

# **THE 2013 YAN FAMILY TRUST**

**December 11, 2013**

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# The 2013 Yan Family Trust

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# **The 2013 Yan Family Trust**

## **Article One Establishing Our Trust**

The date of this trust is December 11, 2013. The parties to this trust are Kelvin Yan and Helen Su Irving-Yan (the *Grantors*) and Kelvin Yan and Helen Su Irving-Yan (collectively, our *Trustee*).

We intend to create a valid trust under the laws of California and under the laws of any state in which any trust created under this trust document is administered. The terms of this trust prevail over any provision of California law, except those provisions that are mandatory and may not be waived.

### **Section 1.01 Identifying Our Trust**

For convenience, our trust may be referred to as:

“The 2013 Yan Family Trust dated December 11, 2013.”

To the extent practicable, for the purpose of transferring property to our trust or identifying our trust in any beneficiary or pay-on-death designation, our trust should be identified as:

“Kelvin Yan and Helen Su Irving-Yan, Trustees, or their successors in interest, of the 2013 Yan Family Trust dated December 11, 2013, and any amendments thereto.”

For all purposes concerning the identity of our trust or any property titled in or payable to our trust, any description referring to our trust will be effective if it reasonably identifies our trust and indicates that the trust property is held in a fiduciary capacity.

### **Section 1.02 Reliance by Third Parties**

Third parties may require documentation to verify the existence of this trust, or particular provisions of it, including the name of our Trustee or the powers held by our Trustee. To protect the confidentiality of this instrument, our Trustee may use an affidavit or a certification of trust that identifies our Trustee and sets forth the authority of our Trustee to transact business on behalf of our trust instead of providing a copy of this instrument. The affidavit or certification may include pertinent pages from this instrument, including title or signature pages.

A third party may rely upon an affidavit or certification of trust that is signed by our Trustee with respect to the representations contained in it. A third party relying upon an affidavit or certification of trust will be exonerated from any liability for actions the third party takes or does not take in reliance upon the representations contained in the affidavit or certification of trust.

A third party dealing with our Trustee will not be required to inquire into this trust's terms or the authority of our Trustee, or to see to the application of funds or other property received by our Trustee. Our Trustee's receipt of any money or property paid, transferred, or delivered to our Trustee will be a sufficient discharge to the third party from all liability in connection with its application. A written statement by our Trustee is conclusive evidence of our Trustee's authority. Third parties are not liable for any loss resulting from their reliance on a written statement by our Trustee asserting our Trustee's authority or seeking to effect a transfer of property to or from the trust.

### **Section 1.03     Transferring Property to Our Trust**

Any person or entity may transfer any property to our trust in any manner authorized by law.

#### **(a)     Funding of Our Trust**

By executing this instrument, we transfer, convey, and assign the property described in the attached schedules to our Trustee. We also transfer all our right, title, and interest in and to all of our property that may legally be held in trust and that may be transferred to our trust by this assignment. This assignment includes all of our real, personal, tangible, and intangible property located in the United States, whether separate property or community property, and whether acquired before or after the execution of this instrument, except for these assets that are expressly not transferred by this instrument:

life insurance policies, unless the ownership of a policy is transferred to our trust by a separate instrument that specifically refers to the policy;

corporate and self-employed (*Keogh*) pension, profit-sharing, and stock bonus plans;

qualified retirement plans;

commercial annuities;

Section 1244 (small business) stock; and

any property, the transfer of which would result in the immediate recognition of income subject to income or other taxes, would result in the loss of a homestead exemption, or would violate a restriction on transfer agreement.

#### **(b)     Acceptance by Our Trustee**

By executing this instrument, our Trustee accepts and agrees to hold the property transferred to the trust as trust property. All property transferred to our trust after the date of this trust must be acceptable to our Trustee. Our Trustee may refuse to accept any property. Our Trustee shall hold, administer, and dispose of all accepted trust property for our benefit and for the benefit of our beneficiaries, in accordance with the terms of this trust.

**(c) Community Property**

Any community property transferred to our trust, including the property's income and the proceeds from the property's sale or exchange, will retain its character as community property during our lives, to the same extent as if it had not been transferred to our trust.

**(d) Separate Property**

Separate property transferred to our trust will retain its character as separate property. Our separate property may be identified as the separate property of either of us on the attached schedules. The separate property of either of us, including the property's income and proceeds from the property's sale or exchange, will remain separate property. Each of us has the unrestricted right to remove all or any part of our separate property at any time.

An amount that is payable to our trust on a life insurance policy that is the separate property of either of us will retain its character as separate property.

**(e) Joint Property**

If joint tenancy property with right of survivorship is transferred to our trust, we will be considered to have severed the joint tenancy immediately before transferring the property, and no right of survivorship will exist with respect to this property.

**Section 1.04 Powers Reserved by Us as Grantors**

As Grantors, we retain the powers set forth in this Section in addition to any powers that we reserve in other provisions of this instrument.

**(a) Action on Behalf of Our Trust**

Whenever both of us are serving as Trustee, either or both of us may act for and conduct business on behalf of our trust without the consent of any other Trustee.

Whenever one of us is alive but not serving as Trustee, and the other is serving as Trustee, the one who is serving as Trustee may act for and conduct business on behalf of our trust without the consent of any other Trustee.

After one of us dies, the ability of the survivor of us, when serving as Trustee, to conduct business on behalf of us without the consent of any other Trustee is subject to the terms and conditions of our trust.

**(b) Amendment, Restatement, or Revocation**

Acting jointly, we may amend, restate, or revoke this instrument, in whole or in part, for any purpose. Acting jointly, we retain the absolute right to amend, restate, or revoke any term or provision of this trust in whole or in part. Each of us individually retains the right to revoke any term or

provision of this trust in whole or in part as to each of our separate property.

Any amendment, restatement, or revocation must be made in writing and delivered to the then-serving Trustee.

**(c) Addition or Removal of Trust Property**

Either of us may add property to our trust. Both of us, acting jointly may remove any property from our trust. Each of us, acting alone, may remove our own separate property from our trust. Community property removed from our trust will retain its character as community property.

**(d) Control of Income and Principal Distributions**

We retain the right to control the distribution of income and principal from our trust. We may direct our Trustee to distribute as much of the net income and principal of the trust property as we consider advisable to us or to other persons or entities. Our Trustee may distribute the net income and principal to us or for our unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed net income is to be added to the principal of our trust.

Unless otherwise directed, our Trustee shall distribute the net income from the community property to us at least quarterly and shall distribute the net income from a Grantor's separate property to that Grantor at least quarterly.

Our Trustee may also distribute principal of the community property for the unrestricted use of either or both of us and the principal of a Grantor's separate property for the unrestricted use and benefit of that Grantor, even to the exhaustion of all trust property. Any undistributed net income is to be added to the principal of our trust.

**(e) Approval of Investment Decisions**

We reserve the absolute right to review and change our Trustee's investment decisions as to the community property. Each of us reserves the absolute right to review and change our Trustee's investment decisions as to our respective separate property. But our Trustee is not required to seek our approval before making investment decisions.

**Section 1.05 Grantor Trust Status**

By reserving the broad rights and powers set forth in Section 1.04 of this Article, we intend to qualify our trust as a *Grantor Trust* under Internal Revenue Code Sections 671 to 677. This means that, for federal income tax purposes, each of us will be treated as the owner of one-half of all the community property held in our trust and as the owner of our respective separate property as if we held the property individually.

During any period that our trust is a Grantor Trust, the Taxpayer Identification Number of our trust will be Kelvin Yan's Social Security number, in accordance with Treasury Regulation Section 301.6109-1(a)(2).

## **Article Two**

### **Family Information**

We were married on June 17, 2006. Kelvin Yan is referred to in this trust as *husband*, and Helen Su Irving-Yan is referred to in this trust as *wife*. We have two children. They are:

Kory Yan, born on October 10, 2008 and

Kristy Yan, born on December 27, 2010

All references in this document to *our children* are references to these children, as well as to any children subsequently born to us or adopted by us by legal proceeding.

References to *our descendants* are to our children and their descendants, including any deceased child's descendants.



## **Article Three**

### **Trustee Succession Provisions**

#### **Section 3.01    Resignation of a Trustee**

A Trustee may resign by giving written notice to either of us. If we are both incapacitated or deceased, a resigning Trustee shall give written notice to the trust's Income Beneficiaries and any other then-serving Trustee.

#### **Section 3.02    Trustee Succession while Both of Us Are Alive**

While we are both alive, this Section governs the removal and replacement of our Trustees.

##### **(a)    Removal and Replacement by Both of Us**

By joint agreement, we may remove any Trustee at any time, with or without cause. If a Trustee is removed, resigns, or cannot continue to serve for any reason, either or both of us may serve as Trustee, we may appoint a Trustee to serve with either or both of us, or we may appoint a successor Trustee.

##### **(b)    Successor Trustee during Incapacity of a Grantor**

During the incapacity of a Grantor, the other Grantor may serve as sole Trustee.

If the other Grantor is unable or unwilling to serve for any reason, then we name the following to serve as successor Trustee in this order:

Jane Yan, Kelvin Yan's sister;

Su-Sou Chen, Helen Su Irving-Yan's mother; then

Patrick Borja, Jane Yan's husband.

##### **(c)    Removal of Trustee during Incapacity**

During any time one of us is incapacitated, the other Grantor may remove any Trustee. If both of us are incapacitated, a Trustee may be removed only for cause; an interested party must petition a court of competent jurisdiction and receive approval from the court for the Trustee removal to be effective.

All appointments, removals, and revocations must be by signed written instrument.

#### **Section 3.03    Trustee Succession after the Death of Either or Both of Us**

After the death of either or both of us, this Section governs the removal and replacement of our Trustees.

##### **(a)    Upon the Death of a Grantor**

Upon the death of a Grantor, the other Grantor may serve as sole Trustee of all trusts created under this instrument.

If the other Grantor is unable or unwilling to serve for any reason, we name the following to serve as successor Trustee in this order:

Jane Yan, Kelvin Yan's sister;

Su-Sou Chen, Helen Su Irving-Yan's mother; then

Patrick Borja, Helen Su Irving-Yan's brother.

**(b) Removal of a Trustee**

After the death of one of us, the surviving Grantor may remove any Trustee, with or without cause. If the surviving Grantor is incapacitated, a Trustee may be removed only for cause, and only if a court of competent jurisdiction approves the removal upon the petition of an interested party.

After the death of both of us, any beneficiary may remove a Trustee only for cause, and with approval from a court of competent jurisdiction. The petition may subject the trust to the jurisdiction of the court only to the extent necessary to make the appointment.

The right to remove a Trustee under this Subsection is not to be interpreted to grant the person holding that right any of the powers of that Trustee.

A minor or incapacitated beneficiary's parent or Legal Representative may act on his or her behalf.

**(c) Default of Designation**

If the office of Trustee of a trust created under this instrument is vacant and no designated Trustee is able and willing to act, the surviving Grantor may appoint an individual or corporate fiduciary that is not related or subordinate to the person or persons making the appointment within the meaning of Section 672(c) of the Internal Revenue Code as successor Trustee.

If the surviving Grantor is unable or unwilling to name a successor Trustee or if both of us are deceased, the trust's Primary Beneficiary may appoint an individual or corporate fiduciary that is not related or subordinate to the person or persons making the appointment within the meaning of Section 672(c) of the Internal Revenue Code as successor Trustee.

Any beneficiary may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy lasting longer than thirty (30) days. The petition may subject the trust to the jurisdiction of the court only to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

A minor or incapacitated beneficiary's parent or Legal Representative may act on his or her behalf.



### **Section 3.04 Notice of Removal and Appointment**

Notice of removal must be in writing and delivered to the Trustee being removed, along with any other then-serving Trustees. The removal notice will become effective in accordance with its provisions.

Notice of appointment must be in writing and delivered to the successor Trustee and any other then-serving Trustees. The appointment will become effective at the time of acceptance by the successor Trustee. A copy of the notice may be attached to this instrument.

### **Section 3.05 Appointment of a Co-Trustee**

Any individual Trustee may appoint an individual or a corporate fiduciary as a Co-Trustee. This Co-Trustee will serve only as long as the appointing Trustee serves, or as long as the last to serve if more than one Trustee appointed the Co-Trustee. This Co-Trustee will not become a successor Trustee upon the death, resignation, or incapacity of the appointing Trustee, unless appointed under the terms of this instrument. Although this Co-Trustee may exercise all the powers of the appointing Trustee, the combined powers of this Co-Trustee and the appointing Trustee may not exceed the powers of the appointing Trustee alone. The Trustee appointing a Co-Trustee may revoke the appointment at any time, with or without cause.

### **Section 3.06 Corporate Fiduciaries**

Any corporate fiduciary serving under this instrument as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal or state law and that is not related or subordinate to any beneficiary within the meaning of Internal Revenue Code Section 672(c).

### **Section 3.07 Incapacity of a Trustee**

If any individual Trustee becomes incapacitated, the incapacitated Trustee need not resign as Trustee. For Trustees other than one of us, a written declaration of incapacity by the Co-Trustee or, if none, by the party designated to succeed the incapacitated Trustee if made in good faith will terminate the trusteeship. If the Trustee designated in the written declaration objects in writing to termination of the trusteeship within ten (10) days of receiving the declaration of incapacity, a written opinion of incapacity signed by a physician who has examined the incapacitated Trustee must be obtained before the trusteeship will be terminated. The Trustee objecting to termination of trusteeship must sign the necessary medical releases needed to obtain the physician's written opinion, or the trusteeship will be terminated without it.

### **Section 3.08 Appointment of Independent Special Trustee**

If for any reason the Trustee of any trust created under this instrument is unwilling or unable to act with respect to any trust property or any provision of this instrument, the Trustee shall appoint, in writing, a corporate fiduciary or an individual to serve as an Independent Special Trustee as to this property or with respect to this provision. The

Independent Special Trustee appointed may not be related or subordinate to any trust beneficiary within the meaning of Internal Revenue Code Section 672(c).

An Independent Special Trustee will exercise all fiduciary powers granted by this trust unless expressly limited elsewhere in this instrument or by the Trustee in the instrument appointing the Independent Special Trustee. An Independent Special Trustee may resign at any time by delivering written notice of resignation to the Trustee. Notice of resignation will be effective in accordance with the terms of the notice.

### **Section 3.09     Rights of Successor Trustees**

Each successor Trustee serving under this instrument, whether individual or corporate, will have all of the title, rights, powers and privileges granted to our initial Trustees named under this instrument. In addition, each successor Trustee will be subject to all of the restrictions imposed on and to all discretionary and ministerial obligations and duties given to the original Trustees.

## **Article Four**

### **Administration of Our Trust during a Grantor's Incapacity**

#### **Section 4.01 Trust Distributions during a Grantor's Incapacity**

For purposes of this Article, *incapacitated Grantor's trust property* refers to the net income and principal of the incapacitated Grantor's separate property and the net income and principal of the incapacitated Grantor's share of the community property, during any period when a Grantor is incapacitated.

Our Trustee shall administer the incapacitated Grantor's trust property as follows.

##### **(a) Distributions for the Incapacitated Grantor's Benefit**

Our Trustee shall regularly and conscientiously make appropriate distributions of income and principal for the benefit of the incapacitated Grantor under the circumstances existing at the time each distribution is made.

Appropriate distributions under this Subsection include the payment of any of the incapacitated Grantor's enforceable legal obligations and premiums for insurance policies owned by the incapacitated Grantor or by our trust, including life, medical, disability, property and casualty, errors and omissions, and longterm health care policies.

Our Trustee is authorized to honor pledges and continue to make gifts to charitable organizations that the incapacitated Grantor has regularly supported in the customarily given amounts.

The examples included in this Subsection are for purposes of illustration only and are not intended to limit the authority of our Trustee to make any distribution for the incapacitated Grantor's benefit that our Trustee determines appropriate.

##### **(b) Manner of Making Distributions**

Our Trustee may make distributions for the incapacitated Grantor's benefit in any one or more of the following ways:

- to the incapacitated Grantor, but only to the extent he or she is able to manage these distributions;

- to other persons and entities for the incapacitated Grantor's use and benefit;

- to an agent or attorney in fact authorized to act for the incapacitated Grantor under a legally valid durable power of attorney executed by the incapacitated Grantor before his or her incapacity; and

to the incapacitated Grantor's guardian or conservator who has assumed responsibility for the incapacitated Grantor under any court order, decree, or judgment issued by a court of competent jurisdiction.

**(c) Distributions for the Other Grantor's Benefit and for the Benefit of Our Dependents**

Our Trustee may distribute as much of the net income and principal of the incapacitated Grantor's trust as our Trustee considers necessary for the health, education, maintenance or support of the other Grantor.

Our Trustee may also distribute as much of the net income and principal of the incapacitated Grantor's trust as our Trustee considers necessary for the health, education, maintenance or support of other persons who our Trustee determines are dependent on the incapacitated Grantor for support.

**(d) Guidance for Our Trustee Regarding Distributions**

When making distributions under Subsections (a) and (c), our Trustee shall give consideration first to the incapacitated Grantor's needs, and then to the needs of the other Grantor and those persons dependent on the incapacitated Grantor.

When making distributions under Subsection (c), we request that our Trustee, in its sole and absolute discretion, consider other income and resources available to the beneficiaries. Our Trustee may make unequal distributions, distributions to some but not all beneficiaries, or no distributions.

A distribution made to a beneficiary under this Section will not be considered an advancement, and will not be charged against the share of the beneficiary that may be distributable under any other provision of this trust.

## **Article Five**

### **Administration of Our Trust upon the Death of a Grantor**

#### **Section 5.01     Surviving Grantor's Trust Property and Deceased Grantor's Trust Property**

After the first of us dies, the surviving Grantor's interest in any community property of our trust and the surviving Grantor's separate trust property will be referred to as the *surviving Grantor's trust property*. The surviving Grantor's trust property will be referred to as the Survivor's Trust, and our Trustees shall administer the Survivor's Trust as provided in Article Eight.

The deceased Grantor's interest in any community property of our trust and the deceased Grantor's separate trust property will be referred to as the *deceased Grantor's trust property*.

#### **Section 5.02     Administrative Trust**

Upon a Grantor's death, our trust will become irrevocable as it pertains to the administration and distribution of the deceased Grantor's trust property. Our Trustee may need to apply for a separate Taxpayer Identification Number for the deceased Grantor's trust property.

Before the distribution of the deceased Grantor's trust property as provided in this trust, the deceased Grantor's trust property will be referred to as the *administrative trust*, but may continue to be known as the 2013 Yan Family Trust during the administration period. The administrative trust will exist for the period reasonably necessary to complete the administrative tasks set forth in this Article.

#### **Section 5.03     Payment of Expenses and Taxes**

Our Trustee may pay from the deceased Grantor's trust property:

- expenses of the deceased Grantor's last illness, funeral, and burial or cremation, including expenses of memorials and memorial services;

- legally enforceable claims against the deceased Grantor or the deceased Grantor's estate;

- expenses of administering the trust and the deceased Grantor's estate; and

- court-ordered allowances for those dependent upon the deceased Grantor.

These payments are discretionary with our Trustee. Our Trustee may make decisions on these payments without regard to any limitation on payment of the expenses and may make payments without any court's approval. No third party may enforce any claim or right to payment against the trust by virtue of this discretionary authority.

If payment would decrease the deduction available to the deceased Grantor's estate, our Trustee may not pay any administrative expenses from assets passing to an organization that qualifies for the federal estate tax charitable deduction. Likewise, if payment would decrease the deduction available to the deceased Grantor's estate or violate the provisions

of Treasury Regulation Section 20.2056(b)-4(d), our Trustee may not pay any administrative expenses from the net income of property qualifying for the estate tax marital deduction.

Our Trustee shall pay death taxes out of the trust property's principal, as provided in Section 5.05. But if a probate estate is opened within six (6) months after the date of the deceased Grantor's death, the deceased Grantor's Personal Representative shall pay any outstanding claims and expenses as authorized by the Personal Representative, as well as any death taxes from the deceased Grantor's probate estate to the extent that the cash and readily marketable assets in the deceased Grantor's probate estate are sufficient.

#### **Section 5.04     Restrictions on Certain Payments from Retirement Plans**

The term *designation date* means September 30 of the calendar year following the year of the deceased Grantor's death, or another date as established by Treasury Regulations or other tax law authority as the final date for determining whether this trust meets the requirements for treatment of the trust's oldest beneficiary as if the beneficiary was named individually as beneficiary of any qualified retirement plan payable to this trust.

Notwithstanding any other provision of this trust or state law to the contrary, our Trustee may not distribute any qualified retirement benefit payable to our trust or any trust created under this trust to or for the benefit of the deceased Grantor's estate, any charity, or any beneficiary other than an individual, on or after the *designation date*. Our intent is that all qualified retirement benefits held by or payable to this trust on or after the designation date be distributed to or held only for individual beneficiaries, within the meaning of Internal Revenue Code Section 401(a)(9).

Qualified retirement benefits may not be used or applied on or after the designation date for payment of the deceased Grantor's debts, taxes, expenses of administration, or other claims against the deceased Grantor's estate, or for payment of estate, inheritance, or similar transfer taxes due because of the deceased Grantor's death, other than those directly attributable to and the legal obligation of a particular qualified retirement plan. This Section does not apply to any bequest or expense that is specifically directed to be funded with qualified retirement benefits.

#### **Section 5.05     Payment of Death Taxes**

For the purposes of this Article, the term *death taxes* refers to any taxes imposed by reason of the deceased Grantor's death by federal, state, or local authorities, including estate, inheritance, gift, and direct-skip generation-skipping transfer taxes. For purposes of this Section, *death taxes* does not include any additional estate tax imposed by Internal Revenue Code Section 2031(c)(5)(C), Section 2032A(c), or Section 2057(f), or any other comparable recapture tax imposed by any taxing authority. Nor does the term include any generation-skipping transfer tax, other than a direct-skip generation-skipping transfer tax.

Except as otherwise provided in this Article or elsewhere in this trust, our Trustee shall provide for payment of all death taxes from the administrative trust without apportionment. Our Trustee may not seek contribution toward or recovery of any payments of death taxes from any individual.



**(a) Protection of Exempt Property**

Death taxes may not be allocated to or paid from any assets that are not included in the deceased Grantor's gross estate for federal estate tax purposes. To the extent practicable, our Trustee may not pay any death taxes from assets that are exempt from generation-skipping transfer tax purposes.

**(b) Protection of the Marital Deduction**

Death taxes may not be paid from or allocated to any property that qualifies for the federal estate tax marital deduction.

**(c) Protection of the Charitable Deduction**

Death taxes may not be paid from or allocated to any assets passing to an organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless the Trustee has first used all other assets available to pay the taxes.

**(d) Property Passing outside of Our Trust**

Death taxes imposed with respect to property included in the deceased Grantor's gross estate for death tax purposes but passing outside of the trust are to be apportioned among the persons and entities benefited. The proportion attributed to each person or entity is the taxable value of each person or entity's beneficial interest over the total taxable value of all property and interests included in the deceased Grantor's gross estate for death tax purposes. The values used for the apportionment are to be the values as finally determined under federal, state, or local law.

**(e) QTIP Property**

Any death tax paid as a result of including property held in a qualified terminable interest property (QTIP) trust created by the deceased Grantor in the deceased Grantor's taxable estate will be apportioned to and collected from the assets of the QTIP trust as provided in Internal Revenue Code Section 2207A.

**Section 5.06 Coordination with the Personal Representative**

The following provisions are intended to help facilitate the coordination between the deceased Grantor's Personal Representative and our Trustee. These provisions apply even if the Personal Representative and the Trustee are the same person or entity.

**(a) Reliance on Information from the Personal Representative**

Our Trustee may rely upon the written request of the deceased Grantor's Personal Representative for payments authorized under this Article and the amounts included in those payments without computing the sums involved. If a payment is made under this Article to the deceased

Grantor's Personal Representative, our Trustee will have no duty to inquire into the application of the payment.

**(b) Receipt of Probate Property**

Our Trustee may accept or decline any distributions of property tendered to our Trustee by the deceased Grantor's Personal Representative. If our Trustee accepts the property, our Trustee may do so without audit, and will not be required to review the Personal Representative's records.

**(c) Discretionary Distributions to the Deceased Grantor's Personal Representative**

Our Trustee may distribute cash, accrued income, or other trust property to the deceased Grantor's probate estate as a beneficiary of this trust, to the extent our Trustee determines that doing so is in the best interests of the trust beneficiaries.

**Section 5.07 Authority to Make Tax Elections**

After a Grantor's death, our Trustee may make tax elections as provided in this Section. But if a Personal Representative is appointed for the deceased Grantor's probate estate, the discretionary authority granted to our Trustee as to any tax election will be subordinate to the Personal Representative's statutorily delegated authority.

**(a) Tax Elections**

Our Trustee may make any tax elections necessary for the efficient administration of the deceased Grantor's estate, including:

- valuing assets according to an alternate valuation date;
- electing whether to take administration expenses as estate tax deductions or income tax deductions;
- allocating a Grantor's unused generation-skipping exemption to any portion of the trust property;
- electing special-use valuation;
- deferring payment of all or any portion of any taxes;
- making any elections relative to the *Deceased Spousal Unused Exclusion Amount* to the extent and amount allowable under Internal Revenue Code Sections 2010(c)(4) and (5), all as our Trustee considers appropriate under then-prevailing circumstances;
- treating any portion of the deceased Grantor's administrative trust as part of the deceased Grantor's estate for federal or state income tax purposes, or both; and
- qualifying any trust property for the *family owned business deduction* authorized under Internal Revenue Code Section



2057, and entering into any agreement on our trust's behalf that is necessary to validly make the election.

Our Trustee may make equitable adjustments between income and principal because of any tax elections made by our Trustee.

**(b) Qualified Terminable Interest Property**

Our Trustee may elect to have any trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under Internal Revenue Code Section 2056(b)(7) (the *QTIP election*) and for any state death tax marital deduction under any state's law (the *state QTIP election*). Our Trustee is not required to make the same election for both federal estate tax purposes and for state death tax purposes. If our Trustee makes a partial QTIP election, our Trustee will divide the trust on the basis of the fair market value of the trust assets at the time of the division.

Our Trustee is indemnified and held harmless from any loss, claim, or damage incurred as a result of any action taken by a beneficiary against our Trustee arising out of our Trustee's decision regarding the QTIP election for any portion of the trust property. Our Trustee is specifically authorized to use trust property to pay directly or to reimburse himself or herself for any expenses incurred to defend any threatened or actual legal action arising under this provision.

Our Trustee may make the special election under Internal Revenue Code Section 2652(a)(3) to treat all of the property of a trust created under this trust for which the QTIP election is made as if that election had not been made, making the deceased Grantor the transferor of the property for purposes of the generation-skipping transfer tax. We desire that our Trustee set apart the property to which the election has been made as a separate trust, so that the inclusion ratio of the separate qualified trust, as defined in the Internal Revenue Code, is zero.

**(c) Allocation of GST Exemption**

Our Trustee may elect to allocate or not allocate any portion of the Available GST Exemption under Internal Revenue Code Section 2631, or a counterpart exemption under any applicable state law to any property of which the deceased Grantor is considered the transferor for generation-skipping transfer tax purposes. This includes any property transferred by the deceased Grantor during the deceased Grantor's life for which the deceased Grantor did not make an allocation prior to death. The exercise of our Trustee's discretion should be based on the transfers, gift tax returns, and other information known to our Trustee, with no requirement that allocations benefit the various transferees or beneficiaries in any particular manner.

**(d) Qualified Conservation Easements**

Our Trustee may create a qualified conservation easement, as defined in Internal Revenue Code Section 2031(c)(8)(A), in any land held by the trust and may make the necessary election provided by Section 2031(c)(6).

## **Article Six**

### **Disposition of Tangible Personal Property**

#### **Section 6.01     Distribution of Tangible Personal Property by Memorandum**

Each of us may dispose of items of tangible personal property by a signed written memorandum executed after we sign this instrument. The memorandum must refer to our trust and must reasonably identify the items and the beneficiary designated to receive each item. If either or both of us executes a memorandum, our Trustee shall incorporate the memorandum by reference into this instrument to the extent permitted by law.

Our Trustee shall distribute the items of tangible personal property listed in the memorandum as promptly as practicable after the death of a Grantor who completed the memorandum, together with any insurance policies covering the property and any claims under those policies, as provided in the memorandum. If either or both of us leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date will control as to that item.

If the memorandum with the most recent date conflicts with a provision of this instrument as to the specific distribution of any item of tangible personal property, the provisions of the memorandum with the most recent date will control as to those items that are in conflict.

If the law does not permit incorporation of the memorandum by reference, the memorandum will then serve as an amendment to our trust, but only to the extent this amendment solely disposes of tangible personal property. We request that our Trustee follow our wishes and distribute the items of tangible personal property listed in the memorandum according to its terms.

#### **Section 6.02     Distribution of Remaining Tangible Personal Property**

Our Trustee shall distribute any of the deceased Grantor's remaining tangible personal property not disposed of by a written memorandum to the Survivor's Trust to be administered as provided in Article Eight. If we are both deceased, our Trustee shall distribute the property as provided in the following Articles.

#### **Section 6.03     Definition of Tangible Personal Property**

For purposes of this Article, the term *tangible personal property* includes household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, apparel and jewelry, books, sporting goods, and hobby paraphernalia. The term does not include any property that our Trustee, in its sole and absolute discretion, determines to be part of any business or business interest owned by the deceased Grantor or our trust.

After the death of a Grantor, if our Trustee receives property to be distributed under this Article from the deceased Grantor's probate estate or in any other manner, our Trustee shall distribute the property in accordance with this Article's terms. The fact that an item of tangible personal property was not received by our trust until after the death of a Grantor does not diminish the validity of the gift. If property to be distributed under this

Article is not part of the trust property upon the death of a Grantor and is not subsequently transferred to our Trustee from the deceased Grantor's probate estate or in any other manner, then the specific distribution of property made in this Article is null and void, without any legal or binding effect.

#### **Section 6.04      Incidental Expenses and Encumbrances**

Until property distributed in accordance with this Article is delivered to the appropriate beneficiary or his or her Legal Representative, our Trustee shall pay the reasonable expenses of securing, storing, insuring, packing, transporting, and otherwise caring for the property as an administration expense. Except as otherwise provided in our trust, our Trustee shall distribute property under this Article subject to all liens, security interests, and other encumbrances on the property.

#### **Section 6.05      Residuary Distribution**

The deceased Grantor's remaining property will be administered as provided in the following Articles.

## **Article Seven**

### **Creation of Trust Shares Upon the Death of a Grantor**

Our Trustee shall divide the deceased Grantor's remaining trust property into two separate shares as provided in Section 7.01. This instrument designates one share as the *Marital Share* and the other share as the *Non-Marital Share*.

#### **Section 7.01     Division of the Deceased Grantor's Remaining Trust Property**

Our Trustee shall divide the deceased Grantor's remaining trust property as provided in this Section.

##### **(a)     Creation of the Marital Share**

Our Trustee shall allocate to the Marital Share a fractional share of the deceased Grantor's remaining trust property calculated as follows.

##### **(1)     The Numerator**

Assuming the value qualifies for the federal tax marital deduction, the fraction's numerator will equal the minimum value sufficient to reduce all death taxes imposed because of the deceased Grantor's death by federal, state, or local authorities to the lowest possible amount. In computing the numerator, our Trustee shall take into account the deceased Grantor's transfers, including transfers treated as made by the deceased Grantor, and all deductions, exclusions, credits, and reductions in value allowed in computing this tax. But any state death tax credit must be taken into account for this purpose only to the extent that it does not increase the amount of state death taxes payable.

##### **(2)     The Denominator**

The denominator will be the value of the deceased Grantor's remaining trust property as finally determined for federal estate tax purposes.

The Marital Share must carry its *pro rata* share of the income, but the Marital Share must not receive less income than that required to be paid to the surviving Grantor under applicable state law.

##### **(b)     Creation of the Non-Marital Share**

Our Trustee shall allocate the balance of the trust property to the Non-Marital Share.

##### **(c)     Funding the Fractional Share**

Our Trustee has complete authority to satisfy the fractional gift by cash contributions, by in-kind contributions, by a combination of cash and in-

kind contributions, or by undivided interests in property or in any *non pro rata* division of the community property under California Probate Code Section 100. If there are insufficient assets qualifying for the federal estate tax or state death tax marital deduction to fully fund the Marital Share, our Trustee shall reduce the funding to the Marital Share accordingly. We acknowledge that the funding amount may be affected by actions by our Trustee and by the deceased Grantor's Personal Representative in making certain tax elections.

Once calculated in this way, the fraction is fixed, and may not vary with changes in the property value after the valuation date used for federal estate tax purposes. Because the fractional gift is not intended to be a specified dollar amount or pecuniary in nature, our Trustee shall apply the fraction to the trust assets at their actual value on the effective allocation date, so that the actual value resulting from the application of the fraction will reflect fluctuations in the trust property's value. Our Trustee may fund the fractional share on a *non pro rata* basis if the funding is based on the total fair market value of the assets on the allocation date.

Our Trustee's allocations of assets are limited as set forth below.

**(1) Ineligible Assets**

Our Trustee may only allocate property and the proceeds of any property to the Marital Share that qualify for the federal estate tax or state death tax marital deduction.

**(2) Tax Consequences of Certain Allocations**

We request that our Trustee always consider the tax consequences of allocating or distributing to the Marital Share any insurance policy that insures the surviving Grantor's life, property subject to the foreign death credit, property on which a tax credit is available, or property that is income in respect of a decedent under the Internal Revenue Code.

Our Trustee shall administer the Marital Share as provided in Article Nine. Our Trustee shall administer the Non-Marital Share as provided in Article Ten.

**Section 7.02 Disposition of Property upon Disclaimer by the Surviving Grantor**

In the time and manner provided by law, the surviving Grantor, his or her fiduciary, or his or her agent serving under a power of attorney may disclaim any portion of any interest in or power over property passing from the deceased Grantor to or for the surviving Grantor's benefit under this instrument. If the surviving Grantor disclaims any property that would otherwise be allocated to the Marital Trust, our Trustee shall allocate the disclaimed property to the Non-Marital Share.

If the surviving Grantor disclaims his or her interest in any portion of the Non-Marital Share, our Trustee shall dispose of the disclaimed interest as though the surviving Grantor had predeceased the deceased Grantor.

## **Article Eight**

### **The Survivor's Trust**

Our Trustee shall administer the Survivor's Trust as provided in this Article.

#### **Section 8.01 Trustee of the Survivor's Trust**

The surviving Grantor may serve as sole Trustee of the Survivor's Trust. The surviving Grantor may remove and replace the Trustee of the Survivor's Trust at any time, with or without cause. Notwithstanding any other provision in this instrument, the surviving Grantor may appoint any individual or corporate fiduciary to serve as Trustee of the Survivor's Trust.

#### **Section 8.02 The Surviving Grantor's Right to Amend**

The surviving Grantor also has the absolute right to amend the Survivor's Trust's terms by restating them in full. The restated Survivor's Trust must be in writing and signed by the surviving Grantor and the Trustee of the restated Survivor's Trust.

The right to amend by restatement may be exercised only by the surviving Grantor.

#### **Section 8.03 Distribution of Income**

Our Trustee shall distribute all of the net income of the Survivor's Trust to the surviving Grantor at least quarter-annually. Nothing contained in this instrument may limit the right of the surviving Grantor to receive the Survivor's Trust's entire net income.

#### **Section 8.04 Distributions of Principal**

Our Trustee shall distribute as much of the principal of the Survivor's Trust to the surviving Grantor as he or she requests in writing for any reason.

Our Trustee may also distribute as much of the principal of the Survivor's Trust to the surviving Grantor as our Trustee determines necessary or advisable for any purpose.

#### **Section 8.05 Unproductive Property**

Upon the written request of the surviving Grantor, our Trustee shall convert any nonproductive property held in the Survivor's Trust to productive property.

#### **Section 8.06 Trust Distributions during the Incapacity of the Surviving Grantor**

During any time the surviving Grantor is incapacitated, our Trustee shall administer the Survivor's Trust according to the provisions of Section 4.01.

#### **Section 8.07 General Power of Appointment**

The surviving Grantor may appoint all or any portion of the principal and undistributed income remaining in the Survivor's Trust at the surviving Grantor's death among one or



more persons or entities, including the creditors of the surviving Grantor's estate. The surviving Grantor has the exclusive right to exercise this general power of appointment.

**Section 8.08 Administration following the Surviving Grantor's Death**

The Survivor's Trust becomes irrevocable upon the death of the surviving Grantor, and our Trustee shall administer the Survivor's Trust consistent with the provisions of Article Five for administration following the death of the first of us to die.

Upon completion of the administrative tasks, our Trustee shall administer the unappointed balance or remainder of the Survivor's Trust as provided in Article Eleven.

## **Article Nine**

### **The Marital Trust**

Our Trustee shall administer the Marital Share in trust as provided in this Article. The trust will be referred to as the *Marital Trust*.

#### **Section 9.01 Distributions of Net Income**

Our Trustee shall distribute all of the net income of the Marital Trust to the surviving Grantor at least quarter-annually during the surviving Grantor's lifetime. Nothing contained in this instrument limits the right of the surviving Grantor to receive the entire net income of the Marital Trust.

#### **Section 9.02 Distributions of Principal**

Our Independent Trustee may distribute as much of the principal of the Marital Trust to the surviving Grantor as our Independent Trustee may determine advisable for any purpose. If no Independent Trustee is then serving, our Trustee shall distribute as much principal of the Marital Trust to the surviving Grantor as our Trustee determines necessary or advisable for the surviving Grantor's health, education, maintenance or support.

Our Trustee, in its sole and absolute discretion, may consider the needs of the surviving Grantor and other income and resources available to the surviving Grantor.

#### **Section 9.03 Nonproductive Property**

Upon written request of the surviving Grantor, our Trustee shall convert any nonproductive property held in the Marital Trust to productive property. In addition, the surviving Grantor has the right to require that any nonproductive property held in any qualified retirement plan, private or commercial annuity, individual retirement annuity, pension, profit-sharing plan, stock-bonus plan, stock ownership plan, or similar arrangement made payable to the Marital Trust be converted to productive property.

#### **Section 9.04 Testamentary Limited Power of Appointment**

The surviving Grantor has the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the Marital Trust among our descendants.

The surviving Grantor may not exercise this power of appointment to appoint trust property to the surviving Grantor, the surviving Grantor's estate, the surviving Grantor's creditors, or the creditors of the surviving Grantor's estate.

We intend to create a testamentary power of appointment that is a limited power of appointment and not a general power of appointment as defined in Internal Revenue Code Section 2041.

#### **Section 9.05     Separate Share for Disclaimed Property**

Our Trustee shall hold any property that has become property of the Marital Trust as a consequence of a disclaimer by the surviving Grantor as a separate share of the Marital Trust, with provisions identical to those contained in the other Sections of this Article, except that the surviving Grantor will not have the limited power of appointment that is held under Section 9.04 with respect to the property of the separate share.

#### **Section 9.06     Qualified Terminable Interest Property**

Our intent is that the Marital Trust property constitute Qualified Terminable Interest Property (QTIP) for federal and state death tax purposes if and to the extent our Trustee or Personal Representative makes the necessary elections. This trust should be interpreted to accomplish this intent.

If our Trustee or Personal Representative elects to have some but not all of the property in the Marital Trust qualify as qualified terminable interest property for federal or state purposes, our Trustee shall separate the qualified property and the nonqualified property into separate shares as necessary. Our Trustee shall hold and administer each share upon identical terms and conditions as if no division had occurred. The separate shares may be invested in a common fund with each share owning a proportionate fractional share of the fund.

#### **Section 9.07     Administration of the Marital Trust at the Death of the Surviving Grantor**

The Marital Trust will terminate upon the death of the surviving Grantor.

If the surviving Grantor has not fully exercised the testamentary power of appointment over the trust property remaining at his or her death, our Trustee shall distribute the unappointed balance or remainder of the Marital Trust as provided in Article Eleven.

## **Article Ten**

### **The Family Trust**

Our Trustee shall hold and administer the Non-Marital Share in a separate trust as provided in this Article. This document refers to the trust as the *Family Trust*.

#### **Section 10.01 Family Trust Beneficiary**

The surviving Grantor is the only beneficiary of the Family Trust during the surviving Grantor's lifetime.

#### **Section 10.02 Separate Share for Disclaimed Property**

To the extent that any property is added to the Family Trust as the result of a qualified disclaimer by the surviving Grantor, our Trustee shall hold and administer the property in a separate share of the Family Trust during the lifetime of the surviving Grantor in accordance with all of the provisions of this Article, except that Section 10.05, which grants the surviving Grantor a limited power of appointment, will not apply to the separate share.

The sole purpose of maintaining the separate share is to keep the disclaimed property, together with all income from the property that is accumulated in the trust, separate from the other property of the Family Trust over which the surviving Grantor has a power of appointment, and to avoid the possible disqualification of an otherwise qualified disclaimer under Internal Revenue Code Section 2518.

#### **Section 10.03 Distribution of Income and Principal**

Our Independent Trustee may distribute as much of the income and principal of the Family Trust to the surviving Grantor as our Independent Trustee may determine advisable for any purpose. If no Independent Trustee is then serving, our Trustee shall distribute as much income and principal to the surviving Grantor as our Trustee determines necessary or advisable for the surviving Grantor's health, education, maintenance or support.

Any undistributed net income must be accumulated and added to principal.

#### **Section 10.04 Guidelines to Our Trustee**

The surviving Grantor is the only beneficiary of the Family Trust. In making discretionary distributions under this Article, our Trustee should bear in mind that our primary concern and objective is to provide for the well-being of the surviving Grantor, and the preservation of principal is not as important as this objective.

Without limiting our Trustee's discretion, we recommend that our Trustee not distribute principal from the Family Trust to the surviving Grantor until the principal of the Marital Trust is substantially exhausted.

#### **Section 10.05 Testamentary Limited Power of Appointment**

The surviving Grantor has the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the Family Trust among our descendants.

The surviving Grantor may not exercise this testamentary limited power of appointment to appoint to the surviving Grantor, the surviving Grantor's estate, the surviving Grantor's creditors, or the creditors of the surviving Grantor's estate. The surviving Grantor may not exercise this testamentary limited power of appointment to create another power of appointment that, under the applicable local law, can be validly exercised in order to postpone the vesting of any estate or interest in this property for a period ascertainable without regard to the date of the creation of the first power. Furthermore, the surviving Grantor is prohibited from exercising the power to suspend the absolute ownership or power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power.

We intend to create a testamentary limited power of appointment and not a general power of appointment as defined in Internal Revenue Code Section 2041.

#### **Section 10.06 Termination of the Family Trust**

The Family Trust will terminate upon the death of the surviving Grantor and our Trustee shall administer the unappointed balance or remainder of the Family Trust as provided in Article Eleven.

## **Article Eleven**

### **Our Descendants' Trusts**

Upon the death of the survivor of us, our Trustee shall administer and distribute our remaining trust property (not distributed under prior Articles of this instrument) under the terms of this Article.

#### **Section 11.01 Division of Our Trust Property**

Our Trustee shall divide our remaining trust property into separate shares for our descendants, *Per Stirpes*.

Our Trustee shall administer the share for each of our descendants in a separate trust for the descendant's benefit as provided in the next Section.

#### **Section 11.02 Administration of Descendants' Trusts**

Our Trustee shall administer the trust for each descendant as follows:

##### **(a) Distributions of Income and Principal**

Our Independent Trustee may distribute to the beneficiary as much of the income and principal of the beneficiary's trust as the Trustee, in its sole and absolute discretion, advises for any purpose. If no Independent Trustee is then serving, our Trustee shall distribute to the beneficiary as much income and principal of the beneficiary's trust as our Trustee determines is necessary or advisable for the health, education, maintenance or support of the beneficiary.

Our Trustee shall add any undistributed net income to principal.

##### **(b) Guidelines for Discretionary Distributions**

In making discretionary distributions to the beneficiary, we desire to encourage the beneficiary to develop a strong work ethic, to be a productive and contributing member of society, and to provide for those who are dependent on the beneficiary for care and support. Accordingly, we request that our Trustee always consider the other known resources available to the beneficiary before making discretionary distributions. We desire that preservation of principal be a priority for purposes of this trust and that the beneficiary show genuine need before our Trustee makes any discretionary distribution.

##### **(c) Right to Withdraw Principal**

When the beneficiary reaches the age of twenty-eight (28) years or if, upon the funding of the trust established for the beneficiary, he or she has already reached the age of 28, the beneficiary may withdraw from the trust at any time any portion or all of the accumulated trust income and principal.

The beneficiary may exercise this right at any time by delivering written notice to our Trustee, setting forth the desired withdrawal amount. Upon receiving a notice, our Trustee shall convey and deliver the requested amount to the beneficiary, free of trust. This right of withdrawal is a privilege that may be exercised only by the beneficiary, and is not subject to the claims of any creditor or to legal process, and may not be voluntarily or involuntarily alienated or encumbered. This provision does not limit the beneficiary's exercise of any power of appointment the beneficiary may have.

**(d) Distribution upon the Death of the Beneficiary**

The beneficiary has the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at the beneficiary's death among our descendants. The beneficiary may not exercise this limited power of appointment to appoint to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or creditors of the beneficiary's estate.

We intend to create a limited power of appointment and not a general power of appointment as defined in Internal Revenue Code Section 2041.

If any part of the beneficiary's trust is not effectively appointed, our Trustee shall distribute the remaining unappointed balance *Per Stirpes* in trusts to the beneficiary's descendants. If the beneficiary has no then-living descendants, our Trustee shall distribute the balance of the trust property to Jane Yan, Kelvin's sister, and if she is deceased, to her issue *Per Stirpes* who survive her. Our Trustee shall administer the trusts under the same terms as the beneficiary's trust.

If Jane Yan is deceased and leaves no issue, our Trustee shall distribute the balance of the trust property as provided in Article Twelve.

## Article Twelve

### Remote Contingent Distribution

If at any time no person or entity is qualified to receive final distribution of any part of our trust estate under the foregoing provisions of this trust, this portion must be distributed as follows:

<b>Beneficiary</b>	<b>Share</b>
Kyle Irving Price, but not his descendants	25%
Jaylon Elijah Irving, but not his descendants	25%
Kamora Joanne Fletcher, but not her descendants	25%
Kevin George Price, but not his descendants	25%

If a beneficiary under this Article is not living at the date of distribution, that person's share must be distributed to his or her descendants, *Per Stirpes*. But if a beneficiary distribution is *to the beneficiary, but not to his or her descendants*, or if a beneficiary does not have any descendants or a descendant cannot take a share for any other reason, that beneficiary's share must be distributed *pro rata* to the other beneficiaries. If there are no beneficiaries under this Article, that beneficiary's share must be distributed one-half to those persons who would inherit it had Kelvin Yan then died intestate owning the property, and one-half to those persons who would inherit it had Helen Su Irving-Yan then died intestate owning the property, as determined and in the proportions provided by the laws of California then in effect relating to the succession of separate property not acquired from a parent, grandparent, or predeceased spouse.



## **Article Thirteen**

### **Distributions to Underage and Incapacitated Beneficiaries**

If our Trustee is authorized or directed under any provision of this trust to distribute net income or principal to a person who has not yet reached the age of twenty-one (21) years or who is incapacitated as defined in Section 17.07(g), our Trustee may make the distribution by any one or more of the methods described in Section 13.01. Alternatively, our Trustee may retain the trust property in a separate trust to be administered by our Trustee under Section 13.02.

We request that before making a distribution to a beneficiary, our Trustee consider, to the extent reasonable, the ability the beneficiary has demonstrated in managing prior distributions of trust property.

#### **Section 13.01 Methods of Distribution**

Our Trustee may distribute trust property for any beneficiary's benefit, subject to the provisions of this Article in any one or more of the following methods:

Our Trustee may distribute trust property directly to the beneficiary.

Our Trustee may distribute trust property to the beneficiary's guardian, conservator, parent, other family member, or any person who has assumed the responsibility of caring for the beneficiary.

Our Trustee may distribute trust property to any person or entity, including our Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act or similar statute.

Our Trustee may distribute trust property to other persons and entities for the beneficiary's use and benefit.

Our Trustee may distribute trust property to an agent or attorney in fact authorized to act for the beneficiary under a valid durable power of attorney executed by the beneficiary before becoming incapacitated.

#### **Section 13.02 Retention in Trust**

Our Trustee may retain and administer trust property in a separate trust for any beneficiary's benefit, subject to the provisions of this Article as follows.

##### **(a) Distribution of Net Income and Principal**

Our Independent Trustee may distribute to the beneficiary as much of the net income and principal of any trust created under this Section as our Independent Trustee may determine advisable for any purpose. If there is no then-serving Independent Trustee, our Trustee shall distribute to the beneficiary as much of the net income and principal of the trust created under this Section as our Trustee determines is necessary or advisable for

the beneficiary's health, education, maintenance or support. Any undistributed net income will be accumulated and added to principal.

**(b) Right of Withdrawal**

When the beneficiary whose trust is created under this Section either reaches the age of twenty-one (21) years or is no longer incapacitated, the beneficiary may withdraw all or any portion of the accumulated net income and principal from the trust.

**(c) Distribution upon the Death of the Beneficiary**

Subject to the terms of the next paragraph, the beneficiary whose trust is created under this Section may appoint all or any portion of the principal and undistributed net income remaining in the beneficiary's trust at the beneficiary's death among one or more persons or entities, and the creditors of the beneficiary's estate. The beneficiary has the exclusive right to exercise this general power of appointment.

The beneficiary may not exercise this power of appointment to appoint to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or creditors of the beneficiary's estate from the *limited share* of the beneficiary's trust. For purposes of this power of appointment, the *limited share* of the beneficiary's trust is that portion of the beneficiary's trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or that without the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at the beneficiary's death. If the generation-skipping tax does not then apply, the limited share will be the beneficiary's entire trust.

If any part of the beneficiary's trust is not effectively appointed, our Trustee shall distribute the remaining unappointed balance *Per Stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, our Trustee shall distribute the unappointed balance *Per Stirpes* to the then-living descendants of the beneficiary's nearest lineal ancestor who was a descendant of ours or, if there is no then-living descendant, *Per Stirpes* to our descendants.

If we have no then-living descendants, our Trustee shall distribute the balance of the trust property as provided in Article Twelve.

**Section 13.03 Application of Article**

Any decision made by our Trustee under this Article is final, controlling, and binding upon all beneficiaries subject to the provisions of this Article.

The provisions of this Article do not apply to distributions to either of us from any trust established under this trust.

Further, the provisions of this Article do not apply to distributions that are required to be made to a beneficiary under the provisions of Section 14.01.

## **Article Fourteen**

### **Retirement Plans and Life Insurance Policies**

The provisions of this Article apply to qualified retirement plans and insurance policies owned by or made payable to our trust.

#### **Section 14.01 Retirement Plans**

Notwithstanding any contrary provision in this trust, this Section's provisions apply to qualified retirement plans.

##### **(a) Rights of Our Trustee**

Subject to the provisions below pertaining to distributions from qualified retirement plans, our Trustee may exercise the right to determine the manner and timing of payments of qualified retirement plan benefits that are permitted and are consistent with the federal income tax rules regarding required minimum distributions under Internal Revenue Code Section 401(a)(9).

Our Trustee may make a qualified disclaimer of any qualified retirement benefits payable or non-qualified annuity benefits to our trust.

No beneficiary may hold our Trustee liable for any decision regarding the selection of the death benefit election or the disclaimer of any qualified retirement benefits payable to our trust.

Our Trustee may not change or designate beneficiaries under any retirement plan. Any power extended to our Trustee under the terms of a retirement plan that gives or appears to give our Trustee the power to change the identity or rights of any beneficiaries under the plan is void *ab initio*.

##### **(b) Distributions from Retirement Plans to the Survivor's Trust**

To the extent that at least part of any tax-favored retirement plan is distributed to the Survivor's Trust, our Trustee may (or must, if so requested by the surviving Grantor) cause the plan or part of the plan to be paid directly to the surviving Grantor as beneficiary, or must (if so required by the surviving Grantor) cause the plan or part of the plan to be transferred directly into another retirement plan in the surviving Grantor's name, without the intervening step of transferring it to the Survivor's Trust.

If the Survivor's Trust becomes the beneficiary of death benefits under any qualified retirement plan, each year, beginning with the year of the deceased Grantor's death, our Trustee shall withdraw at least the greater of:

the net income earned on the Survivor's Trust's share of the plan during the year; and

the minimum distribution required to be withdrawn from the Survivor's Trust's share of the plan under Internal Revenue Code Section 401(a)(9).

Our Trustee may withdraw additional amounts from the Survivor's Trust's share of the plan as our Trustee deems advisable. Our Trustee shall immediately distribute all amounts withdrawn to the surviving Grantor.

If the surviving Grantor is then deceased, our Trustee shall instead distribute the amount that would have been distributed to the surviving Grantor to the remainder beneficiary.

This Subsection's purpose is to ensure that the life expectancy of the surviving Grantor may be used to calculate the minimum distributions required by the Internal Revenue Code. This Subsection is to be interpreted consistent with this intent, despite any direction to the contrary in this trust.

Notwithstanding any other provision of this trust, our Trustee shall treat annuity and other periodic payments from any qualified retirement plans in any given year as income, to the extent the distribution represents income generated and treated as generated by any qualified retirement plan for that year. If income information is not available, then our Trustee shall apportion the annuity and other periodic payments between principal and income in an equitable and practical manner under Section 15.10.

**(c) Distributions from Retirement Plans to the Marital Trust**

If the Marital Trust becomes the beneficiary of death benefits under any qualified retirement plan, each year, beginning with the year of the deceased Grantor's death, our Trustee shall withdraw at least the greater of:

the net income earned on Marital Trust's share of the plan during the year; and

the minimum distribution required to be withdrawn from Marital Trust's share of the plan under Internal Revenue Code Section 401(a)(9).

Our Trustee may withdraw additional amounts from Marital Trust's share of the plan as our Trustee deems advisable, but only if the dispositive terms of the trust authorize our Trustee to immediately distribute the withdrawn amount as provided in this Subsection to the surviving Grantor. Our Trustee shall immediately distribute all amounts withdrawn to the surviving Grantor.

If the surviving Grantor is then deceased, our Trustee shall instead distribute the amount that would have been distributed to the surviving Grantor to the remainder beneficiary.

This Subsection's purpose is to ensure that the life expectancy of the surviving Grantor may be used to calculate the minimum distributions required by the Internal Revenue Code. This Subsection is to be interpreted consistent with this intent despite any direction to the contrary in this trust.

Notwithstanding any other provision of this trust, our Trustee shall treat annuity and other periodic payments from any qualified retirement plans in any given year as income, to the extent the distribution represents income generated and treated as generated by any qualified retirement plan for that year. If income information is not available, then our Trustee shall apportion the annuity and other periodic payments between principal and income in an equitable and practical manner under Section 15.10.

**(d) Distributions from Retirement Plans to Trusts Other Than Trusts That Qualify for the Federal Estate Tax Marital Deduction**

Unless specifically stated otherwise beginning with the year of a Grantor's death, if any trust created under this instrument that does not qualify for the federal estate tax marital deduction becomes the beneficiary of death benefits under any qualified retirement plan, our Trustee shall annually withdraw from the trust's share of the plan the minimum distribution required under Internal Revenue Code Section 401(a)(9). Our Trustee may withdraw additional amounts from the trust's share of the plan as our Trustee deems advisable, but only if the dispositive terms of the trust authorize our Trustee to immediately distribute the withdrawn amount as provided in this Subsection.

Our Trustee shall immediately distribute all amounts withdrawn to:

- the surviving Grantor, if a trust beneficiary;
- if the surviving Grantor is not a trust beneficiary, to our descendants, *Per Stirpes*, who are trust beneficiaries; and
- if the surviving Grantor is not a trust beneficiary and no descendant of ours is a trust beneficiary, then equally to the trust's Income Beneficiaries.

Amounts required to be withdrawn and distributed under this Subsection will reduce mandatory distribution amounts under other provisions of this trust that otherwise require distribution of all the trust's income.

This Subsection's purpose is to ensure that the trust beneficiaries' life expectancies may be used to calculate the minimum distributions required by the Internal Revenue Code. This Subsection is to be interpreted consistent with our intent, despite any direction to the contrary in this trust.

**(e) Minimum Required Distribution**

In administering the trust, the minimum required distribution for each qualified retirement plan for any year is the greater of:

the value of the qualified retirement plan determined as of the preceding year end, divided by the applicable distribution period; and

the amount that our Trustee is required to withdraw under the laws then applicable to the trust to avoid penalty.

If a Grantor dies before the required beginning date for a qualified retirement plan, the applicable distribution period means the beneficiary's life expectancy. If a Grantor dies on or after the required beginning date for a qualified retirement plan, the applicable distribution period means the beneficiary's life expectancy, or the deceased Grantor's remaining life expectancy, if longer.

Notwithstanding the foregoing, if a Grantor's death occurs on or after the required beginning date for a qualified retirement plan, the minimum required distribution for the year of death means:

the amount that was required to be distributed to the Grantor with respect to the qualified retirement plan during the year; minus

amounts actually distributed to the Grantor.

*Life expectancy, required beginning date* and other similar terms used in this Subsection, are to be determined in accordance with Internal Revenue Code Section 401(a)(9).

**Section 14.02 Life Insurance Policies**

The following provisions apply to life insurance policies owned by or made payable to our trust.

**(a) Provisions during Our Lives**

During our lives, each of us individually reserves all of the rights, powers, privileges, and options, with respect to any insurance policy, annuity, or any other third-party beneficiary contract owned by or made payable to our trust. This includes the rights to designate and change beneficiaries, to borrow money, to surrender the policy, to receive any payments as owner, and to make any available elections.

Our Trustee does not have a duty to exercise or to not exercise any rights, powers, privileges, or options with respect to any insurance policy, annuity contract, or other third-party beneficiary contract. Our Trustee does not have an obligation to pay premiums or other contractual amounts that may be payable under any policy.



**(b) Provisions after Our Death**

After the death of a Grantor, our Trustee may make all appropriate elections with respect to these policies and may collect all sums made payable to our trust or to our Trustee under all these policies or contracts.

Our Trustee may exercise any settlement options or other options or rights that may be available under the terms of any policy or contract. No beneficiary may hold our Trustee liable because of any election our Trustee has made with respect to any policy or contract.

**Section 14.03 Liability of Payor**

Persons or entities dealing in good faith with our Trustee are not required to see to the proper application of proceeds delivered to our Trustee, or to inquire into any provision of this trust.

A receipt signed by our Trustee for any proceeds or benefits paid will be a sufficient discharge to the person or entity making the payment.

**Section 14.04 Collection Efforts**

Our Trustee shall make reasonable efforts to collect all life insurance policy proceeds and qualified retirement benefits payable to our trust.

Our Trustee may commence legal or administrative proceedings to collect any life insurance policy proceeds or qualified retirement benefits to which the trust is entitled. Our Trustee need not begin these proceedings until our Trustee is satisfactorily indemnified for any expenses and liabilities our Trustee may incur in connection with the proceeding.

Our Trustee may settle any claims with respect to the collection of any life insurance proceeds or qualified retirement benefits to which our trust may be entitled. A settlement made by our Trustee is binding on all beneficiaries.

**Section 14.05 No Obligation to Purchase or Maintain Benefits**

Nothing in this trust imposes any obligation on either of us or on our Trustee to purchase, invest, or maintain any qualified retirement plan or life insurance policy.



## **Article Fifteen**

### **Trust Administration**

#### **Section 15.01 Distributions to Beneficiaries**

Whenever this trust authorizes or directs our Trustee to make a net income or principal distribution to a beneficiary, our Trustee may apply any property that otherwise could be distributed directly to the beneficiary for his or her benefit. Our Trustee is not required to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this trust.

Our Trustee may make cash distributions, in-kind distributions, or distributions partly in each, in proportions and at values determined by our Trustee. Our Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that our Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

Our Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

#### **Section 15.02 Beneficiary's Status**

Until our Trustee receives notice of the incapacity, birth, marriage, death, or other event upon which a beneficiary's right to receive payments may depend, our Trustee will not be held liable for acting or not acting with respect to the event, or for disbursements made in good faith to persons whose interest may have been affected by the event. Unless otherwise provided in this trust, a parent or Legal Representative may act on behalf of a minor or incapacitated beneficiary.

Our Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. Our Trustee will have no independent duty to investigate the status of any beneficiary and will not incur any liability for not doing so.

#### **Section 15.03 Mandatory Payments of a Pecuniary Amount**

If any person holds the right to receive a pecuniary amount from our trust upon our death, our Trustee must either:

- satisfy the entire pecuniary amount or irrevocably set aside property to satisfy the entire pecuniary amount within fifteen (15) months of our death; or

- pay appropriate interest, as defined in Treasury Regulations Section 26.2642-2(b)(4)(ii)(B), to the person.

If our Trustee satisfies the pecuniary amount with an in-kind distribution, our Trustee will allocate assets to satisfy the pecuniary amount in a manner that fairly reflects net appreciation or depreciation in the value of the available assets, as measured from the valuation date to the payment date.

#### **Section 15.04 No Court Proceedings**

Our Trustee shall administer this trust with efficiency, with attention to the provisions of this trust, and with freedom from judicial intervention. If our Trustee or another interested party institutes a legal proceeding, the court will acquire jurisdiction only to the extent necessary for that proceeding. Any proceeding to seek instructions or a court determination may only be initiated in the court with original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination is not to be construed as subjecting this trust to the court's continuing jurisdiction.

#### **Section 15.05 No Bond**

Our Trustee is not required to furnish any bond for the faithful performance of the Trustee's duties unless required by a court of competent jurisdiction, and only if the court finds that a bond is needed to protect the beneficiaries' interests. No surety will be required on any bond required by any law or court rule, unless the court specifies its necessity.

#### **Section 15.06 Exoneration of Our Trustee**

No successor Trustee is obligated to examine the accounts, records, or actions of any previous Trustee or the Personal Representative of a deceased Grantor. No successor Trustee may be held responsible for any act, omission, or forbearance by any previous Trustee or of the Personal Representative of a deceased Grantor.

Any Trustee may obtain written agreements from the beneficiaries or their Legal Representatives releasing and indemnifying the Trustee from any liability that may have arisen from the Trustee's acts, omissions, or forbearances. If acquired from all the trust's living beneficiaries or their Legal Representatives, any agreement is conclusive and binding on all parties, born or unborn, who may have or who may later acquire an interest in the trust.

Our Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal, and may withhold distribution or allocation pending determination or release of a tax or other lien. This refunding agreement provision will not apply to any distribution that qualifies for the federal estate tax unlimited marital deduction or the federal estate tax charitable deduction.

#### **Section 15.07 Trustee Compensation**

An individual serving as Trustee, other than either of us, is entitled to fair and reasonable compensation for the services provided as a fiduciary. A corporate fiduciary serving as Trustee will be compensated by agreement between an individual serving as Trustee and the corporate fiduciary. In the absence of an individual Trustee or an agreement, a corporate fiduciary will be compensated in accordance with the corporate fiduciary's current published fee schedule.

A Trustee may charge additional fees for services provided that are beyond the ordinary scope of duties, such as fees for legal services, tax return preparation, and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out the Trustee's duties under this trust.

### **Section 15.08 Employment of Professionals**

Our Trustee may appoint, employ, and remove investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, advisors, agents, and employees to advise or assist in the performance of our Trustee's duties. Our Trustee may act on the recommendations of the persons or entities employed, with or without independent investigation.

Our Trustee may reasonably compensate an individual or entity employed to assist or advise our Trustee, regardless of any other relationship existing between the individual or entity and our Trustee.

Our Trustee may compensate providers of contracted services at the usual rate out of the trust's income or principal, as our Trustee deems advisable. Our Trustee may compensate an individual or entity employed to assist or advise our Trustee without diminishing the compensation the Trustee is entitled to under this trust. A Trustee who is a partner, stockholder, officer, director, or corporate affiliate in any entity employed to assist or advise our Trustee may still receive the Trustee's share of the compensation paid to the entity.

### **Section 15.09 Exercise of Testamentary Power of Appointment**

A testamentary power of appointment granted under this trust may be exercised by a will or living trust specifically referring to the power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and may designate the terms and conditions, whether outright or in trust. Except where this trust specifically states otherwise, the holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

Our Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this trust has not been exercised by the beneficiary if our Trustee has no knowledge of the existence of a will or living trust exercising the power within three (3) months after the beneficiary's death.

### **Section 15.10 Determination of Principal and Income**

Our Trustee shall determine how all Trustee fees, disbursements, receipts, and wasting assets will be credited, charged, and apportioned between principal and income in a fair, equitable, and practical manner.

Our Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and the equalization of payments to or for the beneficiaries. Our Trustee may select appropriate accounting periods for the trust property.

Notwithstanding the preceding provisions of this trust or California law to the contrary, our Trustee shall treat distributions from any qualified retirement account to any trust established under this trust in any given year as income to the extent the distribution represents income generated or treated as generated by any qualified retirement account for that year.

**(a) Annuity and Other Periodic Payments**

*Annuity and other periodic payments* refers to distributions made to our Trustee over a fixed number of years or during the life of one or more individuals because of services provided or property transferred to the payor in exchange for future payments. This includes payments made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, individual retirement annuity, pension, profit-sharing plan, stock-bonus plan, stock-ownership plan, or similar arrangement. Our Trustee shall treat annuity and other periodic payments to any trust established under this trust in any given year as income to the extent the distribution represents income generated and treated as generated by the annuity or other periodic payment for that year. If income information is not available, then our Trustee shall apportion the annuity and other periodic payments between principal and income in a fair, equitable and practical manner under the guidelines set forth in this Section.

To the extent an annuity or other periodic payment is characterized as interest, dividend, or other item of income, or an annuity or other periodic payment is made instead of interest, dividend, or other item of income, our Trustee shall allocate the payment to income. Our Trustee shall allocate to principal the balance of the annuity or other periodic payment as well as any other payment received in the same accounting period that is not characterized as interest, dividend, or other item of income.

To the extent annuity and other periodic payments are made and no part of the payments are characterized as interest, dividend, or other item of income, our Trustee shall use the present value of the annuity and other periodic payments as finally determined for federal estate tax purposes, and the Internal Revenue Code Section 7520 rate used to determine the value for federal estate tax purposes to prepare an annuitization table to allocate the payments between income and principal.

If the amounts of annuity and other periodic payments change because of changes in the investment markets or other changes, our Trustee shall allocate the change in the amount of the payments between income and principal in a fair, equitable, and practical manner.

**(b) Protection of Estate Tax Marital Deduction**

If, to obtain an estate tax marital deduction for a trust established under this trust, our Trustee must allocate more of a payment to income than

provided for by this Section, then our Trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

### **Section 15.11 Trust Accounting**

Except to the extent required by law, our Trustee is not required to file accountings in any jurisdiction. After both of our deaths, our Trustee must provide an annual accounting to the Income Beneficiaries of any trust created under this trust unless waived by the Income Beneficiaries.

The annual accounting must include the receipts, expenditures, and distributions of income and principal and the assets on hand for the accounting period. A copy of the federal fiduciary tax return filed for a trust during the accounting will satisfy this reporting requirement.

In the absence of fraud or obvious error, assent by all Income Beneficiaries to a Trustee's accounting will make the matters disclosed in the accounting binding and conclusive upon all persons, including those living on this date and those born in the future who have or will have a vested or contingent interest in the trust property. In the case of an Income Beneficiary who is a minor or incapacitated, the beneficiary's natural guardian or Legal Representative may give the assent required under this Section.

A beneficiary may object to an accounting provided by our Trustee only by giving written notice to our Trustee within sixty (60) days after our Trustee provides the accounting. Any beneficiary who does not submit a timely written objection is considered to assent to the accounting.

Our Trustee must make the trust's financial records and documents available to beneficiaries at reasonable times and upon reasonable notice for inspection. Our Trustee is not required to furnish any information regarding our trust to anyone other than a beneficiary. Our Trustee may exclude any information our Trustee determines is not directly applicable to the beneficiary receiving the information.

In all events, a beneficiary's Legal Representative may receive any notices and take any action on behalf of the beneficiary as to an accounting. If any beneficiary's Legal Representative fails to object to any accounting in writing within sixty (60) days after our Trustee provides the accounting, the beneficiary's Legal Representative will be considered to assent to the accounting.

### **Section 15.12 Action of Trustees and Delegation of Trustee Authority**

When neither of us is serving as a Trustee, if two Trustees are eligible to act with respect to a given matter, they must agree unanimously for action to be taken unless the express terms of the Trustees' appointment provide otherwise. If more than two Trustees are eligible to act with respect to a given matter, the Trustees must agree by majority for action to be taken.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee will be absolved from personal liability by registering the dissent or abstention in the trust records. After doing so, the dissenting Trustee must then act with our other Trustees in any way necessary or appropriate to effect the majority decision.



Notwithstanding the limitations set forth in this Section, unless a Trustee elects otherwise in a written instrument delivered to the other Trustees, whenever neither of us are serving as a Trustee, if two or more Trustees are then serving, any one Trustee may sign any checks, agreements, or other documents on behalf of the trust with the same effect as if all Trustees had signed. Persons dealing with the signing Trustee in good faith may rely upon the signing Trustee's authority to act on behalf of the trust without inquiry as to the other Trustees' agreement.

Subject to the limitations set forth in Section 16.24, any Trustee may, by written instrument, delegate to any other Trustee the right to exercise any power, including a discretionary power, granted to our Trustee in this trust. During the time a delegation under this Section is in effect, the Trustee to whom the delegation is made may exercise the power to the same extent as if the delegating Trustee has personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice to the Trustee to whom the power was delegated.

### **Section 15.13 Trustee May Disclaim or Release Any Power**

Notwithstanding any provision of this trust to the contrary, any Trustee may relinquish any Trustee power in whole or in part, irrevocably or for any specified period of time, by a written instrument. The Trustee may relinquish a power personally or may relinquish the power for all subsequent Trustees.

### **Section 15.14 Trustee May Execute a Power of Attorney**

Our Trustee may appoint any individual or entity to serve as our Trustee's agent under a power of attorney to transact any business on behalf of our trust or any other trust created under this trust.

### **Section 15.15 Additions to Separate Trusts**

If upon the death of the survivor of us, or upon the termination of any trust created under this trust, a final distribution is to be made to a person who is the Primary Beneficiary of another trust established under this trust, and there is no specific indication whether the distribution is to be made in trust or outright, our Trustee shall make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, the distribution will be treated as though it had been an original part of the second trust.

### **Section 15.16 Authority to Merge or Sever Trusts**

Our Trustee may merge a trust created under this trust with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and have at least one Trustee in common. Our Trustee may administer the merged trust under the provisions of the instrument governing the other trust, and this trust will no longer exist if it merges into another trust. Accordingly, in the event another trust is merged into this trust or a trust created under the provisions of this trust document, our Trustee may shorten the period during which this trust subsists to comply with Section 17.01, if necessary, to effect the merger. But if a merger does not appear feasible, our Trustee

may consolidate the trusts' assets for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

Our Trustee may sever any trust on a fractional basis into two or more separate and identical trusts, or may segregate a specific amount or asset from the trust property by allocating it to a separate account or trust. The separate trusts may be funded on a *non pro rata* basis including a *non pro rata* division of the community property under California Probate Code Section 100, but the funding must be based on the assets' total fair market value on the funding date. After the segregation, income earned on a segregated amount or specific asset passes with the amount or asset segregated. Our Trustee shall hold and administer each severed trust upon terms and conditions identical to those of the original trust.

Subject to the trust's terms, our Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the effective severance date; however, the effective severance date may be retroactive to a date before our Trustee exercises the power.

#### **Section 15.17 Authority to Terminate Trusts**

Our Independent Trustee may terminate any trust created under this trust at any time, if our Independent Trustee, in its sole and absolute discretion, determines that administering a trust created under this trust is no longer economical. Once distributed, our Trustee will have no further responsibility with respect to that trust property. Our Trustee will distribute the trust property from a terminated trust in this order:

- to us, if we are both then living;

- if one of us is deceased, to the surviving Grantor, if the surviving Grantor is then a trust beneficiary;

- if we are both deceased or the surviving Grantor is not a trust beneficiary, to the beneficiaries then entitled to mandatory distributions of the trust's net income, in the same proportions; and then

- if none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of the trust's net income, in the amounts and shares our Independent Trustee determines.

#### **Section 15.18 Merger of Corporate Fiduciary**

If any corporate fiduciary acting as the Trustee under this trust is merged with or transfers substantially all of its trust assets to another corporation, or if a corporate fiduciary changes its name, the successor will automatically succeed to the trusteeship as if that successor had been originally named a Trustee. No document of acceptance of trusteeship will be required.



### **Section 15.19 Funeral and Other Expenses of Beneficiary**

Upon the death of an Income Beneficiary, our Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts, or other expenses incurred due to the death of the beneficiary from trust property. This Section only applies to the extent the Income Beneficiary has not exercised any testamentary power of appointment granted to the beneficiary under this trust.

Our Trustee may rely upon any request by the deceased beneficiary's Legal Representative or family members for payment without verifying the validity or the amounts and without being required to see to the application of the payment. Our Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or court rule and without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary's estate.

### **Section 15.20 Marital Deduction Qualification**

The marital gift as described in Article Seven of this trust is intended to qualify for the federal estate tax marital deduction, and the provisions of this trust are to be construed to reflect this intent. To the extent that exercising a provision of this trust would disqualify the marital gift from the federal estate tax unlimited marital deduction, that provision is void except to the extent our Trustee or the deceased Grantor's Personal Representative elects that all or a portion of the marital gift not qualify for the unlimited marital deduction.

### **Section 15.21 Generation-Skipping Transfer Tax Provisions**

If any trust created under this trust would be partially exempt from generation-skipping transfer tax after the intended allocation of Available GST Exemption to the trust, then our Trustee may divide the partially exempt trust so that the allocation of Available GST Exemption can be made to a trust that will be entirely exempt from generation-skipping transfer tax. If our Trustee chooses to divide a trust that would otherwise be a partially exempt trust, our Trustee must create and administer the separate trusts as provided in this Section.

#### **(a) Division into Exempt and Non-Exempt Trusts**

Our Trustee shall divide the property of the otherwise partially-exempt trust into two separate trusts, the *exempt trust* and the *nonexempt trust*. The exempt trust will consist of the largest fractional share of the otherwise partially exempt trust's total assets that will permit the exempt trust to be entirely exempt from generation-skipping transfer tax. The *nonexempt trust* will consist of the balance of the otherwise partially exempt trust's total assets.

To compute the fractional share, our Trustee will use asset values as finally determined for federal estate tax purposes. Our Trustee must then apply the fraction to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of the fraction will include fluctuations in the trust property's value. We request that our Trustee allocate the value

of any Roth IRAs payable to our trust to the exempt trust to the extent possible.

**(b) Administration of the Trusts**

Our Trustee shall administer the exempt and nonexempt trusts created under this Section as separate and independent trusts, but under the same terms as the original trust. To the extent possible, our Trustee should make distributions to a non-skip person as defined by Internal Revenue Code Section 2613 from the nonexempt trust and distributions to a skip person as defined by Section 2613 from an exempt trust. Our Trustee may designate names for the exempt and nonexempt trusts.

If an exempt trust and a nonexempt trust are further divided under the terms of this trust, our Trustee may allocate property from the exempt trust first to the trust from which a generation-skipping transfer is more likely to occur.

**(c) Expression of Our Intent**

Our intent is to minimize the application of the generation-skipping transfer tax to the trust property, but not to affect the total amount of trust property to which any beneficiary may be entitled under this trust. This trust must be construed and interpreted to give effect to this intent.

**(d) Additions of Property to Exempt and Non-Exempt Trusts**

If at any time any property that has an inclusion ratio greater than zero for generation-skipping transfer tax purposes would be added to a trust with property that has an inclusion ratio of zero, then our Trustee will instead hold the property in a separate trust on the same terms and conditions as the original trust.

**(e) Re-Allocation**

If our Trustee's determination of whether a trust in this trust is partially, entirely, or not exempt from GST taxes is later incorrect (for example, if the Congress by law or the Service by regulation or ruling applies the generation-skipping transfer tax retroactively to the trust), our Trustee may re-allocate the assets as of the initial division date, as provided in this Section.

**Section 15.22 Independent Trustee May Confer Testamentary Power of Appointment**

During the Primary Beneficiary's lifetime, our Independent Trustee may grant the Primary Beneficiary a testamentary power to appoint all or part of the Primary Beneficiary's trust or trust share to the creditors of the Primary Beneficiary's estate. Our Independent Trustee may require that the Primary Beneficiary obtain the consent of our Independent Trustee granting the power, as a condition for the exercise of the power. Any testamentary power of appointment granted by our Independent Trustee must be in writing and may be revoked at any time during the lifetime of the Primary Beneficiary to

whom the power was given. We suggest that our Independent Trustee exercise this authority to subject trust property to estate tax instead of the generation-skipping transfer tax when it may reduce overall taxes.

## **Article Sixteen**

### **Our Trustee's Powers**

#### **Section 16.01 Introduction to Trustee's Powers**

Except as otherwise specifically provided in this trust, our Trustee may exercise the powers granted by this trust without prior approval from any court, including those powers set forth under the laws of the State of California or any other jurisdiction whose law applies to this trust. The powers set forth in California Fiduciary Powers Act are specifically incorporated into this trust.

Our Trustee shall exercise the Trustee powers in the manner our Trustee determines to be in the beneficiaries' best interests. Our Trustee must not exercise any power inconsistent with the beneficiaries' right to the enjoyment of the trust property in accordance with the general principles of trust law.

Our Trustee may have duties and responsibilities in addition to those described in this trust. We encourage any individual or corporate fiduciary serving as Trustee to obtain appropriate legal advice if our Trustee has any questions concerning the duties and responsibilities as Trustee.

#### **Section 16.02 Execution of Documents by Our Trustee**

Our Trustee may execute and deliver any written instruments that our Trustee considers necessary to carry out any powers granted in this trust.

#### **Section 16.03 Investment Powers in General**

Our Trustee may invest in any type of investment that our Trustee determines is consistent with the investment goals of the trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account the overall investment portfolio of the trust.

Without limiting our Trustee's investment authority in any way, we request that our Trustee exercise reasonable care and skill in selecting and retaining trust investments. We also request that our Trustee take into account the following factors in choosing investments:

- the potential return from the investment, both in income and appreciation;
- the potential income tax consequences of the investment;
- the investment's potential for volatility; and
- the role the investment will play in the trust's portfolio.

We request that our Trustee also consider the possible effects of inflation or deflation, changes in global and US economic conditions, transaction expenses, and the trust's need for liquidity while arranging the trust's investment portfolio.

Our Trustee may delegate his or her discretion to manage trust investments to any registered investment advisor or corporate fiduciary.

#### **Section 16.04 Banking Powers**

Our Trustee may establish any type of bank account in any banking institutions that our Trustee chooses. If our Trustee makes frequent disbursements from an account, the account does not need to be interest bearing. Our Trustee may authorize withdrawals from an account in any manner.

Our Trustee may open accounts in the name of our Trustee, with or without disclosing fiduciary capacity, and may open accounts in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the account's fiduciary nature or refer to any trust or Trustee.

#### **Section 16.05 Business Powers**

If the trust owns or acquires an interest in a business entity, whether as a shareholder, partner, general partner, sole proprietor, member, participant in a joint venture, or otherwise, our Trustee may exercise the powers and authority provided for in this Section. The powers granted in this Section are in addition to all other powers granted to our Trustee in this trust.

Our Trustee may act personally and independently with any business entity in which the trust has an interest, separate from any duties owed to the trust as our Trustee. This includes serving and receiving compensation for services as an officer, director, general partner, manager, or any other capacity for the business entity. The compensation our Trustee receives from this entity will not affect the compensation our Trustee may be entitled to for serving as our Trustee. Our Trustee may exercise any voting power for any matter, whether the voting power is held as our Trustee or independently as a stockholder, officer, director, general partner, member, manager, or other capacity of the business entity. Our Trustee may independently own, purchase, and sell an interest in a business entity owned by the trust. Any sale of a nonpublicly traded business interest between our Trustee and the trust must be approved and effected by an Independent Special Trustee.

If any trust created under this trust is funded with subchapter S stock, our Trustee may either elect to qualify the trust as a Qualified Subchapter S Trust (QSST) under Internal Revenue Code Section 1361(d)(3) or as an Electing Small Business Trust under Section 1361(e)(1) to administer the trust in accordance with the requirements of the corresponding Section.

#### **Section 16.06 Contract Powers**

Our Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that our Trustee deems advisable. Our Trustee may grant options of any duration for any sales, exchanges, or transfers of trust property.

Our Trustee may enter into contracts, and may deliver deeds or other instruments, that our Trustee considers appropriate.

## **Section 16.07 Common Investments**

For purposes of convenience with regard to the trust property's administration and investment, our Trustee may invest part or all of the trust property jointly with property of other trusts for which our Trustee is also serving as a Trustee. A corporate fiduciary acting as our Trustee may use common funds for investment. When trust property is managed and invested in this manner, our Trustee will maintain records that sufficiently identify this trust's portion of the jointly invested assets.

## **Section 16.08 Environmental Powers**

Our Trustee may inspect trust property to determine compliance with or to respond to any environmental law affecting the property. For purposes of this trust *environmental law* means any federal, state, or local law, rule, regulation, or ordinance protecting the environment or human health.

Our Trustee may refuse to accept property if our Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to any Trustee.

Our Trustee may use trust property to:

- conduct environmental assessments, audits, or site monitoring;
- take remedial action to contain, clean up, or remove any hazardous substance including a spill, discharge, or contamination;
- institute, contest, or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance;
- comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement, or cleanup of any hazardous substance; and
- employ agents, consultants, and legal counsel to assist our Trustee in these actions.

Our Trustee is not liable for any loss or reduction in value sustained by the trust as a result of our Trustee's decision to retain property on which hazardous materials or substances requiring remedial action are discovered, unless our Trustee contributed to that loss through willful misconduct or gross negligence.

Our Trustee is not liable to any beneficiary or to any other party for any decrease in the value of property as a result of our Trustee's actions to comply with any environmental law, including any reporting requirement.

Our Trustee may release, relinquish, or disclaim any power held by our Trustee that our Trustee determines may cause our Trustee to incur individual liability under any environmental law.



### **Section 16.09 Farm, Ranch, and Other Agricultural Powers**

Our Trustee may retain, acquire, and sell any farm or ranching operation, whether as a sole proprietorship, partnership, or corporation.

Our Trustee may engage in the production, harvesting, and marketing of farm and ranch products, either by operating directly or indirectly with management agencies, hired labor, tenants, or sharecroppers.

Our Trustee may engage and participate in any government farm program, whether state or federally sponsored.

Our Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

Our Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; and acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

Our Trustee may do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries.

### **Section 16.10 Insurance Powers**

Our Trustee may purchase, accept, hold, and deal with as owner, insurance policies on either or both of our lives, any beneficiary's life, or any person's life in whom any beneficiary has an insurable interest.

Our Trustee may purchase disability, medical, liability, longterm health care and other insurance on behalf of and for the benefit of any beneficiary. Our Trustee may purchase annuities and similar investments for any beneficiary.

Our Trustee may execute or cancel any automatic premium loan agreement with respect to any policy, and may elect or cancel any automatic premium loan provision in a life insurance policy. Our Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company issuing the policy or from another source. Our Trustee may assign the policy as security for the loan.

Our Trustee may exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy to reduce the amount of a policy, to convert or exchange the policy, or to surrender a policy at any time for its cash value.

Our Trustee may elect any paid-up insurance or extended-term insurance nonforfeiture option contained in a policy.

Our Trustee may sell any policy at its fair market value to anyone having an insurable interest in the policy, including the insured.

Our Trustee may exercise any other right, option, or benefit contained in a policy or permitted by the issuing insurance company.

Upon termination of the trust, our Trustee may transfer and assign the policies held by the trust as a distribution of trust property.



### **Section 16.11 Loans and Borrowing Powers**

Our Trustee may make loans to any person including a beneficiary, as well as an entity, trust, or estate, for any term or payable on demand, with or without interest, and secured or unsecured.

Our Trustee may encumber any trust property by mortgages, pledges, or otherwise, and may negotiate, refinance, or enter into any mortgage or other secured or unsecured financial arrangement, whether as a mortgagee or mortgagor. The term may extend beyond the trust's termination and beyond the period required for an interest created under this trust to vest in order to be valid under the rule against perpetuities.

Our Trustee may enter into, negotiate, or modify the terms of any mortgage or any other secured or unsecured agreement granted in connection with any loan entered into by either or both of us or by any Trustee, and may release or foreclose on any mortgage or security interest payable to either or both of us or to the trust.

Our Trustee may borrow money at interest rates and on other terms that our Trustee deems advisable from any person, institution, or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

Our Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. Our Trustee may accept deeds instead of foreclosing.

### **Section 16.12 Nominee Powers**

Our Trustee may hold real estate, securities, and any other property in the name of a nominee or in any other form, without disclosing the existence of any trust or fiduciary capacity.

### **Section 16.13 Oil, Gas and Mineral Interests**

Our Trustee may acquire, maintain, develop, and exploit, either alone or jointly with others, any oil, gas, coal, mineral, or other natural resource rights or interests.

Our Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell, and exchange any of those rights and interests on terms and for a price that our Trustee deems advisable.

Our Trustee may execute leases, pooling, unitization, and other types of agreements in connection with oil, gas, coal, mineral, and other natural resource rights and interests, even though the terms of those arrangements may extend beyond the trust's termination.

Our Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it considers proper.

Our Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the trust's principal and income.

#### **Section 16.14 Payment of Property Taxes and Expenses**

Except as otherwise provided in this trust, our Trustee may pay any property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments will be a charge against the trust property and will be paid by our Trustee out of income. If the income is insufficient, then our Trustee may make any payments of property taxes or expenses out of the trust property's principal. Our Trustee's determination with respect to this payment will be conclusive on the beneficiaries.

#### **Section 16.15 Purchase of Assets from and Loans to a Deceased Grantor's Probate Estate**

Upon the death of a Grantor, our Trustee may purchase at fair market value and retain in the form received any property that is a part of the deceased Grantor's probate or trust estate as an addition to the trust. In addition, our Trustee may make secured and unsecured loans to the deceased Grantor's probate or trust estate. Our Trustee may not be held liable for any loss suffered by the trust because of the exercise of the powers granted in this Section.

Our Trustee may not use any trust property for the benefit of the deceased Grantor's estate as defined in Code of Federal Regulations Title 26 Section 20.2042-1(b), unless the property is included in the deceased Grantor's gross estate for federal estate tax purposes.

#### **Section 16.16 Qualified Family-Owned Business Interests Deduction**

Our Independent Trustee has the power to amend the terms of a trust holding *qualified family-owned business interests* as defined in Internal Revenue Code Section 2057 in order to permit trust property to qualify for the *family-owned business deduction*, even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

#### **Section 16.17 Qualified Real Property Valuation**

Our Independent Trustee has the power to amend the terms of a trust holding *qualified real property* as defined in Internal Revenue Code Section 2032A, in order to permit the qualified real property to qualify for special use valuation permitted under Section 2032A, even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

#### **Section 16.18 Qualified Tuition Programs**

Our Trustee may purchase tuition credits or certificates or make contributions to an account in one or more qualified tuition programs as defined under Internal Revenue Code Section 529 on a beneficiary's behalf for the purpose of meeting the beneficiary's qualified higher education expenses. With respect to an interest in any qualified tuition program, our Trustee may act as contributor, administering the interest by actions including:

- designating and changing the designated beneficiary of the interest in the qualified tuition program;

requesting both qualified and nonqualified withdrawals;  
selecting among investment options and reallocating funds among different investment options;  
making rollovers to another qualified tuition program; and  
allocating any tax benefits or penalties to the beneficiaries of the trust.

Notwithstanding anything in this provision to the contrary, the designated beneficiary must always be a beneficiary of the trust from which the funds were distributed to establish the interest in the qualified tuition program. Investment in a qualified tuition program will not be considered a delegation of investment responsibility under any applicable statute or other law.

### **Section 16.19 Real Estate Powers**

Our Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve, and in general deal in and with real property in the manner and on the terms and conditions as our Trustee deems appropriate.

Our Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements to, and abandon any real property.

Our Trustee may manage real estate in any manner considered best, and may exercise all other real estate powers necessary to effect this purpose.

Our Trustee may enter into contracts to sell real estate. Our Trustee may enter into leases and grant options to lease trust property, even though the term of the agreement extends beyond the termination of any trusts established under this trust and beyond the period that is required for an interest created under this trust to vest in order to be valid under the rule against perpetuities. Our Trustee may enter into any contracts, covenants, and warranty agreements that our Trustee deems appropriate.

### **Section 16.20 Residences and Tangible Personal Property**

Our Trustee may acquire, maintain, and invest in any residence for the beneficiaries' use and benefit, whether or not the residence is income producing and without regard to the proportion that the residence's value may bear to the trust property's total value, even if retaining the residence involves financial risks that Trustees would not ordinarily incur. Our Trustee may pay or make arrangements for others to pay all carrying costs of any residence for the beneficiaries' use and benefit, including taxes, assessments, insurance, maintenance, and other related expenses.

Our Trustee may acquire, maintain, and invest in articles of tangible personal property, whether or not the property produces income. Our Trustee may pay for the repair and maintenance of the property.

Our Trustee is not required to convert the property referred to in this Section to income-producing property, except as required by other provisions of this trust.

Our Trustee may permit any Income Beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that our

Trustee determines, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

Our Trustee is not liable for any depreciation or loss resulting from any decision to retain or acquire any property as authorized by this Section.

### **Section 16.21 Retention and Abandonment of Trust Property**

Our Trustee may retain any property constituting the trust at the time of its creation, at the time of the death of a Grantor, or as the result of the exercise of a stock option, without liability for depreciation or loss resulting from retention. Our Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

Our Trustee may hold property that is not income producing or is otherwise nonproductive if holding the property is in the best interests of the beneficiaries in the sole and absolute discretion of our Trustee. On the other hand, our Trustee will invest contributions of cash and cash equivalents as soon as reasonably practicable after the assets have been acquired by the trust.

Our Trustee may retain a reasonable amount in cash or money market accounts to pay anticipated expenses and other costs, and to provide for anticipated distributions to or for the benefit of a beneficiary.

Our Trustee may abandon any property that our Trustee considers of insignificant value.

### **Section 16.22 Securities, Brokerage and Margin Powers**

Our Trustee may buy, sell, trade, and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, options, and other securities of any kind and in any amount, including short sales. Our Trustee may write and purchase call or put options, and other derivative securities. Our Trustee may maintain margin accounts with brokerage firms, and may pledge securities to secure loans and advances made to our Trustee or to or for a beneficiary's benefit.

Our Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. Our Trustee may have all securities registered in the name of the bank or trust company or in the name of the bank's nominee or trust company's nominee. Our Trustee may appoint the bank or trust company as the agent or attorney in fact to collect, receive, receipt for, and disburse any income, and generally to perform the duties and services incident to a custodian of accounts.

Our Trustee may employ a broker-dealer as a custodian for securities held by the trust, and may register the securities in the name of the broker-dealer or in the name of a nominee; words indicating that the securities are held in a fiduciary capacity are optional. Our Trustee may hold securities in bearer or uncertificated form, and may use a central depository, clearing agency, or book-entry system, such as The Depository Trust Company, Euroclear, or the Federal Reserve Bank of New York.

Our Trustee may participate in any reorganization, recapitalization, merger, or similar transaction. Our Trustee may exercise or sell conversion or subscription rights for securities of all kinds and descriptions. Our Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution, and may vote or refrain from voting on any matter.

### **Section 16.23 Settlement Powers**

Our Trustee may settle any claims and demands in favor of or against the trust by compromise, adjustment, arbitration, or other means. Our Trustee may release or abandon any claim in favor of the trust.

### **Section 16.24 Limitation on Our Trustee's Powers**

All powers granted to Trustees under this trust or by applicable law are limited as set forth in this Section, unless explicitly excluded by reference to this Section. The limitations set forth in this Section do not apply to either of us while we are both alive, and do not apply if either of us is serving as Trustee of the Survivor's Trust.

#### **(a) An Interested Trustee Limited to Ascertainable Standards**

An Interested Trustee may only make discretionary decisions when they pertain to a beneficiary's health, education, maintenance, or support as described under Internal Revenue Code Sections 2041 and 2514.

#### **(b) No Distributions in Discharge of Certain Legal Obligations**

Our Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of our Trustee, including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove the Trustee, including that person's obligation of support.

#### **(c) Insurance Policy on the Life of Our Trustee**

If the trust holds a policy that insures the life of a Trustee, that Trustee may not exercise any powers or rights with respect to the policy. Instead, a Co-Trustee or an Independent Special Trustee must exercise the powers and rights with respect to the policy.

If any rule of law or court decision construes the ability of the insured Trustee to name an Independent Special Trustee as an incident of ownership of the policy, then a majority of the then current Income Beneficiaries (excluding the insured Trustee if he or she is a beneficiary) will select the Independent Special Trustee.



**(d) Insurance Policy on a Beneficiary's Life**

If the trust holds a policy that insures a beneficiary's life, the beneficiary, individually or as Trustee, may not exercise any power over the policy, its cash value, or its proceeds. This denial of power is intended to prevent an insured beneficiary from holding any power that would constitute an incident of ownership of the policy.

In addition, no distribution of income or principal to the insured beneficiary may be satisfied out of the policy's proceeds, cash value, or other economic benefit of the policy.

The limitations of this Subsection do not apply if, upon the beneficiary's death, the policy's proceeds would otherwise be included in the beneficiary's gross estate for federal estate tax purposes.

## **Article Seventeen General Provisions**

### **Section 17.01 Maximum Term for Trusts**

Notwithstanding any contrary provisions or unless terminated earlier under other provisions of this trust, each trust created under this trust document will terminate twenty-one (21) years after the death of the last to die of the descendants of our paternal and maternal grandparents who are living at the time of the first of us to die.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of the trust's net income, in the same proportions. If no beneficiary is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of the trust's net income, in equal shares *Per Stirpes*.

### **Section 17.02 Spendthrift Provision**

No beneficiary may assign, anticipate, encumber, alienate, or otherwise voluntarily transfer the income or principal of any trust created under this trust. In addition, neither the income nor the principal of any trust created under this trust is subject to attachment, bankruptcy proceedings or any other legal process, the interference or control of creditors or others, or any involuntary transfer.

This Section does not restrict a beneficiary's right to disclaim any interest or exercise of any power of appointment granted in this trust.

### **Section 17.03 Contest Provision**

The right of a beneficiary to take any interest given to him or her under this trust or any trust created under this trust instrument will be determined as if the beneficiary predeceased the last of us to die without leaving any surviving descendants if that beneficiary, alone or in conjunction with any other person, engages in any of these actions:

- contests by a claim of undue influence, fraud, menace, duress, or lack of testamentary capacity, or otherwise objects in any court to the validity of this trust, any trust created under the terms of this instrument, either of our Wills, or any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension, profit-sharing plan, or insurance policy signed by either of us, (collectively referred to in this Section as *Document* or *Documents*) or any amendments or codicils to any Document;

- seeks to obtain adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify, or set aside a Document or any of its provisions;

- files suit on a creditor's claim filed in a probate of the estate of either Grantor, against the trust estate, or any other Document, after rejection or lack of action by the respective fiduciary;



files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already characterized by a Document;

files a petition to impose a constructive trust or resulting trust on any assets of the trust estate; or

participates in any of the above actions in a manner adverse to the trust estate, such as conspiring with or assisting any person who takes any of these actions.

Our Trustee may defend any violation of this Section at the expense of the trust estate. A *contest* includes any action described above in an arbitration proceeding, but does not include any action described above solely in a mediation not preceded by a filing of a contest with a court.

But during any period in which the laws of the State of California govern the applicability or validity of this provision, California Probate Code Section 21311 will apply, and our Trustee may only enforce this provision against any of these types of contests:

a direct contest brought by any beneficiary without probable cause;

a pleading by any beneficiary to challenge a property transfer on the grounds that the transferor did not own the property at the transfer time; and

any filing of a creditor's claim or prosecution of any action based on the filing of a claim of this kind.

The terms *direct contest*, and *pleading* have the same meanings as set forth in California Probate Code Section 21310. This trust and any trusts created in this instrument are *protected instruments* as provided in California Probate Code Section 21310(e).

#### **Section 17.04 Survivorship Presumption**

If we die under circumstances in which the order of our deaths cannot be established, each of us will be considered to have predeceased the other and each Grantor's interest in any community property of our trust, and each Grantor's separate trust property will be administered as provided in Section 8.08 for administering the remaining property in the Survivor's Trust upon death of the surviving Grantor.

If any other beneficiary is living at the death of a Grantor, but dies within ninety (90) days after the Grantor's death, then the beneficiary will be considered to have predeceased the Grantor for purposes of this trust.

#### **Section 17.05 Divorce or Annulment**

If our marriage ends by divorce or annulment, each of us will be considered to have predeceased the other for purposes of this trust, so that our respective property interests are not used for the benefit of the other.

## **Section 17.06 Changing the Governing Law and Situs of Administration**

At any time, our Trustee may change the governing law of the trust; change the situs of the administration of the trust; and remove all or any part of the property from one jurisdiction to another. Our Trustee may elect, by filing an instrument with the trust records, that the trust will then be construed, regulated, and governed by the new jurisdiction's laws. Our Trustee may take action under this Section for any purpose our Trustee considers appropriate, including the minimization of any taxes in respect of the trust or any trust beneficiary.

If considered necessary or advisable by our Trustee, our Trustee may appoint an Independent Trustee to serve as Trustee in the new situs.

If necessary and if our Trustee does not appoint an Independent Trustee within thirty (30) days of our Trustee's action to change the governing law or situs of the trust, the beneficiaries entitled to receive distributions of the trust's net income may appoint a corporate fiduciary in the new situs by majority consent. If a beneficiary is a minor or is incapacitated, the beneficiary's parent or Legal Representative may act on the beneficiary's behalf.

## **Section 17.07 Definitions**

For purposes of this trust, the following terms have these meanings:

### **(a) Adopted and Afterborn Persons**

A person in any generation who is legally adopted before reaching the age of eighteen (18) years and his or her descendants, including adopted descendants, have the same rights and will be treated in the same manner under this trust as natural children of the adopting parent. A person is considered legally adopted if the adoption was legal at the time when and in the jurisdiction in which it occurred.

A fetus *in utero* later born alive will be considered a person in being during the period of gestation.

### **(b) Available GST Exemption**

The deceased Grantor's *Available GST Exemption* means the GST exemption provided in Internal Revenue Code Section 2631 in effect at the deceased Grantor's death; reduced by the aggregate of:

- any amount of GST exemption allocated to the deceased Grantor's lifetime transfers, including those allocations made at the time of the deceased Grantor's death by the deceased Grantor's Personal Representative, by the deceased Grantor's Trustee, or by operation of law; and

- any amount allocated to direct-skip persons as defined in Internal Revenue Code Section 2612(c)(1) that does not qualify for an exclusion from the generation-skipping transfer tax occurring at the deceased Grantor's death to or for the benefit of the deceased Grantor's descendants.

At the time of the deceased Grantor's death, if the deceased Grantor has made a lifetime transfer to a trust with an inclusion ratio of greater than zero but have not filed a gift tax return and the due date for the gift tax return has not yet passed, the deceased Grantor's Available GST Exemption will also be reduced so that the trust inclusion ratio is zero, in order to exempt the transfer from generation-skipping transfer tax.

**(c) Descendants**

The term *descendants* means persons who directly descend from a person, such as children, grandchildren, or great-grandchildren. The term *descendants* does not include collateral descendants, such as nieces and nephews.

**(d) Education**

The term *education* is intended to be an ascertainable standard under Internal Revenue Code Sections 2041 and 2514 and includes:

- enrollment at private elementary, junior, and senior high school, including boarding school;

- undergraduate and graduate study in any field at a college or university;

- specialized, vocational, or professional training or instruction at any institution, as well as private instruction; and

- any other curriculum or activity that our Trustee considers useful for developing a beneficiary's abilities and interests including athletic training, musical instruction, theatrical training, the arts, and travel.

The term *education* also includes expenses such as tuition, room and board, fees, books, supplies, computers and other equipment, tutoring, transportation, and a reasonable allowance for living expenses.

**(e) Good Faith**

For the purposes of this trust, a Trustee has acted in good faith if:

- an action or inaction is not a result of intentional wrongdoing;

- the Trustee did not make the decision to act or not act with reckless indifference to the beneficiaries' interests; and

- an action or inaction does not result in an improper personal benefit to the Trustee.

Further, all parties subject to the provisions of this trust will treat any action or inaction made in reliance on information, consent, or directions received from the Personal Representative of each of our estates as made

in good faith for the purposes of this Section, except for cases of willful misconduct or malfeasance on the Trustee's part.

**(f) Grantor**

*Grantor* has the same legal meaning as *Settlor*, *Trustor* or any other term referring to the maker of a trust.

**(g) Incapacity**

Except as otherwise provided in this trust, a person is considered incapacitated in any of the following circumstances.

**(1) The Opinion of Two Licensed Physicians**

An individual is considered to be incapacitated whenever two licensed physicians give the opinion that the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age; illness; use of prescription medications, drugs, or other substances; or any other cause. If an individual whose capacity is in question refuses to provide necessary documentation or otherwise submit to examination by licensed physicians, that individual will be considered incapacitated.

An individual is considered restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

**(2) Court Determination**

An individual is considered incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent, or legally incapacitated.

**(3) Detention, Disappearance, or Absence**

An individual is considered to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than thirty (30) days, or whenever he or she is detained under duress.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of our Trustee, or by the affidavit of any beneficiary if no Trustee is then serving. The affidavit must describe the circumstances of the individual's disappearance, absence, or detention, and may be relied upon by any third party dealing in good faith with our Trustee.

**(h) Income Beneficiary**

The term *Income Beneficiary* means any beneficiary who is then entitled to receive distributions of the trust's net income, whether mandatory or discretionary.

Unless otherwise provided in this trust, the phrase *majority of the Income Beneficiaries* means any combination of Income Beneficiaries who would receive more than fifty percent (50%) of the accrued net income if that income were distributed on the day of a vote. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income receive the imputed income in equal shares.

References to a *majority* refer to a majority of the entire trust collectively until our Trustee allocates property to separate trusts or trust shares. After our Trustee allocates property to separate trusts or trust shares, references to a *majority* refer to a majority of each separate trust or trust share.

**(i) Independent Trustee**

The term *Independent Trustee* means any Trustee who is not an Interested Trustee as defined in Subsection (k) and includes an Independent Special Trustee appointed under the provisions of Section 3.08. Whenever a power or discretion is granted exclusively to our Independent Trustee, then any Interested Trustee who is then serving as our Trustee is prohibited from participating in the exercise of the power or discretion. If there is no Independent Trustee then serving, then an Independent Special Trustee may be appointed under the provisions of Section 3.08 to exercise the power or discretion that is exercisable only by our Independent Trustee.

**(j) Instrument**

The term *this instrument* means this trust, and includes all trusts created under the terms of this trust.

**(k) Interested Trustee**

The term *Interested Trustee* means a Trustee who:

- is a transferor or beneficiary;
- is related or subordinate to a transferor or beneficiary;
- can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor; or
- can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.

For purposes of this Subsection, *transferor* means a person who transferred property to the trust, including a person whose disclaimer

resulted in property passing to the trust. *Beneficiary* means a person who is or may become eligible to receive income or principal from the trust under the terms of the trust, even if this person has only a remote contingent remainder interest in the trust, but not if the person's only interest is as a potential appointee under a power of appointment. *Related or subordinate* is used as defined in Internal Revenue Code Section 672(c).

Whenever this trust specifically prohibits or limits an Interested Trustee from exercising discretion or performing an act, then any Interested Trustee serving as our Trustee is prohibited from participating in the exercise of that discretion or performance of that act. If there is no Trustee serving who is not an Interested Trustee, then an Independent Special Trustee may be appointed under the provisions of Section 3.08 to exercise the discretion or perform the act.

**(l) Internal Revenue Code and Treasury Regulations**

References to the *Internal Revenue Code* or to its provisions are to the Internal Revenue Code of 1986, as amended, and any corresponding Treasury Regulations. References to the *Treasury Regulations*, are to the Treasury Regulations under the Internal Revenue Code in effect. If a particular provision of the Internal Revenue Code is renumbered or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is considered to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to our intent as expressed in this trust. The same rule applies to references to the Treasury Regulations.

**(m) Legal Representative or Personal Representative**

As used in this trust document, the term *Legal Representative* or *Personal Representative* means a person's guardian, conservator, executor, administrator, Trustee, or any other person or entity representing a person or the person's estate. In the case of a minor beneficiary, the beneficiary's parent or another adult with custody of the beneficiary, except for any transferor to a trust created under this instrument, will be considered the beneficiary's Legal Representative for purposes of this trust.

**(n) Per Stirpes**

Whenever a distribution is to be made to a person's descendants *per stirpes*, the distribution will be divided into as many equal shares as there are then-living children and deceased children who left then-living descendants. Each then-living child will receive one share, and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.



**(o) Primary Beneficiary**

The *Primary Beneficiary* of a trust created under this trust is that trust's oldest Income Beneficiary, unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

**(p) Qualified Retirement Benefits**

The term *qualified retirement plan* means a plan qualified under Internal Revenue Code Section 401, an individual retirement arrangement under Section 408 or Section 408A, or a tax-sheltered annuity under Section 403. The term *qualified retirement benefits* means the amounts held in or distributed pursuant to a plan qualified under Section 401, an individual retirement arrangement under Section 408 or Section 408A, a tax-sheltered annuity under Section 403, or any other benefit subject to the distribution rules of Section 401(a)(9).

**(q) Shall and May**

Unless otherwise specifically provided in this trust or by the context in which used, we use the word *shall* in this trust to impose a duty, command, direct, or require, and the word *may* to allow or permit, but not require. In the context of our Trustee, when we use the word *shall* we intend to impose a fiduciary duty on our Trustee. When we use the word *may* we intend to empower our Trustee to act with the Trustee's sole and absolute discretion unless otherwise stated in this trust. When we use the words *may not* in reference to our Trustee, we specifically mean our Trustee *is not permitted to*.

**(r) Trust**

The terms *this trust*, *this document*, and *this trust document* refer to this trust and all trusts created under the terms of this trust.

**(s) Trustee**

The terms *our Trustee* and *Trustee* refer to the Initial Trustees named in Article One and to any successor, substitute, replacement, or additional person, corporation, or other entity that ever acts as the Trustee of any trust created under the terms of this trust. The term *Trustee* refers to singular or plural as the context may require.

**(t) Trust Property**

The term *trust property* means all property acquired from any source and held by a Trustee under this trust.

**Section 17.08 General Provisions and Rules of Construction**

The following general provisions and rules of construction apply to this trust.

**(a) Multiple Originals; Validity of Paper or Electronic Copies**

This trust may be executed in any number of counterparts, each of which will be considered an original.

Any person may rely on a paper or electronic copy of this trust that the Trustee certifies to be a true copy as if it were an original.

**(b) Singular and Plural; Gender**

Unless the context requires otherwise, singular words may be construed as plural, and plural words may be construed as singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word *or*, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires.

**(c) Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and Subsections used within this trust are included solely for the convenience of the reader. They have no significance in the interpretation or construction of this trust.

**(d) Governing State Law**

This trust is governed, construed, and administered according to the laws of California, as amended except as to trust property required by law to be governed by the laws of another jurisdiction and unless the situs of administration is changed under Section 17.06.

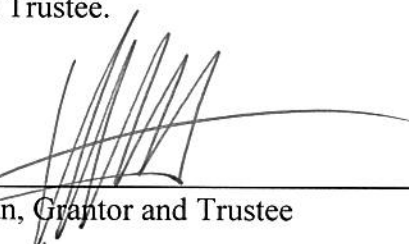
**(e) Notices**

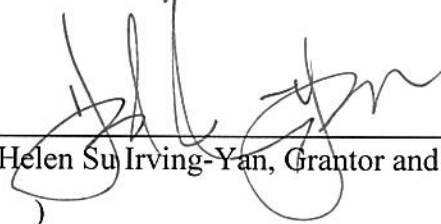
Unless otherwise stated, any notice required under this trust will be in writing. The notice may be personally delivered with proof of delivery to the party requiring notice and will be effective on the date personally delivered. Notice may also be mailed, postage prepaid, by certified mail with return receipt requested to the last known address of the party requiring notice. Mailed notice is effective on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If the party requiring notice is a minor or incapacitated individual, notice will be given to the parent or Legal Representative.

**(f) Severability**

The invalidity or unenforceability of any provision of this trust does not affect the validity or enforceability of any other provision of this trust. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this trust are to be interpreted as if the invalid provision had never been included.

We have executed this trust on December 11, 2013. This trust instrument is effective when signed by us, whether or not now signed by a Trustee.

  
\_\_\_\_\_  
Kelvin Yan, Grantor and Trustee

  
\_\_\_\_\_  
Helen Su Irving-Yan, Grantor and Trustee

State of California

County of Orange

On December 11, 2013 before me, Keiko Gosin, a Notary Public, personally appeared Kelvin Yan and Helen Su Irving-Yan, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

  
\_\_\_\_\_

(Seal)



## Schedule of Assets

1. 100% of 2810 Doming Road, Fullerton, CA 92835

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2. 100% of 7702 Spring Hill Street, Chino, CA 91708

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3. 100% of 214 – 220 East Laguna Street, Tucson, AZ 85705

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4. 50% of 4120 South Neece Street, Corona, CA 92879

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5. 100% of Apogee Inc., a California corporation

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6. 100% of Sydnee LLC, a California limited liability company

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7. 100% of Sydnee Properties LLC, a California limited liability company

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8. 100% of Sydnee Holdings LLC, a California limited liability company

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