

U.S. Trust Comments to Leon Black Revocable Trust.

Comment 3.1

Since most of Leon's art is owned in entities (Narrows Holdings I and Narrows Holdings II), I assume you will need a specific disposition of those entity interests so that such interests pass (i) to the Marital Trust if Debra survives Leon or (ii) *per stirpes* to Leon's issue subject to the trusts held under the Black 2006 Family Trust if Debra predeceases Leon. As drafted, these LLC interests would pass as part of the residuary trust fund : 1/2 to the CLATs and 1/2 *per stirpes* to Leon's issue subject to the trusts under the 2006 Family Trust.

Comment 6.1

Since you anticipate that Leon will not fund his revocable trust during his lifetime, if Debra survives, consider disposing of tangibles and residences under the Will so that title does not need to be changed twice—once to the Trustees of the Revocable Trust and again to the Marital Trust or Debra.

Comment 6.2

Include in the definition of residences, interests in any entity that owns a residence used by Leon as a personal residence?

Comment 7.1

I understood that the impetus for Leon giving half his estate to charity if Debra predeceases is that he felt his children had already received enough assets. If that is so, why not simply leave Share A to the Black Family Foundation, rather than create four separate CLATs? I think we should raise this with Leon.

Riders to Page 22:

22.1

or at the time of the Settlor's death if DEBRA shall survive the Settlor.

22.2

(the "Issue's Share") shall be further subdivided into two separate shares according to value: (1) one share consisting of that portion of the Issue's Share having a fair market value at the time of division substantially equal to seventy-five percent (75%) of the total fair market value of the Issue's Share (Share A), and (2) one share consisting of the balance of the Issue's Share ("Share B").

Wednesday, August 22, 2012

Comment 23.1

Consider including provisions giving the Trustees absolute discretion to select which specific items of property will be included in Share A versus Share B. Consider also whether Leon wants to give them any guidance in this regard or would like the Trustees to consult with the children before making the division. For example, a child may prefer to have income producing assets held in the Share B trust and to have Works of Art (or LLC interests holding the art) held in the Share A trust.

Comment 38.1

If the removing individual is also a beneficiary of the trust, do you not need to always require that a replacement Trustee selected by such individual be an independent Trustee (whether or not the removed Trustee was independent)?

Comment 40.1

Does Leon want to limit compensation so that Barry, John and Richard do not receive double compensation in any year (i.e., \$500,000) for acting as both an Executor and a Trustee?

IMPORTANT: This brief summary of planning ideas is for discussion purposes only. It does not contain legal, tax, investment, or insurance advice and cannot be relied upon for implementation and/or protection from penalties. Always consult with your independent attorney and tax advisor for legal and tax advice.

IRS Circular 230 Disclosure: Pursuant to IRS Regulations, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used by any person or entity for the purpose of (i) avoiding tax related penalties imposed by any governmental tax authority or agency, or (ii) promoting, marketing or recommending to another party any transaction or matter discussed herein. We advise you to consult with an independent tax advisor on your particular tax circumstances.

**THE LEON D. BLACK 2012 REVOCABLE
TRUST AGREEMENT**

Dated: _____

Prepared by
McDermott Will & Emery LLP
New York, New York

member or members) and in such amounts or proportions as the Independent Trustees, in their sole discretion, shall determine. Payments or applications pursuant to this subsection may be made at any time or from time to time, for any reason or purpose whatsoever. In exercising the discretion granted in this subsection, the Independent Trustees need not, but may, consider such of the financial resources apart from the Trust as they deem appropriate of such class member or members.

(3) The Settlor confirms that the entire Trust Fund may be distributed at any time to or for the benefit of any one or more of the class members pursuant to this section, even though such distribution terminates the Trust, and without regard to the interest of any remainderman of the Trust.

(4) If the Settlor is under a disability, the Trustees shall pay any portion of the Trust Fund that the Independent Trustees determine is appropriate to or for the benefit of those individuals to whom the Settlor customarily made periodic gifts prior to the Settlor's disability. Such payments shall be consistent with the amounts that the Settlor customarily gave to such individuals and may be made outright or to any of the trusts that the Settlor or any of the Settlor's issue has established for such individuals during the Settlor's life. In addition, the Trustees shall pay such additional amounts from the Trust Fund to or for the benefit of any one or more individuals to or for whose benefit a gift is to be made under this Trust Agreement at the Settlor's death as modified by any power of appointment exercisable by the Settlor and delivered to the Trustees pursuant to section (E) that the Independent Trustees determine, in their sole discretion, (a) will not jeopardize the comfort and well being of the Settlor and DEBRA, (b) are consistent with the pattern of dispositions directed to be made by this Trust Agreement at the Settlor's death as modified by any power of appointment exercised by the Settlor and delivered to the Trustees pursuant to section (E), and (c) will meaningfully reduce the estate taxes that would otherwise be payable at the death of the Settlor or at the death of the survivor of the Settlor and DEBRA. Such payments may be made outright to any of such individuals or to any trust of which any combination of such individuals, the issue of such individuals and the Settlor are the primary beneficiaries.

(C) *Accumulation of Income.* At the end of each year, the Trustees shall add to principal any net income not paid or applied pursuant to the 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 property in the form received.

or beneficiary designation

(E) *Power of Appointment.* The Settlor shall have the absolute power to appoint any part or all of the Trust Fund remaining at the Settlor's death, together with any property distributed or distributable to the Trustees upon the Settlor's death, to or for the benefit of any one or more Persons including the Settlor's estate and the creditors of the Settlor's estate in such amounts and proportions, either outright or in further trust, upon such terms and conditions (including the granting to the appointee of a further and general or limited power of appointment), as the Settlor shall determine. The Settlor may exercise this power of appointment either (i) by written instrument that is delivered to the Trustees at a time when the Settlor is competent, which makes specific reference to this section, and which is signed and acknowledged by the Settlor or (ii) by a provision in the Settlor's Will that makes specific reference to this section. Any appointment made by such exercise shall be effective on the date of the Settlor's death.

(F) *Trust Termination.* Unless sooner terminated by the distribution of the entire Trust Fund, the Trust shall terminate upon the death of the Settlor. Upon such termination, the Trustees shall dispose of the Trust Fund, together with any property distributed or distributable to the Trustees upon the Settlor's death, to the extent not effectively appointed by the Settlor pursuant to the power of appointment granted under this Article, pursuant to the subsequent provisions of this Trust Agreement.

Comment 3.1

III: TANGIBLE PERSONAL PROPERTY

(A) *Works of Art.* (1) If DEBRA survives the Settlor, the Trustees shall hold all of the Settlor's works of art that are valued at more than TWENTY-FIVE THOUSAND (\$25,000) DOLLARS for federal estate tax purposes, the Settlor's collection of first edition books and the Settlor's collection of canes (including cane stands and glass canes) in as many separate Trusts, each upon the terms set forth in Article VIII, as the Trustees, in their sole discretion, shall determine. This provision shall apply to any works of art valued at more than TWENTY-FIVE THOUSAND (\$25,000) DOLLARS for federal estate tax purposes and any

items of the Settlor's first edition book and cane collections that are held in any Entity the equity interests of which are owned by the Settlor.

(2) (a) If DEBRA does not survive the Settlor, the Trustees shall sell such portion of the property described in subsection (1) as they deem appropriate, and shall dispose of the proceeds of sale pursuant to the subsequent Articles of this Trust Agreement. The Trustees shall divide any of the property described in subsection (1) that they have not sold pursuant to the preceding sentence into shares of substantially equal value as the Independent Trustees, in their sole discretion, shall determine, so that there is (i) one (1) share for each of the Settlor's Children who survive the Settlor and (ii) one (1) share for the issue (taken collectively) of each Child of the Settlor who does not survive the Settlor but has issue who survive the Settlor, and shall set aside one (1) such share for each such Child of the Settlor. The Trustees shall further divide each share set aside for a Child of the Settlor who does not survive the Settlor into as many shares of substantially equal value as there are children of such Child of the Settlor who survive the Settlor, and shall set aside one (1) such share for each of them. The Trustees shall dispose of each share so set aside ^{for} an issue of the Settlor for his or her benefit ~~as provided in~~ ^{Pursuant to} Article XII(I).

(b) If DEBRA does not survive the Settlor, the Settlor requests (but does not require) that the Independent Trustees take into account the Settlor's wishes as to how the property described in subsection (1) should be divided among the Settlor's issue as may be set forth in a letter from the Settlor that is delivered to the Trustees during the Settlor's lifetime.

(B) ***Disposition of Remaining Tangible Personal Property.*** (1) The Trustees shall distribute all of the Settlor's tangible personal property not disposed of by section (A) to DEBRA, if DEBRA survives the Settlor. If DEBRA does not survive the Settlor, the Trustees shall dispose of such tangible personal property:

(i) by distributing to those of the Settlor's Children who survive the Settlor so much or all of such property, and in such amounts or proportions (if the Settlor is survived by more than one such child), as the Independent Trustees, in their sole discretion, shall determine; and/or

(ii) by selling all of such property that is not disposed of pursuant to clause (i) of this sentence and distributing the proceeds of sale to those of the Settlor's Children who

survive the Settlor, and in such amounts or proportions (if the Settlor is survived by more than one such child), as the Independent Trustees, in their sole discretion, shall determine; provided that if more than one of the Settlor's Children survives the Settlor, the combined value of all items and proceeds of items of such property distributed to each Child of the Settlor pursuant to this subsection shall be equal (or as nearly equal as practicable) to the combined value of all items and proceeds of sales of items of such property distributed to every other Child of the Settlor pursuant to this subsection, and provided, further, that notwithstanding the foregoing, any property distributable to any Child of the Settlor under this subsection may, in the sole discretion of the Independent Trustees, be disposed of for his or her benefit pursuant to Article XII(I).

(2) If DEBRA does not survive the Settlor, the Settlor requests (but does not require) that the Trustees consult with the Settlor's Children who survive the Settlor before making the dispositions provided for in this section, and that in making such dispositions, the Independent Trustees take into account any preferences that the Settlor's Children who survive the Settlor may express.

(3) If neither DEBRA nor any of the Settlor's Children survive the Settlor, the Trustees shall sell all of such tangible personal property, except to the extent the Trustees believe that it would be in the best interests of the beneficiaries of the balance of the Trust Fund of the Trust under Article II disposed of under Article VI (or any one or more of them) to retain any one or more items of such tangible personal property. The Trustees shall dispose of the proceeds of sale and any unsold tangible personal property pursuant to the subsequent provisions of this Trust Agreement.

(C) *Definition of Tangible Personal Property.* (1) For purposes of this Article, the term "the Settlor's tangible personal property" shall include, but not be limited to, the clothing, jewelry, personal effects, books, automobiles, household furniture and furnishings, silverware, china, works of art, and all other items of tangible personal property that are held by or given to the Trustees of the Trust under Article II at the Settlor's death, together with all insurance policies thereon, if any, but shall exclude cash and coins that do not have numismatic value and gold and other precious metals and minerals that are held for investment purposes rather than for personal use.

yachts, aircraft

an aesthetic or artistic creation, such as

(2) For purposes of this Trust Agreement, the term "works of art" shall mean paintings, drawings, pictures and sculptures, including archaic Chinese bronzes and Chinese terra cotta figures. The Independent Trustees, in their sole discretion, shall determine whether any particular item of the Settlor's tangible personal property is a "work of art" and such decision shall be binding and conclusive upon all Persons who may in any way be affected thereby.

(D) *Expenses.* The Trustees shall pay, as an administration expense, the reasonable expenses of storing, insuring, packing, and shipping the Settlor's tangible personal property, and of delivering each item to the appropriate beneficiary.

IV: RESIDENTIAL PROPERTY

Comment 6.1

(A) *Disposition if DEBRA Survives the Settlor.* The Trustees shall distribute to DEBRA, if DEBRA survives the Settlor, all of the right, title, and interest in and to any residence that is held by or given to the Trustees of the Trust under Article II at the Settlor's death that DEBRA or the Settlor use as a permanent or occasional residence, together with all policies of insurance thereon. 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).

Comment 6.2

(B) *Disposition if DEBRA Does Not Survive the Settlor.* If DEBRA does not survive the Settlor, the Trustees shall sell the property described in section (A), except to the extent the Trustees believe that it would be in the best interests of the beneficiaries of the balance of the Trust Fund of the Trust under Article II disposed of under Article VI (or any one or more of them) to retain any one or more of such properties. The Trustees shall dispose of the proceeds of sale and any unsold residential property pursuant to the subsequent provisions of this Trust Agreement.

V: GENERAL GIFTS

(A) *Cash Gifts.* (1) If DEBRA survives the Settlor, the Trustees shall distribute to DEBRA, outright and not in trust, an amount equal to the difference between the sum of TWENTY-FIVE MILLION DOLLARS (\$25,000,000) and the proceeds of any life insurance policies DEBRA receives as a result of the Settlor's death.

outright ?
6 0

(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 for JUDY's benefit upon the terms set forth in Article IX.

(B) *Gift of Generation-Skipping Tax Exempt Amount.* (1) The Trustees shall distribute an amount equal to the Generation-Skipping Tax Exempt Amount to the trustees then in office of the BLACK FAMILY 1997 GST EXEMPT TRUST, who shall add such property to the principal of such trust and dispose of the same therewith.

(2) The Generation-Skipping Tax Exempt Amount, as defined more precisely in Article XX(A)(14), is approximately equal to the largest amount that can be protected from the generation-skipping transfer tax by the allocation of the Settlor's remaining GST exemption.

VI: BALANCE OF TRUST FUND

The Trustees shall distribute the balance of the Trust Fund of the Trust under Article II remaining after the dispositions in Articles III, IV and V and after making the payments required to be made from such balance under Article VII (hereinafter the "Trust Fund Balance") as follows:

(A) *Disposition if DEBRA Survives the Settlor.* If DEBRA survives the Settlor, the Trustees shall hold the Trust Fund Balance in a separate Trust for DEBRA's benefit, upon the terms set forth in Article VIII.

(B) *Disposition if DEBRA Does Not Survive the Settlor.* If DEBRA does not survive the Settlor, the Trustees shall divide the Trust Fund Balance into two (2) equal shares, Share A and Share B, which shall be distributed as follows: ✓

(1) The Trustees shall divide Share A into as many separate 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 (each such share being referred to herein as a "Share A Subshare"). The Trustees shall hold each Share A Subshare in a separate Trust upon the terms set forth in Article X.

(2) The Trustees shall divide Share B into shares of the same number and size into which such property would have been divided if the Trustees had been directed to distribute such property to the Settlor's issue who survive the Settlor. The Trustees shall set aside for each issue of the Settlor who survives the Settlor and who would have received a share of such

Handwritten notes:
A circled 'U' with an arrow pointing to the word 'Survive' in paragraph (B).
A checkmark to the right of paragraph (B).
The handwritten phrase "Comment 7.1" written below paragraph (B).
The handwritten phrase "per step 2" written above paragraph (2).
The handwritten word "Surviving" written below paragraph (2).

Article 6

qualify for the federal estate tax marital deduction, the Trustees shall use such property: (1) to pay the Settlor's Death Taxes due upon or in connection with any property described in the first sentence of section (A)(1); (2) to pay the Settlor's debts, funeral expenses and the administration expenses of the Settlor's estate that the Settlor's Personal Representatives request in writing from the Trustees pursuant to section (B); and (3) to satisfy the Settlor's other general gifts, if any, to or for the benefit of persons other than DEBRA. The Trustees shall pay the balance of such property to the trustees then serving under the BLACK 2006 FAMILY TRUST AGREEMENT, who shall add the same to the principal of the BLACK 2006 FAMILY TRUST and dispose of the same as provided in the BLACK 2006 FAMILY TRUST AGREEMENT. By including this section in the Trust Agreement, the Settlor does not intend to indicate that any of the property that the Settlor or the Trustees of the Trust under Article II now owns or that the Settlor expects to acquire in the future or that the Settlor expects such Trustees to hold in the future is property that, by its nature, cannot qualify for the federal estate tax marital deduction. Notwithstanding the foregoing provisions of this section, if chapter 11 of the Code does not apply to the Settlor's estate for any reason, the reference in this section to "the Settlor's gross estate for federal estate tax purposes" shall be read instead as a reference to "the Settlor's gross estate for state estate tax purposes" and each reference in this section to "the federal estate tax marital deduction" shall be read instead as a reference to "any state estate tax marital deduction."

(E) *Income in Respect of Decedent.* To the extent possible, the gift of the Trust Fund Balance disposed of under Article VI(A) shall be funded with rights to items of gross income in respect of a decedent within the meaning of § 691(a) of the Code.

(F) *Finality of Elections.* Subject to the overriding provisions of Article XIV, any decision by the Trustees with respect to any allocation or election authorized by this Trust Agreement or by law shall be binding and conclusive upon all Persons who may in any way be affected thereby, regardless of whether the effect of any such allocation or election is to benefit one or more of such Persons to the detriment of any one or more of such Persons.

VIII: THE DEBRA R. BLACK MARITAL TRUST

Following are the dispositive terms of the Trust directed to be held upon the terms set forth in this Article. Such trust shall be known as the "DEBRA R. BLACK MARITAL TRUST."

(2) The Trustees shall retain such property until the termination of the Trust, subject only, in all cases, to DEBRA's ^{sheppence} power under section (B); and

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

(E) **Trust 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 as follows:

(a) The Trustees shall dispose of all of the works of art, first edition books, and canes (including cane stands and glass canes) held in the Trust in the manner provided in Article III(A) as if the Settlor had died immediately after the death of DEBRA.

(b) The Trustees shall dispose of ~~divide~~ the remaining Trust Fund in the same manner as the Trust Fund Balance would have been disposed of pursuant to Article VI(B) as if the Settlor had died immediately after the death of DEBRA. ✓

IX: THE JUDY BLACK TRUST

Following are the dispositive terms of the Trust directed to be held for the benefit of JUDY upon the terms set forth in this Article. Such Trust shall be known as the JUDY BLACK TRUST.

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

(B) **Principal Invasion.** (1) The Trustees shall pay to JUDY or apply for JUDY's benefit as much of the principal as the Trustees, in their sole discretion, shall determine is necessary for JUDY's health, education, support and maintenance, taking into consideration JUDY's financial resources apart from the Trust.

(2) The Trustees shall pay to JUDY, or apply for JUDY's benefit, as much of the principal as the Independent Trustees, in their sole discretion, shall determine. Payments or applications pursuant to this subsection may be made at any time or from time to time, for any reason or purpose whatsoever. In exercising the discretion granted in this subsection, the

Independent Trustees need not, but may, consider such of JUDY's financial resources apart from the Trust as they deem appropriate.

(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 remaining Trust Fund to JUDY's issue who survive JUDY. If there are no issue of JUDY who survive JUDY, the Trustees shall divide the remaining Trust Fund into shares of the same number and size into which such property would have been divided if the Trustees had been directed to distribute such property to the Settlor's issue who survive JUDY. The Trustees shall set aside for each issue of the Settlor who survives JUDY and who would have received a share of such distribution the share he or she would have received, and shall dispose of such share for his or her benefit as provided in Article XII(1). If none of the Settlor's issue survive JUDY, the Trustees shall distribute the remaining Trust Fund in equal shares to those of DEBRA's brothers, BRUCE RESSLER, JOHN RESSLER, RICHARD RESSLER and ANTHONY RESSLER, who survive JUDY, provided that if one of DEBRA's brothers does not survive JUDY but has issue who survive JUDY, the share such brother would have received had he survived JUDY shall be paid to his issue who survive JUDY.

X: BLACK CHARITABLE LEAD TRUSTS see comment 7.1

Following are the dispositive provisions 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 "BLACK CHARITABLE LEAD TRUST" preceded by the first name a Child of the Settlor who survives the survivor of the Settlor and DEBRA, or of a Child of the Settlor who died before the survivor of the Settlor and DEBRA but who had issue living on the death of such survivor.

(A) **Trust Term.** The term of this Trust (the "Trust Term") shall commence on the date of death of the survivor of the Settlor and DEBRA (the "Beginning Date") and shall continue until the day before the tenth (10th) anniversary of the Beginning Date.

(B) **Annuity.** (1) On the day before each anniversary of the Beginning Date until the last day of the Trust Term (each such date being hereinafter referred to as an "Annuity Payment Date"), the Trustees shall pay to the Charitable Beneficiary from the Trust Fund an annuity amount (the "Annuity Amount") equal to the Applicable Percentage of the amount payable to the Trustees upon the death of the Settlor or DEBRA, as finally determined for Federal estate tax purposes in the Settlor's estate (the "Initial Fair Market Value"). The

annually, computed for any period at the rate of interest that the federal income tax regulations prescribe for the Trust for such computation for such period.

(E) **Charitable Beneficiary.** The Charitable Beneficiary of each Trust shall be such one or more Qualified Charitable Organizations as the Child of the Settlor whose name appears in the name of the Trust, in his or her sole discretion, shall select from time to time. If such Child of the Settlor is not living and competent at the time an Annuity Amount is required to be paid to a Charitable Beneficiary, the Charitable Beneficiary shall be such one or more Qualified Charitable Organizations as the other Children of the Settlor who are then living, in their sole discretion, shall select. If none of the Settlor's Children is then competent, the Charitable Beneficiary shall be such one or more Qualified Charitable Organizations as the Trustees, in their sole discretion, shall select. If the Child of the Settlor whose name appears in the name of the Trust, or the other Children of the Settlor, as the case may be, fail to select the Charitable Beneficiary or Beneficiaries of a particular annuity amount prior to seven (7) days prior to the date on which such amount is payable, the Trustees shall select the Charitable Beneficiary or Beneficiaries.

(F) **Termination.** This Trust shall terminate upon the last day of the Trust Term. Upon such termination, the Trustees shall dispose of the Trust Fund for the benefit of the to the Child of the Settlor whose name appears in the name of the Trust, if such Child of the Settlor is then living, as provided in Article XII(I). If such Child of the Settlor is not then living, such property shall be divided into shares of the same number and size into which such property would have been divided if the Trustees had been directed to distribute such property to his or her issue living upon such termination, or, if there are none, into shares of the same number and size into which such property would have been divided if the Trustees had been directed to distribute such property to the Settlor's issue then living. The Trustees shall set aside for each issue of the Settlor then living who would have received a share of such distribution the share he or she would have received, and shall dispose of such share for his or her benefit as provided in Article XII(I).

(G) **Prohibited Transactions.** Prior to the termination of the Trust, the Trustees are prohibited from engaging in any act of self-dealing as defined in § 4941(d) of the Code, from retaining any excess business holdings as defined in § 4943(c) of the Code which would subject the Trust to tax under § 4943 of the Code, from making any investments which

would subject the Trust to tax under § 4944 of the Code, and from making any taxable expenditures as defined in § 4945(d) of the Code. The Trustees shall make distributions at such time and in such manner as not to subject the Trust to tax under § 4942 of the Code.

(H) *Taxable Year.* The taxable year of the Trust shall be the calendar year.

(I) *Investment of Trust Assets.* Nothing in this Trust Agreement shall be construed to restrict the Trustees from investing the Trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets.

(J) *No Payment for Noncharitable Purposes.* No payment shall be made from the Trust to any beneficiary other than a Qualified Charitable Organization prior to the termination of the Trust.

(K) *Qualification as Charitable Lead Annuity Trust.* The Trust is intended to qualify as a charitable lead annuity trust, transfers to which are deductible under § 2522 of the Code and the Treasury Regulations promulgated thereunder. Therefore, notwithstanding any other provision of this Trust Agreement, (i) no authorization or direction or other provisions contained in this Trust Agreement that would prevent the Trust from so qualifying shall apply to this Trust and (ii) any court having jurisdiction over this Trust Agreement shall construe this instrument accordingly.

XI: RENUNCIATIONS

If DEBRA renounces DEBRA's income interest in any portion of the property in any DEBRA R. BLACK MARITAL TRUST, or DEBRA's interest in any other gift under this Trust Agreement, the property in which DEBRA had the renounced interest shall be paid to the trustees then serving under the BLACK 2006 FAMILY TRUST AGREEMENT, who shall add the same to the principal of the BLACK 2006 FAMILY TRUST and dispose of the same as provided in the BLACK 2006 FAMILY TRUST AGREEMENT. The Settlor requests (but does not require) that DEBRA exercise DEBRA's power to renounce in such manner as to maximize the amount of property that passes to the BLACK 2006 FAMILY TRUST, provided that such property passes to such Trust or Trusts without creating any significant federal and, if DEBRA deems appropriate, state estate tax liability.

portion of the
her
or disposition
or such renounced gift or disposition, as the case may be,

(6) An individual who is deemed to be a descendant of his or her adoptive parent by reason of adoption shall be deemed to be a descendant of all ancestors of such parent. An individual who is deemed not to be a descendant of a parent of his or hers who consented to his or her adoption by another shall be deemed not to be a descendant of any ancestor of such consenting parent unless such individual is a descendant of such ancestor without regard to his or her relationship to such consenting parent. An individual who is deemed not to be a descendant of his or her parent pursuant to subsection (3) or (4) shall be deemed not to be a descendant of any ancestor of such parent unless such individual is a descendant of such ancestor independent of his or her relationship to such parent.

(7) For purposes of this section: (i) a child is the "Genetic Child" of each of the two individuals from whom he or she inherited one-half of his or her DNA; (ii) the man from whom a child inherited one-half of his or her DNA is such child's "Genetic Father," and (iii) the woman from whom a child inherited one-half of his or her DNA is such child's "Genetic Mother."

(D) *Survivorship.* (1) For all purposes of this Trust Agreement, DEBRA shall be deemed to have died on the earliest date on which DEBRA is no longer the Settlor's spouse.

(2) If DEBRA and the Settlor die under such circumstances that it is difficult or impossible to determine which one of them survived the other, then DEBRA shall be deemed to have predeceased the Settlor for purposes of Articles III, and IV, and to have survived the Settlor for all other purposes of this Trust Agreement. *Land V ?*

(3) If any issue of the Settlor dies within ninety (90) days of the date of the Settlor's death or the date of DEBRA's death, such issue shall be deemed to have predeceased the Settlor or DEBRA, as the case may be, for all purposes of this Trust Agreement other than Article XVII.

(4) Except as otherwise provided in subsection (2), any beneficiary whose entitlement to property (whether income or principal and whether outright or in trust) under this Trust Agreement depends upon his or her surviving the occurrence of some event who 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 shall be deemed for all purposes of this Trust Agreement to have died prior to the occurrence of such event.

(E) *Undisposed of Property.* (1) If upon the occurrence of any event (the "Event") any share of a terminated Trust (other than a Trust held under Article IX) shall not be completely disposed of by the other provisions of this Trust Agreement, then such undisposed of share shall be paid as follows:

(a) The Trustees shall distribute the sum of FIFTY MILLION DOLLARS (\$50,000,000) to JUDY, if she is living at the time of the Event; provided, however, that the total sum of all amounts distributed to JUDY from all terminated Trusts shall not exceed the sum of FIFTY MILLION DOLLARS (\$50,000,000).

(b) The Trustees shall distribute the sum of TWENTY MILLION DOLLARS (\$20,000,000) to JON RESSLER, if he is living at the time of the Event; provided, however, that the total sum of all amounts distributed to JON RESSLER from all terminated Trusts shall not exceed the sum of TWENTY MILLION DOLLARS (\$20,000,000).

(c) The Trustees shall distribute the sum of TWENTY MILLION DOLLARS (\$20,000,000) in equal shares to ~~those~~ of IRA RESSLER and DOROTHY RESSLER who are living at the time of the Event; provided, however, that the total sum of all amounts distributed to IRA RESSLER and/or DOROTHY RESSLER from all terminated Trusts shall not exceed the sum of TWENTY MILLION DOLLARS (\$20,000,000).

(d) The Trustees shall distribute the sum of TEN MILLION DOLLARS (\$10,000,000) to each of the following individuals who is living at the time of the Event; provided, however, that the total sum of all amounts distributed to any such individual from all terminated Trusts shall not exceed the sum of TEN MILLION DOLLARS (\$10,000,000):

- (i) SAMANTHA RESSLER;
- (ii) JILLIAN RESSLER;
- (iii) ANDREW RESSLER;
- (iv) REBECCA RESSLER;
- (v) MATTHEW RESSLER;
- (vi) MICHAEL RESSLER;
- (vii) OLIVER RESSLER;
- (viii) NICKOLAS RESSLER; and
- (ix) JONATHAN LEVINE.

(e) The Trustees shall distribute the sum of FIVE MILLION DOLLARS (\$5,000,000) to MARILYN STEWART, if she is living at the time of the Event; provided, however, that the total sum of all amounts distributed to MARILYN STEWART from all terminated Trusts shall not exceed the sum of FIVE MILLION DOLLARS (\$5,000,000).

(f) If the aggregate of the property disposed of in paragraphs (a) through (e) shall be insufficient to make the dispositions described therein, such dispositions shall abate proportionately.

(g) The balance of such undisposed of share, if any, after making the dispositions described in paragraphs (a) through (e), shall be paid to the LEON BLACK FAMILY FOUNDATION, INC. (the "Foundation"), if it is a Qualified Charitable Organization. The Settlor requests that the directors of the Foundation expend the disposition for the following purposes:

- (i) twenty-five percent (25%) thereof shall be used to promote medical research;
 - (ii) twenty-five percent (25%) thereof shall be used to promote Judaica;
 - (iii) twenty-five percent (25%) thereof shall be used to promote art and culture;
- and
- (iv) twenty-five percent (25%) thereof shall be used to promote education.

If the Foundation is not a Qualified Charitable Organization, the balance of such undisposed of share 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 property shall be used for the purposes provided in clauses (i) through (iv) of this paragraph (g).

(2) If upon the occurrence of any event (the "Event") any share of a terminated Trust held under Article IX shall not be completely disposed of by the other provisions of this Trust Agreement, then such undisposed of share shall be paid to the Foundation. The Settlor requests that the directors of the Foundation expend the disposition for the purposes provided in clauses (i) through (iv) of paragraph (g) of subsection (1). If the Foundation is not then a Qualified Charitable Organization, such undisposed of share 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 property shall be used for the purposes provided in clauses (i) through (iv) of paragraph (g) of subsection (1).

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(F) **Assignment of Trust Interests.** No 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 or in any way binding upon the Trustees. No beneficiary of any Trust may assign, transfer, encumber or otherwise dispose of the income or principal of such Trust, or any part thereof, until it shall be paid to such beneficiary by the Trustees. The preceding provisions of this section shall not apply in the case of an exercise of a power of appointment. No income or principal of any Trust, or any part thereof, shall be liable to any claim of any creditor.

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

(H) **Exercise of Powers of Appointment.** With regard to any power of appointment granted under this Trust Agreement that may be exercised by the Will of the holder of the power, the Trustees may rely on any instrument purporting to be a certified copy of the Will of the holder of the power. Commencing six (6) months after the death of the holder of the power, the Trustees (if they have no actual notice of the existence of the Will of the holder that exercises such power) shall incur no personal liability for administering the Trust as though the holder had not exercised the power. If the Will that exercises the power is subsequently discovered, any disposition of the Trust property by the Trustees shall be without prejudice to the rights of any appointee to recover the property from any Person to whom the Trustees have paid assets of the Trust or from the Trustees (in their capacities as Trustees) to the extent of any remaining Trust property. The exercise of a power of appointment granted under this Trust Agreement by the Will of DEBRA or by written instrument effective at DEBRA's death shall be valid only if DEBRA is the Settlor's spouse at the time of DEBRA's death. 22.1

(I) **Property (to) Paid to Trustees Under the Black 2006 Family Trust Agreement.** Property directed to be disposed of for the benefit of a particular issue of the Settlor pursuant to this subsection shall be divided into two separate shares, one consisting of seventy-five percent (75%) of such property (Share A) and one consisting of twenty-five percent (25%) of such property (Share B). Share A for each issue shall be paid to the trustees then serving under the BLACK 2006 FAMILY TRUST AGREEMENT, who shall hold such property in a separate trust of which such issue is the Primary Beneficiary (as that term is defined in that trust agreement) under article III of such trust agreement. Share B for each issue shall be paid to the 22.2

trustees then serving under the BLACK 2006 FAMILY TRUST AGREEMENT, who shall hold such property in a separate trust of which such issue is the Primary Beneficiary (as that term is defined in that trust agreement) under article IV of such trust agreement. *Comment 23.1*

**XIII: TRUSTEES' INVESTMENT AND
ADMINISTRATIVE POWERS**

(A) *Overriding Limitation on Powers.* The provisions of this Article are expressly subordinate to the overriding provisions of Article XIV.

(B) *General Powers.* The Trustees shall have all powers and discretion conferred generally upon fiduciaries by EPTL § 11-1.1 and by other provisions of law. Without limiting the foregoing, the Trustees shall also have 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, mutual funds or money market funds, interests in any kind of investment trust, partnership or limited liability company, 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 may be affiliated), as the Trustees shall determine, to delegate discretionary powers to them, to rely upon information or advice furnished by them, and to compensate them out of the Trust Fund of the Trust or Trusts on behalf of which the engagement was made (and not out of the Trustees' commissions);

(3) To improve, lease for any term (whether or not such term is beyond the term of the administration of the Trust which is the lessor 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 Trust Agreement 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 repairs, maintenance and upkeep of such property, and from the payment of taxes, water rents, and assessments regarding such property; 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 of any nature appurtenant or incident to the ownership of any property, including but not limited to rights to vote, assent, subscribe or convert; 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 the Settlor or 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 is now in effect) by any corporation to be taxed under subchapter S of the Code or any comparable provision under state law;

(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 (including, but not limited to, the Personal Representatives of any estate and the trustees of any trust), as they determine in their discretion, and, in the case of a loan to any estate or trust, irrespective of whether any beneficiary, Personal Representative or trustee of any such estate or trust is a beneficiary or Trustee under this Trust Agreement; provided that all loans, other than loans from a Trust to a beneficiary of that Trust to whom current distributions of income may be made, shall be made at a reasonable rate of interest, and provided further that only the Independent Trustees may participate in any decision to lend property at less than a reasonable rate of interest;

after the Settlor's death or incapacity ?

(2) Every Person contracting or otherwise dealing with the Trustees of a Trust shall look only to the funds and property of such Trust for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Trust Agreement, in whole or in part, and the Trustees shall not be individually liable therefor even though the Trustees did not exempt themselves from individual liability when entering into any contract, obligation or transaction in connection with or growing out of such Trust.

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

(F) **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 shall not combine a Generation-Skipping Tax Exempt Trust with any Trust that is not a Generation-Skipping Tax Exempt Trust.

(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 Trust Agreement, the Trustees direct that (a) any Trust shall be divided into two or more separate Trusts, or (b) any share of the Trust Fund Balance disposed of under Article VI shall be held in more than one Trust, then the Trustees shall determine which property then allocated to or held in such Trust, gift or share shall be allocated to each such separate Trust.

(G) **Powers Relating to Closely Held Business and Investment Interests.** (1) As to each and any Entity, public or private, in which the Trustees, as such, hold or acquire, directly or indirectly, an equity interest, if the fair market value of such interest of the Trustees when aggregated with the fair market value of the equity interests in such Entity of (i) the Settlor, (ii) DEBRA and (iii) the trustees of all other trusts of which the Settlor or DEBRA is the settlor, exceeds one percent (1%) of the fair market value of such Entity, such Entity being hereinafter referred to as "the Closely Held 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 any Trust,

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Trustees of such Trust shall permit any one or more of the beneficiaries of such Trust to occupy any residential property owned by the Trust upon such terms and conditions (as to the payment of rent, repairs or otherwise) as the Independent Trustees of such Trust deem appropriate.

(3) The Trustees of any Trust may retain or purchase any item of tangible personal property, including tangible personal property for the use of any one or more of the beneficiaries of such Trust, and shall permit any one or more of such beneficiaries to use any such item of tangible personal property upon such terms and conditions (including any relating to insurance and preservation) as the Independent Trustees of such Trust deem appropriate.

(4) For purposes of this section, the beneficiaries of a Trust at any particular time shall include only those Persons to whom current distributions from such Trust may be made, and the term "residential property" 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).

(1)
(L) **Self-Dealing.** The Settlor authorizes financial transactions, both direct and indirect, between any Trust held under Article II and any Trustee of such Trust if the Settlor is competent, or if the Settlor is not competent, DEBRA, if DEBRA is competent, consents to such transaction, between any Trust held under Article VIII and any Trustee of such Trust if DEBRA is competent and consents to such transaction (including, without limitation, purchases, sales and leases of property, loans, agreements, and employment and compensation for services), notwithstanding any rule of law relating to self-dealing, provided only that the interested Trustee act in good faith and that the consideration paid by the Trust or by the Trustee be reasonable.

XIV: RESTRICTIONS ON POWERS

Notwithstanding any contrary provision of this Trust Agreement:

(A) **Powers Affecting Marital Deduction.** No power or discretion granted to the Trustees by this Trust Agreement 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 VIII from qualifying for the federal estate tax marital deduction or any state estate tax marital deduction. All powers or discretion conferred upon the Trustees shall be subordinate to the overriding provisions of Article VIII(B), and may be exercised only in such manner as is consistent with the allowance of

shall state the time at which or the event upon which the modification is to be effective and (iii) shall be filed with the trust records maintained by the Trustees.

XVI: ACCOUNTING BY TRUSTEES

(A) *Settlement of Accounts by Agreement.* (1) The Trustees may from time to time settle their accounts with respect to the Trust by agreement with each Interested Party who is legally competent and with the legally appointed guardian, conservator, or similar fiduciary, however denominated in the jurisdiction appointed (in each case other than the Settlor), of each Interested Party who is under a legal disability, or, in the case of an Interested Party who is a minor, a parent of such minor who is not (i) the Settlor, (ii) a Trustee whose accounts are being settled or (iii) a Person who is otherwise an Interested Party. For purposes of the preceding sentence, the term "Interested Party" means, as to the accounts of the Trustees for any period, a Person who would be a necessary party in a judicial proceeding for the settlement of such accounts, after giving effect to the provisions of SCPA § 315 and section (D). ~~of this~~ *Article*

(2) 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, 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 Interest 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 Person under this Trust Agreement or to shift any beneficial interest under this Trust Agreement as between Persons who hold such beneficial interests.

(D) *Service Upon Persons Under Disability.* In any proceeding relating to the Trust, service upon any "person under disability" as defined in SCPA § 103, shall not be necessary when another Person who is a party to the proceeding has the same interest, whether concurrent or successive, as the person under disability.

revoked or superseded by any Person other than the Settlor ^{or if the Settlor is not competent) by} DEBRA (if then competent) except to the extent authorized by the Settlor pursuant to this subsection and (ii) no instrument of designation made by DEBRA may be revoked or superseded by any Person other than the Settlor or DEBRA (if then competent) except to the extent authorized by DEBRA pursuant to this subsection.

(4) Except as otherwise provided in subsection (3), any instrument of designation may be revoked at any time, as to any designee who has not taken office (but not as to any designee who has), by the Person or Persons then entitled to make a designation. Such revocation shall be in writing. In case of such revocation a new designation may be made as specified above.

(C) **Resignation of Trustees.** Any Trustee of any Trust may resign as Trustee at any time by delivering a written notice of resignation to (i) each Trustee of such Trust, or if there is none, to the next successor trustee of such Trust; (ii) the Settlor, if then competent; and (iii) DEBRA, if then competent. 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 and deliver all property then held in the Trust to each remaining Trustee and/or successor trustee of such Trust.

(D) **Removal of Trustees.** (1) The Settlor may, at any time or from time to time when the Settlor is competent, remove any Trustee of any Trust.

(2) At any time when the Settlor is not living or is under a disability or has temporarily or permanently relinquished the power to remove Trustees, DEBRA, if then competent, may remove any Trustee of any Trust.

(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 the Trust to each remaining and/or successor Trustee. If any individual other than the Settlor removes a Trustee and such removed trustee was an Independent Trustee, the removal will not be effective until the individual exercising the removal power designates a Person to serve as trustee of such Trust, such Person agrees to act as trustee of such Trust by signing the written instrument required by section (G), and such Person is then an Independent Trustee.

(19) "Independent Trustees": at any particular time, the Trustees, other than (a) DEBRA, (b) an issue of the Settlor, (c) if DEBRA is living, a Person designated as Trustee who is a Related Person as to DEBRA if DEBRA participated in the designation decision, (d) a Person designated as Trustee who is a Related Person as to a then living issue of the Settlor who participated in the designation decision, (e) any individual, other than the Settlor, whose possession of any of the powers and discretion conferred upon Independent Trustees under this Trust Agreement would result in any portion of the Trust Fund of any Trust in existence at such individual's death being included in his or her gross estate for federal estate tax purposes, or would result in any portion of the Trust Fund of any Trust in existence at the death of DEBRA or an issue of the Settlor being included in his or her gross estate for federal estate tax purposes, or (f) any individual whose possession of, exercise of, or failure to exercise any of said powers and discretion would result in any portion of the Trust Fund of any Trust being included as a taxable gift of such individual for federal gift tax purposes at any time.

(20) "issue": except as otherwise provided in this Article and subject to the provisions of Article XII(C) regarding adopted, out-of-wedlock and posthumously conceived children, all descendants of any degree of the designated ancestor.

(21) "JUDAH 2009 INVESTMENT TRUST AGREEMENT": a trust agreement dated August 13, 2009, between the Settlor, as settlor, and the Settlor and JOHN J. HANNAN, as trustees.

is this term used?

(22) "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.

(23) "Perpetuities Date": the date occurring twenty (20) years and eleven (11) months after the death of the last survivor of all of the issue of (i) the Settlor's mother, (ii) DEBRA's mother, and (iii) IRENEE duPONT (born [REDACTED] late of the State of Delaware, living on the date of the Settlor's death.

(24) "Person": any individual, corporation, partnership, joint venture, joint-stock company, trust, limited liability company, unincorporated organization, government or political subdivision thereof or other entity.

(25) "Personal Representatives": as to a particular 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.

(26) "Primary Beneficiary": for all purposes of this Trust Agreement, the same meaning that it has in articles III and IV of the BLACK 2006 FAMILY TRUST AGREEMENT.

(27) "Qualified Charitable Organization": an organization that is both (a) described in §§ 170(c) (without regard to § 170(c)(2)(A)), 2055(a) and 2522(a) of the Code, and (b) 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 Trust Agreement.

(28) "Related Person": as to an individual, a Person who is related or subordinate to such individual within the meaning of § 672(c) of the Code (determined as though such individual were the grantor, as that term is used in § 672(c) of the Code).

(29) "SCPA": the New York Surrogate's Court Procedure Act.

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

(31) "Settlor's Children": the Settlor's children, BENJAMIN ELI BLACK, JOSHUA MAX BLACK, ALEXANDER SAMUEL BLACK and VICTORIA RACHEL BLACK, all children born to the Settlor after the date of this Trust Agreement who are issue of the Settlor within the meaning of this section and all children adopted by the Settlor after the date of this Trust Agreement regardless of their ages at the time of such adoption.

(32) "Settlor's issue" or "issue of the Settlor": the Settlor's Children, and their issue (as defined in this section) living at any particular time.

(33) "spouse": as to any individual, at any particular time, the person to whom such individual is married and with whom he or she is living, or, ~~if he or she is not living~~, the person to whom ~~he or she~~ was married and with whom he or she was living at the time of his or her death, whether or not that person has remarried. For purposes of this subsection, (i) separation for reasons other than marital discord shall be ignored and (ii) an individual shall be deemed not to be married to the person to whom he or she is married (or was married at the individual's death) if either the individual or such person has instituted an action that seeks as its relief, in whole or in part, a legal separation or an annulment or termination of the marriage, and

living

such individual

as to any deceased individual

thereafter the individual has not given written notice to the Trustees that such person shall continue to be ~~his or her~~ ^{such individual's} spouse for purposes of this Trust Agreement. The Independent Trustees (other than the person whose status is being determined) shall determine whether a person is or was an individual'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. The Settlor confirms that as of the date of execution of this Trust Agreement, the Settlor's spouse is DEBRA.

(34) "Treasury Regulations": the regulations promulgated by the United States Treasury Department as authorized by § 7805 of the Code.

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

(36) "Trust Agreement": this declaration of trust, as it may be modified from time to time pursuant to Article XV.

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

(38) "Trustees": and all pronouns referring thereto: each Trustee and all Trustees serving under this Trust Agreement at any given time.

(39) "Trusts": all separate trusts held or to be held under this Trust Agreement at a particular time.

(40) "Will": the Last Will and Testament of an individual together with all codicils thereto, whenever executed, that is duly admitted to probate.

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

(1) All references to a body of laws (such as the Code), to a body of regulations (such as the Treasury Regulations), or to any provision thereof, shall be deemed to refer to such body of laws, 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, regulations or provisions thereof enacted in its place.

(2) Unless otherwise specifically provided, all references to Articles refer to Articles of this Trust Agreement, all references to sections refer to sections of the Article within which the reference occurs, and all references to subsections refer to subsections of the section within which the reference occurs.

(D) *Partial Invalidity.* If any provision or condition of this Trust Agreement is determined to be void or invalid, then such invalidity shall not affect any other provision or condition hereof, but the remainder of this Trust Agreement shall be effective as though such void provision or condition had not been contained herein.

→ (E) *Counterparts.* This Trust Agreement may be executed in any number of counterparts and all of such counterparts, when taken together, shall constitute the whole.

IN WITNESS WHEREOF, the Settlor has signed this Trust Agreement on the date stated on page one, as Settlor and as Trustee.

LEON D. BLACK, Settlor and Trustee

LAST WILL AND TESTAMENT

OF

LEON D. BLACK

Dated: _____

Prepared by

McDermott Will & Emery LLP

New York, New York

I, LEON D. BLACK, declare this to be my Last Will and Testament and revoke all my prior wills and codicils.

I: FAMILY MEMBERS AND DEFINITIONS

I am married to DEBRA R. BLACK ("DEBRA"). I have four (4) children, BENJAMIN ELI BLACK, JOSHUA MAX BLACK, ALEXANDER SAMUEL BLACK and VICTORIA RACHEL BLACK. The definitions of the terms used in this Will are set forth in Article XI or where they first appear.

II: EXERCISE OF POWER OF APPOINTMENT

If DEBRA survives me, I direct that all property subject to the testamentary power of appointment reserved by me under article II(F) of the JUDAH 2009 INVESTMENT TRUST AGREEMENT be paid to the trustees under my Revocable Trust Agreement, who shall hold such assets in a separate marital trust for DEBRA's benefit upon the terms set forth in article VIII of my Revocable Trust Agreement. Such property shall be held in the same separate marital trust that holds or will hold the payments from any trust held under the JUDAH 2009 INVESTMENT TRUST AGREEMENT disposed of under Article III, ^{E(1)} of my will

III: BEQUEST OF ANNUITY PAYMENTS

If DEBRA survives me, I give any remaining annuity payments payable to me with respect to any trust held under the JUDAH 2009 INVESTMENT TRUST AGREEMENT to the trustees under my Revocable Trust Agreement, who shall hold such property in a separate marital trust for DEBRA's benefit upon the terms set forth in article VIII of my Revocable Trust Agreement.

IV: RESIDUARY ESTATE

I give the balance of my estate, whether real or personal, and wherever located, referred to as "my residuary estate," to the trustees of my Revocable Trust, to be added to the property then held thereunder and to be disposed of as provided in my Revocable Trust Agreement.

V: SPECIAL DISTRIBUTION RULES

(A) *Adopted, Out-of-Wedlock and Posthumously Conceived Children.* (1) An individual legally adopted on or before his or her nineteenth (19th) birthday shall be deemed to be a descendant of his or her adoptive parent or parents, and shall be deemed not to be a

(B) *Powers Affecting Charitable Deduction.* No power or discretion granted to the Executors by this Will or by law, including, without limitation, any investment power, may be exercised if the authority to exercise such power or discretion would prevent property passing to any Qualified Charitable Organization from qualifying for the federal estate tax charitable deduction. All powers or discretion conferred upon the Trustees may be exercised only in such manner as is consistent with the allowance of such charitable deduction to my estate. This section shall be construed as a precedent (and not as a subsequent) limitation or condition.

(C) *Change of Law.* No Executor shall participate in a decision to remove all or part of the assets or change the situs of administration of my estate from one jurisdiction to another jurisdiction, or to elect that the law of any other jurisdiction shall govern any one or more of the administration of my estate, the construction of any terms of my Will or the validity of my Will if such removal, change of situs or election would have the effect of altering any beneficial interest under my Will.

IX: EXECUTOR DESIGNATIONS, RESIGNATIONS AND SUCCESSION

(A) *Initial Designations.* I designate DEBRA, BARRY J. COHEN, JOHN J. HANNAN and RICHARD RESSLER ("RICHARD") as co-executors of this Will. If any two of them shall, for any reason, fail to qualify or cease to act as executor of this Will, I designate ANTHONY RESSLER ("ANTHONY") as executor of this Will in their places.

(B) *Designation of Additional and Successor Executors.* I authorize my Executors to designate additional and/or successor executors of this Will.

(C) *Procedure for Designating Executors.* (1) Any designation authorized by section (B): (i) shall be in writing signed by all of those authorized to make such designation, (ii) shall state the time at which or the event upon which it is to be effective, (iii) shall state whether the designee is to serve as a co-executor or as a successor executor of this Will, and if more than one Person is designated as a successor executor of this Will, the order of succession, and (iv) shall specify the commissions payable to any executor or executors designated if other than the commissions prescribed by law.

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(H) **No Bond.** No bond (including any bond with respect to advance payment of commissions) or other security shall be required of any Executor serving at any time, any provision of law to the contrary notwithstanding.

(I) **Compensation of Executors.** (1) DEBRA shall not be entitled to any commissions or other compensation for her services as an Executor.

(2) The aggregate commissions allowable to each Executor other than DEBRA for the entire administration of my estate shall be the lesser of (1) the commissions allowable under the law of the State of New York in effect at the time of computation of such commissions or (2) ^{MD} the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000), multiplied by the Inflation Factor. Notwithstanding the preceding sentence, my Executors shall not receive any commissions or other compensation as Executors for any money or property paid to the trustees of my Revocable Trust Agreement.

(3) For purposes of this section, the term "Inflation Factor" shall mean the sum of (a) 100% and (b) the increase, if any, expressed as a percentage, between the New York—Northeastern New Jersey Consumer Price Index for all urban consumers for all items published by the United States Bureau of Labor Statistics, or any successor or substitute therefor (the "Consumer Price Index") for the month this Will is executed and the Consumer Price Index for the month of such distribution, in which such commission is payable.

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provision for corporate Executors to use fee schedule

X: ACTION BY EXECUTORS

(A) **Declining to Participate.** Any Executor, at any time or from time to time, may decline to participate in any one or more decisions to be made by my Executors. Any such refusal shall be set forth in a written instrument signed by such Executor or on his, her or its behalf and delivered to each other Executor.

(B) **Release or Suspension of Powers.** Any Executor, at any time or from time to time, may release or suspend for a specified period of time any power conferred on such Executor. 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 Executor's successors if such document states that it is intended to bind such successors. Any such release

(10) "Inclusion Ratio": the same meaning as that ascribed to the term "inclusion ratio" in § 2642 of the Code.

(11) "Independent Executors": my Executors other than DEBRA and my issue.

(12) "issue": except as otherwise provided in this Article and subject to the provisions of Article V(A) regarding adopted, out-of-wedlock and posthumously conceived children, all descendants of any degree of the designated ancestor.

(13) "JUDAH 2009 INVESTMENT TRUST AGREEMENT": a trust agreement dated August 13, 2009, between me, as settlor, and me and JOHN J. HANNAN, as trustees.

(14) "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.

(15) "my children": my children listed in Article I, all children born to me after the date of this Will who are issue, within the meaning of subsection (12), of mine and all children adopted by me after the date of this Will regardless of their ages at the time of such adoption.

(16) "my issue" or "issue of mine": my children (as defined in subsection (15)) and their issue (as defined in subsection (12)).

(17) "my Revocable Trust": that certain trust created under article II of my Revocable Trust Agreement.

(18) "my Revocable Trust Agreement": a declaration of trust executed on the same day as, but immediately prior to, the execution of this Will, by me, as settlor and as trustee, known as the LEON D. BLACK 2012 REVOCABLE TRUST AGREEMENT, as the same may be amended from time to time.

(19) "Perpetuities Date": the date occurring twenty (20) years and eleven (11) months after the death of the last survivor of all of the issue of (i) my mother, (ii) DEBRA's

is this
used
in
the
will?