

SAMPLE OF A REVOCABLE TRUST

by

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Baldwinsville NY

DECLARATION OF TRUST ¹

JOHN CLIENT TRUST ²

THIS DECLARATION, made the _____ day of November, 2015 by **JOHN H. CLIENT**, of 123 Main St., Syracuse, NY 13202 (hereinafter referred to as "Grantor" and "Trustee");

WITNESSETH :

1. TRUST PROPERTY. The Grantor has this day delivered the property described in Schedule "A", attached hereto, to the Trustee and does hereby transfer ownership of such property.³ The Trustee agrees to act as Trustee of such assets and to hold, administer and distribute the property, together with all additions thereto and all reinvestments thereof, as the principal of a trust estate for the benefit of Grantor in accordance with the terms and provisions hereinafter set out.

1 Since the abolishment of the merger doctrine, an individual may create a trust with his own assets and act as sole Trustee. If the document establishing such an entity involves only one party, it would not be an agreement, but a declaration. If any other party is acting as Trustee other than the Grantor, then the trust would be created by agreement.

2 It is possible to structure a trust so that it will hold the property of both husband and wife (joint trust). Extreme care shall be taken to avoid numerous issues that can arise in a joint trust such as determining which spouse contributed which property, how separate property and/or joint property are distributed and how marital, estate tax exemption and asset protection trusts are funded at death. Joint trusts can also cause inadvertent tax consequences. See TAM 9308002 regarding the loss of basis step-up in a joint trust. Further, significant complications can arise if the couple divorces. There are many traps for the unwary in a joint trust. Practitioners should consider the creation of two (2) separate trusts for each spouse to avoid these potential ambiguities and pitfalls.

3 EPTL §3-3.7 authorizes a standby trust to be created, which would be funded in the first instance at the death of the Grantor. EPTL §7-1.18 addresses the funding requirements for a trust. While a standby trust can be created if there is a second party Trustee, it cannot be unfunded if the Grantor acts as sole Trustee. In that case, some funding must occur.

The assets making up the trust should be actually transferred to it. Simply a statement of assets to make up the trust is not sufficient. Further, although a pour over will serves to fund the trust at death, the will must be probated to achieve this. Therefore, if avoidance of probate is a primary reason for utilizing the revocable trust, the trust must be funded prior to death to achieve this goal.

Grantor or his attorney-in-fact may add property to the principal of this Trust at any time. It is anticipated that upon the incapacity of the Grantor to handle his financial affairs, the attorney-in-fact will transfer substantially all of the Grantor's remaining assets to this Trust.

2. GRANTOR'S RIGHTS. The Grantor expressly reserves the right at any time upon written notice to the Trustee:

(A) To withdraw all or any part of the principal free and discharged of the terms and conditions of this Declaration and of the Trust except as to terminating commissions if due; such right of withdrawal being personal to Grantor and not exercisable by any court, attorney-in-fact, guardian, conservator or committee; and ⁴

(B) To revoke or amend this Declaration,⁵ and to alter or terminate the Trust created; provided however that the duties, responsibilities and rate of compensation of a Trustee shall not be altered or modified by such amendment without the written consent of the Trustee. A Trustee may be replaced, however, by an amendment, without cause. At Grantor's death, this trust shall become irrevocable.

3. DISPOSITION. (A) The Trustee may accumulate, or pay or apply the income of the trust to or for the use of Grantor during his life, or to such persons and in such proportions as the Grantor may from time to time direct. In addition, the Trustee may at any time, in the exercise of absolute discretion, pay from the principal of the trust such amounts as the Trustee may deem advisable to provide adequately for the support, maintenance, education and comfort of the Grantor.⁶

4 Consider limiting the ability to withdraw trust property to the grantor and the trustee. Providing a withdrawal right to an attorney in fact or guardian may result in abuse and unwanted estate tax consequences.

5 If a Trust does not specifically state that it is revocable, then it irrevocable. EPTL §7-1.16.

6 In furtherance of planning for nursing home admission or for other reasons, it may become appropriate for the Grantor to make gifts to his beneficiaries. Since the property in the trust is not in the hands of the agent under a power of attorney, the power cannot be used to carry out the gifting. Some authority should be given to the Trustee, either to carry out the gifting directly, or in the alternative, to transfer property back to the agent, so that gifting can be made through the power of attorney. Consider broadening the gifting power in the durable power of attorney.

(B) Unless sooner terminated as provided in this Declaration, the trust shall terminate upon the death of the Grantor, and upon his death the remainder shall be paid to those of Grantor's nieces and nephews who survive Grantor, per capita. If no nieces or nephews survive Grantor, then the remainder shall pass to Syracuse University, to be added to its Scholarship Endowment Fund.

(C) If any beneficiary under this Declaration dies within thirty (30) days after Grantor's death, the bequest to that beneficiary shall be divested by his or her death, and that property shall be disposed of pursuant to the provisions of this Declaration as if the beneficiary had not survived.

4. INVESTMENT AND MANAGEMENT.

In addition to the powers conferred upon Trustees by law, the Grantor authorizes the Trustee, in the exercise of absolute discretion, with respect to any property, real or personal, at any time held under any provision of this Declaration, including accumulated income and any stock of any bank or trust company acting in any fiduciary capacity hereunder (or any stock of any corporation which owns any stock of any such bank or trust company), and without authorization by any court:

(A) Retain Trust Estate. To retain for such time as the Trustee may deem advisable, without liability for loss resulting from such retention, the original assets and all additional trust property, although the property so held may not be of the character, type, quality, or diversity prescribed by law or by the terms of this instrument as proper for investment of trust assets, and although such property represents a large percentage or all of the trust estate;

(B) Hold Uninvested Cash and Unproductive Property. For any periods deemed advisable, to hold cash uninvested, even though the total amount so held is disproportionate under trust investment law or would not be permitted without this provision, and to retain or acquire and hold unproductive realty or personalty, except as may be otherwise provided by this Declaration.

(C) Acquire and Allow Use of Unproductive Property. To acquire real property or tangible personal property, such as homes, art work, jewelry, furniture and vehicles, and to allow any beneficiary hereunder the use of such property free of any rental payment, and for so long as the Trustee shall deem appropriate, in the exercise of absolute discretion.

(D) Invest and Acquire. To invest and reinvest trust assets in any type of property or security, including stock market margin accounts, without regard to the proportion that investments of the type selected may bear to the entire trust estate, without limitation to the classes of trust investments authorized by law, and without regard to the possibility that the investment may be in new issues or in new or foreign enterprises. The property acquired may be realty or personalty and may include life insurance, bonds, debentures, leaseholds, options, easements, mortgages, notes, mutual funds, investment trusts, common trust funds, voting trust certificates, and any class of stock or rights to subscribe for stock, regardless of whether the yield rate is high or low or whether or not the new asset produces any income at all. It is intended that the Trustee shall have the authority to act in any manner deemed in the best interest of the trust involved, regarding it as a whole, even though certain investments considered alone might not otherwise be proper.

(E) Exercise Options and Conversion Privileges. To exercise any options, rights and conversion privileges pertaining to any securities held by the Trustee and trust assets.

(F) Sell and Lease. To sell, convey, grant options to purchase, lease, mortgage, transfer, exchange or otherwise dispose of for any purposes and at any time prior to making final distribution, any or all assets of the trust including real property, for prices, upon terms and conditions and in a manner as may be deemed advisable; to execute and deliver deeds, leases, bills of sale, and other instruments of whatever character, and to take or cause to be taken all action deemed necessary or proper in connection therewith.

(G) Lend. On any terms deemed advisable, to lend trust funds to any borrower including, but not limited to, the executor or administrator of Grantor's estate or a beneficiary of any trust, hereunder, and to change the terms of such loans. This authorization includes the power to extend such loans beyond maturity, with or without renewal, and without regard to the existence or value of any security, to facilitate payment of such loans, to change the interest rate thereof, and to consent to the modification of any guaranty relating thereto. Notwithstanding the above, no loan shall be made to the Grantor, except if each such loan is adequately secured and bears interest at prevailing commercial rates.

(H) Borrow. To borrow whatever money the Trustee may deem desirable for any trust on any terms from any lender, including the Trustee and the personal representative of Grantor's estate, and the Trustee or beneficiary of any other trust, by whomsoever created, and to mortgage, pledge or otherwise encumber as security any assets of the borrowing trust.

(I) Change Term or Duration of Obligation. Incident to the exercise of any power, to initiate or change the terms of collection, or of payment of, any debt, security or other obligation of or due to the trust estate, upon any terms and for any period, including a period beyond the duration or termination of any or all trusts.

(J) Compromise or Abandon Claims. Upon whatever terms the Trustee deems advisable, to compromise, adjust, arbitrate, sue, defend, or otherwise deal with any claims, including tax claims, against or in favor of any trust; to abandon any asset the Trustee shall deem of no value or of insufficient value to warrant keeping or protecting; to refrain from paying taxes, assessments or rents, and from repairing or maintaining any asset; and to permit any asset to be lost by tax sale or other proceeding.

(K) Distribute in Cash or in Kind. To distribute any shares in cash or in kind, or partly in each, whether or not pro rata among the beneficiaries, and without regard to the income tax basis of specific property allocated to any beneficiary. The Trustee's valuations of assets upon making distribution, if made in good faith, shall be final and binding on all beneficiaries.

(L) Use Nominees. To hold any or all of the trust assets, real or personal, in a Trustee's own name, or in the name of any corporation, partnership or other person as the Trustee nominates for holding the assets, with or without disclosing the fiduciary relationship.

(M) Bid In or Take Over Without Foreclosure. To foreclose any mortgage, to bid in the mortgaged property at the foreclosure sale or acquire it from the mortgagor without foreclosure, and to retain it or dispose of it upon any terms deemed advisable.

(N) Vote Stock. To vote stock for any purpose in person or by proxy, to enter into a voting trust and to participate in corporate activities related to any trust in any capacity permitted by law, including service as an officer or director.

(O) Participate in Reorganizations. To unite with other owners of property similar to any held in trust in carrying out any plan for the consolidation, merger, dissolution, liquidation, foreclosure, lease, sale, incorporation, reincorporation, reorganization or readjustment of the capital or financial structure of any association or corporation in which any trust has a financial structure of any association or corporation in which any trust has financial interest; to serve as a member of any protective committee; to deposit trust securities in accordance with any plan agreed upon; to pay any assessments, expenses or other sums deemed expedient for the protection or furtherance of the interests of the beneficiaries hereunder; and to receive and retain as trust

investments any new securities issued pursuant to the plan, even though these securities would not constitute authorized trust investments without this provision.

(P) Purchase Property From Estate. To purchase property, real or personal, from a Grantor's or any other person's estate upon such terms and conditions as to price and terms of payment as the Trustee and the respective representatives shall agree upon; to hold the property so purchased in trust although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee may deem advisable.

(Q) Employ Assistants and Agents. To any extent reasonably necessary, to employ attorneys-at-law, accountants, tax specialists, brokers, investment counselors, realtors, managers for business, farms, ranches, groves and forests, technical consultants, attorneys-in-fact, agents and any other consultants and assistants the Trustee deem advisable for the proper administration of the trust estate and to make such payments therefor from income or principal as the Trustee may determine.

(R) Establish and Maintain Reserves. Out of the rents, profits or other gross income received, to set aside and maintain reserves to the extent deemed advisable to meet present or future expenses, including taxes, assessments, insurance premiums, debt amortization, repairs, improvements, depreciation, obsolescence, general maintenance and reasonable compensation for services, including services of professional and other employees or agents, as well as to provide for fluctuations in gross income and to equal or apportion payments for the benefit of beneficiaries entitled to receive income.

(S) Carry Several Trusts as One Estate. To the extent that division of the trust estate is directed by this instrument, to administer the Trust estate physically undivided until actual division becomes necessary to make distributions; to hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division by appropriate entries in the books of account only; and to allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for a beneficiary at the time specified in this Declaration.

(T) Divide Trust. The Trustee may divide the property administered into two or more separate trusts for any reason, using absolute discretion, including the allocation of Grantor's generation skipping tax exemption.

(U) Continuation of Powers. All of the rights, powers, duties, authority, privileges and immunities given to the Trustee by this Declaration shall continue after termination of the trust and until the Trustee shall have made actual payment of distribution of all trust property.

(V) Allocation to Principal/Income. The Trustee, other than a Trustee interested in the trust, shall be authorized to allocate receipts and disbursements of the trust to principal or income as the Trustee shall designate.

(W) Renunciation of Powers. The Trustee, or any single Trustee if there are more than one acting, may renounce or otherwise surrender any power granted such Trustee in this Declaration, including a power to make discretionary distributions to any beneficiary. Such renunciation shall apply only to the Trustee making it. The renunciation must be in writing and delivered to all other acting Trustees and the Grantor (if living). When such a renunciation has been made, the power so surrendered shall not be available to any successor to the Trustee so renouncing. The renunciation shall be effective immediately upon execution by the Trustee.

(X) Termination of Trust. The Trustee may terminate any trust hereunder when its fair market value has declined to the extent that it becomes uneconomical, imprudent or unwise to continue. In such event, the remainder shall be paid to or applied for the benefit of the then income beneficiaries, equally.

5. PROVISIONS FOR MINORS AND INCOMPETENTS

(A) Notwithstanding any of the other provisions of this Declaration, if any trust principal shall at any time be or become payable under any provision of this Declaration to a minor, an incompetent, or person under disability, such property shall vest in absolute ownership in such person, but the Trustee shall be authorized, in the exercise of absolute discretion and without authorization by any court:

(1) To defer payment or distribution of the whole or any part of such property and to hold and invest the whole or the undistributed portion thereof as a separate share for such minor or incompetent with all the powers and authority set forth in this Declaration and to accumulate and invest the whole or any part of any income therefrom with the same powers and authority; and

(2) To pay, distribute or apply the whole or any part of such property or any income therefrom for the care, comfort, maintenance, support (except as otherwise provided herein) education, use or other benefit of such minor or incompetent, or to pay any amount to such person (other than the Grantor) as the Trustee shall designate as custodian for such minor under the Uniform Transfers to Minors Act or Uniform Gifts to Minors Act of any jurisdiction, all without regard to whether or not the same is currently needed, used or applied for the benefit of such minor or incompetent, any balance thereof to be paid or distributed to such minor when such minor reaches the age of twenty-one (21) years or to such incompetent at any time or, the receipt of the person or persons to whom any such payment is so made being a sufficient discharge therefor even though the Trustee may be such person.

(B) Notwithstanding any of the other provisions of this Declaration in which the Grantor authorizes the Trustee to pay or distribute any income to any beneficiary (whether or not a minor or incompetent), the Trustee shall nevertheless be authorized, in the exercise of absolute discretion, to apply the whole or any part of such distribution for the care, comfort, maintenance, support (except as otherwise provided herein), education, use or other benefit of such beneficiary instead of distributing the same to such beneficiary, by making payment or distribution of such income in the manner provided in subparagraph (2) of paragraph "A" of this Article.

(C) Notwithstanding any other provision of this Declaration, no payments, distributions or applications of income or principal shall be made (directly or indirectly) to any beneficiary in satisfaction of any person's legal obligation to support such beneficiary.

(D) The authority conferred upon the Trustee by paragraph "A" of this Article shall be construed as a power only and shall not operate to suspend the power of alienation or the absolute ownership of any property by a minor or incompetent or prevent the absolute vesting thereof in a minor or incompetent.

(E) The Trustee shall be entitled to receive compensation with respect to any property held pursuant to the provisions of paragraph "A" of this Article at the same rates as though

the Trustee held such property as a testamentary Trustee.

6. ESTATE TAXES. ⁷ All estate, inheritance, succession, transfer and other death taxes, including any interest and penalties thereon, but excluding any additional tax imposed by Chapter 13 (Generation Skipping Transfer Tax) or Section 2032A (Special Use Valuation) of the Internal Revenue Code or corresponding provisions of state law, paid to any domestic or foreign taxing authority, with respect to all property taxable by reason of Grantor's death, whether such taxes be payable by Grantor's estate or any recipient of any such property and whether or not such property passes under this Declaration or Grantor's Will, shall be charged against and paid without apportionment out of the general trust estate; provided, however, that any non-probate property which is included in Grantor's estate for estate tax purposes and which does not pass under this Declaration shall bear its proportionate share of all such taxes to the extent any such property generates a tax by reason of Grantor's death. ⁸

Any tax (including any interest and penalties thereon) imposed by reason of Chapter 13 or Section 2032A of the Internal Revenue Code or corresponding provisions of state law, with respect to property passing under this Declaration or otherwise, shall be paid out of the property to which such chapter or section applies.

7 Consistency is critical in regard to the source of funds from which estate tax would be paid. If this provision is contained in the Grantor's will, and there is no probate property, the will might need to be probated in order to trigger the provision. Even if it does, the direction would be better placed in the revocable trust agreement or declaration.

8 In the larger estate, beware of the consequence of charging estate tax attributable to non-probate assets to a general probate estate, or to the assets in the pour-over revocable trust. This language forces the non-probate property to bear its own proportionate estate tax.

7. CONCERNING THE TRUSTEE⁹

(A) Alternate Trustee. (1) SUSAN P. SUBSTITUTE is hereby designated as alternate Trustee, to take office upon a vacancy, or to become Co-Trustee upon determination of the acting Trustee or upon one of the events described below in subparagraph (2). If at any time the office of Trustee is vacant, or if there is no alternate designated and able to act, the current Trustee or Trustees may appoint, in the exercise of absolute discretion, such one or more individuals and/or a bank or trust company to act as Trustee or Trustees.

(2) Upon the happening of whichever of the following events shall first occur, all of the powers and duties, discretionary or otherwise, of the primary Trustee shall vest in and be exercised by the alternate Trustee, without the necessity of judicial intervention:

(a) The voluntary resignation of a Trustee as the primary Trustee, either by personal election or by the election of his agent under a valid power of attorney; or

(b) The determination of a physician who has primary responsibility for the medical care of the primary Trustee, in consultation with the Grantor's children, that the Trustee is unable to handle his financial affairs for any reason; or

(c) A judicial determination that the Trustee is unable to manage his financial affairs¹⁰; or

(d) Upon the death of the Trustee.

(3) No Trustee, nor alternate Trustee shall be under any duty to institute any inquiry into the possible incapacity of a primary Trustee, but the expense of any such inquiry reasonably instituted may be paid from trust assets.

(B) Acceptance. The acceptance of trusteeship by any Trustee not a party to

9 Consider the appointment of a Trust Protector and the parameters for the Trust Protector's role. Caution should be used to limit the Trust Protector's powers in order to prevent abuse and an unwanted battle of fiduciaries.

10 See: In the Matter of Chiaro, 2010 NY Slip Op 20215 (NY. Sup. Ct. 5/12/2010) for a discussion of the limitation of the power to amend a trust by an Article 81 property management guardian.

this document shall be evidenced by an instrument in writing delivered to the Grantor, or if deceased, to the legal representatives of Grantor's estate.

(C) Bond. No bond or security of any kind shall be required of any Trustee acting hereunder.

(D) Account. No Trustee acting hereunder shall be under a duty to render a judicial account periodically, or upon resignation, or otherwise, provided, however, that the expenses of any accounting for a resigning Trustee shall be a proper charge against the trust estate.

(E) Charges. The separate trust hereunder shall be chargeable with and may pay without application to any court:

(1) The reasonable expenses of the Trustee in the administration of such trust, including the fees and expenses of such agents, attorneys, accountants and advisors as the Trustee may employ in the administration of such trust; and

(2) Reasonable compensation for the services rendered and responsibilities assumed by each of the Trustees in the administration of such trust.

(F) Resignation. Any Trustee may resign from office without leave of court at any time and for any reason. Such resignation shall be made by instrument in writing, duly acknowledged, and delivered in person or by registered mail to the Trustee, or, if there is no Trustee then in office, to each Grantor, if then living, or, if not then living, to the legal representative of the Grantor's estate.

(G) Singular/Plural. Wherever the term "Trustee" is used in this Declaration, it shall be deemed to refer to the Trustee or Trustees acting hereunder from time to time.

8. ALIENATION. No disposition of, or charge or encumbrance on, the income or principal of the trust or any part thereof by any beneficiary under this Declaration, by way of anticipation, shall be valid or in any way binding upon the Trustee, and no beneficiary shall have the right to assign, transfer, encumber or otherwise dispose of such income or principal or any part thereof until the same shall be paid or distributed to such beneficiary by the Trustee. No income or principal or any part thereof shall in any way be liable to any claim of any creditor of any such beneficiary. No court shall order payment of trust property pursuant to New York Estate Powers and Trust Law (EPTL) §7-1.6 or otherwise. It is the intent of this Declaration that only the Trustee shall determine when, and in what amounts principal or income shall be paid.

9. CHANGES BY WILL. This trust may not be amended or revoked by the provisions of any will or codicil of Grantor pursuant to EPTL §7-1.17(b).

10. LAWS OF NEW YORK TO CONTROL.

(A) The Grantor is currently a resident of the State of New York, and all questions pertaining to the validity, construction, effect and administration of this Declaration shall be determined by and in accordance with the laws of the State of New York.

(B) The situs of any trust created hereunder may be maintained in any jurisdiction, in the absolute discretion of the Trustee, and thereafter transferred at any time to any other jurisdiction selected by the Trustee. Upon any such transfer of situs, the trust estate may thereafter, at the election of the Trustee of said trust, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. Accordingly, if the Trustee of any trust created hereunder elects to change the situs of any such trust, the Trustee shall hereby be relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

11. MISCELLANEOUS

(A) Paragraph Headings. The paragraph headings used are for convenience only and shall not be resorted to for interpretation of this trust. Whenever the context so requires, the masculine shall include the feminine or neuter, and vice versa, and the singular shall include the plural and vice versa.

(B) Validity of Provisions. If any portion of this trust is held to be void or

