

**TRACK 6**  
**Elder Law Drafting: All the Clauses You  
Didn't Know You Needed and More**

**Presented By:**  
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**ELDER LAW DRAFTING: ALL THE CLAUSES YOU  
DIDN'T KNOW YOU NEEDED AND MORE**

**NEW YORK STATE BAR ASSOCIATION  
ELDER LAW AND SPECIAL NEEDS SECTION  
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## SAMPLE PROVISIONS FOR TRUSTS, WILLS AND POWERS OF ATTORNEY

### Medicaid Asset Protection Trust

#### Distribution of Income

1. **All Income to Grantor:** During Grantor's lifetime, the Trustee, after deducting the expenses of administration of the Trust, shall pay to or apply for the benefit of Grantor, all of the net income of the Trust in convenient installments, but at least so often as quarter-annually.
2. **Discretionary Income to Children:** During Grantor's lifetime, the Trustee, after deducting the expenses of administration of the Trust, may pay so much of the net income of the Trust as the Trustee shall deem proper to or for the benefit of any one or more of Grantor's children, \_\_\_\_\_, in equal or unequal amounts. Any income not so paid is to be accumulated and added to the principal at the end of each calendar year. Under no circumstances may the Trustee pay or apply the net income of the Trust for the benefit of the Grantor.
3. **Discretionary Income to Grantor and/or Children:** During Grantor's lifetime, the Trustee, after deducting the expenses of administration of the Trust, may pay so much of the net income of the Trust as the Trustee shall deem proper to or for the benefit of any one or more of Grantor and Grantor's children, \_\_\_\_\_, in equal or unequal amounts. Any income not so paid is to be accumulated and added to the principal at the end of each calendar year.

#### Distribution of Principal

1. **Distribution to Grantor's Children: (i)** During Grantor's lifetime, the Trustee may pay so much of the principal of the Trust (even to the extent of the whole) as the Trustee shall deem proper, to or for the benefit of any one or more of Grantor's children, \_\_\_\_\_, in equal or unequal amounts. Under no circumstances, however, shall the Trustee distribute residential real property (including condominiums or the shares of a cooperative apartment) used by the Grantor as a personal residence.  
  
**(ii)** Under no circumstances may the Trustee invade the principal of the Trust for the benefit of the Grantor. The Grantor directs that the provisions of Section 7-1.6 of the New York Estates, Powers and Trusts Law, or any successor statute, shall not be applied by any court having jurisdiction of an express or testamentary trust to compel the payment or application of the principal of the Trust to or for the benefit of the Grantor for any reason whatsoever. This provision is specifically intended to negate and eliminate any discretion granted to any Court by Section 7-1.6 of the New York Estates, Powers and Trusts Law.

## **Grantor's Use of Residence**

1. **Provision for Income and Use of Residence:** During the lifetime of Grantor, the Trustee, in the Trustee's sole discretion, may distribute from time to time all or part of the net income from the Trust Estate, as follows: (i) to or for the benefit of Grantor, (ii) to or for the benefit of Grantor's children and/or grandchildren, or (iii) accumulate said income as part of the Trust Estate. Notwithstanding the foregoing, Grantor shall have the absolute right, during Grantor's lifetime, to reside in, enjoy, and occupy any and all residential property owned by the Trust, rent-free, provided that Grantor keeps the property in good condition and repair and pays and is responsible for all carrying costs of said property and expenses with regard to Grantor's use and occupancy thereof, including, but not limited to, any mortgage payments (interest and principal), real estate taxes, insurance premiums, loss, damage, maintenance and repairs, and maintain adequate casualty and liability insurance on said property. Grantor shall not be required to give any bond or other security.
2. **Use of Residence; Termination of Use:** In the event that my trust holds residential real property (including condominiums or the shares of a cooperative apartment) used by me, then I have the exclusive right to possess, occupy, and use the real property (including a cooperative apartment) for residential purposes.

### ***No Payment of Rent; Payment of Maintenance***

I may not be required to pay rent for such property, but will be responsible for and required to pay all of the expenses of the maintenance of the property, including taxes, insurance, utilities, mortgage payments, and normal costs of maintenance and upkeep of the property.

### ***Termination of Tenancy***

If I cease to use such property as a residence (permanently or seasonally), my Trustee may, in the exercise of sole and absolute discretion, either continue to hold such property as an investment or sell it. Notwithstanding the above, any purchaser of real property owned by this trust will be entitled to rely upon the authority of my Trustee to sell such real property. My Trustee may purchase or acquire substitute property or properties to be used by me for residential purposes. Any substitute property purchased shall be part of the principal of this trust.<sup>1</sup>

3. **Use of Residence; Reference to Property Tax Exemption:** In the event that the Trust holds residential real property, including shares in a cooperative apartment, used by the Grantor as a personal residence, Grantor shall have the right to the exclusive occupancy of

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<sup>1</sup> This provision was derived from copyrighted material and are used for educational purposes with the express permission of the copyright holder, ElderCounsel, LLC. All rights reserved.

said residential real property (or replacement residential real property). The Grantor shall not be responsible to pay rent for such property, but shall be responsible for and required to pay all of the expenses of the maintenance of the property, including taxes, insurance, utilities, mortgage payments and normal costs of maintenance and upkeep of the property. Such right to exclusive occupancy may be waived in writing by the Grantor or her legal representative (including the holder of a durable power of attorney). Such written waiver by Grantor may include binding instructions to the Trustee for the sale of the residential real property and/or the purchase of a replacement personal residence for the Grantor of her own choosing. It is the intent of the Grantor herein to preserve or obtain any and all types of property tax exemptions which the Grantor would otherwise have been entitled to if the property had been held by her.

4. **Use of Residence; Occupancy:** In the event that this trust holds residential real property used by me, then I have the right to occupy the real property (including a cooperative apartment) for residential purposes. Upon my request, the Trustees shall purchase substitute property or properties to be used for my dwelling purposes. Any substitute property purchased shall be part of the principal of this trust. Notwithstanding the above, any purchaser of real property owned by this trust will be entitled to rely upon the authority of the Trustees to sell the real property. I may not be required to pay rent for any property, but I am responsible for, and required to, pay all of the expenses of the maintenance of the property, including taxes, insurance, utilities, mortgage payments and normal costs of maintenance and upkeep of the property.
  
5. **Use of Residence; Joint Trust:** (G) As set forth in Schedule A annexed hereto, the Grantors have contributed to the Trust their interests in the real property containing their residence which is located at 123 Main Street, White Plains, New York 10601 (the "Residence"). The Trustees are hereby authorized to hold the Residence or any undivided interest in same as all of or a portion of the principal of this Trust as well as to hold any other real property or any undivided interest in same which the Grantors may contribute to the Trust at a later date, including all lands appurtenant to or used in connection with the Residence. The Trustees shall hold, manage and administer the Residence pursuant to the following terms and conditions:
  - (1) The Grantors retain the right of use, occupancy and possession of the Residence during their lifetimes. Accordingly, the Trustees shall permit the Grantors to occupy the Residence for so long as they shall so desire and the Trustees shall not charge the Grantors rent for such occupancy. If the Grantors cease to use the Residence, the Trustees may, in the exercise of absolute discretion, either continue to hold the Residence as an investment, or sell the Residence.
  
  - (2) The Grantors shall be responsible to pay for all maintenance and repairs, water, sewer, insurance and mortgage charges and all taxes related to the Residence which accrue. The Grantors specifically retain their entitlement to any Senior Citizen, STAR,

Veteran's benefits, or other tax exemptions concerning the Residence.

(3) Subject to the aforementioned right of the Grantors to continue to occupy the Residence during their lifetimes, the Trustees are authorized to sell or lease the Residence to any person, for such price and on such terms, including credit, as the Trustees may deem advisable, and the Trustees are authorized to but are not required to invest and reinvest the proceeds of such sale or any part thereof in other residential property, or any undivided interest therein, and the Grantors shall have the same right to occupy any residence so purchased during the term of this Trust as herein provided with respect to the Residence or an undivided interest therein.

### **Special Power of Appointment**

1. **Lifetime Limited Power of Appointment Upon Termination of Trust:** The Grantor reserves the power, exercisable by written instrument delivered to the Trustees during the trust term, by making specific reference to, and exercise of this power to appoint any part or all of the principal of the remainder of the trust fund at the end of the trust term, outright or upon trusts, powers of appointment, conditions or limitations, to one or more persons select out of a class composed of the Grantor's issue. This power may be exercised by an agent under a duly executed statutory power of attorney and statutory gift rider.
2. **Lifetime Limited Power of Appointment over Income and/or Principal:** The Grantor hereby reserves a limited power to appoint the income and/or principal of the Trust, during the Grantor's lifetime, and a limited power to appoint the remainder of the Trust upon Grantor's death, to or among any one or more members of a class consisting of the Grantor's issue, in any degree, whether presently living or born hereafter, in such proportions and amounts, without regard to equality, outright or in further trust, as the Grantor may direct and appoint by written and acknowledged instrument executed by the Grantor, the Grantor's attorney-in-fact or a Court appointed guardian for the Grantor, making specific reference to this power of appointment. No such appointment shall be made to Grantor, her creditors, her estate or her estate's creditors, under any circumstances.
3. **Joint Lifetime Limited Power of Appointment:** The Grantors jointly reserve the power, exercisable by written instrument, executed by both Grantors, if both are living, or by the surviving Grantor, if one of the Grantors has died, and delivered to the Trustees during the lifetimes of the Grantors, to appoint any part or all of the principal or income of the Trust, outright or upon Trusts, power of appointment, conditions or limitations, to or among a class of beneficiaries limited to the Grantors' children, grandchildren and relatives by blood, marriage or adoption and any charitable organization. No exercise of this power shall exhaust it. No such appointment shall be made to either Grantor, the creditors of the Grantors, the estates of the Grantors, the creditors of the Grantors' estates, or any governmental entities or any federal, state or local subdivision, department or agency thereof. The power reserved to the Grantors under this paragraph may be exercised by a duly appointed agent under power

of attorney for a Grantor, provided that the authority to exercise the power is contained in the power of attorney or by a conservator, committee or guardian of a grantor, provided that the power to exercise such power is granted by a court of law. If both Grantors are living, the exercise of the power of appointment pursuant to this paragraph shall be made by both Grantors acting jointly or by either Grantor, with the signed and acknowledged consent of the other Grantor or the duly appointed attorney-in-fact or legal representative of the other Grantor.

4. **Testamentary Limited Power of Appointment:** The Grantors reserve the power, exercisable by the Will of either Grantor or any codicil thereto, to appoint any part or all, in any proportion, of the principal or income of the Trust, outright or upon Trusts, powers of appointment, conditions or limitations, to or among a class of beneficiaries limited to Grantor's children, grandchildren, relatives by blood, marriage or adoption and charitable organizations. No such appointment may be made to the Grantors, the creditors of the Grantors, the estates of the Grantors, the creditors of the Grantors' estates or governmental entities or any federal state or local subdivision or agency thereof. The Will of a Grantor who exercises this limited power of appointment shall specifically refer to the power of appointment granted by this Section of the Trust and must be submitted for probate within ninety (90) days of the death of the second Grantor to die, in the county of the Grantor's residence. If a Will exercising this limited power of appointment is submitted for probate in the estate of the first Grantor to die, such exercise of the limited power of appointment shall not be effective if the Will of the second Grantor to die shall be submitted for probate within ninety (90) days of the death of the second Grantor and such exercise of the limited power of appointment differs in any manner from the exercise of the power of appointment by the Will of the first Grantor to die, as the Grantors intend that the surviving Grantor shall retain the right to exercise this testamentary power of appointment over the entirety of the trust principal. If no Will of the second Grantor to die is submitted for probate within ninety (90) days after the death of the second Grantor to die, any exercise of the limited power of appointment by the Will of the first Grantor to die shall be effective.

#### **Exercise of Special Power of Appointment**

1. **Exercise of Testamentary Limited Power of Appointment:** I am the grantor of the \_\_\_\_\_ TRUST u/a/d \_\_\_\_\_, over which I have a power of appointment pursuant to ARTICLE FOUR, Paragraph A, thereof. I hereby specifically exercise my power of appointment by appointing all property therein, subject to the subsequent terms of this my Last Will and Testament.
2. **Exercise of Testamentary Power of Appointment; Another Form:** I hereby exercise the power of appointment which I have pursuant to Article IV (B) of my Irrevocable Trust, dated April 2, 2007, and give, devise and bequeath all real and personal property over which I have such power of appointment to my son, **JOE SMITH**.

3. **Lifetime Exercise of Limited Power of Appointment:** I, \_\_\_\_\_, residing at \_\_\_\_\_, as Grantor of the \_\_\_\_\_ Asset Management Trust u/a/d \_\_\_\_\_ (the "Trust"), hereby exercise the limited power of appointment reserved by me under the provisions of Article Three, Paragraph 1(a) of the Trust and direct that upon my death the Trustee distribute the remaining principal and undistributed income of the Trust (the "Trust Remainder") as follows:

(a) The Trustee shall distribute the Trust Remainder to my daughter, \_\_\_\_\_, if she is then living.

(b) In the event that my daughter, \_\_\_\_\_, is not then living, the Trustee shall distribute the Trust Remainder to the issue of my daughter, \_\_\_\_\_, who are then living, per stirpes.

The exercise of this power shall not be deemed to release my power to revoke this appointment and to reappoint the Trust Remainder to or among any one or more members of a class consisting of my issue, in any degree, whether presently living or born hereafter, in such proportions and amounts, without regard to equality, outright or in further trust, as I may direct and appoint.

Except as modified by this Exercise of the Power of Appointment, the terms and provisions of the \_\_\_\_\_ Asset Management Trust executed by the undersigned on \_\_\_\_\_ are hereby ratified and affirmed.

### **Trigger to SNT**

1. **Distribution of SNT for Disabled Beneficiary:** Notwithstanding any provision of this Trust to the contrary, in the event that any share of the Trust hereunder shall become payable to a person who is a resident of a nursing facility and/or a "person with a severe and chronic or persistent disability" as such term is defined in New York Estates, Powers and Trusts Law Section 7-1.12 (the "Disabled Beneficiary"), such share shall not be distributed to such Disabled Beneficiary but instead shall be held for his or her benefit by the Trustee, IN FURTHER TRUST, to hold, manage, invest and reinvest the same, to collect and receive any income arising therefrom and, after deducting all charges and expenses properly attributable thereto, to administer and dispose of the net income and principal thereof as follows:

(a) The Trustee may pay to or apply for the benefit of the Disabled Beneficiary, so much (even to the extent of the whole) of the net income and/or principal of this trust as the Trustee shall deem advisable, in the Trustee's sole and absolute

discretion, subject to the limitations set forth below. The Trustee shall add to the principal of such trust the balance of net income not so paid or applied.

**(b)** It is the Grantor's intent to create a supplemental needs trust which conforms to the provisions of Section 7-1.12 of the New York Estates, Powers and Trust Law. The Grantor intends that the trust assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city, or other governmental entity for which the Disabled Beneficiary may otherwise be eligible or which the Disabled Beneficiary may be receiving. Consistent with that intent, it is the Grantor's desire that, before expending any amounts from the net income and/or principal of this trust for the benefit of the Disabled Beneficiary, the Trustee consider the availability of all benefits from government or private assistance programs for which the Disabled Beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee endeavors to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of the Disabled Beneficiary.

**(c)** None of the income or principal of this trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal, state, county, city, or governmental entity for which the Disabled Beneficiary may otherwise be eligible or which the Disabled Beneficiary may be receiving.

**(d)** The Disabled Beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from this trust.

**(e)** Notwithstanding the provisions of Paragraphs 5(b) and 5(c) above, the Trustee may make distributions to meet the Disabled Beneficiary's need for food, clothing, shelter or health care even if such distributions may result in an impairment or diminution of the Disabled Beneficiary's receipt or eligibility for government benefits or assistance but only if the Trustee determines that (i) the Disabled Beneficiary's needs will be better met if such distribution is made, and (ii) it is in the Disabled Beneficiary's best interests to suffer the consequent effect, if any, on the Disabled Beneficiary's eligibility for or receipt of government benefits or assistance; provided, however, that if the mere existence of the Trustee's authority to make distributions pursuant to this Paragraph 5(e) shall result in the Disabled Beneficiary's loss of government benefits or assistance, regardless of whether such authority is actually exercised, this Paragraph 5(e) shall be null and void and the Trustee's authority to make such distributions shall cease and shall be limited as provided in Paragraphs 5(b) and 5(c) above, without exception.

**(f)** It is the Grantor's intent that the provisions of Section 7-1.6 of the New York Estates, Powers and Trusts Law, or any successor statute, shall not be applied or available to authorize any invasion of the principal of this trust by any court.

(g) Upon the death of the Disabled Beneficiary, the Trustee shall distribute the remaining principal and undistributed income of the trust to the Disabled Beneficiary's then living issue, per stirpes, or, in default of such issue, per stirpes to the then living issue of the Disabled Beneficiary's nearest lineal ancestor who was a descendant of the Grantor, or, in default of such issue, to the Grantor's then living issue, per stirpes, or in default thereof, to the legal representative of the Disabled Beneficiary's estate. In the event that any portion of the trust shall become payable to a person for whom an amount shall then be held in trust under any provision of this Trust, then, anything herein to the contrary notwithstanding, such portion shall not be paid over to such person but in lieu thereof shall be added to his or her trust to follow the disposition thereof in all respects as to both income and principal.

### **Revocation of Trust**

1. **Partial Revocation of Trust:** This AGREEMENT is made as of the date below between \_\_\_\_\_ and \_\_\_\_\_, as Grantors and income beneficiaries, and \_\_\_\_\_, as Trustee, of The \_\_\_\_\_ Family Irrevocable Trust dated \_\_\_\_\_, and \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ being the children of the Grantors and the residuary beneficiaries of said Trust.

### **RECITALS**

WHEREAS, the Grantors and Trustee have entered into an irrevocable trust agreement entitled The \_\_\_\_\_ Family Irrevocable Trust dated \_\_\_\_\_ (hereinafter referred to as the "Trust"), with the Grantors being the income beneficiaries and the Grantors children being the residuary beneficiaries of the Trust; and

WHEREAS, the Grantors and Trustee have faithfully carried out the obligations set forth in the Trust since the funding of such Trust; and

WHEREAS, the Trust was funded with an initial transfer on \_\_\_\_\_ in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) and an additional transfer of \_\_\_\_\_ (\$ \_\_\_\_\_) on \_\_\_\_\_; and

WHEREAS, the Grantors now desire to partially revoke the Trust as permitted by Estates, Powers and Trust Law §7-1.9 so as to effectuate a return of \_\_\_\_\_ (\$ \_\_\_\_\_) to the Grantors; and

WHEREAS, the Trustee agrees to the partial revocation of the Trust as desired by the Grantors; and

WHEREAS, the Residuary Beneficiaries hereby acknowledge that they have no vested interest in said Trust and would have been entitled to no portion of the Trust corpus absent the exercise of discretion of the Trustee; and furthermore, that the Beneficiaries have no absolute right to the entirety of the Trust until such time as the Grantors die; and

WHEREAS, the Beneficiaries consent to the partial revocation of the Trust as desired by the Grantors.

NOW THEREFORE, in consideration of the foregoing and the mutual promises of the parties herein, the parties hereby agree to the partial revocation of the Trust and the return of the \_\_\_\_\_ (\$\_\_\_\_\_) to the name of the Grantors, with the Trustee being directed to make such return as soon as possible after securing all required signatures on this Agreement as such authority and ownership of said property ceases as a result of said revocation.

\_\_\_\_\_  
, Grantor and Income Beneficiary

\_\_\_\_\_  
, as Trustee and as Remainder Beneficiary

\_\_\_\_\_  
, as Remainder Beneficiary [Acknowledgment]

2. **Full Revocation of Trust:** This INSTRUMENT made this \_\_\_\_\_, by \_\_\_\_\_, residing at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, \_\_\_\_\_, as the Grantor, created the \_\_\_\_\_ TRUST, originally dated \_\_\_\_\_, by and between \_\_\_\_\_, as the Grantor, and \_\_\_\_\_ and \_\_\_\_\_, as the Trustees (hereinafter referred to as the “Trust”); and

WHEREAS, pursuant to section 7-1.9 of New York’s Estates, Powers and Trusts Law, as amended from time to time (“EPTL”), the Grantor may revoke or amend any of the terms and conditions of the aforesaid Trust agreement with the written consent of all persons beneficially interested; and

WHEREAS, the Grantor now desires to revoke the Trust in its entirety;

WHEREAS, signed simultaneously hereto are consents of the persons beneficially interested in the trust, as defined in EPTL § 7-1.9; and

NOW, THEREFORE, in consideration of the premises and by virtue of the statutory power given to the Grantor as aforesaid, the Grantor hereby directs as follows:

1. The undersigned acknowledges and agrees that the recitals above shall be incorporated into this Agreement as if same have been recited in their entirety herein.

2. The \_\_\_\_\_ TRUST u/a/d \_\_\_\_\_, is hereby revoked in its entirety.

IN WITNESS WHEREOF, the Grantor executed this Instrument this \_\_\_\_\_.

\_\_\_\_\_  
[Acknowledgment]

3. **Full Revocation of Trust; Another Form:** REVOCATION OF TRUST AGREEMENT made and entered into this \_\_\_ day of \_\_\_\_\_, 2018 by \_\_\_\_\_, residing at \_\_\_\_\_, as Grantor.

WHEREAS, \_\_\_\_\_ made and entered into a Trust Agreement on \_\_\_\_\_, designated as the “\_\_\_\_\_ ASSET MANAGEMENT TRUST”, between said \_\_\_\_\_, as Grantor and said \_\_\_\_\_, as Trustee (hereinafter referred to as the “Trust”); and

WHEREAS, \_\_\_\_\_ now desires to revoke the Trust in its entirety; and

WHEREAS, \_\_\_\_\_ is an adult and the only living person who is or may be beneficially interested in the Trust; and

WHEREAS, by an instrument executed by \_\_\_\_\_ on \_\_\_\_\_ in the manner required by Section 7-1.9 of the Estates, Powers and Trusts Law of the State of New York, \_\_\_\_\_ has consented to the revocation of the Trust.

NOW, THEREFORE, the Trust is hereby revoked in its entirety.

IN WITNESS WHEREOF, \_\_\_\_\_ has executed this Revocation of the Trust as of the day and year first written above.

\_\_\_\_\_  
Grantor [Acknowledgment]

4. **Full Revocation of Trust; Another Form:** THIS REVOCATION made on the 31st day of October, 2011, between \_\_\_\_\_ and \_\_\_\_\_.

WHEREAS, \_\_\_\_\_, as Grantor, (hereinafter sometime referred to as “Grantor”), and \_\_\_\_\_, as Trustee (hereinafter sometimes referred to as “Trustee”), entered into a Trust Agreement entitled \_\_\_\_\_, under agreement dated April 2, 2011 (hereinafter sometimes referred to as “Trust Agreement,” a copy of which is annexed here as Exhibit A), and

WHEREAS, Grantor desires to revoke the Trust Agreement in accordance with the provisions of New York Estate Powers and Trusts Law Section 7-1.9, and

WHEREAS, Grantor desires to have all of the Trust Estate distributed to Grantor, and

WHEREAS Grantor has exercised the Power of Appointment under Article IV (B) of the Trust Agreement, by a Will dated October 31, 2011 (a copy of which is annexed here as Exhibit B), and has, pursuant to that Power of Appointment, given, devised and bequeathed all real and personal property subject to that power to \_\_\_\_\_; and

WHEREAS, upon the exercise of such Power of Appointment, the only persons beneficially interested in the Trust Agreement are \_\_\_\_\_ and \_\_\_\_\_ (hereinafter sometimes referred to as "Beneficiary"), who hereby consents to the revocation of the Trust Agreement.

NOW, THEREFORE, it is agreed that \_\_\_\_\_ u/a dated \_\_\_\_\_ is hereby revoked as follows:

The Grantor hereby revokes \_\_\_\_\_ u/a dated \_\_\_\_\_ in accordance with the provisions of New York Estates Powers and Trusts Law Section 7-1.9.

- I. The Grantor and Beneficiary hereby ratify all actions of the Trustee in administering the Trust Estate up to the date of this revocation.
- II. The Trustee and Beneficiary of \_\_\_\_\_ u/a dated \_\_\_\_\_ hereby consent to the revocation of such Trust Agreement.
- III. The Grantor directs the Trustee to distribute the Trust Estate of the Trust Agreement to the Grantor.

IN WITNESS WHEREOF, \_\_\_\_\_, as Grantor, and \_\_\_\_\_ SMITH, as Trustee and Beneficiary, have signed and sealed this instrument.

\_\_\_\_\_  
, Grantor [Acknowledgment]

**Consent to Revocation of Trust**

- 1. **Consent to Revocation of Trust Agreement:** THIS CONSENT dated as of \_\_\_\_\_, by \_\_\_\_\_, residing at \_\_\_\_\_, as beneficiary of the \_\_\_\_\_ TRUST u/a/d \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, \_\_\_\_\_, as the Grantor, created the \_\_\_\_\_ TRUST, originally dated \_\_\_\_\_, by and between \_\_\_\_\_ referred to as the “Trust”); and

WHEREAS, pursuant to section 7-1.9 of New York’s Estates, Powers and Trusts Law, as amended from time to time (“EPTL”), the Grantor, with the written consent of all the persons beneficially interested in the trust, may revoke the Trust agreement by a written instrument, acknowledged or proved in like manner;

WHEREAS, by written instrument dated \_\_\_\_\_, entitled the “Revocation of the \_\_\_\_\_ Trust”, a copy of which is attached hereto and made a part hereof (the “Revocation”), the Grantor revoked the Trust agreement;

WHEREAS, the current income and principal beneficiary of the Trust is \_\_\_\_\_, who would rightly be considered a person beneficially interested in the trust, as defined in EPTL § 7-1.9;

WHEREAS, other than the foregoing, and \_\_\_\_\_ and \_\_\_\_\_, who are the remainder beneficiaries of the Trust, there are no other persons beneficially interested in the trust;

WHEREAS, there are no persons beneficially interested in the trust who are minors;

WHEREAS, the undersigned now desires to give his/her consent to the Revocation;

NOW, THEREFORE, in consideration of the premises and the terms hereinafter set forth, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Recitals. The undersigned acknowledge and agree that the recitals above shall be incorporated into this Agreement as if same have been recited in their entirety herein.
2. Consent. \_\_\_\_\_, as beneficiary of the Trust, does hereby give his/her consent to the Revocation.
3. Counterparts. This Consent may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned has duly executed this Consent as of the date first above written.

\_\_\_\_\_  
, Beneficiary of the Trust [Acknowledgment]

**Consent to Revocation of Trust; Another Form:** WHEREAS, \_\_\_\_\_ did on or about \_\_\_\_\_ transfer and deliver to \_\_\_\_\_, as Trustee, certain personal property, to be held by her upon the trusts set forth in an indenture dated \_\_\_\_\_, designated as the “\_\_\_\_\_”, between said \_\_\_\_\_, as Grantor and said \_\_\_\_\_, as Trustee (the “Trust”); and

WHEREAS, said Trustee has continued to act as Trustee under the Trust and now holds certain personal property hereunder,

NOW, THEREFORE, the undersigned, being an adult and the only living person who is or may be beneficially interested in the Trust, which statement shall be a representation by the undersigned to the Trustee which shall survive completion of the transaction contemplated herein, DO HEREBY CONSENT to the revocation of the Trust by said \_\_\_\_\_ in its entirety.

This instrument shall operate and is intended and shall be construed as the written consent to the revocation of the Trust required by Section 7-1.9 of the Estates, Powers and Trusts Law of the State of New York.

IN WITNESSETH WHEREOF, I have executed this Consent to Revocation of Trust Agreement this \_\_\_\_ day of \_\_\_\_\_. [Acknowledgment]

**Grantor Trust Provisions**

1. **Power Over Income:** It is Grantor’s intention that this trust be construed as a “grantor trust” under Code Sec. 677(a). All income shall be taxable to Grantor, whether distributed or accumulated by the Trust. The Trustee may distribute to Grantor such amounts of income, but not principal, of the Trust as the Trustee deems necessary to satisfy Grantor’s tax obligation, to the extent that the income of the Trust generates a tax liability for Grantor.
2. **Power of Substitution:** The Grantors retain the power, in a nonfiduciary capacity and without the approval or consent of any person in a fiduciary capacity, to reacquire all or any part of the Trust corpus by substituting other property of an equivalent value.

**Disposition of Trust Remainder Upon Death of Grantor**

1. **Joint Trust:** (A) Upon the death of either or both of the Grantors, if the Trustees determine, in their sole discretion, that there are no other assets of the Grantor or the Grantor’s estate available to pay the following expenses, the Trustees shall pay first from the income of the Trust, and if the income of the Trust is insufficient, then from the principal of the Trust, all administration expenses, estate, inheritance and/or income taxes of any kind which shall be assessed as a result of the Grantor's death with respect to all items included in the computation of such taxes which relate to assets which are contained in the Trust at the time of the Grantor’s death. After the Trustees have paid all of the taxes, expenses, and other costs hereto referenced, all income of the Trust not yet disbursed or otherwise

distributed as heretofore directed shall be accumulated, added to and become a part of the principal of the Trust (hereinafter collectively referred to as the "Trust Property").

- (B) Upon the death of the first Grantor to die, the surviving Grantor shall continue to hold all rights as a beneficiary of this Trust as set forth in the preceding Article II herein.
  - (C) Upon the death of the second Grantor to die, any trust property remaining after payment of the expenses set forth in subparagraph (A) shall be distributed to such persons and in such proportions, in further Trust or otherwise, in fee or lesser estates as either Grantor, by either a lifetime instrument or the Grantor's Last Will and Testament duly admitted to probate, may validly appoint, which lifetime and testamentary powers of appointment are specifically limited as set forth in Article V hereof.
  - (D) If both Grantors shall fail to exercise the lifetime or testamentary powers of appointment set forth in Article III paragraph ( C ) and Article V and at least 90 days have elapsed since the death of the second Grantor to die, the Trustees shall distribute the rest, residue and remainder of the Trust property as follows:
2. **Trust for One Grantor:** Upon the death of Grantor, subject to the exercise of the limited power of appointment created by Article Three, Paragraph 1 above, the Trustee shall distribute the remaining principal and undistributed income of the Trust (the "Trust Remainder") to Grantor's then living issue, per stirpes. The foregoing notwithstanding, the share of the Trust Remainder payable to Grantor's daughter, \_\_\_\_\_, or her issue, shall be reduced by the amount of \_\_\_\_\_, and the share of the Trust Remainder payable to Grantor's son, \_\_\_\_\_, or his issue, shall be increased by the amount of \_\_\_\_\_.

### **Decanting**

1. **Exercise of Power to Appoint Pursuant to New York Estates, Powers and Trusts Law §10-6.6:** PLEASE TAKE NOTICE that MICKEY MOUSE, authorized trustee, exercises the power to appoint all the assets of the separate trust established for the benefit of MINNIE MOUSE under Article I of the WALT DISNEY TRUST u/a dated December 27, 1996 (Invaded Trust) to the trustees of the MINNIE MOUSE IRREVOCABLE TRUST u/a dated March \_\_\_\_\_, 2018 (Appointed Trust). This power to appoint is authorized by New York Estates, Powers and Trust Law §10-6.6.

A copy of the WALT DISNEY u/a dated December 27, 1996, which contains the Invaded Trust, is attached as Exhibit A. A copy of the MINNIE MOUSE IRREVOCABLE TRUST u/a dated March \_\_\_\_\_, 2018 is attached as Exhibit B.

This Exercise of Power to Appoint pursuant to New York Estates, Powers and Trusts Law §10-6.6 may be signed in counterpart.

PLEASE TAKE FURTHER NOTICE that the power to appoint exercised herein shall be effective thirty (30) days after service of this notice and attachments.

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MICKY MOUSE [Acknowledgment]

2. **Exercise of Power to Appoint Pursuant to New York Estates, Powers and Trusts Law §10-6.6; Another Form: WHEREAS**, the provisions of Section 4.09 of Article Four of \_\_\_\_\_ **Irrevocable Life Insurance Trust u/a/d February 3, 2016** (“the Trust”), provide that during the lifetime of the Grantor, the Independent Trustee may distribute any portion of trust property to or for the benefit of the Grantor’s descendants, in equal or unequal amounts, as the Independent Trustee determines advisable for any purpose and if there is no Independent Trustee, the Trustee may distribute to or for the benefit of any one or more of the Grantor’s descendants, in equal or unequal amounts, as much of the trust property for the beneficiary’s health, education, maintenance and support as the Trustee determines is necessary or advisable; and  
  
**WHEREAS**, in accordance with the provisions of Article Five of the Trust, upon the Grantor’s death, the Grantor’s then living descendants, per stirpes, are the current and remainder income and principal beneficiaries of the Trust; and  
  
**WHEREAS**, in accordance with NY EPTL Section 10-6.6 (b)(1), an authorized trustee with unlimited discretion to invade trust principal may appoint part or all of such principal to a trustee of an appointed trust for, and only for the benefit of, one, more than one or all of the current beneficiaries of the invaded trust (to the exclusion of any one or more of such current beneficiaries); and  
  
**WHEREAS**, the successor and remainder beneficiaries of such appointed trust shall be one, more than one or all of the successor and remainder beneficiaries of such invaded trust (to the exclusion of any one or more of such successor and remainder beneficiaries); and  
  
**WHEREAS**, the provisions of Article Four, Section 4.09 of \_\_\_\_\_ **Irrevocable Life Insurance Trust** dated January \_\_, 2018, (the “New Trust”) provide that during the lifetime of the Grantor, the Independent Trustee may distribute any portion of trust property to or for the benefit of the Grantor’s descendants, in equal or unequal amounts, as the Independent Trustee determines advisable for any purpose and if there is no Independent Trustee, the Trustee may distribute to or for the benefit of any one or more of the Grantor’s descendants, in equal or unequal amounts, as much of the trust property for the beneficiary’s health, education, maintenance and support as the Trustee determines is necessary or advisable; and

**WHEREAS**, in accordance with the provisions of Article Five, Section 5.01 of the **New Trust**, upon the Grantor's death, the Grantor's descendants are the current and remainder income and principal beneficiaries of the Trust.

**NOW THEREFORE**, since \_\_\_\_\_, as Trustee of the Trust, has the unlimited discretion to invade the trust principal for the benefit of one or more or all of the Grantor's descendants, and one or more of Grantor's descendants are the remainder beneficiaries of the **New Trust**, he hereby invades the principal of the Trust and appoints all of the principal of the Trust in favor of the Trustee of the **New Trust**. In certain circumstances the appointment will begin the running of the statute of limitations that will preclude persons interested in the invaded trust from compelling an accounting by the trustees after the expiration of a given time. Said appointment of principal to the Trustee of the **New Trust** shall be effective thirty (30) days after the date of service of this document.

The Trustee of the Trust has signed this document on the \_\_\_\_ day of **January, 2018**.

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, Trustee

### **Miscellaneous Provisions**

1. **No Invasion of Principal for Income Beneficiary:** Under no circumstances may the Trustee invade the principal of the Trust for the benefit of the Grantor. The Grantor directs that the provisions of Section 7-1.6 of the New York Estates, Powers and Trusts Law, or any successor statute, shall not be applied by any court having jurisdiction of an express or testamentary trust to compel the payment or application of the principal of the Trust to or for the benefit of the Grantor for any reason whatsoever. This provision is specifically intended to negate and eliminate any discretion granted to any Court by Section 7-1.6 of the New York Estates, Powers and Trusts Law.
2. **No Power to Adjust:** The Grantor expressly waives the application of the terms and conditions of Section 11-2.3(b)(5) of the Estates Powers and Trusts Law of the State of New York to the extent that the provisions of such statute are applicable to this Trust. The Trustee shall not make an adjustment between principal and income pursuant to the provisions of the aforesaid statute or any successor statutes. Further, no court or Administrative agency may compel the Trustee to make an adjustment between income and principal.
3. **No Power for Unitrust:** The Grantor expressly waives the application of the terms and conditions of Section 11-2.4 of the Estates Powers and Trusts Law of the State of New York. The Trustee shall not elect unitrust status for this Trust pursuant to the aforesaid statute to the extent that the provisions of said statute or any successor statute are applicable to this Trust. Further, no court or Administrative agency may compel the Trustee to elect unitrust status for this Trust. The Trustee shall have the sole discretion regarding the investment of Trust assets even if said investment decisions reduce the annual income payable to the Grantor.

4. **Unlimited Power for Trustee Distribution:** The provisions of Section 10-10.1 of the Estates, Powers and Trusts Law notwithstanding, the Trustee is authorized to make discretionary distributions of principal to himself or herself.
5. **No Power to Pay Grantor's Taxes:** The Grantors direct that the Trustees shall not have the power to pay to the Grantors, or to any taxing authority on Grantors' behalf, the income taxes charged to Grantors on any portion of the Trust Estate. This provision is specifically intended to negate and eliminate any discretion granted to the Trustees by Section 7-1.11 of the New York Estates, Powers and Trusts Law.

## **Last Will and Testament**

### **Trigger to SNT**

1. **Distribution to SNT for Disabled Spouse:** Any provision hereof to the contrary notwithstanding, if my husband/wife is in or becomes a resident of a nursing facility, my trustee's discretion regarding the payment of principal to or on behalf of my husband/wife is hereby limited to providing funds solely for items for the care and comfort of my husband/wife that are not available from any publicly funded program, including but not limited to Medicare, or Medicaid, or any private source including but not limited to insurance or employment benefits. The term "Nursing Facility" shall include but not be limited to any medical institution, skilled nursing facilities, health related facilities, intermediate care facilities, residential treatment facilities, small residential facilities, hostel, group home, foster home operated for the care, support, and maintenance of the beneficiary, or room and board situations eligible for reimbursement under Title XIX of the Social Security Act, or any successor statute.

My trustee is prohibited from utilizing any trust funds from principal for the payment of any care or services that would otherwise be paid by any public, private, insurance or employment based source. It is my intention that the provision of Section 7-1.6 of the Estates, Powers and Trust Law of the State of New York, or any successor statute, shall not be applied or available to authorize any invasion of the principal of this trust by any court.

No judge or court shall have the power to order the invasion of principal in contravention of the provisions of the foregoing paragraphs. This provision is intended to negate and eliminate any discretion granted by Section 7-1.6 of the New York Estates, Powers and Trusts Law. <sup>2</sup>

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<sup>2</sup>This provision was derived from copyrighted material and are used for educational purposes with the express permission of the copyright holder, ElderCounsel, LLC. All rights reserved.

2. **Distribution to SNT for Disabled Beneficiary, Including Spouse:** Notwithstanding any provision of this Will to the contrary, any bequests payable under this Will, including distributions from any trust created under this Will, to a person, including my husband, who is a resident of a nursing facility and/or a “person with a severe and chronic or persistent disability” as such term is defined in New York Estates, Powers and Trusts Law Section 7-1.12 (the “Disabled Beneficiary”), shall not be distributed to such Disabled Beneficiary but instead shall be held for his or her benefit by the Trustee hereinafter named, IN TRUST, to hold, manage, invest and reinvest the same, to collect and receive any income arising therefrom and, after deducting all charges and expenses properly attributable thereto, to administer and dispose of the net income and principal thereof as follows:

(a) The Trustee shall pay to or apply for the benefit of the Disabled Beneficiary, so much (even to the extent of the whole) of the net income and/or principal of this trust as the Trustee shall deem advisable, in the Trustee’s sole and absolute discretion, subject to the limitations set forth below. The Trustee shall add to the principal of such trust the balance of net income not so paid or applied.

(b) It is my intent to create a supplemental needs trust which conforms to the provisions of Section 7-1.12 of the New York Estates, Powers and Trust Law. I intend that the trust assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city, or other governmental entity for which the Disabled Beneficiary may otherwise be eligible or which the Disabled Beneficiary may be receiving. Consistent with that intent, it is my desire that, before expending any amounts from the net income and/or principal of this trust for the benefit of the Disabled Beneficiary, the Trustee consider the availability of all benefits from government or private assistance programs for which the Disabled Beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee endeavor to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of the Disabled Beneficiary.

(c) None of the income or principal of this trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal, state, county, city, or governmental entity for which the Disabled Beneficiary may otherwise be eligible or which the Disabled Beneficiary may be receiving.

(d) The Disabled Beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from this trust.

(e) Notwithstanding the provisions of Sub-Paragraphs (b) and (c) of this Paragraph SEVENTH above, the Trustee may make distributions to meet the Disabled Beneficiary’s need for food, clothing, shelter or health care even if such distributions may result in an impairment or diminution of the Disabled Beneficiary’s receipt or eligibility for government benefits or assistance but only if the Trustee determines that (i) the Disabled Beneficiary’s needs will be better met if such distribution is made, and (ii) it is in the Disabled Beneficiary’s best interests to suffer the consequent effect, if any, on the Disabled Beneficiary’s eligibility for or receipt

of government benefits or assistance; provided, however, that if the mere existence of the Trustee's authority to make distributions pursuant to this Sub-Paragraph (e) of this Paragraph SEVENTH shall result in the Disabled Beneficiary's loss of government benefits or assistance, regardless of whether such authority is actually exercised, this sub-paragraph shall be null and void and the Trustee's authority to make such distributions shall cease and shall be limited as provided in Sub-Paragraphs (b) and (c) of this Paragraph SEVENTH above, without exception.

(f) It is my intention that the provisions of Section 7-1.6 of the New York Estates, Powers and Trusts Law, or any successor statute, shall not be applied or available to authorize any invasion of the principal of this trust by any court.

(g) Upon the death of the Disabled Beneficiary, the Trustee shall distribute the remaining principal and undistributed income of the trust to the Disabled Beneficiary's then living issue, per stirpes, or, in default of such issue, per stirpes to the then living issue of the Beneficiary's nearest lineal ancestor who was a descendant of mine, or, in default of such issue, to my then living issue, per stirpes. In the event that any portion of the trust shall become payable to a person for whom an amount shall then be held in trust under any provision of this will, then, anything herein to the contrary notwithstanding, such portion shall not be paid over to such person but in lieu thereof shall be added to his or her trust to follow the disposition thereof in all respects as to both income and principal.

(h) If my husband, \_\_\_\_\_, is a beneficiary of this trust, and should make an election pursuant to EPTL 5-1.1-A, the trust created and administered pursuant to Paragraph SEVENTH of this Last Will and Testament shall, after the distribution of the statutory share to my husband, continue for the benefit of my husband, and the election pursuant to EPTL 5-1.1-A shall not result in the termination of such trust as if my husband had predeceased me, EPTL 5-1.1A(a)(4)(A) to the contrary notwithstanding.

3. **Distribution to SNT for Disabled Beneficiary; Another Form:** Notwithstanding anything contained in this Will to the contrary, if any property is to be distributed under this Will to a person who at that time is a "person with a severe and chronic or persistent disability," as defined in Section 7-1.12 of the New York Estates, Powers and Trust Law, as amended, then such distribution shall not be made to such person, but instead shall be retained by my executor, as trustee, and held, IN TRUST, as a separate supplemental needs trust (SNT), for the benefit of such person (each such person is hereinafter referred to in this paragraph as the "SNT beneficiary"). The trustee of each SNT established under this paragraph shall pay so much of the income and/or principal of the SNT to or for the benefit of the SNT beneficiary as the trustee, in the trustee's discretion, shall determine is advisable to supplement, not supplant, impair or diminish, government benefits or assistance for which the SNT beneficiary may otherwise be eligible or which the SNT beneficiary may be receiving, unless the trustee determines the SNT beneficiary's needs are better met by a distribution regardless of any consequential effect on such benefits or assistance. Upon the death of the SNT

beneficiary, any principal and accumulated income remaining shall be distributed to the SNT beneficiary's issue then surviving, per stirpes, but if there are no issue of the SNT beneficiary then surviving, according to the provisions of this Will disposing of my residuary estate, as if I had died then owning such property.

4. **Distribution to SNT for Disabled Beneficiary; Another Form:** Notwithstanding anything contained in this Will to the contrary,

(i) If any property is to be distributed under this Will to a person who at that time is a "person with a severe and chronic or persistent disability," as defined in Section 7-1.12 of the New York Estates, Powers and Trust Law (EPTL), as amended, then such distribution shall not be made to such person, but instead shall be retained by my executor, as trustee, and held, IN TRUST, as a separate supplemental needs trust (SNT), for the benefit of such person (hereinafter referred to as the "SNT beneficiary").

(ii) If, during the administration of any trust established under this Will, the current sole income beneficiary becomes a "person with a severe and chronic or persistent disability," as defined in Section 7-1.12 of the EPTL, then, the terms and conditions of such trust shall be changed to those of an SNT for the benefit of such person (hereinafter referred to as the "SNT beneficiary").

(iii) The trustee of each SNT established under this paragraph shall pay so much of the income and/or principal of the SNT to or for the benefit of the SNT beneficiary as the trustee in the trustee's discretion shall determine is advisable to supplement, not supplant, impair or diminish, government benefits or assistance for which the SNT beneficiary may otherwise be eligible or which the SNT beneficiary may be receiving, unless the trustee determines the SNT beneficiary's needs are better met by a distribution regardless of any consequential effect on such benefits or assistance. Upon the death of the SNT beneficiary, any principal and accumulated income remaining shall be distributed to the SNT beneficiary's issue then surviving, per stirpes, but if there are no issue of the SNT beneficiary then surviving, according to the provisions of this Will disposing of my residuary estate, as if I had died then owning such property (and provided, however, that in the case of any person for whose benefit a trust is then in existence under the provisions of this Will, I direct that his or her share shall be added to the principal of such trust instead of being paid over to him or her).

**Appointment of Successor Executor and/or Trustee**

1. **Nomination of Successor Executor or Administrator:** Subject to the foregoing, any sole executor or sole administrator of this Will (and any successor executor or administrator appointed pursuant to the provisions of this paragraph) shall have the right to nominate a successor executor or administrator, as the case may be, if a successor is not nominated by me pursuant to the foregoing paragraph. Such nomination shall be made by filing in the Surrogate's Court of the county where my Will has been admitted to probate a duly acknowledged written instrument, nominating the said successor executor or successor administrator.

2. **Nomination of Successor Executor, Administrator or Trustee:** Subject to the foregoing, any sole executor or sole administrator of this Will, and any sole trustee of any trust established under this Will (and any successor executor, administrator or trustee appointed pursuant to the provisions of this paragraph) shall have the right to nominate a successor executor, administrator or successor trustee, as the case may be, if a successor is not nominated by me pursuant to the foregoing paragraphs. Such nomination shall be made by filing in the Surrogate's Court of the county where my Will has been admitted to probate a duly acknowledged written instrument, nominating the said successor executor, successor administrator or successor trustee.

### **NYS Tax Provision**

1. **Charitable Bequest to Prevent New York Estate Tax on a Portion of the Estate Where the Tax Is Greater than 100% of the Portion (The Cliff):** If my New York taxable estate exceeds the New York basic exclusion amount in effect at my death, as those terms are used and defined in Article 26, Part I of the New York Tax Law (§§ 951 et seq.), then I give and bequeath an amount that will result in a reduction of my New York State estate tax, which reduction equals or exceeds the amount so distributed. Such bequest shall pass to \_\_\_\_\_ CHARITY \_\_\_\_\_: In calculating the New York taxable estate for purposes of this paragraph of my Will, the amount of any charitable deduction that might be available as a result of the gifts in this paragraph of my Will shall be ignored. . In the event the beneficiary is not a charity which would qualify for the estate tax charitable deduction, then the Executors shall have authority to substitute another charity, with similar purposes, to receive this bequest. It is my intention that this bequest shall be to a charity qualified for the estate tax charitable deduction.
2. **Disclaimer to Charity to Minimize Tax:** Notwithstanding the foregoing paragraphs, if any residuary beneficiary disclaims any part of their share, said disclaimed shares shall be distributed to the following charitable organizations in equal shares:

### **ABLE Act Provision for Testamentary SNT**

1. **Distribution to ABLE Account:** The authority of the Trustee to make distributions shall include the authority to make a distribution and deposit to an ABLE Act account pursuant to Section 529A of the Internal Revenue Code (the Stephen Beck Jr. Achieving a Better Life Experience Act) which may have been or will be established by a guardian or parent of the beneficiary of this trust even though such account may be subject to pay back to any government agency, including a state medical assistance agency under that statute. The Trustee shall be guided by the special needs of the beneficiary to determine whether the qualified disability expenses, as defined in that statute, will be better met under this trust or the ABLE Act account before making the distribution to this account.

## **Monitor Care of SNT Beneficiary**

1. **Protecting the Interests of Disabled Beneficiary:** At least one of the Trustees designated hereunder, or their designee, shall be required to visit with the beneficiary on a quarterly basis to informally assess and determine the condition of her care and health. It is my direction that they shall also spend sufficient time in the beneficiary's residence and room to determine if it is clean, safe and well-maintained.
  - (i) If no Trustee is able to conduct the quarterly visit, the Trustee may designate a family member (designee) for such purpose, or if none is available, may retain a professional advocate or care manager to conduct the visits and report back to the Trustee, in writing, regarding their observations, concerns, and findings.
  - (ii) If the Trustee shall become aware of any questions or concerns regarding the health, happiness, or care of the beneficiary, or of the care and maintenance of their possessions, the Trustee shall notify, in writing, the appropriate social worker, residential director, or house manager. If these concerns are not adequately addressed or resolved by the social worker, residential director, or house manager, the Trustee is directed to contact, in writing, and by other such means necessary, the servicing agency and/or organization to inform them of said Trustee's and to pursue such concern until satisfactory resolution.
  - (iii) If there shall be no satisfactory resolution, the Trustees are directed to contact the appropriate state agency including but not limited to Office of Persons with Developmental Disabilities (known as OPWDD) and the Empire Justice Center for the Protection of Persons with Special Needs. The Trustee shall be authorized to retain an attorney and to pay any legal fees from this Trust for such purpose, in the sole discretion of the Trustee.

## **Pour Over to Revocable Trust**

1. **Pour Over of Residuary Estate to Revocable Trust:** (a) I give all the rest, residue and remainder of the property, both real and personal and wheresoever located, which I may own or to which I may be entitled at the time of my death (excluding any property over which I may have a power of appointment, it being my intention not to exercise any such power), and which is herein referred to as my "residuary estate" to the then-acting Trustee of the \_\_\_\_\_ Revocable Trust dated \_\_\_\_\_, and executed before this Will, to be added to the property of that trust. I direct that the Trustee administer the property according to the trust agreement and any amendments made prior to my death.
  - (b) If the \_\_\_\_\_ Revocable Trust dated \_\_\_\_\_ is not in effect at my death, or if for any other reason the pour-over cannot be accomplished, I completely incorporate by reference all the terms of such trust into this Will by reference.
  - (c) In the event that incorporation by reference is not permitted in the State in which I am domiciled at the time of my death, I dispose of my estate as follows: [insert dispositive plan]

## Retirement Plans

- Conduit Trust as Beneficiary of Retirement Plans: (a) **Distributions from Retirement Plans to Trusts****

Unless specifically stated otherwise, each year, beginning with the year of my death, if any trust created under my Will becomes the beneficiary of death benefits under any qualified retirement plan, my Trustee shall withdraw from the trust's share of the plan, in each year, the required minimum distribution required under Section 401(a)(9) of the Internal Revenue Code. My Trustee may withdraw such additional amounts from the trust's share of the plan as my Trustee deems advisable; but, only if the dispositive terms of the trust authorize my Trustee to immediately distribute the withdrawn amount as provided below. My Trustee shall immediately distribute all net amounts withdrawn to:

My wife, if a beneficiary of the trust; and

If my wife is not a beneficiary of the trust, to my descendants, *per stirpes*, who are beneficiaries of the trust; and

If no descendant of mine is a beneficiary of the trust, then to the Income Beneficiaries of such trust in equal shares.

Amounts required to be withdrawn and distributed under this Section, to the extent they are withdrawn and distributed, reduce mandatory distribution amounts under other provisions of my Will that otherwise require distribution of all of the income of the trust.

The purpose of this Section is to insure that the life expectancy of the beneficiaries of the trust may be used to calculate the minimum distributions required by the Internal Revenue Code. This Section is to be interpreted consistent with my intent despite any direction to the contrary in my Will.

**(b) Minimum Required Distribution**

In administering any trust created under my Will, the minimum required distribution for any year will be, for each qualified retirement plan, the greater of (1) the value of the qualified retirement plan determined as of the preceding year-end, divided by the applicable distribution period; and (2) the amount that my Trustee is required to withdraw under the laws then applicable to the trust to avoid penalty.

If my death occurs before my required beginning date with respect to a qualified retirement plan, the applicable distribution period means the life expectancy of the beneficiary. If my death occurs on or after my required beginning date with respect to a qualified retirement plan, the applicable distribution period means the life expectancy of the beneficiary, or (if longer) my remaining life expectancy.

Notwithstanding the foregoing, if my death occurs on or after my required beginning date with respect to a qualified retirement plan, the minimum required distribution for the year of my death means (a) the amount that was required to be distributed to me with respect to the qualified retirement plan during the year, minus (b) amounts actually distributed to me with respect to the qualified retirement plan during the year.

Life expectancy, required beginning date and other similar terms used in this Section, will be determined in accordance with Section 401(a)(9) of the Internal Revenue Code.

**(c) Qualified Retirement Plan**

The term “qualified retirement plan” means a plan qualified under Section 401 of the Internal Revenue Code, 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)<sup>3</sup>.

**Cemetery Plot**

1. **Specific Bequest of Cemetery Plot:** I give and devise that certain plot known and designated on the map of \_\_\_\_\_ cemetery as grave no. 2, in row 3 to my son, \_\_\_\_\_, per stirpes.

**Beneficiary Designation Form**

**Testamentary Trust as Beneficiary**

1. **Naming Testamentary Trust as Contingent Beneficiary:** If my wife, \_\_\_\_\_, survives me, I designate her as my primary beneficiary to receive 100% of the death benefit upon my death.  
If my wife, \_\_\_\_\_, survives me, but disclaims all or part of the death benefit, I designate the then acting Trustee of the Credit Shelter Trust under Article Four of my Last Will and Testament dated \_\_\_\_\_, as my contingent beneficiary, to receive the part (or all) of the death benefit so disclaimed.  
If my wife, \_\_\_\_\_, does not survive me, I designate my son, \_\_\_\_\_, per stirpes, as my contingent beneficiary.

**First Party SNT**

**Medicare Set Aside Account**

1. **Options for Medicare Set Aside Account:** If the personal injury plaintiff is receiving Supplemental Security Income, Medicaid, or other needs based governmental benefits that require a first party special needs trust compliant with the requirements of 42 U.S.C. §1396p(d)(4)(A), the MSA must be imbedded within a (d)(4)(A) trust.

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The (d)(4)(A) might provide for a separate account as follows:

#### OPTION ONE

Medicare Set Aside Account Pursuant to 42 U.S.C. § 1395Y(b)(2)(A):

Notwithstanding any other dispositive provision of this trust applicable during the lifetime of [Beneficiary], the [Beneficiary] Irrevocable Trust shall contain a Medicare Set Aside account (MSA) which shall be segregated from other trust assets. As soon as practicable after the receipt of the trust assets described in Schedule A to this agreement, the Trustee shall segregate from the remainder of the trust assets those funds and structured settlement annuities listed on Schedule A that are intended to fund the MSA.

Distributions During the Lifetime of [Beneficiary].

During the lifetime of [Beneficiary], both the corpus and income of the MSA, including any payments that may be received in the future from any structure settlement annuity that is purchased to fund the MSA, shall remain segregated as a part of the trust estate and separately administered as a Medicare Set Aside arrangement. Payments may be made from MSA for the sole benefit of [Beneficiary] subject, however, to the limitations set forth in Subparagraph 2 below.

Payment of Certain Medical Expenses If and As Required for Medicare Benefits. During the lifetime of [Beneficiary] both the corpus and the income from the MSA may be paid for medical services and supplies that would otherwise be reimbursable under Medicare but only if (1) such payments are necessary to entitle [Beneficiary] to Medicare coverage under the Medicare Secondary Payer Statute and (2) such payments shall be prudent in the discretion of the Trustee after considering all other benefits to which [Beneficiary] shall be entitled. Such medical expenses and supplies are hereinafter referred to as “eligible injury related medical expenses”.

Engagement of Experts and Consultants. The Trustee shall engage the services of experts, including but not limited to [Name of Medicare Advisor], a Medicare claims and payment administrator, to advise and counsel the Trustee with respect to eligible injury related medical expenses. The Trustee may rely upon the written instruction and advice of such experts regarding disposition of the trust as to eligible injury related medical expenses, and payments and distributions from the MSA, made in accord with such instructions and advice of such experts, shall be conclusively deemed authorized and proper. The Trustee is specifically authorized to appoint, direct and/or remove [Name of Medicare Advisor], as an agent for the administration of the MSA and to authorize [Name of Medicare Advisor], to hold the MSA, or any portion thereof, as a part of the trust. For administrative convenience, the Trustee is authorized to revocably assign to [Name of Medicare Advisor] any payments intended to fund the MSA.

Administrative Fees, Costs and Expenses Related to Medicare Set Aside Account. Administrative fees, costs and expenses related to the MSA shall not be paid from the MSA

or its income. Any such fees, costs and expenses associated with the maintenance, management, and administration of the MSA, including but not limited to the fees of the Trustee and of [Name of Medicare Advisor] or any other Medicare claims and payments administrator or advisor, shall be paid from trust assets not contained in the MSA. The fees, costs, and expenses of experts and consultants retained in connection with the administration of the MSA shall not reduce or be paid from or as part of the compensation due the Trustee.

Distributions After the Death of [Beneficiary]. After the death of [Beneficiary], the remainder of the trust estate shall be distributed in accordance with the provisions of [Paragraph providing for the disposition of the remainder of the d4A trust after the death of the beneficiary] below.

## OPTION TWO

### **ARTICLE II SETTLOR'S INTENT**

2.3 Additional Purpose. Because some portion of the Trust estate may represent funds received by the Beneficiary as the result of injuries for which future medical services might reasonably be necessary that would otherwise be covered by Medicare, it is the further intent of the Settlor and purpose of the Trust that such portion of the Trust estate qualify and be administered as a Medicare Set-Aside Arrangement ("MSA") pursuant to the provisions of 42 U.S.C. § 1395y and 42 C.F.R. §411.20 and all related Memoranda issued by the Centers for Medicare and Medicaid Services (herein after referred to collectively as the "Secondary Payor Act"), as provided more specifically herein, and to the extent the Beneficiary becomes and remains eligible to receive Medicare.

### **ARTICLE III DEFINITIONS**

3.1 MSA Sub-account" means that portion of the Trust estate, if any, that is designated as a MSA because it represents funds received by the Beneficiary due to injuries for which future medical services can reasonably be expected to be needed that would otherwise be paid by Medicare but for the receipt of such funds. Just as with the entire Trust estate, no portion of the MSA Sub-account is available to the Beneficiary and shall not be considered or construed as being available for purposes of public benefits eligibility or otherwise.

### **ARTICLE VI TAX PROVISIONS**

6.6. Tax Attributable to MSA Sub-account. As provided by the CMS July 11, 2005 Policy Memorandum, the Trustee may pay any taxes owed on the MSA Sub-account from the MSA Sub-account as a, "cost that is directly related to the account."

### **ARTICLE VII DISTRIBUTIONS DURING THE BENEFICIARY'S LIFETIME**

7.11 Distributions for Medicare Related Expenses. Throughout the administration of the Trust and lifetime of the Beneficiary, the Trustee shall use the income and corpus of the

MSA Sub-account to pay directly for medical services, supplies, prescriptions, and durable medical equipment, if any, that would otherwise be paid or reimbursed by Medicare, provided however, that any such direct payments are also: a) related to the injuries suffered by the Beneficiary for which damages for future medical services were paid to the Trust; and, b) made pursuant to an allocation or other pre-prepared plan identifying the Beneficiary's injuries and future medical costs otherwise payable by Medicare but for the receipt of such damages for future medicals (hereinafter "Qualified Expenses").

7.12 Engagement of Experts or Consultants. In addition to the Trustee's general authority to engage professionals, the Trustee is specifically empowered to engage the services of experts, including but not limited to, any entity engaged in the professional administration of MSAs. The Trustee shall be entitled to rely upon the advice and written instructions of such experts, including but not limited to an allocation or other pre-prepared plan identifying the Beneficiary's Qualified Expenses, and any distributions made from the Trust for the payment of such Qualified Expenses shall be conclusively deemed as proper, necessary, and authorized

## **ARTICLE IX ADMINISTRATIVE PROVISIONS**

9.3 MSA Sub-account Reports. The Trustee shall provide annual reports or accountings of the MSA Sub-account to the Centers for Medicare and Medicaid Services ("CMS") within thirty (30) days of the annual accounting period for the MSA Sub-account. The annual accounting period shall be the anniversary date of the funding of the MSA Sub-account unless otherwise provided in the allocation or other pre-prepared plan identifying the Beneficiary's Qualified Expenses. The Trustee shall also provide reports or accountings to CMS upon the exhaustion of the MSA Sub-account, whether such exhaustion of funds is temporary or permanent.

9.4 MSA Sub-account Reporting Fees and Other Costs. Any fees or costs that may be associated with filing annual reports of the MSA Sub-account with CMS shall be paid from that portion of the Trust estate not constituting the MSA Sub-account. Likewise, the Trustee shall not pay any administrative fees, including Trustee compensation, costs, or other expenses related to the MSA Sub-account from the MSA Sub-account but shall instead pay all such fees, costs or expenses from that portion of the Trust estate not constituting the MSA Sub-account.

## **Revocable Trust**

### **Administrative Trust Upon Death**

1. **Creation of Administrative Trust:** Upon the death of the creator, this Agreement shall become irrevocable and may not be amended thereafter. During the administration of this trust after the death of the creator, this trust shall be known as "The **NAME** Administrative Trust.

## **Pour Over to Testamentary SNT**

1. **Pourover to Testamentary Trust for Spouse:** If my husband, \_\_\_\_\_, shall survive me, my Trustee shall distribute my remaining trust property (not distributed under prior Articles of this instrument) to the then acting Trustee of the \_\_\_\_\_ Supplemental Needs Trust created under Article \_\_\_\_\_ of my Last Will and Testament dated \_\_\_\_\_ to be administered and disposed of as a part thereof.

## **Digital Assets**

### **Provisions for Digital Assets**

1. **Provision for Power of Attorney; Can be Adopted for Will or Trust:** Online Accounts, Digital Assets, and Digital Devices  
Without limiting any other provision of this Power of Attorney, and subject to the limitations of any other provision of this Power of Attorney, my Agent has the powers described in this Section.

My Agent has full authority to deal with Online Accounts, Digital Assets, and Digital Devices of all kinds, wherever located. This authority includes, but is not limited to, the power to acquire, create, establish, access, control, modify, cancel, delete, continue, transfer, and take possession of such accounts, assets, and devices.

However, if I have used an online tool to direct the custodian of an Online Account, Digital Asset, or Digital Device to not disclose certain information, and if the online tool allows for the modification or deletion of that direction at all times, then such direction overrides the authority granted in this Section.

Further, even though state law might not require a custodian to disclose a deleted digital asset, my Agent is authorized to access them, and the custodian will be held harmless for doing so.

My Agent may request and change my access credentials to any Online Account, Digital Asset, and Digital Device (such as username, password, and secret question), and any third-party dealing with my Agent in good faith will be held harmless for releasing such access credentials.

For purposes of this Power of Attorney, the following definitions apply:

#### **(1) Online Accounts**

The term "Online Accounts" means accounts that are accessible through the Internet or other similar method, including, but not limited to: bank accounts; investment accounts; other financial accounts; accounts with health care providers; social media accounts (like LinkedIn, Facebook, and Twitter); gambling and poker accounts; accounts with publishers; accounts for access to employee benefits; email accounts; accounts with Internet service providers;

accounts to manage websites and website domain names; accounts with retail vendors; tax-preparation service accounts; affiliate marketing accounts; accounts with utility companies; user access accounts on third-party Digital Devices; and any other online account.

### **(2) Digital Assets**

The term "Digital Assets" means intangible personal property related to digital technology (whether located on a Digital Device or an Online Account), including, but not limited to: emails sent or received; text messages sent or received; other digital communications sent or received; digital music; digital photographs; digital videos; software licenses; social network accounts; file sharing accounts; online access to financial accounts; domain registrations; DNS service accounts; website hosting accounts; personal and commercial websites; tax preparation service accounts; online store accounts; affiliate marketing accounts; and other types of online accounts and digital items that currently exist or may exist as technology develops.

### **(3) Digital Devices**

The term "Digital Devices" means tangible personal property related to digital technology capable of storing Digital Assets or accessing Online Accounts, and includes, but is not limited to: desktop computers; laptop computers; tablet computing devices (tablets); other mobile computing devices; peripheral devices; hard disk drives; solid state drives; flash memory devices; other storage devices; mobile telephones; smartphones; and any other type of digital device that currently exists or may exist as technology develops.

2. **Provision for Will:** My Executor shall have the power to access, handle, distribute, and dispose of my Digital Assets, and the power to obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and Digital Assets. If I have prepared a memorandum, which may be altered by me from time to time, with instructions concerning my Digital Assets and their access, handling, distribution, and disposition, I direct my Executor and beneficiaries to follow my instructions as outlined in that memorandum, although I recognize such memorandum is not legally binding. "Digital Assets" includes the following:
  1. Files stored on my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops; and
  2. Emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, banking accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts, and similar digital items which currently exist or may exist as technology develops, regardless of the ownership of the physical device upon which the digital item is stored.

This authority is intended to constitute “lawful consent” to a service provider to divulge the contents of any communication under The Stored Communications Act (currently codified as 18 U.S.C. §§ 2701 et seq.), to the extent such lawful consent is required, and an agent acting hereunder shall be an authorized user for purposes of applicable computer-fraud and unauthorized-computer-access laws.”

3. **Provision for Will or Trust; Abbreviated Form:** My Executor [Trustee] shall have the power and authorization to access, take control of, conduct, continue, or terminate my accounts on any website, including any social networking site, photo sharing site, micro blogging or short message service website or any email service website. All such websites may release my log-on credentials, including username and password, to my Executor [Trustee], and the website shall be indemnified and held harmless by my estate for any damages, causes of action or claims that may result from this disclosure. This authority is intended to constitute “lawful consent” to a service provider to divulge the contents of any communication under The Stored Communications Act (currently codified as 18 U.S.C. §§ 2701 et seq.), to the extent such lawful consent is required, and any Executor [Trustee] acting hereunder shall be an authorized user for purposes of applicable computer-fraud and unauthorized-computer-access laws. It is my intent that my Executor [Trustee] shall have full authority to access my Digital Assets in accordance with New York Estates Powers and Trust Law Article 13-A.
  
4. **Provision for Will or Trust; Comprehensive Form:** My Executor [Trustee] may take any action (including, without limitation, changing a terms of service agreement or other governing instrument) with respect to my Digital Assets and Digital Accounts as my Executor or the Trustee shall deem appropriate, and as shall be permitted under applicable state and Federal law. My Executor [Trustee] may engage experts or consultants or any other third party as necessary or appropriate to effectuate such actions with respect to my Digital Assets or Digital Accounts, including, but not limited to, such authority as may be necessary or appropriate to decrypt electronically stored information or to bypass, reset or recover any password or other kind of authentication or authorization. If my Executor or the Trustee shall determine that it is necessary or appropriate to engage and delegate authority to an individual pursuant to this paragraph, it is my request that [DIGITAL ASSET FIDUCIARY] be engaged for this purposes. This authority is intended to constitute “lawful consent” to a service provider to divulge the contents of any communication under The Stored Communications Act (currently codified as 18 U.S.C. §§ 2701 et seq.), to the extent such lawful consent is required, and a Executor or Trustee acting hereunder shall be an authorized user for purposes of applicable computer-fraud and unauthorized-computer-access laws. The authority granted under this paragraph shall extend to all Digital Assets and Digital Accounts associated with or used in connection with the Business (as defined herein). The authority granted under this paragraph is intended to provide my Executor [Trustee] with full authority to access and manage my Digital Assets and Digital Accounts to the extent permitted under applicable state and Federal law and shall not limit any authority granted to my Executor [Trustee] under such laws. “Digital Account” means an electronic system for creating, generating, sending, sharing, communicating, receiving, storing, displaying or processing information

which provides access to a Digital Asset stored on a digital device, regardless of the ownership of such digital device. It my intent that my Executor [Trustee] shall have full authority to access my Digital Assets in accordance with New York Estates Powers and Trust Law Article 13-A.

5. **Provision for Power of Attorney; Another Form:** (  ) (G) my attorney-in-fact shall have (i) the power to access, use and control my Digital Devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar Digital Device which currently exists or may exist as technology develops or such comparable items as technology develops for the purpose of accessing, modifying, deleting, controlling or transferring my Digital Assets, and (ii) the power to access, modify, delete, control and transfer my Digital Assets, including but not limited to, my emails received, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts and similar digital items which currently exist or may exist as technology develops or such comparable items as technology develops, and (iii) the power to obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my Digital Devices and Digital Assets described above.

## **Power of Attorney**

### **Gifting to Children**

1.       : My agent may make gifts, in any amount, to my children and more remote descendants. When a child of mine acts as agent hereunder, he or she shall be authorized to make gifts of my property, in any amounts, to any descendants of mine. Gifts to my child who is my agent and all descendants of that child shall not exceed the least amount which is gifted during the same calendar year, but previously, to any living sibling of my agent or to the descendants, collectively, of any deceased sibling of my agent. For purposes of the preceding sentence, a gift to my agent shall be the aggregate gifts to my agent and his or her descendants at the time in question and the amount which is gifted to a sibling of my agent shall be the aggregate gifts to such sibling and his or her descendants at the time in question.

### **Sale of Real Estate**

1. (  ): This Power of Attorney is to be used in connection with the execution of all documents necessary to the sale, transfer and conveyance of any of my right, title, and interest in real property located at 1234 Main Street, Middle Village, New York 11379.

### **ABLE Act**

1. Transfer or gift my property in cash or in kind, either: (a) outright to the recipient; (b) to a custodian under the Uniform Transfer to Minors Act; (c) to a tuition savings account or prepaid tuition plan as defined under Section 529 of the Internal Revenue Code; or (d) directly to an educational institution; or (e) to an ABLE Act account as defined under Section 529a for the benefit of a qualified disabled beneficiary.

## Suggested Modifications to a New York Statutory Short Form Power of Attorney and Statutory Gift Rider

***New York Elder Law*, by David Goldfarb and Joseph Rosenberg (Lexis/Matthew Bender 2018)**

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### **Form 2.203 Optional Modifications to Statutory Short Form Durable Power of Attorney**

Insert these in (g) MODIFICATIONS (OPTIONAL):

- (        ) Whenever two or more powers of attorney are valid at the same time, the agents appointed on each shall act separately, unless specified differently in the documents.
- (        ) I grant my agent authority to make loans and execute promissory notes.
- (        ) Unless reasonable cause exists to require otherwise, the agent shall not be obligated by the monitor to provide financial details or accountings more frequently than annually.
- (        ) Reasonable Compensation shall be defined as [insert definition of reasonable compensation].

### **Form 2.204 Optional Modifications to Statutory Gift Rider (SGR)**

[Insert these in SGR Section (b) Modifications:]

- (        ) I grant my agent authority to make gifts up to [a specified dollar amount];
- (        ) I grant my agent authority to make gifts unlimited in amount;
- (        ) I grant my agent authority to make gifts to any person or persons;
  
- (        ) I grant my agent authority to make the following specified transactions:
  - (        ) open, modify or terminate a deposit account in the name of the principal and other joint tenants;
  - (        ) open, modify or terminate any other joint account in the name of the principal and other joint tenants;
  - (        ) open, modify or terminate a bank account in trust form as described in section 7-5.1 of the estates, powers and trusts law, and designate or change the beneficiary or beneficiaries of such account;
  - (        ) open, modify or terminate a transfer on death account as described in part four of article thirteen of the estates, powers and trusts law, and designate or change the beneficiary or beneficiaries of such account;
  - (        ) change the beneficiary or beneficiaries of any contract of insurance on the life of the principal or annuity contract for the benefit of the principal;

( )procure new, different or additional contracts of insurance on the life of the principal or annuity contracts for the benefit of the principal and designate the beneficiary or beneficiaries of any such contract;

( )designate or change the beneficiary or beneficiaries of any type of retirement benefit or plan;

( )create, amend, revoke, or terminate an inter vivos trust; and

( )create, change or terminate other property interests or rights of survivorship, and designate or change the beneficiary or beneficiaries therein.

( ) I grant my agent authority to forgive loans.

( ) I grant my agent authority to purchase life estates.

( ) My best interests shall include planning for eligibility for a benefit, a program, or assistance under a statute or regulation.

( ) A gift or other transfer may be made outright, to a trust established or created for such individual, to a Uniform Transfers to Minors Act account for such individual (regardless of who is the custodian), or to a tuition savings account or prepaid tuition plan as defined under [section 529 of the Internal Revenue Code](#) for the benefit of such individual (without regard to who is the account owner or responsible individual for such account).

### **Form 2.205 Optional Modifications to the Statutory Gift Rider—Gifts to the Agent**

[The following provisions may be added to the SGR at Section (c) GRANT OF SPECIFIC AUTHORITY FOR AN AGENT TO MAKE GIFTS OR OTHER TRANSFERS TO HIMSELF OR HERSELF: (OPTIONAL)]

( ) make gifts up to [a specified dollar amount];

( ) make gifts unlimited in amount;

( ) make gifts as in the modification section (b) above.

### **Form 2.206 Optional Springing Provision**

[Insert this provision in Section (g) MODIFICATIONS]

( ) This Power of Attorney will take effect upon the occasion of the signing of a written statement by a physician or physicians named herein by me at this point:

Dr. [indicate name and address of physician(s)]

[Insert Full Name(s) and Address(es) of Certifying Physician(s)]

or if no physician or physicians are named hereinabove, or if the physician or physicians named hereinabove are unable to act, by my regular physician, or by a physician who has treated me within one year preceding the date of such signing, or by a licensed psychologist or psychiatrist, certifying that I am suffering from diminished capacity that would preclude me from conducting my affairs in a competent manner.

( ) This Power of Attorney will take effect upon the occasion of the signing of a written statement by a person or persons named herein by me at this point:

[indicate names and addresses of persons selected] CERTIFYING that the following specified event has occurred: [indicate triggering event]

### **Form 2.207 Additional Clause—Designation of Guardian**

[Add to Statutory Short Form Power of Attorney section (g) Modifications:]

If it becomes necessary to appoint a guardian of my person or property, I hereby nominate pursuant to [New York Mental Hygiene Law §281.17](#) [indicate name of nominated guardian] to serve as guardian. If [name of nominated guardian] is for any reason unable or unwilling to serve as guardian, I nominate [indicate name of alternate guardian] to serve as guardian.

### **Form 2.207A Additional Clause—Digital Assets**

[Insert this provision in Section (g) MODIFICATIONS]

The agent shall have the following powers and authority over digital devices, digital assets, and digital passwords and credentials, which shall be considered sufficient lawful consent to service providers under applicable law, and the agent shall be an authorized user for all purposes, including but not limited to, computer fraud and unauthorized access laws:

- a. To access, use, and control my digital devices, including but not limited to, computers, tablets, storage devices, cell phones, smartphones, and any similar devices, in order to access, modify, delete, control, or transfer my digital assets;
- b. To access, modify, delete, control, and transfer my digital assets, including but not limited to, email accounts, social media accounts, music, photographs, videos, software licenses, file sharing accounts, financial accounts, banking accounts, domain registrations, web hosting accounts, tax preparation service accounts, online stores, and similar digital assets; and
- c. To obtain, access, modify, delete, and control my passwords and other electronic credentials associated with my digital devices and digital assets.

### **Form 2.208 Additional Clause—Renounce Inheritance and Exercise, Waive or Release Right of Election**

[This clause may be added to the Statutory Gifts Rider (SGR) in Section (b) Modifications:]

I authorize my agent to make statutory elections and disclaimers and/or renunciations, including the power to execute and deliver a valid disclaimer under the Internal Revenue Code, [New York Estates, Powers and Trusts Law §2-1.11](#), and any other applicable state statutes. My agent has the power to disclaim any property, interest in property, or powers to which I am or may become entitled, whether by gift, testate or intestate succession, or right of survivorship, and to exercise, waive or release any right to claim an elective share in any estate or under any will.

[Add the following if appropriate, to the SGR Section (c): Grant of Specific Authority for an Agent to Make Gifts or Other Transfers to Himself or Herself:] I authorize my agent to make a renunciation in favor of my attorney-in-fact or the spouse or issue of my attorney-in-fact.

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