

MEMORANDUM

Date: August 13, 2012

To: Leon Black

From: Carlyn S. McCaffrey
Elyse G. Kirschner

Re: Summary of Your Draft 2012 Will and Revocable Trust Agreement

This memorandum explains the principal provisions of the draft Will and Revocable Trust Agreement (the "Revocable Trust Agreement") we have prepared for you and the anticipated tax consequences of certain of their provisions. We have prepared these draft documents in order to incorporate the estate planning decisions you recently reached, including the decision to leave half of your assets at the death of the survivor of you and Debra to a charitable lead annuity trust.

I. Overview

The Revocable Trust Agreement is intended to serve as your primary testamentary document, in place of a comprehensive Will. The Trust Agreement establishes your revocable trust (the "Revocable Trust"). The trustees of the Revocable Trust who are in office after your death will receive all of your assets (including any that they already hold and those that are delivered to them by your executors), pay your estate taxes, and divide the balance among your beneficiaries. The Will serves the limited function of appointing your executors, disposing of your tangible property and real property and directing that all other assets remaining in your name at your death be transferred to the trustees of the Revocable Trust.

Your estate plan will continue to be reflected in a combination of Will and Revocable Trust Agreement rather than a stand-alone Will in order to facilitate the administration of your assets after your death and to eliminate, to the extent possible, the supervisory authority of the local Surrogate's Court over the trusts for Debra and your children that would otherwise have been created under your Will.

II. Will Provisions

A. Dispositive Provisions

1. Exercise of Power of Appointment (Article II)

If Debra survives you, you direct that the remainder interest in any grantor retained annuity trust ("GRAT") held under the Judah 2009 Investment Trust Agreement that is included in your estate be paid to the trustees of your Revocable Trust, to hold in a marital trust for Debra's benefit (discussed in III.A.3, below).

2. *Bequest of Annuity Payments (Article III)*

If Debra survives you, you give any remaining annuity payments payable to you from any GRAT under the Judah 2009 Investment Trust Agreement to the trustees of your Revocable Trust, to hold in the same marital trust for Debra's benefit that will hold the remainder interest in this GRAT.

3. *Residuary Estate (Article IV)*

Your residuary estate is your estate reduced by the bequests described above and by the expenses and debts of your estate. You give your residuary estate to the trustees of your Revocable Trust (discussed in III, below), to be disposed of under its terms.

B. *Administrative Powers (Article VII)*

Your Will gives your executors broad administrative and investment powers.

C. *Executors (Article IX)*

You designate Debra, Barry Cohen, John Hannan and Richard Ressler as co-executors. If any two of them cannot act, you designate Anthony Ressler as executor in their places.

Debra will not be entitled to compensation for her services as executor. Each other executor will be entitled to commissions equal to the lesser of the legally allowable commissions at that time or \$250,000, adjusted for inflation.

III. *Your 2012 Revocable Trust Agreement*

A. *Dispositive Provisions*

1. *During Your Life (Article II)*

We do not anticipate that you will fund your Revocable Trust during your lifetime. However, if you do, article II of the Revocable Trust Agreement gives you complete control over the trust property during your life. You may direct that distributions from your Revocable Trust be made to or for the benefit of anyone (including yourself) for any reason.

If at any time you are under a disability, (i) the trustees must pay as much of the trust fund to or for the benefit of either you or Debra as the trustees determine is necessary for any of your or her health, education, support and maintenance, and (ii) the

trustees must distribute as much of the trust fund to you, Debra and any of your issue¹ for any reason as the independent trustees determine. In addition, the independent trustees have the power to make distributions out of your Revocable Trust to or for the benefit of such individuals as the trustees determine to reduce future estate taxes in a manner consistent with your overall estate plan.

2. *After Your Death*

The initial trust will terminate at your death. At that time, assets passing under your Will will be paid to the trustees of your Revocable Trust for distribution in accordance with the terms of the Revocable Trust Agreement. The dispositive provisions are as follows:

a. ***Tangible Personal Property (Article III)***. Any tangible property held in or added to your Revocable Trust at your death will be paid as follows:

If Debra survives you, the trustees will hold your works of art, your collection of first edition books and your cane collection in a marital trust for Debra's benefit (discussed in III.A.3, below). If Debra does not survive you, the trustees will sell such portion of this property as they deem appropriate, and will dispose of the sale proceeds pursuant to the remaining provisions of the Revocable Trust Agreement. The trustees will divide any unsold property among (i) your children who survive you and (ii) your children who do not survive you who have issue who survive you in shares of substantially equal value as the independent trustees determine. The share allocated to a child of your who does not survive you will be allocated in equal shares among his or her issue who survive you. The share of such property allocated to each of your children and more remote issue will be distributed to the trustees then serving under the Black 2006 Family Trust Agreement (the "2006 Trust Agreement") in the manner described below (discussed in III.A.7).

The trustees will distribute the balance of your tangible personal property to Debra, outright, if she survives you, or if she does not, in shares of substantially equal value among those of your children who survive you as your independent executors determine, taking into account your children's preferences.

b. ***Residential Property (Articles IV)***. Any residential property held in or added to your Revocable Trust at your death will be distributed to Debra, outright, if Debra survives you. If Debra does not survive you, the trustees may sell or retain such property.

c. ***Gift to Debra (Article V(A)(1))***. If Debra survives you, you give Debra, outright, and not in trust, the difference between \$25 million and the proceeds of any life insurance policies she receives as a result of your death.

¹ For all purposes of your trust agreement, your children are deemed to be Benjamin, Joshua, Alexander, Victoria and all children subsequently born to or adopted by you. Your issue are defined as your children and their descendants.

d. *Gift to Judy Black (Article V(A)(2)).* If your sister Judy survives you, the trustees will hold \$5 million in a separate trust for Judy's benefit (discussed in III.A.4, below).

e. *Gift of Generation-Skipping Tax Exempt Amount (Article V(B)).* The trustees of your Revocable Trust will distribute an amount equal to your remaining generation-skipping transfer ("GST") tax exemption² (referred to in the Revocable Trust Agreement as the "Generation-Skipping Tax Exempt Amount") to the Black Family 1997 GST Exempt Trust.

f. *Balance of Trust Fund (Article VI).* If Debra survives you, the trustees will hold the balance of the trust fund of your Revocable Trust (*i.e.*, the assets remaining after the gifts described above are paid and after the payment of all debts, administration expenses and death taxes) in a marital trust for Debra's benefit (described in III.A.3, below).

If Debra does not survive you, the trustees will divide the balance of the Trust Fund into two equal shares, Share A and Share B. The trustees will divide Share A into as many shares as are necessary to provide one share for each of your children who survives you and each of your children who does not survive you but who has issue who survive you (each such share a "Share A Subshare"). The trustees will hold each Share A Subshare in a separate charitable lead trust with respect to each of your children who survives you (discussed in III.A.5, below).

The trustees will distribute Share B to the trustees then serving under the 2006 Trust Agreement to be allocated among trusts for such issue in the manner described below (discussed in III.A.7).

3. *The Marital Trust (Article VIII)*

If Debra survives you, a marital trust will be created on your death for her benefit. All of the income of such trust must be paid to Debra. The trustees must distribute as much of the principal to Debra as they determine is necessary for her health, education, support and maintenance and as the independent trustees determine for any reason. In addition, the trustees must distribute as much of the principal to Debra as the independent trustees deem advisable to facilitate Debra's estate planning.

If the trust holds any of your works of art, you direct the trustees to hold such property and to pay the expenses thereon, unless Debra exercises her right to make the property in the trust productive.

Each marital trust will end on Debra's death, at which time any remaining property will be disposed of in the same manner as such property would have been disposed of if you had died immediately after the death of Debra.

² The GST exemption is currently \$5.12 million. Unless Congress acts to change the law, it will decline to about \$1.39 million in 2013.

4. Trust for Judy (Article IX)

If Judy survives you, a trust will be held for her benefit under Article IX of your Revocable Trust Agreement. The trust provides that the trustees must distribute all of the trust's income to Judy and as much of the principal as the trustees determine is necessary for Judy's health, education, support and maintenance and as the independent trustees determine for any reason.

The trust will terminate on Judy's death, at which point any remaining trust property be paid to Judy's issue who survive her, or if Judy has no issue who survive her, to your issue, to be held in trust for them under the 2006 Trust Agreement. If none of Judy's issue or your issue is then living, such property will be paid in equal shares to Debra's brothers, Bruce, John, Richard and Anthony, or to the issue of any of them who does not survive Judy.

5. Charitable Lead Trusts (Article X)

At the death of the survivor of you and Debra, the trustees will establish a separate charitable lead annuity trust ("CLAT") for each child of yours who survives the two of you and for each child who does not survive but who has issue who survive. Each child will have the power to determine the charitable beneficiaries of one of the CLATs. Each CLAT will last for a term of 10 years after the death of the survivor of you. Each CLAT is required to make a payment at the end of each year during its 10-year term of a fixed amount to a charity or charities. Each child will have the power to determine the charitable beneficiaries of one of the CLATs. Your children, collectively, will have the power to determine the charitable beneficiaries of any CLAT held for the issue of a child who is not living.

The annuity amount payable is the smallest amount necessary to produce an estate tax charitable deduction equal to 99.99% of the value of the CLAT's assets, calculated using date of death values of the property passing to each CLAT and the IRS's assumed rate of investment return in effect at the time of the death of the survivor of you. For example, for each \$10 million worth of value passing to these trusts, if the IRS's assumed rate of return is 1% (the rate in effect for August 2012), the annual payment would be about \$1,055,715.

At the end of the 10-year period, any property remaining in each CLAT will be paid to the child for whose benefit the CLAT was established, or if such child is not then living, to your issue then living. The share of such property payable to each of your children and more remote issue will be distributed to the trustees then serving under the 2006 Trust Agreement to be allocated among trusts for such issue in the manner described below.

6. Remote Takers (Article XI(E))

In the unlikely event that any trust other than the trust for Judy ends when none of your issue is living, the trust property will be paid as follows:

- \$50 million to Judy, if she is then living;
- \$20 million to John Ressler, if he is then living;
- \$20 million in equal shares to those of Ira and Dorothy Ressler who are then living;
- \$10 million to each of Samantha Ressler, Jillian Ressler, Andrew Ressler, Rebecca Ressler, Matthew Ressler, Michael Ressler, Oliver Ressler, Nickolas Ressler and Jonathan Levine; and
- \$5 million to Marilyn Stewart.

The balance of such property will be paid to the Leon Black Family Foundation, with the request that the directors of the Foundation use 25% of such property to promote medical research, 25% of such property to promote Judaica, 25% of such property to promote art and culture, and 25% of such property to promote education.

In the unlikely event that Judy's trust ends when none of her issue, your issue, Debra's brothers or any of the issue of Debra's brothers survive her, the trust property will be paid to the Leon Black Family Foundation, with the request that the directors of the Foundation use of the property in the manner described in the preceding paragraph.

7. *Allocation of Property Among Trusts Held Under the 2006 Trust Agreement (Article XII(I))*

The independent trustees of the 2006 Trust have told us that they intend to amend the 2006 Trust Agreement to direct that the trust property after the death of the survivor of you and Debra be divided into two separate trusts for each child (or more remote descendant) of yours. One will consist of 75% of each child's share and one will consist of 25%. The purpose of the division is to impose greater restrictions on each child's access to the 75% share to increase the likelihood that this portion of each child's trust assets will be available for future generations of your descendants. The restrictions imposed on the trust holding the larger share, for example, will include a requirement that the trust have a corporate trustee who must approve distributions to the trust's beneficiary. After reaching age 35, each of your children will have the power to remove his or her corporate trustee but only if a replacement corporate trustee is appointed.

You have concluded that this pattern of restrictions is appropriate and would like it to apply to the property that will pass to your children at the death of the survivor of you and Debra. The draft Revocable Trust Agreement implements this decision by directing that property to be held in trust for each child be divided into a 75% share and a 25% share and that each such share will be paid to the trustees of the 2006 Trust Agreement. The larger share is to be held in the more restrictive trust; the smaller, in the trust over which the beneficiary will have more control.

B. Administrative Powers and Power to Revoke (Articles XIII and XV)

The trustees are given broad administrative and investment powers. You have the power to modify or revoke your Revocable Trust at any time.

C. Trustees (Article XVII)

You are the initial trustee of your Revocable Trust. You may designate additional and/or successor trustees and remove trustees. If you cease to act as trustee and have not otherwise designated successor trustees, you designate Debra, Barry Cohen, John Hannan and Richard Ressler as co-trustees in your place for any trust. Each child may become a co-trustee of his or her CLAT, along with Debra, Barry, John and Richard. You may want to consider designating a corporate trustee such as US Trust to serve as co-trustee of each CLAT along with your child who is the beneficiary in lieu of the individuals listed above. Please let us know if this is how you would like to proceed and we will make the appropriate amendments.

If you are deceased or under a disability, Debra may designate additional and/or successor trustees and may remove trustees of all trusts, provided that if Debra removes an independent trustee, such removal will not be effective until she designates a new independent trustee. After the death or disability of both of you, the trustees may designate additional and/or successor trustees. You should give some consideration as to the extent it would be appropriate to have the trustees other than Debra participate in the appointment of successor and additional trustees and the removal of trustees.

Debra will not be entitled to compensation for serving as a trustee. Each other trustee will be entitled to annual compensation at the lesser of the amount allowed to him, her or it under New York law or \$250,000 per year, adjusted for inflation.

IV. Tax Considerations

A. Estate Tax

If Debra survives you, the marital deduction and the Estate Tax Credit³ should protect most of your estate from the federal estate tax. The assets held in the marital trust at its termination will be included in Debra's estate, which will be subject to federal estate tax to the extent not protected by her Estate Tax Credit and the estate tax charitable deduction.

If Debra does not survive you, your estate will be subject to federal estate tax to the extent not shielded by your remaining Estate Tax Credit and the estate tax

³ In 2012, the Estate Tax Credit currently protects \$5.12 million from estate tax. This amount is reduced by lifetime taxable gifts made by you up to \$5.12 million and by bequests made in your Will and revocable trust agreement to persons other than Debra and charity. Unless Congress acts to change the estate tax law, the credit will decline to \$1 million in 2013.

charitable deduction. The property passing to the CLATs, approximately 50% of your estate, will be protected from the estate tax by the charitable deduction.

Each of your and Debra's estates will be subject to New York estate tax to the extent it exceeds New York's estate tax exempt amount (currently \$1 million) and does not qualify for the marital deduction or charitable deduction.

B. Gift Tax

Transfers to your Revocable Trust are not considered completed gifts and are not subject to the gift tax. Nonetheless, you should report the contributions you make to your Revocable Trust on a timely-filed gift tax return.⁴ For contributions made in 2012, a gift tax return will be due on April 15, 2013.

C. Generation-Skipping Transfer Tax

The GST tax generally is imposed, in addition to any gift or estate tax, on transfers to grandchildren and more remote descendants at the highest estate and gift tax rate, currently 35%. It is also imposed on a trust when a beneficiary dies and there is no other beneficiary of the trust who is a member of the deceased beneficiary's generation or a higher generation. Each individual currently may transfer up to \$5.12 million to such persons without incurring a GST tax by allocations of his or her GST tax exemption (see footnote 2). To the extent GST exemption is not allocated to transfers made by you during your lifetime, it is anticipated that your executors will allocate your remaining GST exemption to your gift of the Generation-Skipping Tax Exempt Amount to the Black Family 1997 GST Exempt Trust. This allocation will not save estate tax at your death, but will protect the assets from the GST tax when they eventually pass to your grandchildren or more remote descendants.

D. Income Tax

During your lifetime, your Revocable Trust will be a so-called "grantor trust" for income tax purposes. As a result, as long as you are alive, the trust will not be required to pay income tax on trust income. Instead, you will take into account all of the trust's income, deductions, and credits when you file your income tax returns. If the trustees use your social security number as the trust's taxpayer identification number, the trust will have no income tax filing requirements or reporting obligations so long as the trustees provide your name (in addition to the trust's name and address) to banks, brokers and other payors through which the trust holds assets or from which the trust derives income. Nevertheless, trust assets should always be held in the name of the trust (or its trustees), even when your name is provided to banks, brokers and other payors.

After your death, each trust set up under your Revocable Trust Agreement will be a separate taxpayer for income tax purposes and will be required to file annual

⁴ See Treas. Reg. § 25.6019-3(a).

federal income tax returns and may be required to file state income tax returns.⁵ Each trust will pay income tax on its income except to the extent distributed to a beneficiary. Each beneficiary will pay income tax on distributions received from each trust to the extent of his or her share of the distributed income.

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As part of its effort to curb tax shelters, the Internal Revenue Service recently issued regulations that impose sanctions on attorneys who provide informal written tax advice without prominently disclosing that the advice cannot be relied upon by the taxpayer for the purpose of avoiding penalties. Because this memorandum contains a discussion of taxes but does not warrant the significant additional time or expense that would be involved in the preparation of a formal opinion that complies with the IRS rules, we include the relevant IRS disclosure, below. If you would like us to prepare a formal tax opinion on which you may rely for penalty relief, please let us know, and we can discuss the cost of preparing one.

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CSM/EGK

⁵ Under current law, it may be possible to avoid New York income tax if a trust has no trustees that are New York residents and no New York property or income.