit of his or her child under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any jurisdiction.

(C) *Change of Law.* No Trustee shall participate in a decision to remove all or part of the assets or change the situs of administration of any Trust from one jurisdiction to another jurisdiction, or to elect that the law of such other jurisdiction shall govern the same if such removal, change of situs or election would have the effect of altering any beneficial interest under this Declaration of Trust.

ARTICLE XVIII: ACCOUNTING BY TRUSTEES

(A) *Settlement of Accounts by Agreement.* The Trustees of any Trust from time to time may settle their accounts with respect to that Trust by agreement with each legally competent individual who is a beneficiary of such Trust and with the legally appointed guardian of the property, conservator, committee, or other representative of each beneficiary of such Trust who is under a legal disability. For purposes of the immediately preceding sentence, a "beneficiary" of a given Trust means a person to whom current distributions may

be made from that Trust and a person to whom a share of such Trust would be payable if such Trust were to terminate on the date of settlement of the Trustees' account.

Such agreement shall bind all persons, whether or not then living or under a legal disability, then or thereafter entitled to any property of the Trust accounted for, whether principal or income, and shall completely release and discharge the Trustees for the acts and proceedings so accounted for.

(B) *Judicial Settlement of Accounts.* Nothing contained in this Article shall preclude the Trustees from seeking a judicial settlement of their accounts.

(C) *Change of Beneficial Interests Prohibited.* Notwithstanding any contrary provision of this Article, no settlement of the Trustees' accounts by agreement shall release and discharge the Trustees if an effect of such agreement is to enlarge the beneficial interest of any beneficiary under this Declaration of Trust or to shift any beneficial interest under this Declaration of Trust as between beneficiaries.

(D) *Service Upon Persons Under a Disability.* In any proceeding relating to any Trust, service upon any person under a disability shall not be necessary when a person not under a disability is a party to the proceeding and has the same interest as the person under the disability.

ARTICLE XIX: TRUSTEE APPOINTMENTS,

RESIGNATIONS AND COMPENSATION

(A) *Designation of Additional and/or Successor Trustees.* (1) The Settlor appoints DEBRA R. BLACK, BARRY J. COHEN, JOHN J. HANNAN and RICHARD RESSLER to act as successor Trustees in the event of the Settlor's disability or death. In addition, the Settlor may, at any time or from time to time, so long as he is not under a disability, revoke the designation of anyone or more of DEBRA R. BLACK, BARRY J.

COHEN, JOHN J. HANNAN and RICHARD RESSLER as successor Trustees and may appoint, in the manner provided in section "(B)" of this Article, one or more individuals or a qualified bank or trust company to act as additional or successor Trustee or Trustees.

(2) The Trustees of any Trust are authorized to appoint, in the manner provided in section "(B)" of this Article, one or more persons to serve as additional and/or successor Trustees of that Trust.

(3) At any time after a child of the Settlor has attained the age of thirty (30) years, such child may, upon qualification and acceptance, become an additional Trustee of any Trust held for his or her benefit under Article XII. Additionally, at any time after a child of the Settlor has attained the age of forty (40) years, such child may designate, in the manner provided in section "(B)" of this Article, one or more persons other than such child or a Related Person as to the child to serve as an additional or successor Trustee of any Trust held for such child's benefit under Article XII.

(4) Any instrument of appointment made by the Settlor pursuant to subsection "(1)" of this section may provide whether, and the extent to which, any appointment made pursuant to that subsection may be superseded by an appointment made by the Trustees pursuant to subsection "(2)" of this section. Notwithstanding any other provision of this Article, no instrument of appointment made by the Settlor may be revoked or superseded by any other person except to the extent authorized by the Settlor pursuant to this subsection.

(B) Procedure for Appointing Trustees. (1) Any appointment authorized by this Article shall: (i) be in writing signed by the Settlor or all of the Trustees, as the case may be, (ii) state the time at which or the event upon which it is to be effective, (iii) state whether the designees shall serve as co-Trustee or as successor Trustee, and (iv) if more than one successor Trustee is appointed, state the order of succession. Except as otherwise provided in subsection "(4)" of section "(A)" of this Article, if there are inconsistent instruments of

appointment, the instrument that bears the most recent date and that makes an unrevoked appointment shall govern.

(2) Except as otherwise provided in subsection "(4)" of section "(A)" of this Article, any instrument of appointment may be revoked at any time, as to any designee who has not taken office (but not as to any appointee who has), by the person or persons then entitled to make an appointment. Such revocation shall be in writing. In case of such revocation a new appointment may be made as specified above.

(C) *Removal of Trustees.* (1) The Settlor may, at any time or from time to time, remove any Trustee by written notice of removal delivered to the Trustees and such removal shall take effect upon the date stated in the notice, whereupon all duties of the removed Trustee shall cease, other than the duties to account and to transfer and deliver all property then held in the Trust to each remaining and/or successor Trustee.

(2) At any time after a child of the Settlor has attained the age of forty (40) years, such child may remove any Trustee of any Trust held for his or her benefit under Article XII, provided that immediately following such removal there is at least one Trustee of such Trust who is not a Related Person as to him or her.

(3) The power to remove a Trustee pursuant to this section shall be exercisable by written notice of removal delivered to the Trustees and shall take effect upon the date stated in the notice, whereupon all duties of the removed Trustee shall cease, other than the duties to account and to transfer and deliver all property then held in such Trust to each remaining and/or successor Trustee.

(D) *Resignation of Trustees.* Any Trustee may resign as Trustee of the Trust at any time by delivering a written notice of resignation to the Settlor, if he is living, and in any event to each other Trustee at the time in office, or if none, to the next successor Trustee. The resignation shall take effect upon the date stated in the notice, whereupon all

duties of the resigning Trustee shall cease, other than the duties to account and to transfer all property then held in such Trust to each remaining or successor Trustee.

(E) *Mandatory Ineligibility.* For all purposes of this Declaration of Trust, (i) a Trustee who is under a disability shall thereupon cease to be a Trustee, and shall be deemed to have resigned for all purposes of this Declaration of Trust, and (ii) if DEBRA ceases to be the Settlor's spouse, DEBRA shall thereupon cease to be a Trustee, and shall be deemed to have resigned for all purposes of this Declaration of Trust.

(F) *Powers of Successor Trustees.* All powers, authority and discretion granted to the Trustees shall pass to and be exercisable by each successor (whether or not appointed by instrument). No successor Trustee shall be obliged to examine the accounts, records, and acts of any previous Trustee or any allocations of receipts or disbursements as between principal and income made by any previous Trustee.

(G) *Acceptance of Terms.* Before taking office, each Trustee other than the original Trustees shall accept the terms of this Declaration of Trust and shall agree to act as Trustee by signing a written instrument to that effect. A Trustee shall be deemed to have taken office when he or she signs that instrument (but not before his or her appointment is to take effect by its terms).

(H) *Records of Trustees.* Each instrument that appoints a Trustee, that revokes an appointment or that signifies a Trustee's acceptance of office shall be filed with the trust records maintained by the Trustees and a copy of it shall be delivered to each Trustee, if any, then in office.

(I) *Trustee Bond.* No bond or other security shall be required of any Trustee serving at any time, any provision of law to the contrary notwithstanding.

(J) *Compensation.* (1) DEBRA R. BLACK shall not be entitled to any commissions or other compensation for her services as a Trustee.

(2) The annual commissions payable to each Trustee (other than DEBRA R. BLACK) for his or her services as Trustee of all Trusts shall be the lesser of (i) the commissions payable to such Trustee under the laws of the State of New York in effect at the time of computation of such commissions, or (ii) the sum of TWO HUNDRED AND FIFTY THOUSAND (\$250,000) DOLLARS (pro-rated for part of a year), adjusted as provided in subsection "(3)" of this section "(I)." This amount shall be allocated among the Trusts in the proportion that the aggregate fair market value of their respective assets (determined on the last day of the year), bears to the aggregate fair market value of all assets held in all Trusts (determined on the last day of the year). No Trustee shall be entitled to receive any so-called "paying out commissions" or any commission other than the commission provided for in the first sentence of this subsection.

(3) (a) To adjust a stated amount as provided in this subsection, the Trustees shall multiply such amount by a fraction, the numerator of which shall be the Consumer Price Index for the first day of the calendar year in which such amount is to be paid and the denominator of which shall be the Consumer Price Index for the calendar month in which this Declaration of Trust is executed, and if the resulting amount is greater than the stated amount, then such resulting amount shall be substituted for the stated amount and shall be paid to the designated recipient in lieu thereof.

(b) For the purposes of this subsection, the term "Consumer Price Index" shall mean the New York-Northeastern New Jersey Consumer Price Index for all urban consumers for all items, issued by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics, for any reason, ceases publishing the Consumer

Price Index, the Settlor directs the Trustees to utilize such other than recognized cost-of-living index as the Trustees, in their sole discretion, shall deem appropriate.

(4) Each Trustee shall consent in writing to the restrictions applicable to such Trustee under this Article as a condition to his or her serving as such Trustee.

(5) Notwithstanding the preceding provisions of this section, each Trustee shall be entitled to reimbursement for the reasonable, actual out-of-pocket expenses incurred by him or her in connection with the administration of my estate or of any Trust.

ARTICLE XX: ACTION BY TRUSTEES

(A) *Declining to Participate.* Any Trustee, at any time or from time to time, may decline to participate in any one or more decisions to be made by the Trustees. His, her or its decision to do so shall be set forth in a written instrument signed by him or her or on its behalf and delivered to his, her or its co-Trustees.

(B) *Release or Suspension of Powers.* Any Trustee, at any time or from time to time, may release or suspend for a specified period of time any power conferred on such Trustee under this Declaration of Trust. Such release or suspension shall be irrevocable if the document by which the release or suspension is effected states that it shall be irrevocable and shall bind all of such Trustee's successors if such document states that it is intended to bind such successors. Any such release or suspension shall be effected by written instrument signed by the Trustee making the release or suspension and delivered to each other Trustee.

(C) *Majority Decision.* Except as otherwise provided, any decision of the Trustees may be made by a majority of the Trustees who are not precluded by law or this Declaration of Trust from making the decision and who have not declined to participate in the decision, but ministerial duties of the Trustees (such as signing of checks, execution of

brokerage transactions relating to securities or commodities, and execution of applications for life insurance) may be performed by any one Trustee.

(D) *Independent Administration.* To the extent permitted by law the Settlor expressly waives compliance by the Trustees with any provision of law requiring qualification of trustees or registration of trusts or administration or accounting by Trustees under the supervision of any court.

IN WITNESS WHEREOF, the Settlor and Trustee has signed this Declaration of Trust on the date appearing on page one.

/s/ Leon D. Black
LEON D. BLACK, Settlor
and Trustee

SCHEDULE "A"

\$5.00

/s/ Leon D. Black
LEON D. BLACK, Settlor

STATE OF NY)
) ss.:
COUNTY OF NY)

On this 30th day of ~~October~~ ^{September}, 1997, before me personally came
LEON D. BLACK to me known and known to me to be the person described in and who
executed the foregoing instrument and who acknowledged that she executed it.

/s/ Carlyn S. McCaffrey

Notary Public

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CARLYN S. McCAFFREY
NOTARY PUBLIC, State of New York
No. 24-4602951
Qualified in Kings County
Commission Expires October 3, 1998