

JOHN DOE
2022 IRREVOCABLE HOMESTEAD TRUST

I, John Doe, hereby create the John Doe 2022 Irrevocable Homestead Trust on January 26, 2022. My brother Robert Doe will serve as the trustee, and in that capacity he is called the “Trustee.”

General Provisions

My family

1. I am not married. I have three children: Adam, Barbara, and Charles. On the date of execution of this trust instrument, Charles is a minor.

Defined terms and general rules

2. Definitions of various terms and other rules governing the administration of each trust under this trust instrument are set forth in the attached Schedule A.¹

The trust estate

3. I hereby convey title to the residence described on Schedule B to the Trustee, subject to my retained life estate.² Those assets and any other assets later conveyed to the Trustee are called the “trust estate.” Assets do not have to be listed on Schedule B to be part of the trust estate. The Trustee acknowledges receipt of the trust estate and agrees to hold it as set forth in this trust instrument.

This trust is irrevocable by me

4. I cannot amend or revoke this trust instrument, require changes in investments, or withdraw assets (although I have a reversionary interest in clause 5.4). No part of the trust estate can ever be used for my benefit or be distributed in discharge of my legal obligations.

Distributions

Homestead trust

5. The Trustee will hold and administer the trust estate as follows.

Distributions

5.1 The Trustee may distribute any amounts it thinks are necessary for the health, support, and maintenance of my descendants who are living from time to time.³ The amounts spent for their benefit may be unequal, based on their separate needs and resources. Any undistributed income is to be added to principal periodically.

I am solely liable for all expenses

5.2 I will be solely and exclusively responsible for all costs and expenses of any nature with respect to the interests in the residence held as part of the trust estate during my life, including (without limit) all taxes, maintenance, repairs (whether ordinary or extraordinary), improvements, indebtedness secured by a mortgage or other lien (including both principal and interest), hazard and liability insurance, and homeowners dues or assessments. The Trustee will have no liability or responsibility of any nature with respect to the residence during my lifetime, or for any such costs and expenses, despite the interest in the residence

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that is held as part of the trust estate, and despite provisions of any laws governing trusts or principal and income accounting which may be to the contrary.

My lifetime power of appointment

5.3 I reserve the right during my life to direct the Trustee to distribute all or any part of the trust estate to any one or more of my descendants, whether outright or in trust, except that I cannot exercise this power in a manner that would discharge my legal obligations.⁴ To be effective, the direction must be set forth in a written instrument signed by me in the presence of two witnesses; it must refer specifically to this inter vivos power of appointment; it must be irrevocable; it must be effective immediately upon execution; and it must be delivered to the Trustee before my death.⁵

Reversion to me

5.4 The Trustee will distribute all assets of the trust estate to me on the first date during my lifetime when I do not have any then living child who is under the age of eighteen.

If I have a minor child when I die

5.5 If I have a then living child who is under the age of eighteen when I die, and if I have not previously exercised my power of appointment under clause 5.3, upon my death the Trustee will distribute all assets of the trust estate as provided in clause 6.

When I Die:

One Continuing Trust for My Descendants

One trust for my descendants

6. If I die while I have a then living child who is under the age of eighteen, and if I have not previously exercised my power of appointment under clause 5.3, upon my death the Trustee will hold the trust estate as follows.

Distributions

6.1 The Trustee may distribute any amounts it thinks are necessary for the health, education, support, and maintenance of my descendants living from time to time. If an Independent Trustee is serving, additional amounts may be spent for their best interests as determined solely by the Independent Trustee.⁶ The amounts spent for the beneficiaries may be unequal, based on their separate needs and resources. Any undistributed income is to be added to principal periodically.

Division into separate trusts

6.2 On the first date after my death when I have no then living child of mine who is under the age of 25, the Trustee will divide the remaining trust assets among my descendants.⁷ Each descendant's share will be held as a separate trust for his or her benefit as provided in clause 7.

A Separate Trust for Each Descendant

Separate trusts

7. The Trustee will administer each separate trust held for a descendant of mine for his or her benefit as follows.

Distributions

Distributions

7.1 The Trustee may pay or apply any amounts it thinks are needed for the beneficiary's health, education, support, and maintenance, and if there is an Independent Trustee then serving, for the beneficiary's best interests as determined solely by the Independent Trustee. Any undistributed income is to be added to principal periodically.

Guardian's budget

7.2 If a separate trust is created for a beneficiary who is under the age of 18, I direct the Trustee to consult with that beneficiary's guardian and to establish a reasonable budget to provide for the needs of the beneficiary. The Trustee will be responsible to conduct a financial analysis of the beneficiary's needs and determine the amounts reasonably required for his or her care, and to implement procedures for disbursing funds to the guardian for those purposes. The Trustee is authorized to make distributions that provide some incidental or indirect benefit to the beneficiary's guardian or custodian, but only if the expenditure is for the primary benefit and needs of the beneficiary.

Significant events

7.3 If an Independent Trustee is serving, it is to consider making distributions or loans or extending credit to or for the benefit of the beneficiary when significant events occur in the beneficiary's life, such as the following:

Graduation from college

7.3(a) Graduating with a bachelor's or more advanced degree from an accredited college or university;

Marriage

7.3(b) Getting married;

Birth of a child

7.3(c) Having a child;

Buying a home

7.3(d) Buying a home;

Starting a business

7.3(e) Starting a business or entering into an entrepreneurial enterprise of any nature that requires capital, with the requirement that the beneficiary have a comprehensive business plan, and with the suggestion that the Independent Trustee invest the trust capital in ways that will provide incentives and reward the beneficiary for the responsible assumption of risk, such as entering into participatory ownership arrangements between the trust, the beneficiary, and other persons, or making distributions to other trusts with more preferential terms for that beneficiary, while at the same time encouraging the beneficiary to preserve as much wealth in trust as possible for protection from taxes and from the claims of creditors, spouses, and outsiders;

At various ages

7.3(f) Reaching the following ages:

Age 25

7.3(f)(1) I suggest that one-third of the value of the beneficiary's

trust be distributed to him or her upon reaching the age of 25, or when I die if the beneficiary is 25 or older but younger than 30;

Age 30

7.3(f)(2) I suggest that one-half of the value of the beneficiary's trust be distributed to him or her upon reaching the age of 30, if the beneficiary has not already reached that age when I die, or two-thirds when I die if the beneficiary is 30 or older but younger than 35;

Age 35

7.3(f)(3) I suggest that all of the beneficiary's trust be distributed to him or her upon reaching the age of 35, or when I die if the beneficiary has already reached that age; and

Other events

7.3(g) Any other event deemed by the Independent Trustee to be significant.

The trustee decides

7.4 The beneficiary will not have an enforceable right to a distribution when any of the events in clause 7.3 occur (including reaching the ages of 25, 30, and 35). The decision whether to make a distribution (and the amounts to be distributed) will be made by the Independent Trustee alone and in its sole judgment, based upon what it believes to be in the beneficiary's best interests (including the beneficiary's financial circumstances and solvency), although it is my expectation that the Independent Trustee will follow the guidelines set forth in clause 7.3 unless the Independent Trustee determines in its sole discretion that there are good reasons not to do so. Without limiting the Independent Trustee's discretion, the factors which may be taken into account by the Independent Trustee in determining whether to follow the guidelines set forth in clause 7.3 include such things as:

Physical or mental conditions

7.4(a) Whether the beneficiary is suffering from any physical, mental, emotional, or other condition (whether or not rising to the level of disability) that might adversely affect his or her ability to manage, invest and conserve assets of the value that would be distributed to him or her;

Financial maturity

7.4(b) Whether the beneficiary has demonstrated financial stability and an ability to manage, invest and conserve his or her assets,

Marital or emotional stress

7.4(c) Whether the beneficiary is going through a period of marital, emotional, or other stress that might affect his or her ability to manage, invest and conserve his or her assets;

Exposure to creditors

7.4(d) Whether the beneficiary faces potential exposure to claims arising from a potential or pending divorce or potential or pending claims of creditors;

Tax consequences

7.4(e) Potential tax consequences of any distribution.

When the Beneficiary Dies

Beneficiary can make gifts

7.5 The beneficiary has the following rights to make gifts when he or she dies.

To my other descendants

7.5(a) The beneficiary can make gifts to any of my other descendants from the beneficiary's trust assets.

Avoiding GST tax

7.5(b) In addition, if any portion of a trust is not wholly exempt from generation-skipping tax, the beneficiary can make gifts from that portion as provided in clause 3.6 of Schedule A, to avoid generation-skipping tax on that portion.

Alternate gift to my descendants

7.6 When the beneficiary dies the Trustee will divide all of the remaining trust assets (to the extent that the beneficiary does not give them to other persons as permitted) among the following persons:

7.6(a) the beneficiary's descendants; or if none,

7.6(b) the descendants of the beneficiary's parent who is a descendant of mine; or if none,

7.6(c) the descendants of the beneficiary's grandparent who is a descendant of mine, or if none,

7.6(d) my descendants.

The share of each descendant will be held in trust for him or her as provided in clause 7. If there is already a trust under clause 7 for that descendant, the assets passing to that descendant under this clause 7.6 will be added to that trust.

Alternate gift to other persons

7.7 If I have no descendants upon the termination of any trust under clause 7 (to the extent that the beneficiary does not make gifts of those trust assets as permitted), the Trustee will distribute the remaining trust assets to my heirs at law.⁸

Trust term limit

7.8 Despite any contrary provision of this trust instrument, if any trust has not already terminated upon the expiration of 360 years after the death of the survivor of me and the last to die of my descendants living at my death, that trust will terminate on that date, and the remaining assets of that trust will vest in all beneficiaries then eligible to receive income, in equal shares.⁹

Survival and Protective Provisions

Order of death

8. If any beneficiary is required to survive another person to receive a distribution, and if the beneficiary does not survive that other person by 90 days, the beneficiary will be treated as if he or she died before that other person.

Spendthrift clause

9. No beneficiary's beneficial interest in the trusts created in this trust instrument will be subject to anticipation, assignment, pledge, sale, or transfer in any manner, regardless of the nature of that interest. No beneficiary can anticipate, encumber, or charge his or her beneficial interest. While in the Trustee's possession (and to the extent allowed by law, while in the beneficiary's possession), a beneficiary's beneficial interest will not be liable for or subject to his or her debts, contracts, obligations or liabilities. Payments to a beneficiary will be made only upon the beneficiary's personal receipt or, in the sole discretion of the Trustee, specifically on the beneficiary's behalf. Payments receivable by a beneficiary or payable on the beneficiary's behalf will not be subject to any legal process for the payment of that beneficiary's debts.

Trustee Succession

Successor trustees

10. If Robert ceases to serve as Trustee, my brother Thomas will serve as the only Trustee. The provisions of this clause are subject to the provisions of clause 1 of Schedule A governing the removal, appointment, and succession of Trustees.

Additional Instruments and Binding Effect

Further instruments

11. I will execute any further instruments necessary to vest the Trustee with full legal title to the assets transferred to it under this trust instrument.

Binding effect

12. The terms of this trust instrument (including the attached Schedule A) extend to and are binding upon my personal representatives, successors, and assigns and upon the successors and assigns of the Trustee.

In witness whereof, I have executed this trust instrument as of the date shown on the first page.

GRANTOR

JOHN DOE

This instrument was signed, sealed, published, and declared by John Doe in our joint physical presence, and at his request we have signed our names as attesting witnesses in his physical presence and in the physical presence of each other on January 26, 2022.¹⁰

Name

Address

TRUSTEE

ROBERT DOE

STATE OF FLORIDA¹¹
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by physical presence by John Doe, as Grantor, who is known to me personally, on January 26, 2022.

Notary Public
My commission expires:
(Affix notarial seal)

JOHN DOE
2022 IRREVOCABLE HOMESTEAD TRUST

SCHEDULE A
ADMINISTRATIVE PROVISIONS

The following provisions govern the administration of the trust estate and each trust held or created under this trust instrument.

A. Rules Governing Trustees.¹²

Who Is Eligible to Appoint and Remove Trustees

*Power to appoint
and remove
trustees*

1. The individual or groups named in clause 1.5 below, in the order of priority in which they are listed, will have the power to appoint additional or successor and alternate successor Trustees and co-Trustees (whether or not removing a Trustee then serving), and to remove any Trustee then serving or designated to serve as a successor, with or without cause. Only individuals who are eligible as provided in clause 1.1 below can participate in a decision whether to exercise those powers.

*Must be in oldest
generation and 25
and otherwise able
to act*

1.1 Only persons who have reached the age of 21 and who are not then disabled (as defined in clause 6 of Schedule A), absent, or otherwise unable to act for any reason will be eligible to participate in a decision whether to exercise these powers. If there are two or more generation levels of persons in a group who are otherwise eligible to participate in a decision whether to exercise these powers, only the person or persons in the most senior generation level within that group will be eligible to participate in a decision whether to exercise these powers.

*Renunciation of
power*

1.2 A person may renounce his or her right to participate in decisions whether to exercise these powers either temporarily or permanently by written notice signed by that person and given to each Trustee then serving.

*Decision within a
group*

1.3 If there are two or more persons in a group who are eligible to participate in a decision whether to exercise these powers, those persons shall act by their agreement if there are only two such persons or by majority decision if there are more than two such persons. If there is only one person in that group who is eligible to participate in a decision whether to exercise these powers, that person shall act alone.

*Next highest
priority person or
group acts if higher
priority cannot act*

1.4 If at any time there is no individual or no person in the group which has priority to exercise these powers who is eligible to participate in a decision whether to exercise these powers, or if the persons in that group are unable to reach agreement, these powers can be exercised by the individual with the next highest

priority or the group with the next highest priority which has one or more persons in it then eligible to participate in a decision whether to exercise these powers.

Priority of Right to Appoint and Remove Trustees

Priority

1.5 The following are the individuals and groups who are eligible to exercise the powers to appoint and remove Trustees and their priority:

1.5(a) Me alone with respect to all trusts, and then next

1.5(b) My brother Robert, and then next

1.5(c) My brother Thomas, and then next

1.5(d) With respect to a separate trust under clause 7, my child who is the primary beneficiary of that trust,¹³ and then next

1.5(e) With respect to a separate trust under clause 7, the descendants of the primary beneficiary of that trust, and then next

1.5(f) My descendants.

Which group can decide can change from time to time

1.6 The determination of which individual or group (and which persons within a group) will be eligible to participate in a decision whether to exercise these powers will depend on the facts and circumstances in existence at any particular time. If at any one time there is no individual or group with one or more persons in it then eligible to participate in making a decision which has higher priority, the individual or group with one or more persons in it then eligible with the next highest priority will be eligible to exercise these powers, but only until such time (if ever) as an individual or group with one or more persons in it with higher priority becomes eligible to participate in making a decision.

Independent trustee can appoint trustees

1.7 If at any time there is no one with the power to appoint successor Trustees under clause 1.5, the Independent Trustee or Trustees then serving can appoint successor and alternate successor Trustees, but the Independent Trustee or Trustees cannot revoke or supersede any designation of a successor Trustee previously made under the preceding clauses.

Method of appointing trustees

1.8 The designation and revocation of a designation under the preceding clauses must be made by written notice given to each Trustee then serving. Each designation so made will supersede all prior designations to the extent they are inconsistent.

Court can appoint independent trustee

1.9 If at any time there is no Independent Trustee then serving, and if a successor Independent Trustee is not appointed under the provisions of the

preceding clauses after the last Independent Trustee ceases to serve, a court with jurisdiction over the trust shall appoint a successor Independent Trustee.

Primary Beneficiary Can Become Sole Trustee

*Right to become
sole trustee*

1.10 With respect to any trust under clause 7, at any time after reaching the age of 25, the primary beneficiary of that trust can elect to become a Trustee to serve in addition to the other persons who are then serving as Trustee. At any time after reaching the age of 35, the primary beneficiary of that trust can remove all other persons then serving as Trustee of that trust (including an institutional Trustee) and serve thereafter as sole Trustee of that trust. If a primary beneficiary who elects to become a Trustee thereafter resigns or ceases to serve as a Trustee because of disability, he or she can elect to serve again at any time if not disabled.

Removing an Individual Trustee

*Removal for
disability*

1.11 An individual Trustee will cease to serve immediately if he or she becomes disabled.

*Removing
individual trustee
for cause*

1.12 An individual Trustee can be removed by the unanimous agreement of Spouse's First Name, my children, and each other Trustee then serving (excluding any of them who is disabled and excluding any Trustee who is being removed) for any of the following reasons:

1.12(a) The willful or negligent mismanagement by that individual Trustee of the trust assets;

1.12(b) The abuse or abandonment of, or inattention to, the trust by that individual Trustee;

1.12(c) A federal or state charge against that individual Trustee involving the commission of a felony or serious misdemeanor;

1.12(d) An act of stealing, dishonesty, fraud, embezzlement, moral turpitude, or moral degeneration by that individual Trustee; or

1.12(e) Substance abuse, gambling abuse, or incarceration; or

1.12(f) In the case of an individual Trustee who is married to a descendant of mine, if that Trustee and the descendant cease to live together as spouses for any reason other than the death of the descendant.

There must be at least two persons (excluding the individual who is the subject of the inquiry) eligible to make the determination under this clause in order to remove a Trustee for cause. The removal of an individual Trustee under this clause will be effective immediately upon delivery to him or her of the written agreement for removal signed by all of the persons whose consent is required for the removal.

Resignation

Resignation

1.13 Any Trustee can resign by giving sixty days written notice to the person or persons who then have the priority right under clause 1.5 to name a successor Trustee and to each other Trustee then serving. If a successor institutional or Independent Trustee is required, the resignation will not be effective until one is appointed. If a successor Trustee is required and none is appointed within 60 days after the notice of resignation, the resigning Trustee may petition a court with jurisdiction over the trust to appoint a successor Trustee.

No Court Accountings

*No court
accountings*

1.14 The Trustee shall not have any duty to comply with any law requiring bond, registration, qualification, or accounting to any court. This clause does not waive, supersede, or modify the Trustee's duty under applicable law to provide accountings and other information to the beneficiaries of any trust under this instrument.

No Liability for Prior Trustees and Other Fiduciaries¹⁴

*No liability for
other fiduciaries*

1.15 Each Trustee is excused from any duty to examine or inquire into the actions or failures to act of any prior Trustee of any trust under this trust instrument, a current or prior trustee of another trust, or a current or prior personal representative of an estate, even if a beneficiary requests the Trustee to do so, and even if the Trustee knows or should know that the prior Trustee, current or prior trustee of another trust, or current or prior personal representative was negligent, breached its fiduciary duties, or acted in bad faith or with reckless indifference to the purposes of the trust or estate or the beneficial interests of the beneficiaries. At its sole option a Trustee may require a prior Trustee, trustee of another trust, or personal representative of an estate to render an accounting, but in no event will any Trustee be liable for the actions or failures to act of any prior Trustee, a current or prior trustee of another trust, or a current or prior personal representative of an estate, whether or not disclosed in any accounting required by the Trustee. If the Trustee elects to examine the actions or omissions of a prior Trustee, a current or prior trustee of another trust, or a current or prior personal representative of an estate upon the request of a beneficiary, the Trustee can require the beneficiary to advance all costs and fees incurred in the examination, or at its sole option the Trustee can offset those costs and fees directly against any payment that would otherwise be made to that beneficiary.

Compensation

Trustee fees

1.16 Each Trustee is entitled to receive reasonable compensation for services rendered in the administration of the trust. If an institutional Trustee has

a written fee schedule that has been disclosed to the persons who at the time of the disclosure were eligible to participate in a decision whether to exercise the power to remove and replace trustees (or if there was only one such person, to that person alone), the institutional Trustee will be compensated for its services in accordance with that schedule for its services rendered after the disclosure unless a different formula or amount of compensation is agreed to in writing with a majority of the persons who are then eligible to participate in a decision whether to exercise the power to remove and replace trustees (or if there is only one such person, that person alone). However, any fees paid to a Trustee for making principal distributions, for termination of a trust, and upon termination of its services must be based solely on the value of its services rendered, not on the amount of the principal distribution or the value of the trust. Reasonable compensation for services of Trustees who are not institutional Trustees, and for institutional Trustees with respect to principal distributions, termination of a trust, and termination of the institutional Trustee's services, shall be based on the amount of time reasonably necessary to perform those services billed at hourly rates comparable to those charged by persons regularly performing similar services for others for compensation on an hourly basis.¹⁵

*Proceedings to
review fees*

1.17 The Trustee shall pay itself without obtaining approval from any person or authority regardless of any conflict of interest. ***[The following should be called to the client's attention]*** In any proceeding in which a Trustee's compensation is questioned, it shall be presumed that the compensation taken by the Trustee is reasonable and appropriate. The burden of proving that the compensation was excessive shall be on the person questioning the compensation, not on the Trustee. During any proceeding challenging the actions of a Trustee, including actions for removal of the Trustee, the Trustee shall continue to receive compensation in the same manner and amounts without prior approval.¹⁶

The Trustee's Liability and Conflicts of Interest

Liability

1.18 The following rules govern liability for service as a Trustee.¹⁷

Individual trustees

1.18(a) Each individual Trustee is relieved from all liability for his or her actions or failures to act as Trustee, unless that individual acts in bad faith or with reckless indifference to the purposes of the trust or the beneficial interests of the beneficiaries.

All other trustees

1.18(b) Each institutional Trustee will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty.

Liability Among Trustees

Liability among trustees

1.19 The provisions of this clause 1.19 apply to all Trustees, whether a particular Trustee is an individual Trustee or an institutional Trustee. A Trustee who is not otherwise liable for that Trustee's actions or failures to act under clause 1.18(a) or 1.18(b) (as applicable) will not be jointly and severally liable for another Trustee's actions or failures to act for which that other Trustee is liable under clause 1.18(a) or 1.18(b) (as applicable), even if those Trustees acted jointly, except as follows.

Limited responsibility for acts and omissions of other trustees

1.19(a) A Trustee who is not otherwise liable for that Trustee's own actions or failures to act will not have any duty to monitor the conduct of another Trustee with regard to that other Trustee's actions or omissions, but if a Trustee has actual knowledge that the actions or failures to act of another Trustee were done or omitted in bad faith or with reckless indifference to the purposes of the trust or the beneficial interests of the beneficiaries, the Trustee who is not otherwise liable has a duty to take reasonable care (i) to prevent that other Trustee from committing or continuing those actions or failures to act, and (ii) to compel that other Trustee to redress the trust for the consequences of that other Trustee's actions and failures to act, and take all actions at the expense of the trust which the Trustee deems necessary (including notifying one or more of the beneficiaries of the trust) to cause the other Trustee to correct the other Trustee's actions and failures to act and to redress the trust.

No liability for trustees with exclusive authority

1.19(b) Notwithstanding the other provisions of this clause 1.19, if the terms of this trust instrument (or the terms of the instrument appointing a Trustee) confer upon one or more of the Trustees, to the exclusion of the other Trustees, the authority to exercise certain powers or the authority to direct or prevent specified actions, a Trustee who is excluded with respect to that authority shall have no duty or liability to prevent a breach of trust or to compel redress of a breach of trust with respect to the exercise or failure to exercise that authority by any Trustee upon whom that authority was conferred, unless the Trustee who is excluded from that authority would be engaged in willful misconduct by complying with the directions of the Trustee upon whom that authority was conferred.

Contribution

1.19(c) No Trustee who is liable for his, her, or its actions or failures to act will have any right of contribution or recovery from another Trustee with respect to those matters unless that other Trustee is also separately liable with respect to the same matters as provided in clauses 1.18 and 1.19.

Trustee Indemnity

Indemnity of trustee

1.20 Except as provided in clauses 1.18 and 1.19, each Trustee shall be

held harmless and indemnified from the assets of the trust estate for any liability, damages, attorney's fees, expenses, and costs incurred as a result of his, her, or its service as Trustee, or for any reduction in compensation for services as a Trustee. Except as provided above, each Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect that Trustee from liability for that Trustee's actions or failures to act while serving as Trustee, and that Trustee may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust estate, or if the former Trustee is an individual, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

Defending Trustees and Agents Against Claims

Defense costs

1.21 If a beneficiary brings proceedings against a Trustee or an individual officer, director, member, partner, employee, or agent of an institutional Trustee for breach of fiduciary duty or some other reason, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to allow the Trustee to defend itself or those individuals. That could result in a financial burden on the Trustee, make someone selected to serve as a Trustee reluctant to accept the position, and make it possible to intimidate the Trustee in the performance of its duties by threatening to bring proceedings that might force the Trustee to pay fees and costs from the Trustee's own personal or institutional resources.

Trustee can pay legal fees from the trust assets

1.21(a) For those reasons, I deliberately and intentionally waive any such conflict of interest so that the Trustee (whether individual or institutional) can hire counsel to defend itself if proceedings are threatened or brought against the Trustee for any reason (whether by a beneficiary or by someone else) and pay all reasonable fees and costs for his, her, or its defense from the trust estate while the proceeding is pending without approval or permission from any person, tribunal, or authority, regardless of any law to the contrary.

No special notice of payment of legal fees is required

1.21(b) The Trustee is not required to notify the beneficiaries or any other person, tribunal, or authority of these payments except through annual or other periodic accountings required by law. Fees may be awarded, disallowed, or allocated in whole or in part upon conclusion of the proceedings, as provided by law.

Who bears ultimate burden of trustee's legal fees

1.21(c) The Trustee will account for all such fees and costs paid from the trust estate to defend the Trustee and any such individual as provided by law, and will reimburse the trust estate for those fees and costs if required by law, but

subject to the following. In the case of an individual Trustee (even if that Individual Trustee is removed), no fees or costs that have been incurred by that individual shall be disallowed, and no fees or costs of any other person shall be assessed or charged to that individual personally, unless that individual has been determined in a final order to be liable under clause 1.18 or 1.19 (as applicable).

Other Fiduciary Capacities

Conflicts of interest

1.22 A Trustee may also serve as a personal representative of an estate, as trustee of another trust, or as an officer, director, general or limited partner, manager, member, or some other capacity with respect to one or more entities owned or controlled by that Trustee or by the Trustees, or in which a Trustee has a separate interest. As a result, the Trustees may have what the law would consider to be a conflict of interest. These potential conflicts are intentionally waived so that each Trustee will serve without regard to any such conflict.

Environmental Liabilities

Environmental matters

1.23 The following rules govern administration of the trust estate with respect to assets that could cause the Trustees to incur liability for environmental contamination or hazardous wastes.

No title to assets

1.23(a) Title to the following types of assets will not vest in any Trustee (including a successor Trustee when it begins to serve) until that Trustee executes a written instrument accepting title to those assets:

Real property interests

1.23(a)(1) Real property or any interest of any nature in real property (including mortgages secured by real property), and

Business entities

1.23(a)(2) Any interest in a partnership, limited liability company, or closely held corporation which owns real property or an interest in real property and in which the Trustee would have the ability to vote or otherwise participate in the management and control of the entity's operations.

Preconditions to accepting title

1.23(b) The Trustees may require environmental audits acceptable to it to be made at any time at the expense of the trust estate, and may require indemnities or other arrangements satisfactory to it that will protect and hold it harmless from liability that might be incurred for environmental contamination or hazardous substances. Until they accept title to the asset, the Trustees will have no fiduciary duty with respect to that asset.

If title is not accepted

1.23(c) If the Trustees refuse to accept title to an asset described in clause 1.23(a) of this Schedule A that has never been part of the trust estate of any trust under this trust instrument, title to that asset will revert to the transferor or pass to such other persons (other than the Trustees) as may be provided by

applicable law. If a successor Trustee refuses to accept title to such an asset accepted by a prior Trustee, the prior Trustee will continue to hold title to and administer that asset until the prior Trustee distributes, sells, or otherwise disposes of that asset, or until other relief is granted by a court having jurisdiction over the prior Trustee. Until it accepts title to such an asset, a Trustee will have no fiduciary duty with respect to that asset.

Losses for compliance

1.23(d) The Trustees will not be liable to any beneficiary for any claims against or losses incurred by the trust estate because of compliance with laws regulating environmental contamination or hazardous wastes, including reporting or abating contamination, cleanup of property, obtaining insurance coverage to protect the Trustees from liability for environmental contamination, and incurring administrative expenses in connection with administrative or judicial proceedings, even if the amounts spent exceed the value of the property.

Powers are supplemental

1.23(e) These provisions are in addition to other remedial powers and rights given to fiduciaries under applicable law with respect to assets that could cause the Trustees to incur liability under laws governing environmental contamination or hazardous substances.

No Duty to Diversify Closely Held Interests¹⁸

Special rule for closely held interests

1.24 The provisions of this clause 1.24 apply to interests in real estate (including any interest in residential property) and in business entities which are not regularly and publicly traded on an exchange or over-the-counter market and which were contributed to the trust estate by me during my lifetime or passing to the trust estate by reason of my death, and to interests in successor business entities acquired by merger, consolidation, or other types of reorganization of those business entities. Those interests are referred to as “Closely Held Interests.”

My belief about the long term best interests of the beneficiaries

1.24(a) A significant amount of my wealth has been created through work and investments made in Closely Held Interests. I did not accumulate or grow my wealth through diversification or investing in a balanced portfolio of investments that an investment manager would typically hold. It is my firm belief that risk is an inherent part of the creation and maintenance of wealth. It is only through the continued assumption of risk that the wealth which I have worked to create can be preserved for the long-term best interests of the beneficiaries. One of my central purposes in establishing the trusts created under this trust instrument is to provide for the growth and long-term preservation of that wealth for the benefit of my beneficiaries, for as long as these trusts may last, by the retention of ownership of those Closely Held Interests, even though retention makes the trust

estate subject to extreme volatility and what economists call “uncompensated risk.”

There is no duty to diversify

1.24(b) Because of my beliefs and my purpose in creating the trusts under this trust instrument, I expressly intend and direct that the Trustees shall never have any duty to diversify Closely Held Interests held as part of the trust estate, even if they constitute one hundred percent of the trust estate, despite any rule of law that might require otherwise, and despite any objections that the beneficiaries may raise. I intentionally and deliberately direct that the prudent investor rules contained in the Uniform Prudent Investor Act, and in any other statute or body of law that may be applicable, shall not apply with respect to any such Closely Held Interests held as part of the trust estate. Instead, I authorize the Trustees to retain all such Closely Held Interests until they in their sole and absolute discretion determine that circumstances have changed such that I would conclude that it is no longer in the best interests of the beneficiaries to retain those Interests, or that it is in their best interests to reduce the concentration of holding those Interests. My beliefs shall be entitled to great weight and shall be presumed to be correct, even with the passage of time and for as long as the trusts created under this trust instrument shall exist, and in order to disregard or ignore my beliefs, even in part, an affirmative determination must be made by the Trustees that the relevant facts and circumstances have changed such that I would conclude that it is no longer in the best interests of the beneficiaries to retain those Interests.

Trustees not liable for failure to diversify

1.24(c) The Trustees will not be liable in any manner under the prudent investor rules with respect to any such Closely Held Interests held as part of the trust estate. The Trustees will have no liability for failure to implement measures over the remaining assets of the trust estate which are not Closely Held Interests in making investment decisions that would counter the effects or consequences of holding those Closely Held Interests (including, without limit, compensating measures to achieve diversification, hedging techniques, or other risk reduction techniques). The Trustees shall have no liability for (and shall be indemnified and held harmless from) any damage or liability of any nature incurred by the trust estate, any beneficiary, or any other person because of compliance with the provisions of this clause, regardless of any information that might be available to the Trustees, and even if the Trustees have actual knowledge that such damage or liability is being incurred. I deliberately and intentionally waive any rules or laws to the contrary.

Gift to charity if beneficiaries are unwilling to accept risk

1.24(d) If, despite my belief that the long-term best interests of the beneficiaries are best served by retention of the Closely Held Interests, an action is brought by anyone to compel the Trustees to dispose of any such Closely Held

Interests that the Trustees have not decided to divest, and if a court, tribunal, or other authority having jurisdiction enters a final order determining that the Trustees must sell or otherwise dispose of any such Closely Held Interests, after compliance with that order the Trustees shall make no distributions of income or principal at any time thereafter to any beneficiary who is an individual and who (or whose designated representative, agent, natural or legal guardian in the case of an individual who is not then legally competent) failed to appear in or otherwise irrevocably go on record in that action to consent to the retention of those Interests and to join with the Trustees in defending that action. Instead of making distributions to an individual beneficiary who failed to so appear in or otherwise irrevocably go on record in that action as stated above, the Trustees shall thereafter distribute all such amounts of income or principal that otherwise would have been distributed to or for the benefit of that individual beneficiary instead to Charitable Organizations.

Beneficiary consent to these provisions

1.24(e) Each individual beneficiary's beneficial interest under this trust instrument is expressly conditioned upon that beneficiary's acceptance of the terms and conditions set forth in this clause 1.24, including the alternate gift of the beneficial interest if the individual beneficiary is unwilling to accept the investment risk inherent in Closely Held Interests that I deem essential for the long-term best interests of my individual beneficiaries.

Divided Trustee Functions

Division of authority among trustees

1.25 Except with respect to the exercise of certain powers or discretion which applicable law or the provisions of this trust instrument restrict to an Independent Trustee, and except as may be otherwise specifically provided to the contrary elsewhere in this trust instrument, the persons with the power under clause 1.5 to appoint Trustees can assign any one or more of the functions, powers, and authority of the Trustee under this trust instrument to any one or more co-Trustees, and to the exclusion of the other co-Trustees then serving. They can exercise this power both with respect to currently serving co-Trustees without appointing any additional Trustees, and with respect to newly appointed co-Trustees. Trustees can be given titles or descriptions to differentiate their respective roles more clearly in the administration of the trust estate.

No duty to monitor

1.25(a) No Trustee who has been excluded from the exercise of certain functions, powers, and authority as provided in this clause 1.25 shall have any obligation to:

1.25(a)(1) monitor, review, question, or challenge the decisions and actions or omissions of any Trustee to whom those functions, power, and authority have been assigned,

1.25(a)(2) make any recommendations to any Trustee to whom those functions, power, and authority have been assigned, or

1.25(a)(3) communicate with or warn or apprise any beneficiary or third party with respect to actions or omissions of any such Trustee to whom those functions, power, and authority have been assigned, even if that Trustee would or might have exercised its own discretion in a manner different from the manner determined by the Trustee to whom those functions, power, and authority have been assigned.

No liability for directing trustee's actions

1.25(b) A Trustee who has been excluded from the exercise of certain functions, powers, and authority as provided in this clause 1.25 shall not be liable for, and shall be indemnified and held harmless from, any liability for any act or omission of any Trustee to whom those functions, power, and authority have been assigned, and for acting on a direction of any Trustee in the implementation of any decision with respect to the functions, power, and authority delegated exclusively to that directing Trustee.

*Majority Action and Voluntary
Delegation of Powers Among Trustees*

Decisions of the trustees

1.26 If more than one Trustee is serving at any time, and unless certain functions, powers, and authority have been assigned to one or more Trustees to the exclusion of other Trustees as provided in clause 1.25, the Trustees shall act by majority decision in exercising their powers and discretion except as follows. The Trustees shall act by unanimous agreement if specifically required by other terms of this trust instrument or by the terms of any instrument appointing Trustees, or if there are only then two Trustees then serving.

If there is a deadlock

1.26(a) When the Trustees are to act by majority decision in exercising their powers and discretion, and if it is impossible to reach a majority decision, the decision of the Independent Trustee (or the decision of a majority of the Independent Trustees if more than one person is serving as an Independent Trustee) will control.

Decisions restricted to independent trustees

1.26(b) If applicable law or the provisions of this trust instrument restrict the exercise of certain powers or discretion to the Independent Trustee, the Independent Trustee will exercise those powers and discretion without the

participation of any Trustee who is not an Independent Trustee, and by majority decision if more than one person is serving as an Independent Trustee.

Temporary independent trustee to make decisions

1.26(c) If more than one Trustee is then serving and if the Trustees are unable to reach a decision in exercising their powers and discretion as provided in the preceding clauses, the person or persons who then have the right to appoint successor Trustees shall appoint an Independent Trustee to serve temporarily for the sole purpose of making the decision, even if that causes more than three Trustees to serve. The decision of that Independent Trustee will be binding on all Trustees and on all persons having an interest in the trust estate. The Independent Trustee appointed temporarily to make that decision will cease to serve once the decision has been made. All provisions of this trust instrument governing the service of Trustees (including, without limit, indemnification and compensation) will apply to that Trustee.

The trustees can delegate to each other

1.26(d) Except where unanimous agreement is required, or where the exercise of certain powers or discretion is restricted to the Independent Trustee, a majority of the Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power or discretion held by them. Trustees who reasonably consent to the delegation of authority to other Trustees will not be liable for the consequences of the actions or failures to act of those other Trustees. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable to any person for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable to any person for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the dissenting Trustee joins in the exercise of that power or discretion.

Divided trustee functions

1.26(e) If the provisions of this trust instrument (or the terms of the instrument appointing a Trustee) restrict the authority to exercise certain powers to certain Trustees, or if certain functions, powers, and authority have been assigned to two or more Trustees to the exclusion of other Trustees as provided in clause 1.25, the preceding provisions of this clause 1.26 will apply only to the Trustees who are authorized to act with respect to the exercise of those powers.

The Trustee's Powers

Trustee powers

2. The Trustee has all powers given to trustees by applicable law. The Trustee can exercise its powers independently and without court approval. Persons dealing with the Trustee have no duty or obligation to question the Trustee's actions or its use of the trust estate. Nevertheless, the Trustee must use its powers as a fiduciary

in accordance with the terms of this trust instrument. Without restricting the powers given to it by law, the Trustee also has the following powers:

A. Except as otherwise provided to the contrary, to hold funds uninvested for such period as the Trustee deems prudent, and to invest in any assets the Trustee deems advisable even if not specifically listed in so-called "legal lists," without responsibility for depreciation or loss on account of those investments, or because those investments are nonproductive, as long as the Trustee acts in good faith.

B. Except as otherwise provided to the contrary, to retain the original assets it receives for as long as it deems best, and to dispose of those assets when it deems advisable.

C. To expend whatever funds it deems proper for the preservation, maintenance, or improvement of assets; to insure property against damage or loss; and to insure the trustee (both personally and in its fiduciary capacity), the trustee's agents, and, to the extent necessary or advisable, the beneficiaries against liability of any type arising from the administration of the trust (including, without limit, liability for errors and omissions, personal injury, environmental contamination, hazardous wastes, property damage, and other sources of liability); and to pay for these as expenses of administration.

D. To employ and compensate attorneys, accountants, advisers, financial consultants, managers, agents, custodians, and assistants (including persons or entities affiliated with the Trustee) without liability for any act of those persons, if they are selected and retained with reasonable care. Fees may be paid from the trust estate even if the services were rendered in connection with proceedings in jurisdictions other than the principal place of administration of the trust.

E. To execute deeds, leases, contracts, bills of sale, notes, mortgages, security instruments, and other written instruments.

F. To make distributions, whether of income or principal, to any person under the age of twenty-one or to any incapacitated person according to the terms of this agreement by making distributions directly to that person whether or not that person has a guardian; to the parent, guardian, or spouse of that person; to a custodial account established by the Trustee or others for that person under an applicable Uniform Transfers To Minors Act; to any adult who resides in the same household with that person or who is otherwise responsible for the care and well-being of that person; or by applying any distribution for the benefit of that person in any manner the Trustee deems proper. The receipt by the person to whom payment is made will constitute full discharge of the Trustee with respect to that payment.

G. To make any division or distribution in money or in kind, or both, without allocating the same kind of property to all shares or distributees, and without regard to the income tax basis of the property, provided that the Trustee exercises its discretion in good faith. Any such division will be binding and conclusive on all parties.

H. To render at any time an accounting to a majority in interest of the permissible current income beneficiaries who are then legally competent, or to file an accounting with a court having jurisdiction. Written approval of the accounting by a majority in interest of those beneficiaries, or by the court, will be binding upon all persons having an interest in the trust estate.

I. Except as prohibited by law, to hold any assets in the name of a nominee without disclosing the fiduciary relationship, or to hold the property unregistered, without increasing or decreasing its liability.

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

K. To compromise, arbitrate, or otherwise adjust claims in favor of or against the trust and to agree to any rescission or modification of any contract or agreement.

L. To participate in any type of liquidation or reorganization of any enterprise.

M. To vote and exercise all rights and options, or empower another to vote and exercise those rights and options, concerning any corporate stock, securities, or other assets, or to delegate those rights to an agent, and to enter into voting trusts and other agreements or subscriptions that the Trustees deem advisable.

N. To hold interests in sole proprietorships, general or limited partnerships, joint ventures, business trusts, land trusts, limited liability companies, and other domestic and foreign forms of organizations; and to exercise all rights in connection with such interests as the Trustee deems appropriate.

O. To buy, sell, exchange, or lease any real or personal property, publicly or privately, for cash or credit, without court approval and upon the terms and conditions that the Trustee deems advisable. A lease will be valid and binding for its full term even if it extends beyond the full duration of the trust.

P. To exercise all its powers even though it may also be acting individually or on behalf of any other person or entity interested in the same matters. The Trustee, however, will exercise these powers at all times in a fiduciary capacity, primarily in the interest of the beneficiaries of the trust. Nevertheless, despite any other provision of this trust instrument, no Trustee may participate in the decision to make a discretionary distribution that would discharge a legal support obligation of that Trustee. All power to make such distributions will be exercised solely by the remaining Trustees, if any, or if there are no other Trustees then serving, by the person or persons named to serve as the next successor Trustee, or if there are none, by a special Trustee appointed for that purpose by a court having jurisdiction.

Q. To make elections under state laws and under the Internal Revenue Code, including selecting taxable years (if permitted) and dates of distribution. The Trustee is specifically and intentionally excused from any requirement to make equitable adjustments among affected beneficiaries because of any election.

R. To determine, in a fiduciary capacity, how expenses of administration and receipts are to be apportioned between principal and income.

S. After my death, to exercise the discretion to refrain from funding or to terminate any trust whenever the value of the principal of that trust (or if a trust has been divided into exempt and nonexempt trusts, the principal value of those combined trusts) would be or is less than the minimum amount required to administer that trust on an economically efficient basis (considering the costs and expenses of administering the trust), and to distribute the remaining principal and all accumulated income of the trust as provided in paragraph F to the beneficiaries then entitled to receive income in proportion to their shares of that income (or on a per capita basis if their shares are not fixed). The Trustee will exercise this power to terminate in its absolute discretion, as it deems prudent for the best interest of the permissible current income beneficiaries. This power cannot be exercised by any Trustee who has a beneficial interest in the trust either alone or in conjunction with any other Trustee, but must be exercised solely by the other Trustees who do not have a beneficial interest in the trust, or if none, by a special Trustee appointed for that purpose.

T. Except as otherwise provided to the contrary, to hold nonproductive assets without allocating any portion of principal to income, despite any laws or rules to the contrary.

U. Except as otherwise provided to the contrary, to hold two or more trusts or other funds in one or more consolidated funds, in which the separate trusts or funds have undivided interests.

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

W. To employ any investment management service, financial institution, or similar organization to advise the Trustee and to handle all investments of the trust and to render all accountings of funds held on its behalf under custodial, agency, or other agreements.

X. To transfer the situs of any trust or any trust property to any other jurisdiction as often as the Trustee deems advisable, and if necessary to appoint a substitute or ancillary Trustee to act with respect to that property. The Trustee may delegate to the substitute Trustee any or all of the powers given to the Trustee; may elect to act as advisor to the substitute Trustee and receive reasonable compensation for that service; and may remove any acting or substitute Trustee and appoint another, or reappoint itself, at will.

Y. To invest in assets, securities, or interests in securities of any nature, including (without limit) commodities, options, futures, hedge funds, precious metals, currencies, and in domestic and foreign markets and in mutual or investment funds, including funds for which the Trustee or any affiliate of the Trustee performs services for additional fees, whether as custodian, transfer agent, investment adviser or otherwise, or in securities distributed, underwritten, or issued by the Trustee or by syndicates of which the

Trustee is a member; and to trade on credit or margin accounts (whether secured or unsecured), and to pledge assets of the trust estate for that purpose. I expressly authorize the Trustee, with specific reference to Florida Statutes section 736.0802(5)(e)2 (or any similar successor statute), to invest and reinvest from time to time in investment instruments described in Florida Statutes section 736.0802(5)(a) (including assets other than qualified investment instruments) owned or controlled by the Trustee or its affiliates, or from which the Trustee or its affiliate receives compensation for providing services in a capacity other than as Trustee and to do so without notice to or consent from any beneficiary.

Z. To deal with each custodian of electronic records in which the Trustee (including any predecessor Trustee) have or had a right or interest, with full authority to direct each custodian to disclose those records, including the contents of electronic communications sent or received by the Trustee (including any predecessor Trustee) to the Trustee, and to continue to maintain or to terminate all accounts in which that custodian carries or maintains digital assets, as provided in the Florida Fiduciary Access to Digital Assets Act.

B. Rules Governing Taxes.

Generation-Skipping Tax Provisions

GST taxes

3. The following rules govern all generation-skipping trusts.

Tax savings clause

3.1 I intend for each trust under this trust instrument to be interpreted and administered in a way that will minimize generation-skipping transfer (“GST”) taxes in a manner consistent with directions for division and distribution of the trust estate as set forth in this trust instrument. All other provisions of this trust instrument are subject to this clause.

Definitions

3.2 The terms used in this clause have the meaning given to them in Chapter 13 of the Internal Revenue Code. Additional terms are defined as follows.

3.2(a) “Exempt trust” or “exempt property” means a trust (or trust equivalent) or property that has a GST inclusion ratio of zero.

3.2(b) “Nonexempt trust” or “nonexempt property” means a trust (or trust equivalent) or property that has a GST inclusion ratio greater than zero.

Exempt and nonexempt trusts

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

Trust additions

3.4 Exempt or nonexempt property can be added only to a trust of the same character. If because of this rule a trust cannot receive property, the property will be held as a separate exempt or nonexempt trust by the trustee of the trust designated to receive the property and administered and distributed as provided for that trust.

Multiple transferors

3.5 If portions of a single trust are attributable to transfers from different transferors, the Trustee will maintain sufficient records to preserve the treatment of those portions as separate trusts under Section 2654(b)(1) of the Internal Revenue Code.

General power of appointment

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

Multiple trust rules

3.7 If a trust has been divided into exempt and nonexempt trusts, the following rules will govern how distributions are made as between those trusts.

Distributions

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

Charges

3.7(b) If a trust charged with the payment of taxes or expenses is divided into exempt and nonexempt trusts, those taxes and expenses are to be paid first from the nonexempt trust, and from the exempt trust only after the nonexempt trust has been exhausted.

Paying GST tax

3.8 If a federal or state GST tax is imposed with respect to any transfer under this trust instrument, the amount of the tax will be charged to the property constituting the transfer as provided in section 2603(b) of the Internal Revenue Code.

Subchapter S Stock

Subchapter S stock

4. The following rules govern any stock held in a subchapter S company.

Separate trust

4.1 Despite any other provisions of this trust instrument, before the Trustee of any trust that is not elected to qualify as a small business trust and which does not qualify as a "Qualified Subchapter S Trust" (referred to in this clause as a "QSST") may receive any stock in a subchapter S corporation, the Trustee will set aside that stock in a separate QSST for the income beneficiary of that trust. If the trust has more than one permissible current income beneficiary, the Trustee will divide that stock among separate QSSTs for each such beneficiary, based on the ratio that the actuarial values of the income interests of the beneficiaries bear to each other. The Trustee will administer each QSST as nearly as possible in accordance with the provisions set forth for that trust, but subject to the following overriding provisions.

Income payments

4.2 The Trustee must pay all net income to the beneficiary quarterly or more frequently during the beneficiary's lifetime.

Principal payments

4.3 If the beneficiary is otherwise entitled under the provisions of this trust instrument to receive principal distributions from the nonqualifying trust, the Trustee may distribute principal to or for the benefit of the beneficiary in accordance with those provisions. The Trustee cannot distribute principal to or for the benefit of any other person during the life of the beneficiary.

Termination during life

4.4 If the trust is terminated during the beneficiary's life, the Trustee will distribute all remaining assets to that beneficiary.

Termination at death

4.5 Upon the death of the beneficiary during the term of the trust, the Trustee shall pay the undistributed income to the beneficiary's estate. All remaining assets are to be distributed as provided for the nonqualifying trust, but subject to the continuing terms of this clause 4.

Undistributed income

4.6 For purposes of clause 4.5 of this Schedule A, "undistributed income" means net income received on or before the day before the beneficiary's death. The term does not include an item of income or expense that is due or accrued. In the case of a trust being administered as a unitrust, the term

"undistributed income" means the prorated unitrust amount computed on a daily basis through the day before the beneficiary's death.

C. Rules Governing Miscellaneous Other Matters.

General Rule Governing Distributions

Distributions

5. If the Trustee knows that a beneficiary has other available income and resources, it should take them into account when deciding how much principal to distribute to that beneficiary or for his or her benefit. The Trustee does not have to get financial statements or tax returns from a beneficiary. The Trustee can make payments directly to a beneficiary or to other persons for his or her benefit, but it does not have to make payments to a court appointed guardian. The Trustee's decision on amounts to be spent will be final.

Determination of Disability

Definition and determination of disability

6. For purposes of this trust instrument an individual is disabled if he or she is unable to manage his or her personal affairs or assets because of a mental or physical impairment (whether temporary or permanent in nature). The determination of whether an individual is disabled (or whether the individual has recovered from a disability) can be made only by one of the following two procedures.

Private decision

6.1 Upon the written agreement of a majority of the persons who have the highest priority and who are eligible to participate in a decision whether to exercise the power to remove and replace trustees (but if there is only one such person, and if that person's disability is being determined, a majority of the persons in the group with the next highest priority, or if there is only one such person, that person alone) and each Trustee then serving (excluding any such person whose disability is being determined), a board certified medical doctor will be hired to examine the individual. The costs of the examination will be paid from the trust estate.

Written notice

6.1(a) Written notice must be given to the individual stating that he or she has 30 days from receipt of the notice to submit to the examination and to authorize release of the written findings of the examination to each Trustee then serving, or if that individual is the only Trustee then serving, to the persons having the power to appoint successor Trustees. If the individual fails to comply within 30 days, the individual will be deemed to be disabled for all purposes of this trust instrument unless the persons agreeing to the examination agree to an extension of the deadline.

Medical findings

6.1(b) The physician's written findings of the examination will be binding if given to the individual and to each person who signed the notice unless a court determines otherwise.

Court determination

6.2 If a court with jurisdiction determines an individual's legal capacity, that determination will supersede any other determination made under this clause 6.

Division Among Descendants¹⁹

Division among descendants

7. When assets are to be divided among a person's descendants, the division will be made among that person's then living descendants so that the shares within each generation level will be equal (for example, so that each living child of that person will receive an equal share of the total amount distributed to that person's children, so that each living grandchild of that person will receive an equal share of the total amount distributed to that person's grandchildren, and so forth, even though the amounts distributed may differ among generation levels). The first division will be made at the most senior generation level in which that person has living descendants, so that there will be one share for each descendant at that level who is alive or who is deceased with then living descendants of his or her own. The shares of all of the deceased descendants in that generation level who have living descendants of their own will be combined and then redivided among them in the same manner, by reapplying the preceding rule to the next most senior generation level in which that person has living descendants (and reapplying it further if necessary). Thus, for example, if all of my children are deceased, and if all of my grandchildren are living, each of my grandchildren will receive the same amount even if one of my deceased children had more children of his or her own than another one of my deceased children. A descendant of a person who was in one continuous gestation upon that person's death will be included in the class of that person's descendants for purposes of this clause if the descendant lives 120 hours or more after birth.

Other Definitions

Defined terms

8. The following terms as used in this trust instrument have the meaning set forth below.

Final orders

8.1 "Final order" means an order that is not subject to appellate review because the right to appeal was exhausted or waived.

Heirs

8.2 "Heirs" means the heirs at law of a person determined as if that person had died on the specified date, unmarried, intestate, and a resident of the State of Florida, under Florida law then in effect.

Income 8.3 “Income” means money or property that the Trustee receives as current return from the principal assets of the trust estate, as determined under UPIA or other applicable state law.

Trustee chooses method of determining income 8.3(a) The Trustee has full and exclusive authority to define income as fiduciary accounting income (and if an Independent Trustee is serving, to make discretionary adjustments to fiduciary accounting income as the Independent Trustee in its sole discretion deems advisable), to define income as a unitrust amount, or to determine income based on some other method, all as authorized by governing law.

Adjusting unitrust percentage and method of determining fair market value 8.3(b) The Independent Trustee from time to time may adjust the percentage used to calculate the unitrust amount (provided that the percentage used is within the range of percentages authorized by UPIA), and elect to use fair market values or average fair market values in determining the unitrust amount, as the Independent Trustee determines to be necessary to administer the trust estate fairly, efficiently, and impartially in a manner that is fair and reasonable to all of the beneficiaries.

Conversion between methods 8.3(c) The Trustee can convert and reconvert from one method of determining income to another method from time to time (including conversions and reconversions within the same accounting period) as the Trustee in its sole discretion shall determine.

Independent trustee 8.4 “Independent Trustee” means any individual Trustee who is not a Related Person as that term is defined in clause 8.7 of this Schedule A or an Institutional Trustee that is not “related or subordinate” (as defined in section 672(c) of the Internal Revenue Code) to a Related Person.

Institutional trustee 8.5 “Institutional Trustee” means a corporation or other legal entity that is authorized to serve as a trustee under the laws of the United States or any state in the United States.

Internal Revenue Code 8.6 “Internal Revenue Code” means the Internal Revenue Code in effect from time to time, or successor provisions of future federal internal revenue laws.

Related Persons 8.7 “Related Person” means any individual who is “related or subordinate” (as defined in section 672(c) of the Internal Revenue Code) to me, to any spouse or former spouse of mine, to any descendant of mine, or to any spouse or former spouse of a descendant of mine, determined as if any of them were the grantor of that trust for purposes of that Internal Revenue Code section.

UPIA 8.8 “UPIA” means the Florida Uniform Principal and Income Act set forth in Chapter 738 of the Florida Statutes, as in effect from time to time, or any

similar law governing fiduciary trust accounting rules with respect to the administration of any trust under this trust instrument.

Notices

Notices

9. Whenever notice is required under this trust instrument, it will be effective only if delivered in writing as follows.

How delivered

9.1 Notice can be delivered in person, by any form of mail or delivery that requires written receipt, by ordinary mail, or by electronic transmission, as provided below.

Notice to institutional trustee

9.2 Notice by any form of delivery to an institutional Trustee will be effective only if delivered to the officer or other agent who is primarily responsible for the administration of the trust, at the address shown on the institutional Trustee's correspondence or accounting statements for the trust.

Notice to individual

9.3 Notice to an individual that is not delivered in person or by electronic transmission will be effective if delivered to the individual's last known place of residence or where the individual regularly conducts business or is employed.

Physical delivery

9.4 If notice is sent by mail not requiring a written receipt upon delivery, it will be regarded as delivered five days after mailing. If notice is sent by courier service, it will be regarded as delivered upon written receipt signed by the person to whom it was addressed, an adult member of that person's household, an adult employee at that person's place of business or employment, or someone else authorized to act on that person's behalf. If the person who received the delivery refused to sign a receipt for it or refused the delivery itself, the notice will be regarded as delivered on the date of refusal as identified in a written statement signed by the person who made or attempted to make the delivery.

Electronic transmission

9.5 Notice may be delivered to a person by electronic transmission that delivers either a printed copy of the notice or readable data in digital format that can be permanently stored by the receiving device. Electronic transmission may be sent only to an address used by that person in corresponding about the trust or its administration, unless the person has previously given notice to the person giving the notice that the address is no longer valid for that purpose. Notice will be regarded as delivered when it is transmitted electronically unless the person transmitting the notice receives a written or electronic report within five days that the transmission was not delivered to that address.

How days are counted

9.6 When any provision in this trust instrument provides for notice of less than thirty days, only legal business days shall be considered in determining the notice period. When any provision in this trust instrument provides for notice of

thirty days or more, actual calendar days shall be considered into determining the notice period.

Dealing with Minors and Disabled Persons

Minors and disabled persons

10. Whenever any provision of this trust instrument requires that notice be given to or that consent be obtained from a person who is a minor or who is disabled, it shall be sufficient for all purposes if notice is given to or consent obtained from that person's attorney-in-fact, legal guardian, natural guardian if there is no legal guardian, or other legal representative.

Absence

Definition of absence

11. For all purposes of this trust instrument, a person will be deemed to be absent if (i) the whereabouts of that person are unknown and he or she has not had an exchange of written or oral communications for thirty consecutive days with a Trustee, a designated successor Trustee, or a person who has the power under this trust instrument to appoint a successor Trustee, or (ii) even if the person's whereabouts are known, the facts and circumstances are such that the person cannot communicate freely, voluntarily, and confidentially with respect to the administration of the trust for thirty consecutive days. Under either of those circumstances, however, if that person is then serving as a Trustee and administration of the trust requires the appointment of another Trustee prior to the expiration of thirty days, that person will be deemed to be absent upon the unanimous written determination of the following: (i) all other persons then serving as Trustee, (ii) the person or persons designated under this trust instrument to succeed that person as Trustee, if any, and (iii) the person or persons with the authority under this trust instrument to appoint a Trustee to succeed that person as Trustee.

Alternative Dispute Resolution²⁰

Alternative dispute resolution

12. If there is a dispute or controversy of any nature between or among the Trustee and beneficiaries involving any aspect or the administration of any trust under this trust instrument (other than a determination of a person's disability), I direct the parties in dispute to submit the matter to mediation or some other method of alternative dispute resolution selected by them, and if that procedure fails to resolve the dispute, to binding arbitration. Except as otherwise provided in this trust instrument, the parties shall conduct binding arbitration in accordance with Sections 731.401 and 44.104, Florida Statutes, as amended, or successor laws, and the applicable Florida Rules of Civil Procedure, or any other applicable law governing alternative dispute resolution with respect to the administration of any trust under this trust instrument.

Arbitration by beneficiary

12.1 A beneficiary shall commence an arbitration proceeding by submitting a written notice to the Trustee by hand-delivery, which indicates the nature of the dispute and a list of all persons believed to be interested in the dispute. The Trustee shall serve all interested persons with the notice within 5 days of receipt of it.

Arbitration by trustee

12.2 A Trustee shall commence an arbitration proceeding by submitting a written notice to all persons interested in the dispute by hand-delivery, which indicates the nature of the dispute and a list of those persons believed to be interested in the dispute.

Appointment of mediator or arbitrator

12.3 If the parties are unable to agree on the selection of a mediator or arbitrator, the court having jurisdiction over the trust shall, upon application by an interested person and after notice to all other interested persons, select the mediator or arbitrator, who shall be a lawyer with at least 10 years of practice in trust and estate law, unless none is available. There shall be only one mediator and only one arbitrator for each dispute, and the same person may not serve in both roles (although a mediator or arbitrator may mediate or arbitrate more than one dispute). The mediator or arbitrator cannot have any interest or involvement in the dispute.

Procedural rules

12.4 In any arbitration, discovery and hearing venue and procedures shall be in accordance with agreement of the parties, or if they cannot agree, by rules established by the arbitrator, recognizing the goals of privacy, efficiency, obtaining cost savings, and proceeding with less formality than in a judicial tribunal, while reaching a fair result. The Florida Evidence Code (or any other applicable law governing evidentiary matters with respect to the administration of any trust under this trust instrument) shall apply to the proceeding, but affidavits and other means of reducing the cost of authenticating and explaining evidence may be used in the discretion of the arbitrator.

Initial meeting

12.5 Within 15 days of selection of the arbitrator or appointment of the arbitrator by the court, the arbitrator shall meet with the interested persons to identify the dispute and to establish a discovery schedule, hearing venue, the fee of the arbitrator, and applicable procedural rules. The issues to be resolved, discovery procedures and schedule, hearing venue, arbitrator's fee, and hearing procedures shall be included in a written order served on the interested persons within 5 days of the arbitrator's meeting with the interested persons.

Fees of the arbitrator

12.6 The arbitrator's fee and costs (including cost of the hearing venue, if any) shall be paid from the trust estate initially. After the final hearing, the arbitrator may determine whether all or any portion of the arbitrator's fee and costs

should be borne by one or more of the persons interested in the arbitration in accordance with applicable governing law and equitable principles of fairness, except as follows. I direct that no such fees or costs be assessed or charged to any individual Trustee who is not an Independent Trustee personally, unless the arbitrator determines in a final order that is not subject to further review that the individual Trustee acted in bad faith or with reckless indifference to the purposes of the trust or the beneficial interests of the beneficiaries.

Final hearing and order

12.7 Unless good cause is shown, the final hearing shall commence within 120 days of appointment of the arbitrator. The final decision shall be in writing and shall include findings of fact and conclusions of law. The arbitrator shall serve the parties with a copy of the decision within 10 days of the final adjournment of the arbitration proceeding. Within 10 days of service of the decision, the parties may serve on the other parties and the arbitrator a list of proposed corrections as to the form of the order, including clerical errors and mistakes in describing parties or property. There is no right to rehearing. Within 5 days following the period for offering corrections to the form of the decision, the arbitrator shall serve a corrected written decision or advise the interested persons in writing that no corrections were made.

Guardian ad litem

12.8 If the arbitrator determines that a guardian ad litem is necessary to represent the interests of unborn, unascertained, or disabled interested persons, one shall be appointed by the arbitrator and confirmed by the court having jurisdiction over the trust either before or upon conclusion of the arbitration. In all other respects, decisions of the arbitrator shall be binding upon minors, unborn persons, and unascertained persons to the same extent as orders and judgments entered in judicial proceedings concerning estates and trusts.

Beneficiary must participate in good faith

12.9 Each beneficial interest in each trust under this trust instrument is conditioned on the beneficiary participating in alternative dispute resolution proceedings in good faith. If a beneficiary refuses to participate in alternative dispute resolution, I authorize the court having jurisdiction over the matter to award costs and attorney's fees from that beneficiary's share. If an arbitration proceeding was commenced in which all the interested persons participated, the arbitrator may determine whether a beneficiary participated in good faith. If the arbitrator determines that the beneficiary did not participate in good faith, it may award attorneys' fees and costs from the beneficiary's share.

Trustees must participate in good faith

12.10 Each Trustee's acceptance of the Trust constitutes that Trustee's agreement to participate in alternative dispute resolution proceedings in good faith. If a Trustee refuses to participate in alternative dispute resolution, it shall

cease to serve as a Trustee. The court having jurisdiction over the Trustee is authorized to remove that Trustee and surcharge it for costs and attorneys' fees. If an arbitration proceeding was commenced in which all the interested persons participated, the arbitrator may determine whether a Trustee participated in good faith. If the arbitrator determines that the Trustee did not participate in good faith, it may surcharge it for attorneys' fees and costs.

Statutes of limitation apply

12.11 All applicable statutes of limitation, statutes of repose, and other time bars with respect to any dispute or controversy of any nature between or among the Trustees and beneficiaries involving any aspect or the administration of any trust under this trust instrument shall continue to apply and will bar the commencement of an arbitration proceeding if a judicial action or proceeding with respect to that dispute or controversy would be barred.

Modification of Certain Administrative Provisions

Independent trustee can change administrative rules

13. If the Independent Trustee determines it to be necessary for the efficient administration of the trust, it can change the rules and create new rules governing (i) the determination under clause 6 of this Schedule A of whether an individual is disabled, (ii) the delivery of notice under clause 9 of this Schedule A, (iii) the rules under clause 10 of this Schedule A governing dealing with minors and disabled persons, (iv) the determination under clause 11 of this Schedule A of when a person is deemed to be absent, and (v) the rules under clause 12 of this Schedule A governing alternative dispute resolution. The Independent Trustee must give notice of any such change to each other Trustee then serving and to the beneficiaries who are then eligible to receive current distributions of income and principal. If the proposed change governs the delivery of notice under clause 9, notice of the proposed change must be delivered by one of the rules then in effect for giving notice. The Independent Trustee is prohibited from making any change that would cause the trust estate or any portion or interest in it that qualifies for any tax deduction, exemption, or preference to cease to qualify. No change will become effective if any other Trustee then serving or if a majority of the persons who are then eligible to participate in a decision whether to exercise the power to remove and replace trustees (or if there is only one such person, that person alone) objects in writing within 30 days of delivery of notice of the proposed change.

Other Miscellaneous Provisions

Mandatory and permissive

14. The words "will" and "shall" are used interchangeably in this trust instrument. Unless the context indicates otherwise, "will" and "shall" mean that the Trustee must take the action indicated, and "may" means that the Trustee has

the discretionary authority to take the action but is not automatically required to do so.

Governing law

15. This trust instrument is executed under Florida law.

Substance and procedure

15.1 The substantive and procedural law of Florida will govern all aspects of this trust instrument, including, but not limited to, its validity, construction, and duties of the Trustee.

Place of administration

15.2 Subject to the other provisions of this trust instrument, the laws of the jurisdiction where a trust has its principal place of administration will govern all matters involving the administration of that trust. Each trust shall be administered at a place that the Trustee believes to be generally and reasonably appropriate to its purposes and administration. The Trustee need not choose a particular place which might be deemed more advantageous for one or more particular purposes (including, without limit, tax or creditor-protection purposes). The Trustees shall not be under a continuing duty to determine the most appropriate place for a trust to be administered or to relocate the trust to another place.²¹

General references

16. Gender references mean either masculine or feminine, as appropriate. Number references include both singular and plural if the context permits or requires. Reference to a clause or subclause includes (as appropriate) the entire clause of which it is a part and all subclauses and paragraphs in that clause. The use of descriptive margin notations and captions for clauses and paragraphs is for convenience only and is not meant to restrict the application of those provisions.

In witness whereof, I have executed this Schedule A to the trust instrument, as part of the terms of the trust on the date shown on the first page.²²

GRANTOR AND TRUSTEE

JOHN DOE

This instrument was signed, sealed, published, and declared by John Doe as Schedule A in our joint physical presence, and at his request we have signed our names as attesting witnesses in his physical presence and in the physical presence of each other on January 26, 2022.

Name

Address

TRUSTEE

ROBERT DOE

SCHEDULE B

Residence located at 123 Camino de los Ladrillos Amarillos,
Fort Lauderdale, Florida

¹ It should be possible to include all dispositive provisions in any revocable or irrevocable trust that the client cares about in less than ten pages – drafted in plain simple English. While the administrative provisions governing things such as choice and regulation of trustees, tax clauses, fiduciary powers and the like are extremely important, most clients do not care about those, and they become frustrated with the length and complexity of the overall document if they are forced to read through those provisions to find the provisions they actually care about.

In addition, note the formatting and organization of the trust instrument. Margin notes provide easy reference to the different provisions of the trust and allow the drafter to omit the clutter of typical article and paragraph titles. Margin notes can help the client to understand the general purpose of the various provisions (such as “avoiding GST tax”). Overall aesthetic appearance of estate planning documents is important for client satisfaction, and the content should flow in a logical order that is easily readable by persons not trained in the jargon of estate planning.

² It will still be necessary to prepare and record a deed conveying title to the trustee, with care being taken to reserve a life estate for the life of the settlor. The practitioner should advise the settlor to obtain confirmation from the local tax collector’s office that the settlor’s homestead property tax qualification will not be affected by the transfer. Close attention should be given to the documentary stamp tax consequences if the homestead property is encumbered by a mortgage, and also to determine if the conveyance will trigger a due on sale clause in the mortgage documents.

³ Note that the distribution standards during the settlor’s life are limited to ascertainable standards and thus do not allow a “decanting” distribution to another trust during the settlor’s life unless the recipient trust grants each beneficiary of this trust beneficial interests in the recipient trust which are substantially similar to the beneficial interests of the beneficiary in this trust. See, for example, Florida Statutes section 736.04117. Careful analysis should be made of the risk that expanding distribution authority to allow decanting distributions that change beneficial interests might cause a court to conclude that the settlor has directly or indirectly retained incidents of control sufficient to cause the trust arrangement to have testamentary aspects, and thus be an invalid attempt to avoid the constitutional restrictions on devise of homestead. The underlying premise of this trust is that the settlor has made an inter vivos gift of all interests not retained by the settlor (even if incomplete for federal gift tax purposes – see note 4 below)

⁴ The prohibition on distributions in discharge of the settlor’s legal obligations is not intended to serve the normal purpose of an *Upjohn* clause, because the residence will be included in the settlor’s gross estate at death in any event because of the settlor’s retained life estate in the homestead property. Instead, the purpose is to rule out an argument that the settlor has retained a power of revocation if the settlor can appoint the trust assets in a manner that discharges the settlor’s obligations.

⁵ The power of appointment is critical for several purposes. It causes the gift of the remainder interest in the homestead property (as well as any other assets transferred to the trust) to be an incomplete gift, thus avoiding immediate gift tax consequences. See Treasury Reg. section 25.2511-2(c): “A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard.” For income tax purposes, the power of appointment is a power of disposition under Internal Revenue Code section 674(a) which causes the trust to be a wholly grantor trust, thus preserving the benefits of capital gains exclusion under section 121, and avoiding gain recognition by the trust if the remainder interest in the homestead property is sold during the grantor’s

life. Note, however, that the grantor trust proposals in the Build Back Better Business Act would have upended these tax consequences, and in some circumstances making the use of this homestead trust disadvantageous both for gift tax and income tax purpose.

The power of appointment cannot be testamentary, otherwise the attempted disposition will likely fail as a prohibited devise under the constitution, statute, and caselaw. It could be argued that a power of appointment exercisable only during lifetime but taking effect upon death is not testamentary in nature, but unless the exercise is irrevocable once made, the soundness of that argument is completely undermined if the settlor has the continuing ability to revoke or change the terms of an inter vivos exercise right up until the moment of death – just as the settlor could continually revise and exercise the provisions of the settlor’s last will and testament right up until the moment of death. This form takes the more conservative approach that the exercise must be effective immediately, and that the effectiveness cannot be deferred until death even if the exercise itself is irrevocable once made. It would be an unanticipated and unusual circumstance for the power ever to be exercised – it is the existence of the power which is important.

⁶ Note that inclusion of the power to make distributions for “best interests” gives the trustee the power to make decanting distributions after the settlor’s death. See Florida Statutes section 736.04117.

⁷ Note that the term “per stirpes” is never used here or anywhere else in the trust instrument. Clients do not understand the term, and frankly neither do most drafters because there are generally three different meanings of the term among different jurisdictions. Clause 7 of Schedule A gives a specific method to determine how assets will be divided among descendants, with examples. This eliminates the possibility of varying results if the governing law jurisdiction of the trust changes from time to time, and it eliminates the need to explain the term “per stirpes” to the client.

⁸ Each time the term “heirs” is used, the drafter should specify how heirs will be determined. Which jurisdiction’s law will govern, and how will that law be applied under the specific facts and circumstances? A definition of “heirs” is set forth in clause 8.2 of Schedule A, which avoids the need for repetitive definitions if the term is used in various places of the trust instrument. If the term is used only in one provision of the trust instrument, the definition could be included in that provision and clause 8.2 of Schedule A could be eliminated. It is a better practice and safeguard, however, to include the definition as part of the fixed standard provisions of Schedule A, to ensure that the term will always be there – even if the term “heirs” is never actually used in the dispositive provisions of the trust instrument.

⁹ Two comments are in order here. First, the perpetuities clause set forth here uses the maximum period of duration permitted under Florida law. The drafter should use perpetuities provisions permitted under the governing law jurisdiction. Second, most perpetuities provisions are drafted to require outright distribution of the remaining trust assets upon termination of the perpetuities period. That is not necessary. Remaining trust interests are required to “vest” upon conclusion of the period. The language of this provision permits the trustee to distribute the remaining assets in further trust upon the termination of the period, as long as all trust interests are vested – thus deferring outright ownership for longer periods where appropriate.

¹⁰ Florida Statutes section 736.0403(2)(b) requires that all revocable trusts with testamentary aspects executed by a Florida domiciliary – regardless where executed – be executed with the formalities required for execution of a last will and testament. Because this particular trust is an irrevocable inter vivos trust, the requirements of Florida Statutes section 736.0403(2)(b) do not apply, nor do they apply if the settlor is not domiciled in Florida when the trust instrument is executed, but it is safer practice to comply with the execution formalities nonetheless.

¹¹ There is no requirement that the trust instrument be notarized unless there would be a need to record the entire trust instrument. (Even then, it is generally preferable to record a certificate of trust, rather than the entire trust instrument.) Even though a revocable trust with testamentary aspects created by a Florida domiciliary must be executed with will formalities, there are no “self-proof” procedures (and thus no notary required) for a revocable trust, as it is not subject to probate administration.

¹² These are the most complicated and intricate provisions of the entire trust instrument. It is impossible to come up with one template that can adequately address all of the possible variations and permutations of the rules governing who will serve as trustees, who will have the power to control the succession of trustees, and the checks and balances that will exist on the exercise of the trustee’s powers. Even the most complicated tax driven provisions (for example, marital deduction or generation-skipping tax provisions) are subject to objective and codified rules, and thus are entirely driven by logical choices. Trustee selection on the other hand is subjective. The drafter should modify this template as necessary after discussing with the client her or his wishes about trustee selection and service.

¹³ Clauses 1.5(c) and 1.5(d) of Schedule A are based on the assumption that a separate trust has been created for a child of the settlor and which also includes that child’s descendants as beneficiaries who are eligible either for current or future distributions from that separate trust. For example, this form would not be appropriate if the settlor creates a sprinkling trust for the benefit of all of the settlor’s descendants (such as the trust under clause 6), as opposed to separate trusts for the settlor’s descendants under clause 7.

¹⁴ This clause negates the duty that a successor trustee would otherwise have under the common law or the Uniform Trust Code to investigate and address breaches of duty by a predecessor trustee. As a practical matter, it is usually necessary to include exoneration provisions such as these to induce the persons chosen by the settlor to serve as successor trustees to accept their appointment.

¹⁵ Clause 1.16 of Schedule A allows the persons who have the power to remove and replace trustees to override an institutional trustee’s standard fee schedule. The clause automatically overrides provisions of an institutional trustee’s standard fee schedule which provide for fixed charges on principal if the services of the institutional trustee are terminated or if principal is distributed. Those charges (known as termination fees) were standard provisions in published fee schedules of corporate fiduciaries in the past, and still appear in some published fee schedules. Those provisions are never appropriate, and thus this clause supersedes them.

¹⁶ These and other provisions in Schedule A are generally “trustee friendly” in that they override or reverse normal rules governing trustee conduct and liability that apply under the Uniform Trust Code or common law. The underlying assumption in this form is that the settlor has given careful consideration to the selection of trustees, has weighed the delicate balance of power and the system of checks and balances between trustees and beneficiaries, and wishes to protect the trustee from the demands of unhappy beneficiaries who disagree with the trustee’s decision and threaten the trustee with litigation. After all, the job of a trustee quite often is to say “no,” and the policy underlying many of the provisions in Schedule A is to give the benefit of the doubt to the trustee, and to place the burden on unhappy beneficiaries in proceedings challenging the trustee’s decisions and compensation, thus removing the ability of unhappy beneficiaries to “blackmail” the trustee by exercising procedural remedies given to them under the Uniform Trust Code or common law. This is a delicate policy assumption that would be inappropriate in some circumstances, and thus the overall approach should be discussed with the client.

¹⁷ Clauses 1.18(a) and 1.18(b) set forth different standards of conduct for individual trustees versus institutional trustees. Individual trustees are held to the least restrictive standard of conduct by

exoneration from liability to the maximum extent permitted by the Uniform Trust Code, whereas institutional trustees are held to normal default standards of conduct. The assumption is that the settlor will want to hold individual trustees who are likely friends or relatives of the settlor to standards of good faith conduct, not to standards of ordinary negligence. The optional language in clauses 1.21 and 1.22 exonerating individual employees of an institutional trustee will normally be appropriate for clients who have their own family office or private trust company. Most people are unaware that individual trust officers of institutional trustees may have joint and several individual liability for breaches of trust.

¹⁸ It is questionable whether this provision will truly provide protection from liability for a trustee who fails to diversify investments or otherwise follow prudent investor rules in jurisdictions which follow the nonwaivable “benefit of the beneficiary” rule imposed by the Uniform Trust Code and approved in the Restatement (Third) of Trusts. Some jurisdictions (such as Florida) have chosen not to adopt a mandatory “benefit of the beneficiary” rule and thus permit different standards governing trustee conduct and liability.

¹⁹ This clause adopts the approach of per capita division at each generation level of the Uniform Probate Code. This is the clause used to define how assets are divided among descendants without use of the term “per stirpes” as discussed in note 4 *supra*. If the client wishes to use the more traditional common law approach of dividing assets by representation at each generation level the alternative language should be used.

²⁰ Under the common law an alternative dispute resolution (ADR) provision is not binding on beneficiaries or other persons in a dispute concerning the trust. Some states, such as Florida and Texas, enforce ADR provisions set forth in a will or trust instrument. *See, e.g.*, Florida Statutes section 731.401.

²¹ This provision is intended to override section 108(b) of the Uniform Trust Code, which is not a mandatory provision under section 105 and thus which can be overridden by the terms of the trust. Section 108(b) imposes on the trustee a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries. The commentary to section 76 of the Restatement (Third) of Trusts states:

A trustee's duty to administer a trust includes an initial and continuing duty to administer it at a location that is reasonably suitable to the purposes of the trust, its sound and efficient administration, and the interests of its beneficiaries. Terms of the trust, however, may establish expressly or by implication a place of administration, initially at least, and may affect the trustee's duty in the matter. . . . Under some circumstances the trustee may have a duty to change or to permit (e.g., by resignation) a change in the place of administration.

This can impose an overwhelming and perhaps impossible duty on a trustee to monitor the laws of all possible jurisdictions in which the trust might be administered, and create a duty to move administration of the trust each time the law of a jurisdiction changes or a beneficiary changes domicile. The clause negates that duty while still requiring the trustee to administer the trust in a place it believes to be generally and reasonably appropriate.

²² Better practice calls for the settlor to sign Schedule A even though the settlor has already signed the main body of the trust instrument. See note 9 *supra* for execution requirements applicable to revocable trusts with testamentary aspects under Florida law. To avoid any doubt about validity of the provisions of Schedule A under Florida law for revocable trusts, and as a matter of best practices, both the settlor and witnesses should execute Schedule A as well as the main body of the trust instrument.