

## THE RICHARD N. MERKIN 2018 TRUST

THIS TRUST AGREEMENT ("Agreement"), dated July \_\_\_\_, 2018, by and among RICHARD N. MERKIN, as Grantor ("Grantor"), and [DARREN K. INDYKE] and [RICHARD D. KAHN], as Trustees ("my Trustee"), of The Richard N. Merkin 2018 Trust.

The Grantor hereby pays over, assigns, grants, conveys, transfers and delivers to my Trustee the property described in Schedule A annexed hereto and made a part hereof (the "Trust Estate"), to be administered and disposed of as provided in this Agreement, with any additions, changes, or amendments to this Agreement.

The trust created hereby shall be known as the "The Richard N. Merkin 2018 Trust" or the "this Trust."

### **Article I**      **During My Lifetime**

The following provisions shall apply during my lifetime:

#### **Section 1.1. - Disbursement of Income**

During my lifetime, all of the income of the Trust Estate shall be paid to me, or accumulated or paid as I may direct in writing from time to time.

#### **Section 1.2. - Disbursement of Principal**

My Trustee may distribute any part or all of the principal of the Trust Estate to me as I may direct in writing from time to time.

#### **Section 1.3. - Specific Rights Reserved to Me**

- A. I reserve the right, at any time and from time to time, to amend this Agreement, in whole or in part, by a written instrument executed and acknowledged by me.
- B. I reserve the right, at any time and from time to time, in my sole and unfettered discretion, to remove any trustee of any trust created under this Agreement, including my Trustee, by a written instrument executed and acknowledged solely by me.
- C. I reserve the right, at any time, to revoke this Trust in its entirety or any provision hereof by a written instrument executed and acknowledged solely by me.
- D. I reserve the right, at any time and from time to time, to withdraw or appoint any part or all of the principal of the Trust Estate by a written instrument executed and acknowledged solely by me.

E. I reserve the right, at any time and from time to time, to transfer to my Trustee, by gift, by Will or by beneficiary designation, such additional property, including life insurance policies, as I may desire. Any such additional property shall be held on the same terms as are then applicable to the original Trust Estate, except that it may be transferred subject to conditions and provisions of special application to such additional property.

## **Article II      After My Death**

The following provisions shall apply after my death:

### **Section 2.1. - Payment of My Debts and of Taxes and Expenses**

My Trustee shall pay from the principal of the Trust Estate (a) my debts, funeral and burial expenses and the administration expenses of my probate estate which are not paid by the Executor of my probate estate, and (b) the federal and state estate, inheritance, succession, generation skipping and similar taxes imposed by reason of my death which are the obligations of my Trustee (including any of such taxes which the Executor of my probate estate directs my Trustee to pay by written direction delivered to my Trustee). For purposes of this Section 2.1, the principal of the Trust Estate shall not include (a) any assets which are not included in my Gross Estate or (b) any assets which are not subject to, or available to creditors for the payment of, my debts, my funeral and burial expenses or the administration expenses of my probate estate.

### **Section 2.2. - Specific Bequests or Devises Under My Will**

If my probate estate is insufficient to satisfy all pecuniary bequests (or bequests payable in cash or in kind in the discretion of the Executor of my probate estate) provided in my Will, my Trustee shall pay such unpaid bequests from the principal of the Trust Estate. If my Will provided for a specific bequest or devise of specified assets and such bequest or devise could not be satisfied from my probate estate because such assets were held by my Trustee at my death, my Trustee shall distribute such assets to satisfy such bequest or devise.

### **Section 2.3. - Balance of Trust Estate**

The balance of the Trust Estate, after the distributions provided in Sections 2.1 and 2.2 of this Article II, shall be distributed as follows:

A. **[Fifty percent (50%) thereof outright to GRATITUDE AMERICA, LTD., a United States Virgin Islands not-for-profit corporation, if it shall be a valid, duly existing and active corporation on the date of my death.]**

B. **[Fifty percent (50%) thereof outright to J. EPSTEIN VIRGIN ISLANDS FOUNDATION, INC. (A/K/A ENHANCED EDUCATION), a United States Virgin Islands not-for-profit corporation, if it shall be a valid, duly existing and active corporation on the date of my death.]**

C. **[If on the date of my death, GRATITUDE AMERICA, LTD. is not a valid, duly existing and active corporation, then One Hundred percent thereof to J.]**

**EPSTEIN VIRGIN ISLANDS FOUNDATION, INC. (A/K/A ENHANCED EDUCATION), if on the date of my death it is a valid, duly existing and active corporation.]**

**D. [If on the date of my death J. EPSTEIN VIRGIN ISLANDS FOUNDATION, INC. (A/K/A ENHANCED EDUCATION) is not a valid, duly existing and active corporation, then One Hundred percent thereof to GRATITUDE AMERICA, LTD., if on the date of my death it is a valid, duly existing and active corporation.]**

**E. [If on the date of my death neither GRATITUDE AMERICA, LTD. nor J. EPSTEIN VIRGIN ISLANDS FOUNDATION, INC. (A/K/A ENHANCED EDUCATION) is a valid, duly existing and active corporation, then my Trustee is hereby directed to designate, in my Trustee's discretion, one or more charitable organizations, including private foundations, private operating foundations and public charities, to which the balance of the Trust Estate shall be distributed.]**

### **Article III    Trust Administration**

#### **Section 3.1. - Exercise of Discretionary Powers**

Except as hereinbefore specifically provided, in connection with the exercise of a discretionary power to distribute income or principal to any person, there shall be no requirement to take into account such person's other income or capital resources, the interest of such person in any other fund or the duty of anyone to support such person, although these factors may be taken into account.

#### **Section 3.2. - Discretionary Distributions**

Any discretionary payment from any trust hereunder shall be charged against such trust as a whole, and shall not be charged against the individual share of any person at any time.

#### **Section 3.3. - Allocation of Assets**

A. For each distribution, partial distribution, allocation, or division of assets into shares or trusts involving a fraction, my Trustee shall apply such fraction to the fair market value of the relevant assets on the date of such distribution, allocation, or division, whichever first occurs. My Trustee shall appropriately adjust such fractions to reflect the effect of any partial distributions, allocations, or divisions, taking into account the fair market value as of the date of distribution, allocation, or division, whichever first occurred, of the assets so distributed, allocated, or divided.

B. My Trustee shall value any assets distributed, allocated, or divided to satisfy (in whole or in part) a pecuniary distribution at the fair market value of such assets on the date of such distribution, allocation, or division, whichever first occurs.

#### **Section 3.4. - Accounting Allocations**

A. Except as otherwise specifically provided in this Agreement and except as provided in Paragraph B of this Section 3.4, my Trustee shall allocate receipts and disbursements

in accordance with sound trust accounting principles and have discretion to allocate receipts and disbursements when, in the judgment of my Trustee the treatment is uncertain under applicable laws or generally accepted accounting principles.

B. Except as otherwise specifically provided in this Agreement, my Trustee shall not treat any part of the principal amount of the proceeds of sale of any asset of any trust created hereunder as income distributable to or for the benefit of any beneficiary entitled to distributions of income; provided, however, that my Trustee shall treat a portion of any proceeds of sale of any financial instrument originally issued or acquired at a discount equal to the amount which (1) has previously been characterized as ordinary income for income tax purposes or (2) will be characterized as ordinary income for income tax purposes in the year of such sale, as income for trust accounting purposes.

**Section 3.5. - Spendthrift Provision**

During the term of any trust created hereunder, no money or other assets (either principal or income) payable or distributable under the provisions of this Agreement shall be pledged, assigned, transferred, given, conveyed, hypothecated, sold, anticipated, charged, or encumbered by any Beneficiary hereunder, nor shall the income and principal of any such trust, while in the possession of my Trustee be liable for any debts, contracts, obligations, or undertakings of such Beneficiary, voluntary or involuntary, or for any claims or judgments against any Beneficiary, including claims for alimony or for the support of any Beneficiary's spouse or children, or for reimbursement of a federal, state or local government, or any agency of any federal, state, or local government, for the support of any Beneficiary hereunder, prior to the time such money or assets are actually paid or distributed to such Beneficiary. Any attempted pledge, assignment, transfer, gift, conveyance, hypothecation, anticipation, charge, or encumbrance of any money or assets (either income or principal) payable or distributable under the provisions of this Agreement by any Beneficiary hereunder prior to the time such money or assets are actually paid or distributed to such Beneficiary shall be null and void and shall not be recognized by my Trustee. This Section 3.5 of this Article III shall not apply to me.

**Section 3.6. - Division and Combination of Trusts**

A. For any administrative, tax or other purpose determined by my Trustee to be in the best interests of any Beneficiary (including any remainderman) hereunder, my Trustee may at any time and from time to time (whether before or after funding), without approval of any court, divide any trust under this Agreement into two or more separate trusts or combine two or more trusts with substantially identical terms (whether or not such trusts resulted from division of a prior trust).

B. If property is directed to be added to any trust hereunder (the "Original Trust"), whether by the terms of this Agreement any other agreement, or the Will of any person, my Trustee may hold such property as one or more separate trusts on terms identical to the terms of the Original Trust. My Trustee may allocate such property among the separate trusts (if any) into which the Original Trust was divided, whether or not pro-rata, using specific assets or

undivided interests therein (including allocation of all such property to one of such separate trusts).

C. Any time during the existence of separate trusts created by division of a trust hereunder, my Trustee may exercise all discretionary powers differently with respect to the separate trusts and take all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to such separate trusts may exercise such power differently with respect to each such trust.

**Section 3.7. - Consolidation of Trusts**

If at any time after my death there is in existence a trust under my Will or any trust agreement created by me having identical beneficiaries and substantially the same terms as any trust under this Agreement, my Trustee may terminate the trust hereunder and transfer the assets thereof to the trustees of such other trust having such identical beneficiaries and substantially the same terms, to be administered by the trustees thereof. Different termination dates under the applicable Rule Against Perpetuities shall not be deemed a difference in the terms of such trusts, but the portion of the trust representing the transferred assets shall retain the same termination date as the Original Trust.

**Section 3.8. - Termination of Trusts**

Notwithstanding anything herein, any trust created hereunder for any person shall (unless terminated earlier) terminate upon the day preceding the expiration of the maximum period permitted under the Rule Against Perpetuities as applied under the laws of **[the State of New California][the Territory of the United States Virgin Islands]**, for the vesting of an interest in a trust and upon such date the assets of such trust shall be distributed to such person.

**Section 3.9. - Equitable Adjustment**

If my Trustee decides to exercise or not exercise any fiduciary power granted by this Agreement or by law (including, without limitation, any election available to my Trustee) and the exercise or nonexercise of such power confers a benefit on one Beneficiary or class of Beneficiaries hereunder and imposes a detriment upon another Beneficiary or class of Beneficiaries hereunder, my Trustee shall not attempt to restore the interests of the Beneficiaries or classes of Beneficiaries to the position otherwise contemplated by this Agreement through adjustment between income and principal or otherwise.

**Section 3.10. - Lapsed Distribution**

Except as otherwise specifically provided in this Agreement, a provision for distribution to an individual who is not surviving at the date such individual otherwise becomes eligible for such distribution shall lapse notwithstanding any law to the contrary.

**Section 3.11. - Notice**

Any notice required hereunder shall be delivered personally or sent by first class or certified mail addressed to the last known address of the intended recipient.

**Section 3.12. - Termination of Trust**

An instrument in writing completely revoking this Agreement prior to my death shall, without more, upon delivery to my Trustee, completely terminate all of my Trustees' right, title, and interest to any life insurance proceeds, death benefits, pension, profit sharing, or other retirement benefits or any other assets otherwise payable to my Trustee.

**Article IV Powers of My Trustee**

The provisions of this Article IV shall apply to my Trustee.

**Section 4.1. - Exercise of Judgment and Powers**

The trustee of each trust hereunder, or any successor trustee thereof, has the entire care and custody of all assets of such trust. Each such trustee has the power to do everything such trustee in good faith deems advisable, provided that such trustee does so in accordance with the provisions of this Agreement, without necessity of any judicial authorization or approval, even though but for this power it would not be authorized or appropriate for fiduciaries under any statutory or other rule of law. Each such trustee shall exercise such trustee's best judgment and discretion for what such trustee believes to be in the best interests of such trust and the Beneficiaries of such trust. If more than two trustees are empowered as trustees under any provisions of this Agreement to participate in the decision to exercise or not exercise any fiduciary power granted by this Agreement or by law, a majority of such trustees shall be empowered to make such decision. If two trustees are so empowered, such decision must be made unanimously by both trustees so empowered.

**Section 4.2. - Compensation of Trustees**

Each trustee serving as My Trustee hereunder shall be compensated (including, without limitation, the payment of commissions and all other applicable compensation) for serving as my Trustee to the full extent provided under the law of **[the State of California][the Territory of the United States Virgin Islands]**. In addition, each trustee serving as my Trustee hereunder shall be reimbursed for all reasonable costs, expenses, charges, and liabilities reasonably incurred or paid in connection with acting as trustee or performing services hereunder, including, but not limited to, reasonable fees and expenses of counsel or any other agents reasonably hired by my Trustee, and my Trustee shall not be liable therefor individually. My Trustee has discretion hereunder to pay such compensation and reimbursements from trust assets, without obtaining judicial authorization or approval.

**Section 4.3. - General Investment Powers**

A. Except as otherwise provided in this Agreement, and subject to Section 4.1 hereof, each trustee of any trust created hereunder has the power with respect to such trust:

1. To enter upon and take possession of the assets of such trust and collect the income and profits from such assets, and to invest and reinvest such assets in real,

personal, or mixed assets (including the common trust funds of a corporate fiduciary) or in undivided interests therein without being limited by any present or future investment laws;

2. To retain all or any part of the assets of such trust (without regard to the proportion that any one asset or class of assets may bear to the whole) in the form in which such assets were received or acquired by such trustee;

3. To sell or dispose of, exchange, transfer, invest, or loan all or any part of the assets of such trust which such trustee holds, at any time, for such sums or upon such terms as to payment, security, or otherwise as such trustee determines, either by public or private transactions;

4. To buy and sell options, warrants, puts, calls or other rights to purchase or sell (collectively called "options") relating to any security or securities, regardless of whether such security or securities are then held by such trustee, and whether such options are purchased or sold on a national securities exchange, and to exercise with respect to such options all powers which an individual owner thereof could exercise, including, without limitation, the right to allow the same to expire;

5. With respect to oil, natural gas, minerals, and all other natural resources and rights to and interests therein (together with all equipment pertaining thereto) including, without limiting the generality of the foregoing, oil and gas royalties, leases, or other oil and gas interests of any character, whether owned in fee, as lessee, lessor, licensee, concessionaire or otherwise, or alone or jointly with others as partner, joint tenant, or joint venturer in any other noncorporate manner, (a) to make oil, gas and mineral leases or subleases; (b) to pay delay rentals, lease bonuses, royalties, overriding royalties, taxes, assessments, and all other charges; (c) to sell, lease, exchange, mortgage, pledge or otherwise hypothecate any or all of such rights and interests; (d) to surrender or abandon, with or without consideration, any or all of such rights and interests; (e) to make farm-out, pooling, and unitization agreements; (f) to make reservations or impose conditions on the transfer of any such rights or interests; (g) to employ the most advantageous business form in which properly to exploit such rights and interests, whether as corporations, partnerships, limited partnerships, mining partnerships, joint ventures, co-tenancies, or otherwise exploit any and all such rights and interests; (h) to produce, process, sell or exchange all products recovered through the exploitation of such rights and interests, and to enter into contracts and agreements for or in respect of the installation or operation of absorption, reprocessing or other processing plants; (i) to carry any or all such interests in the name or names of a nominee or nominees; (j) to delegate, to the extent permitted by law, any or all of the powers set forth herein to the operator of such property; and (k) to employ personnel, rent office space, buy or lease office equipment, contract and pay for geological surveys and studies, procure appraisals, and generally to conduct and engage in any and all activities incident to the foregoing powers, with full power to borrow and pledge in order to finance such activities; together with the power to allocate between principal and income any net proceeds received as consideration, whether as royalties or otherwise, for the permanent severance from lands of oil, natural gas, minerals, and all other natural resources;

6. To hold all or any part of the assets of such trust in cash or in bank accounts without the necessity of investing the same; of such trust;
7. To improve, repair, partition, plat, or subdivide all or any part of the assets of such trust;
8. To litigate, defend, compromise, settle, abandon, or submit to mediation or arbitration on such terms and conditions as such trustee determines any claims in favor of or against such trust or the assets of such trust;
9. To loan or borrow money in such amounts and upon such terms and conditions as such trustee determines, assume such obligations or give such guarantees as such trustee determines, for the purpose of the acquisition, improvement, protection, retention, or preservation of the assets of such trust, or for the benefit of any of the Beneficiaries who are entitled or permitted to receive income from such trust;
10. To create or invest in any entity with all or part of the assets of such trust and to carry on for as long and in such manner as such trustee determines any business enterprise held or created by such trustee or in which I owned any interest at my death, either individually or as a partner, joint venturer, stockholder, trust beneficiary, or member; to sell such business enterprise as an ongoing business; to consolidate, merge, encumber, dissolve, liquidate or undertake any other extraordinary corporate transaction relating to such business enterprise;
11. To vote in person or by proxy any and all stock or securities and to become a party to any voting trusts, reorganization, consolidation, or other capital or debt readjustment of any corporation, association, partnership, limited liability partnership, limited liability company, or individual with respect to stocks, securities, or debts held by such trust;
12. Except as provided in Sections 4.3B, C, and D of this Article IV, to enter into any good faith transactions with any trustee of any trust created hereunder, including such trustee, individually or with any corporation, partnership, limited liability partnership, limited liability company, or other entity in which any such trustee has an ownership interest;
13. To purchase from my estate any stocks, bonds, securities, real or personal property, or other assets, or make loans to my estate;
14. To lease, mortgage, pledge, grant a security interest in, or otherwise encumber all or any part of the assets of such trust for any term of years whether or not beyond the term of such trust (including, without limitation, any such action for the benefit of any of the beneficiaries of such trust);
15. To abandon any property of such trust, real or personal, which such trustee may deem worthless or not of sufficient value to warrant keeping or protecting; to abstain from the payment of taxes, water rents or assessments and to forego making repairs, maintaining or keeping up any such property; and to permit such property to be lost by tax sale or other proceedings or to convey any such property for a nominal consideration or

without consideration so as to prevent the imposition of any liability by reason of the continued ownership thereof;

16. To elect the mode of distribution of the proceeds from any profit-sharing plan, pension plan, employee benefit plan, individual retirement plan, insurance contract, or annuity contract pursuant to the terms of such plan or to change to another custodian of such plan;

17. To conduct any audit, assessment, or investigation with respect to any asset of such trust regarding compliance with any law or regulation having as its object protection of public health, natural resources, or the environment (referred to as "Environmental Laws"); to pay from the assets of such trust to remedy any failure to comply with any Environmental Law (even to the exhaustion of all of the assets of such trust); and, as may be required in such trustee's judgment by any Environmental Law, to notify any governmental authority of any past, present, or future non-compliance with any Environmental Law; and

18. To refuse to accept any asset distributable to such trust.

B. No trustee of any trust created hereunder shall directly or indirectly buy or sell any property for the trust from or to himself or herself, or from or to his or her relative, employer, employee, partner or other business associate.

C. No trustee of any trust created hereunder shall as trustee of such trust buy or sell property to or from himself or herself as trustee of another trust.

D. No trustee of any trust created hereunder shall lend trust funds to himself or herself, or to his or her relative, employer, employee, partner, or other business associate.

#### **Section 4.4. - Administrative Powers**

Except as otherwise provided in this Agreement, each trustee of a trust created hereunder shall have the power with respect to such trust:

A. To employ agents, attorneys-at-law, consultants, investment advisers (to whom such trustee shall have discretion to delegate such trustee's investment authority and responsibility), other trustees and other fiduciaries in the administration of such trustee's duties, to delegate to such persons, or to one or more other persons serving as a trustee hereunder, the custody, control, or management of any part of the assets of such trust as such trustee determines and to pay for such services from the assets of such trust, without obtaining judicial authorization or approval;

B. To delegate, in whole or in part, to any person or persons the authority and power to (1) sign checks, drafts or orders for the payment or withdrawal of funds, securities and other assets from any bank, brokerage, custody or other account in which funds, securities or other assets of such trust shall be deposited, (2) endorse for sale, transfer or delivery, or sell, transfer or deliver, or purchase or otherwise acquire, any and all property, stocks, stock warrants,

stock rights, options, bonds or other securities whatsoever, (3) gain access to any safe deposit box or boxes in which assets of such trust may be located or which may be in the name of such trustee and remove part or all of the contents of any such safe deposit box or boxes and release and surrender the same, and (4) take any other action that such trustee may have the power to take with respect to such trust and the property thereof; no person or corporation acting in reliance on any such delegation shall be charged with notice of any revocation or change of such delegation unless such person or corporation receives actual notice thereof;

C. To pay any property distributable to a Beneficiary under a legal disability or who has not attained the age of 21, without liability to such trustee, by paying such property to such Beneficiary, (2) for the use of such Beneficiary, (3) to a legal representative of such Beneficiary appointed by a court or if none, to a relative for the use of such Beneficiary, or (4) to a custodian for such Beneficiary designated by such trustee, to hold until age 21 or such earlier age as shall be the maximum permitted under applicable law;

D. To divide such trust into subsidiary accounts if such trustee determines that such division is necessary to maintain fair and accurate records;

E. To distribute to such trust or any of the Beneficiaries of such trust in kind or in cash, or partly in kind and partly in cash, and to allocate different kinds or disproportionate shares of assets or undivided interests in assets among all of such trusts or all of such Beneficiaries;

F. In making the division into one or more trusts hereunder (if such trusts have the same trustees), to keep the assets of such trusts invested and handled as a single fund without actual division and to designate such trusts on such trustees' books as owning a designated undivided interest in such fund;

G. To have evidence of ownership of any security maintained in the records of a Federal Reserve Bank under the Federal Reserve Book Entry System; to deposit funds in any bank or trust company; to carry in the name of such trustee or the nominee or nominees of such trustee and with or without designation of fiduciary capacity, or to hold in bearer form, securities or other property requiring or permitting of registration; and to cause any securities to be held by a depository corporation of which such trustee is a member or by an agent under a safekeeping contract; provided, however, that the books and records of such trustee shall at all times show that such investments are part of such trust;

H. To register or not register such trust with the probate division of the Superior Court of **[the State of California][the United States Virgin Islands]** or otherwise and to make all decisions which relate thereto;

I. To give any Beneficiary of any trust hereunder a general power of appointment exercisable in such Beneficiary's Will over all or part of such trust, subject to any terms and conditions as such trustee determines, by written notice to such Beneficiary; to eliminate any such power of appointment by written notice to the Beneficiary; and to irrevocably release the power under this paragraph to give a power of appointment or to eliminate a power of appointment;

J. To renounce and disclaim, in whole or in part, and in accordance with applicable law, any assets, interests, rights, or powers (including any power of appointment) which are payable to (or exercisable by) such trust or over which such trustee has any right, title, interest, or power; and

K. To make, execute, and deliver any and all such instruments in writing as shall be necessary or proper to carry out any power, right, duty, or obligation of such trustee or any disposition whatsoever of such trust or any asset of such trust and to exercise any and all other powers incidental or necessary to carry out or to fulfill the terms, provisions and purposes of such trust.

**Section 4.5. - Restrictions on Exercise of My Trustee's Powers**

A. Notwithstanding any provision of this Agreement to the contrary, no trustee of a trust created hereunder shall participate in a discretionary decision to exercise or not exercise any fiduciary power to distribute income from or principal of any trust hereunder to himself or herself or the spouse thereof.

B. Any trustee of a trust created hereunder may by a written notice delivered to the other trustee (or trustees) of such trust decline to participate in the decision to exercise or not exercise any fiduciary power granted by this Agreement or by law.

C. If a trustee of any trust hereunder is not empowered (because of a conflict of interest, declination to act or otherwise) to participate in the decision to exercise or not exercise any fiduciary power granted by this Agreement or by law, then the remaining trustee or trustees of such trust shall be empowered to make such decision. If no other trustee or successor trustee is empowered to participate in such decision, the trustee of such trust may designate a substitute trustee to serve as trustee of such trust who shall be empowered to make such decision but has no other power or authority of the trustees of such trust. Such designation shall be by written notice delivered to such substitute trustee.

**Article V Provisions Concerning Trustees**

The provisions hereof shall apply to my Trustee.

**Section 5.1. - Successor Trustees**

In the event a trustee of any trust hereunder dies, becomes incapacitated or is unwilling or is unable to serve, while I am alive, I shall have the right to appoint a successor trustee of such trust. In the event [DARREN K. INDYKE] or [RICHARD D. KAHN] does not survive me, resigns, is removed, becomes incapacitated or is unwilling or is otherwise unable to serve as my Trustee, [Designate one or more Successor Trustees] shall be appointed the successor trustee of this Trust in place of such trustee. [You may also specify an order of priority if more than one successor trustee is desired]. In the event that any trustee resigns, is removed, becomes incapacitated or is unwilling or otherwise unable to serve as my Trustee, and there are no remaining successor trustees that have been designated pursuant to this Section 5.1 who are willing or able to serve as my Trustee, then the trustees who are then still serving as my Trustee,

if any, shall designate a successor trustee to fill the vacancy created by such resignation, removal, incapacity, or unwillingness or inability to serve.

**Section 5.2. - Appointment of Trustee**

The appointment of a successor trustee hereunder shall become effective when such successor trustee signs an acceptance of the trust to which such successor trustee is appointed.

**Section 5.3. - Resignation of Trustees**

Any trustee hereunder may resign at any time, without the approval of any court, by an instrument in writing filed with the trust records. In addition, if there is filed with the trust records a written certification from any attending physician of any individual trustee of a trust hereunder that he or she is no longer able to make decisions with respect to such trust, then from the date of filing of such certification, such individual trustee shall be deemed to have resigned for all purposes of this Agreement.

**Section 5.4. - Vacancy in Office**

If the last remaining trustee of a trust hereunder dies or cannot or will not act as trustee of any trust hereunder and if no successor trustee is designated pursuant to Section 5.1 who is able or willing to act, then a successor trustee shall be named by order of a court of competent jurisdiction. All of the fees and expenses of any trustee (including attorneys' fees) attributable to the appointment of a successor trustee of a trust shall be paid from the assets of such trust.

**Section 5.5. - Elimination of Bond**

No bond or other security shall be required of any trustee of any trust hereunder in any jurisdiction.

**Section 5.6. - Exculpation and Indemnification of Trustees**

No one serving as the trustee of any trust under this Agreement shall be accountable or responsible to any person interested in any trust hereunder for the manner in which such trustee shall in good faith exercise any discretionary authority or any power of such trustee. No one serving as the trustee of any trust under this Agreement shall be liable for any loss or depreciation in value occasioned by reason of any negligence, error or mistake of judgment in entering into any transaction, in making any sale or investment, in continuing to hold any property, or by reason of any action or omission, whether by such trustee or any other fiduciary, unless such trustee has acted in bad faith. In the absence of proof by affirmative evidence to the contrary, each trustee of any trust under this Agreement shall be deemed to have acted within the scope of such trustee's authority hereunder, to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all interested persons. No trustee of any trust hereunder shall be liable for the acts or defaults of any other trustee of any trust hereunder.

In the event a legal action is brought against any individual serving as trustee of any trust under this Agreement, all legal fees and related expenses incurred in connection with the defense of such legal action shall be paid by such trust without court authorization; provided, however, that (a) no such payment shall (or shall continue to) be made if a court enters an order prohibiting such payment, and (b) such trustee shall refund to the trust any such payments that previously had been made if a court enters an order directing that such payments be refunded, or if a court concludes that such trustee acted in bad faith.

## **Article VI    Miscellaneous Provisions**

### **Section 6.1.    - Representation of Person Under a Disability**

To the extent allowed by law, where a party to any proceeding with respect to any trust hereunder has the same interest as a person under a disability, legal process shall not be required on the person under a disability.

### **Section 6.2.    - Simultaneous Deaths**

If a Beneficiary under this Agreement and I die simultaneously or under such circumstances that it is difficult to determine who died first, then for all purposes of this Agreement such Beneficiary shall be deemed to have predeceased me.

### **Section 6.3.    - Law Governing**

This Agreement and each trust created by it shall in all respects and for all purposes be governed and regulated by the laws of **[the State of California][the Territory of the United States Virgin Islands]**, as they now exist and may from time to time be enacted, amended, or repealed. All questions regarding the validity, construction and administration of this Agreement, or any of its provisions, and of any trust created by it shall be determined solely by the laws of **[the State of California][the Territory of the United States Virgin Islands]**. The courts of **[the State of California][the Territory of the United States Virgin Islands]** shall have primary supervision over the administration of each trust created by this Agreement.

Notwithstanding anything to the contrary in this Agreement, subject to Section 4.1 hereof, any trustee of any trust created under this Agreement shall have discretion at any time or times following my death to transfer the situs of such trust to such other country, or such other jurisdiction as such trustee determines, without obtaining judicial authorization or approval (unless such judicial authorization or approval is required by applicable law) and without the filing of any bond. Such determination to transfer the situs of any trust under this Agreement shall be evidenced by an instrument in writing signed, witnessed and acknowledged by the trustees of such trust in the same manner as would be required for a deed. The trustees of such trust are authorized to take whatever actions are necessary to effect such a transfer of situs. If judicial authorization or approval is required to effect such a transfer of situs, I intend and desire that the appropriate court accept the determination of such trustee concerning the transfer of the

situs of such trust even if one or more Beneficiaries disagree with such determination. From and after the transfer of the situs of such a trust pursuant to this Section 6.3 of this Article VI, the administration of such trust shall be governed by the law of the new situs of such trust.

**Section 6.4. - Definition of Terms**

Except as otherwise specifically provided herein, as used in this Agreement,

A. The term "trustee", including "my Trustee", refers to such persons in their capacity as trustee of any trust hereunder while such persons occupy such office, whether one or more persons occupy the office of trustee at the same time or times, and includes any successor trustee or trustees. The term "Executor" of a person's estate means all persons who occupy the office of personal representative, administrator, executor, or ancillary administrator while such persons occupy such office, whether one or more persons occupy such office at the same time or times, and includes any successor or successors to that office. A reference to a person's Will means such person's Last Will and Testament and any Codicil or Codicils thereto.

B. A reference to any tax also includes any interest or penalties thereon. The term "my Gross Estate" means my gross estate as finally determined for purposes of computing my federal estate tax.

C. Whenever the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

**Section 6.5. - No Contest**

If any Beneficiary under this Agreement shall in any way directly or indirectly (a) contest or object to the probate of my Will or to the validity of any disposition or provision of my Will or of this Agreement or (b) institute or prosecute, or be in any way directly or indirectly instrumental in the institution or prosecution of, any action, proceeding, contest, objection or claim for the purpose of setting aside or invalidating my Will or this Agreement or any disposition therein or herein or provision thereof or hereof, then I direct that (aa) any and all provisions in this Agreement for such Beneficiary and his or her issue in any degree shall be null and void and (bb) my estate, whether passing under my Will or this Agreement or pursuant to the laws of intestacy, shall be disposed of as if such Beneficiary and his or her issue in any degree had all failed to survive me.

**Section 6.6. - Trustee Notice**

Each trustee of any trust created under this Agreement may have duties and responsibilities in addition to those described in this Agreement. If any such trustee has questions regarding such trustee's duties and obligations, such trustee should obtain legal advice.



