

**WHEN TO REMOVE THE TRAINING WHEELS  
AND OTHER ISSUES  
IN ESTATE PLANNING FOR  
PRODUCTIVE CHILDREN**

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BY: JANE PEEBLES, J.D.



## Jane Peebles, J.D.

Partner

jane.peebles@bingham.com  
T. 213.680.6650

Jane Peebles is a partner in Bingham McCutchen's Estate Planning Group and Charitable Advising Practice. She is certified by the California State Bar Association as a specialist in Estate Planning, Probate and Trust Law and is a Fellow of the American College of Trust and Estate Council (ACTEC). Ms. Peebles is also a nationally recognized lecturer and author on a variety of domestic and international estate and charitable planning matters. Ranked one of the "Top 50 Female Super Lawyers" in Southern California in 2004, 2005 and 2006 by a vote of her peers, as reported in *Los Angeles* magazine, Jane Peebles has dedicated her practice to estate planning, international tax planning and charitable planning.

### Publications

- Author, "Implications of the Anti-Terrorist Financing Rules for U.S. Charities: Compliance with Executive Order 13224," *Planned Giving Design Center* (2006)
- Author, "Emerging Legal Issues in International Philanthropy," *Perspectives on Foundation Management: Innovation and Responsibility at Home and Abroad*, John Wiley & Sons (2002)
- Author, "Estate Planning Design and Drafting After the EGTRRA," *Major Tax Planning*, University of Southern California, Matthew Bender (2002)
- Author, "Hot Topics in Charitable Giving," *Major Tax Planning*, University of Southern California, Matthew Bender (2000)
- Author, "Creative Uses of Charitable Lead Trusts," *Major Tax Planning*, University of Southern California, Matthew Bender (1999)
- Author, "Cross-Border Gifts," *Journal of Gift Planning* (2nd Quarter 1999)
- Author, "Charitable Gifts of Retirement Plan Assets," *Planned Giving Design Center* (1999)
- Author, "The Handbook of International Philanthropy," *Bonus Books* (Chicago, 1998)
- Author, "Tax Planning for Cross-Border Philanthropy by U.S. Donors," *Trusts & Estates Magazine* (May 1998)
- Lecturer, "Here There Be Dragons: Navigating the Waters of Cross-Border Philanthropy," *Thirty-First Annual University of Miami Philip E. Heckerling Institute on Estate Planning*, Matthew Bender (1997)
- Co-author, "Socially Responsible Investment and the Private Trust," *Probate & Property Magazine* (July/August 1992)
- Co-author, "A Primer on U.S. Estate and Gift Taxation of Aliens," *Major Tax Planning*, University of Southern California, Matthew Bender (1991)

## Awards and Honors

- Top 50 Female Super Lawyer, *Los Angeles* magazine, 2004, 2005 and 2006
- Southern California Super Lawyer, *Los Angeles* magazine, 2006
- Women Making A Difference award nominee, *Los Angeles Business Journal*, 2006

## Philanthropic Endeavors

- Member and on the Board of Directors, National Committee on Planned Giving
- Member, Planned Giving Roundtable of Southern California
- Member, Planned Giving Roundtable of Orange County
- Director and Founder, The Women's Leadership Council
- Member, Council on Foundations
- Member, City of Hope Blue Ribbon Advisory Panel
- Member, Motion Picture & Television Fund Foundation Professional Advisory Panel
- Member, Porrath Foundation for Cancer Patient Advocacy Blue Ribbon Advisory Council
- Member, Jewish Community Foundation of the Jewish Federation of Greater Los Angeles Professional Advisory Committee

## Summary

Estate planning practitioners often pride themselves on the intricacies of their plan design, focusing on the amount of wealth that is transferred from one generation to another. Lost in the variety of trusts, gifts, insurance, family sales and valuation discounts is the impact of such wealth transfer on those for whom the planning was designed. If the end result of all the effort is a wealthy but unmotivated and unhappy beneficiary, we will have failed in our responsibility to our clients. We must not lose sight of the fact that, while wealth can be inherited, self-esteem must be earned. Estate planning should be more than the distribution of family wealth. It must always focus on the impact of the transfer of wealth on the beneficiary for whom the planning is intended.

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By Jane Peebles, J.D.

Much has been written about estate planning, especially how to shift wealth, save taxes, skip generations and create liquidity. Each profession has its own solutions. Lawyers tell us that all can be cured with trusts, insurance agents remind us that the family farm will be sold at auction without sufficient cash, and trust companies warn us against inadequate or ill-trained fiduciaries. The message, however couched, is always focused on the tools and techniques. What's often missing in this morass of information, rules, tax codes, boxes, funnels and arrows, is any meaningful discussion of the effect of this planning on those for whose benefit the plans are made.

There doesn't seem to be much attention paid to the issues that really concern most estate owners — who will receive the benefits of the estate; when, why and under what conditions will they enjoy it; how will it help and could it hurt the people the estate owner cares most about. If the discussion of these issues at the planning or sales stage seems all too brief, the emphasis in the implementation documents is even less focused. No estate plan, regardless of its sophistication or tax benefit, is worth the paper it is written on if the result is counterproductive to these real goals.

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There are several economic, social and demographic factors involved here. A number of studies have indicated that many trillions will pass from the generation now over 55 years of age to the next youngest generation in the next 20 or so years. This anticipated massive transfer of accumulated wealth has stimulated estate and tax planners who recognize the enormous erosion that will be caused by federal and state death taxes, as well as the disruption to family businesses and farms.

Meanwhile, sociologists have been sounding the warning about the "lost" or "postponed" generation that has yet to take responsibility for itself, much less the wealth

that is bound to come. It does not require special credentials or clinical training for a parent to recognize the financial or emotional immaturity of a child. College education does not assure the young adult of a guaranteed profession or business, or even the skill to balance the checkbook or live within a budget. The parenting process extends longer than ever, increasing the risk that the life of the parent will end before the guidance is no longer required.

When wealth passes on to the perpetual adolescent, the results tend to be catastrophic. As obvious as this may seem to a parent, it has escaped notice by many estate planning practitioners.

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Every estate plan, whether simple or complicated, should reflect the goals and concerns of the estate owner, regardless of the tax consequences. No will or trust which purports to transfer family wealth can accomplish its primary objective if it does not carry out these objectives.

Stated differently, if your clients' children are not ready for uncontrolled wealth or a massive stream of income today, then the plan you design should not provide for that in the event of your client's death. The plan must be viewed as if it went into effect tomorrow morning. Of course, as the children mature or the estate changes in size or complexity, the plan can and should change. But to assume that, by the time your client dies, the children will be "ready" to receive their inheritance is to ignore the risk of your client's premature death.

The first question to ask your client is, "If you were to die today and your plan were to go into effect, would the arrangements for your children continue to stress the values that you have tried to teach, reward your children for their efforts and successes, discourage lethargy and self-indulgence, and protect against impulsiveness and vulnerability?" The second question to ask is, "Have you given yourself, or those whom you have entrusted to manage your affairs after you've gone, the ability to adapt your plan to changing conditions and circumstances?"

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There are seemingly endless designs of wills and trusts, each intended to transfer family wealth to the heirs of the estate owner. If the length of each document were directly related to its clarity and thoughtfulness, then a forty-page document should adequately reflect these concerns and provide a logical plan for implementation. Unfortunately, there is no such correlation.

A typical plan allocates assets for the children upon the death of the parents, subject to management and control by a trustee. Distribution of income and principal to or for the benefit of the child is described in the trust document, often providing wide discretion to a trustee while the child is a minor and requiring all income to be paid out after the child attains age 21. Principal distributions are often staggered over time, such as a portion at 25, another portion at 30 and the balance at 35. Quite often, the trustee is given specific authority to invade principal for the child's "health, education, maintenance and support."

In a lengthy document, these dispositive provisions might be no longer than one paragraph or one page, yet they contain virtually all of the instruction to the trustee for the welfare and benefit of the children. It is, in many cases, a plan that may cause irreparable harm to the very individuals whom the estate owner seeks to protect.

Does the estate owner really want \$50,000 per year of income paid to a 21 year old? For a \$1 million estate, this is only a modest return. Consider the cash flow generated on \$5 million or more and, importantly, the impact of such cash flow on the young adult recipient. Will it encourage independence, hard work, and self-sufficiency or is it likely to result in indolence, indifference and dependency? Designed improperly, the estate plan can cause the "trust junkie syndrome," namely, an inability to function without a steady source of trust income.

In deciding whether this is appropriate in a given family, the parent might ask whether he or she would, if financially able to do so, provide such income to the child currently.

In other words, when does the child learn financial self-dependence? If the task is not complete at the death of the parent, the estate plan should encourage it thereafter.

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Income or principal should be distributed to young adults only to further these objectives. If it is desirable to encourage college or graduate education, or vocational training, or to provide a down payment on a personal residence, or utilize capital for the child's business or profession, then the plan should so provide. Avoid automatic distributions of principal or mandated payment of income. Define and explain all terms, criteria and conditions. Be realistic and flexible and allow the child to pursue his or her own individuality.

Ultimately, the parenting process will (or should) end. The child will reach a maturity level that, hopefully, will enable him or her to utilize family wealth effectively. When that occurs, the family assets should become available to the child. It may take longer for some than others, and partial distributions may be appropriate. In delegating responsibility to a fiduciary to make these decisions, care should be taken to select an individual or institution that understands the goals and conditions. Someone sufficiently close to the children should be granted the authority to postpone any otherwise mandated outright distributions of principal – if the child is clearly unable to manage funds prudently, has a serious substance abuse problem, is in bankruptcy, etcetera, at the time the distribution is scheduled to occur.

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Transferring family wealth is far easier than transferring family values. Conversely, inheriting great wealth is no assurance of acquiring self-reliance. Planning one's affairs for the family should keep these principles in mind.



**EXHIBIT A**  
**SAMPLE ESTATE PLAN QUESTIONNAIRE**

Many advisors use questionnaires or checklists to help them understand the client's goals and values. Here are some of the issues commonly discussed with clients:

- [A] Whose plan is it?
  - [1] Dynamics of husband and wife.
  - [2] Role of the children.
  - [3] Role of the in-laws.
  
- [B] What are the stated goals in the estate plan? Economic centered planning.
  - [1] Minimize tax.
  - [2] Equalize distribution.
  - [3] Provide for grandchildren.
  
- [C] What are the real planning priorities? Value centered planning.
  - [1] Assure financial security and independence for self and spouse.
  - [2] Maintain control.
  - [3] Retain flexibility.
  - [4] Launch the grandchildren.
  - [5] Enable the children to succeed for themselves.
  - [6] Minimize the tax on yourself and the family.
  - [7] Provide for the charitable organizations and causes that have been important to you.

- [D] Will you be ready for retirement?
- [1] Do you and your spouse have the resources?
  - [2] Are you and your spouse prepared emotionally?
- [E] Do you expect your children, and will they be ready, to run your business?
- [1] Have you built competent successor management?
  - [2] Are your children the right successors?
  - [3] Will your security be affected if your business fails after you've retired?
  - [4] How would the children react to control without ownership?
  - [5] How would the children react to control by the group? Control by one over the others?
- [F] What do you really want for your children?
- [1] Financial independence.
  - [2] Self-esteem.
  - [3] Harmony.
- [G] What do you really want for your grandchildren?
- [1] Opportunity.
  - [2] Education.
- [H] Do you really want to treat your children equally?
- [1] Do you mean "equitable" or "equal"?
  - [2] Are the children equal in talent? Equal in opportunity? Equal in effort?

- [3] How do they perceive equal treatment?
- [4] How do their families perceive equal treatment?
- [I] Since change in circumstances is inevitable, are you willing to allow your spouse or children to make decisions about the distribution of your estate after you are gone?
- [J] Who is capable of managing your affairs if you are unable?
  - [1] Are the children ready?
  - [2] Will there be a conflict of interest between you and the children?  
Among the children?
  - [3] Are your goals and priorities sufficiently clear for others to follow?
- [K] Are you prepared for the divorce or death of your child?
  - [1] The chance of divorce is nearly 50%. Does your plan anticipate this?
  - [2] If your child dies, what plans have you made for your grandchildren?  
Are they likely to be prepared for their inheritance by the time your estate distributes? Who's raising and training the grandchildren after your child is gone, and will this person have the skill and talent to prepare them for such wealth?
- [L] Who should act as trustee for children:
  - [1] Child as self-trustee?
  - [2] Child as co-trustee?
  - [3] One child as trustee for another?
  - [4] Individual or institutional or combination?

**EXHIBIT B**  
**QUESTIONNAIRE: PLANNING FOR DESCENDANTS**

1. Assuming the current system of estate and income taxes, how would you expect that your estate would be divided among the following:

- [    %]    Child/children
- [    %]    Other individuals
- [    %]    Charity
- [    %]    Government (taxes)

2. If there were no taxes, or if you could plan your estate accordingly, how would you prefer to allocate your assets?

- [    %]    Child/children
- [    %]    Other individuals
- [    %]    Charity

3. You may feel that the size of your estate is such that your child/children does not need all of it to survive or thrive. Is there a dollar amount (in today's value) that you feel is sufficient, with any more being too much for him or her?

[Yes ]       \$ \_\_\_\_\_

[No ]        \_\_\_\_\_

4. On the other hand, you may feel that your child/children should have a minimum amount of wealth to provide him/her with the capital needed to go into business or a profession, or to purchase a home, or provide for his/her family. Is there a dollar amount that you want to be sure he/she receives, net of all taxes and expenses?

[Yes ]        \$ \_\_\_\_\_

[No ]         \_\_\_\_\_

5.     Rather than capital, you may prefer to provide your child/children with a stream of income. Is there a dollar amount that you would like your son or daughter to have, regardless of the reason or use?

[Yes ]        \$ \_\_\_\_\_

[No ]         \_\_\_\_\_

6.     Instead of a base amount of income, is there a ceiling or maximum amount, beyond which the income would become a disincentive for his/her own work?

[Yes ]        \$ \_\_\_\_\_

[No ]         \_\_\_\_\_

7.     Should trust distributions match the child's earned income? Should the matching amount be capped?

[Yes ]        \_\_\_\_\_

[No ]         \_\_\_\_\_

Yes, but capped at [\_\_\_\_%][\$\_\_\_\_\_] annually.

8.     As you think about your own interests in the next several years, as it may affect your estate plan, prioritize what would you be most willing to do.

[     ]        Give up some income to your child/children, while keeping control over the wealth.

[     ]        Give up some wealth to your child/children, including the income earned on it.

- Give up some of your cash flow to charity, in order to shift the wealth to your child/children in later years, in a tax efficient manner.
- Give up some of your wealth in the future to charity, in order to maximize your own income and reduce current income taxes.
- Give up some of your income and wealth now, in order to maximize your charitable gifts and minimize your income taxes.

9. How do you feel about your child/children's capacity to manage his/her own affairs, after receiving your estate? Which of the following is most accurate?

- Capable and ready to assume full responsibility.
- Not yet ready, but likely to be within the next \_\_\_ years.
- Not ready, and may never be ready, although my trustee should have the flexibility to decide this in the future.
- Not ready, and won't be ready, now or in the future.

10. Check each of the following that reflects your feelings or concerns about leaving assets to your child/children. Leave blank those statements that are not accurate or applicable to you.

- He/she will use these assets to his/her advantage, without relying on them to survive.
- He/she expects to inherit all of my estate and would be upset if I left anything of consequence to others or to charity.
- If he/she inherits a substantial estate from me, it is likely to deter his/her own motivation and work ethic.

- ] The date of his/her retirement will be the same as the date of my death.
- ] A steady and sizeable stream of income from my estate will undermine his/her motivation to work hard and develop his/her own economic independence.
- ] He/she would respond well to a system of incentives and rewards built into my estate plan.

**11. Indicate your goals and concerns for your grandchildren by prioritizing the following:**

- ] I do not care to provide for my grandchildren since my child/children will be responsible for that.
- ] I do want to be sure that there are sufficient funds for the education of my grandchildren.
- ] I want to leave a sizeable gift to my grandchildren, to be sure that they have the resources to get started in life.
- ] I want to leave my child/children with the use and enjoyment of my estate, but I also want to be sure that the grandchildren receive a substantial portion of what is left after he/she is gone.

**12. How comfortable are you about discussing your financial affairs and estate plan goals with your child/children? Check which is most accurate.**

- ] Very comfortable and would be willing to do so now.
- ] Comfortable, but not at this point.
- ] Comfortable only for the purpose of exploring his/her goals and expectations.

**Uncomfortable at this time in discussing anything with him/her.**

**None of his/her business.**



**EXHIBIT C**  
**FAMILY OPPORTUNITY FUND**

1. Goal of the Fund

- a. The primary goal of this Fund is to function like a family bank and make available the capital that will provide incentives for members of the grantor's family to become independent, self-sufficient, productive members of the community. It seeks to reward those who apply themselves and who are willing to complete their education and provide for themselves.
- b. Its secondary goal is to give family members an opportunity to learn how to manage wealth; work with professionals in fields of finance, business, law and accounting; and interact with other family members.

2. Capitalization of the Fund

- a. The amount of assets contributed to this Fund depends upon the time horizon anticipated before the assets or earnings will be needed, the investment style and risk tolerance of the grantor, and the grantor's willingness and capacity to transfer assets. The key questions that must be answered by the grantor are how much capital is needed to provide the resources for the initial beneficiaries, when such resources will be required, and how the assets will be invested in the meantime. Tax consequences of earnings and realized gains must also be considered.
- b. Contributions can be made during the grantor's lifetime, or upon death, and can be made by one or more contributors.

3. Distribution of Fund Proceeds and Assets

- a. To implement the grantor's goal, the trust must specify the purpose, terms and conditions of any distributions, loans or investments made by the Fund.

- b. The grantor can specify any purpose for the Fund, but the overriding objective is to provide the beneficiaries with the tools needed to become successful, independent and self-sufficient. Thus, the broad purposes often include:
  - i. Education (through graduate or post-graduate work), including technical training, travel related to education, and living expenses while engaged in this process. It can specify such criteria as a minimum grade point average, part time or full academic schedule, accredited or unaccredited institutions.
  - ii. Investment in a business in which the beneficiary will be personally involved. Criteria may include satisfying the co-trustees with the business skills and business plan of the beneficiary, some personal financial investment by the beneficiary, or other financial or business conditions that the grantor deems reasonable and appropriate.
  - iii. Down payment on the purchase of the beneficiary's first home, provided that the distribution may not exceed 25% of the purchase price and the beneficiary must demonstrate sufficient earned income to service the debt on the remaining 75%.

The co-trustees should keep in mind that the grantor's goal is to encourage the beneficiary to become independent and self-sufficient, and to reward hard work and initiative. The Fund is intended to provide some or all of the resources necessary, if the beneficiary can meet the stated criteria. It should be made clear in the document whether the grantor wants the co-trustees to preserve the Fund for future generations, or to consider the needs of the current beneficiaries as primary, and the interests of successive generations as secondary. This will affect the size, method and conditions of distributions. These concepts should be fully spelled out in the document, with key terms adequately defined and explained.

#### 4. Method of Distribution

- a. Distributions may be made in one or more of the following methods:
  - i. Outright to, or on behalf of, the beneficiary.
  - ii. Investment by the Fund in the beneficiary's business venture.
  - iii. Loan to the beneficiary, at an interest rate to be determined by the co-trustees, but subject to the proviso that the conditions of the loan should not be onerous or burdensome.
- b. The co-trustees must act by majority vote. If a beneficiary is also a co-trustee, such trustee should be disqualified from participating in the decision or evaluation of the request.

#### 5. Investment of Fund Assets

- a. The Fund can create broad investment authority, or follow specific investment objectives, restrictions or criteria.
- b. The co-trustees should adopt a written investment policy, which can be revised from time to time, within the criteria set forth in the trust agreement.

#### 6. Structure and Management of the Fund

- a. The Fund would be established as an irrevocable trust, managed by a minimum of three co-trustees and a maximum of five co-trustees.
- b. The co-trustees would be initially selected by the grantors. Although the grantors could designate themselves as Trust Advisors, with the rights and privileges discussed below, they could not act as co-trustees. There should be a clear method of appointment and removal, and a term of office as trustee, to discourage any individual from becoming too possessive or controlling.

- c. No more than 33% of the co-trustees should be Family Members, as defined in the document. However, it is recommended that at least one co-trustee be appointed from among the qualified adult Family Members. Typically the term "Family Member" means the grantor's direct or lineal descendants (children, grandchildren, great-grandchildren), but could be expanded to include spouses, or lateral relations (such as cousins, nephews and nieces, etc.).
- d. The process of selecting, removing, and compensating trustees should be set forth in the trust agreement.
- e. Trustees must be indemnified and held harmless from all liability with respect to their management and discretionary decisions, provided that they have acted in good faith, and not with intentional or reckless disregard for their fiduciary duties.

## 7. Tax Matters

- a. The Fund would qualify for the maximum generation-skipping transfers. To assure complete exemption, no more than the maximum generation-skipping transfers should be made to the Fund, and appropriate tax filings should be submitted applying the available exemption.
- b. The Fund would be income taxed on its earnings and realized gains. It is known as a "complex trust" because of its ability to accumulate its earnings. The federal trust tax rate is current 35% on all earnings in excess of \$10,050 per calendar year.

## 8. Termination

- a. The Fund is intended to continue as long as legally possible, in order to maintain these resources for future generations. However, if the grantor wants to emphasize the needs of the first generation of beneficiaries, even to

the extent that all funds may be distributed or withdrawn, then this should be stated in the trust agreement.

- b. Upon termination, the Fund shall disburse the balance of the assets to charities and foundations, including family foundations of the grantor or descendants of the grantor, which are devoted to promoting similar values for the community at-large. The identity of these charities and foundations can be set forth by the grantor or, if not, as the trustees determine.

**EXHIBIT D**  
**SAMPLE PROVISIONS FOR ISSUE # 1**

DISTRIBUTION TO ISSUE

Each share of the Trust Estate which is required to be held for the benefit of a child or more remote individual issue of Settlers shall be administered and distributed as follows:

(a) If beneficiary is under twenty-four (24) years of age and has not yet earned an undergraduate degree from an accredited college or university, Trustee shall pay to or apply for the benefit of beneficiary, in Trustee's absolute discretion, as much of the income of beneficiary's share of the Trust Estate as Trustee deems necessary for beneficiary's health, support, maintenance and education. If Trustee deems the income to be insufficient, Trustee may also pay to or apply for the benefit of beneficiary as much of the principal of beneficiary's share of the Trust Estate as Trustee, in Trustee's absolute discretion, deems necessary for beneficiary's health, support, maintenance and education. Any net income not so distributed shall be accumulated and added to the principal of such beneficiary's share of the Trust Estate at the end of the Trust's taxable year.

(b) From and after such time as beneficiary is twenty-four (24) years of age or older, or earlier earns an undergraduate degree from an accredited college or university, Trustee shall accumulate for the benefit of beneficiary all of the net income and principal of beneficiary's share of the Trust Estate, subject to Trustee's absolute discretion to utilize income and/or principal as follows:

(1) Trustee may pay to, loan to, guarantee a loan to or apply for the benefit of beneficiary such amounts of income and principal as Trustee deems reasonable and necessary to provide for beneficiary's (i) education, (ii) purchase or refurbishing of beneficiary's principal residence, (iii) establishment of or investment in a business which will constitute beneficiary's primary livelihood, (iv) support in the event of physical or mental incapacity, (v) health, and/or (vi) to provide additional income to any beneficiary engaged in public service whose compensation is below comparable standards for private business.

(2) In making any distribution decision hereunder, Trustee should consider beneficiary's maturity, experience, judgment, prior history and the proposed purpose to which the funds will be applied. Trustee should be mindful of Settlor's objectives to foster hard work, responsibility and initiative on the part of beneficiary. Distributions should be made as a method of rewarding and stimulating these qualities and not as a substitute for self-reliance. Trustee is authorized and encouraged (but not legally obligated) to refrain from making distributions to beneficiary if beneficiary is either not making satisfactory progress towards an undergraduate, graduate or professional degree at an accredited college or university or not gainfully employed on a full-time basis. Notwithstanding the preceding sentence, for purposes of this paragraph, beneficiary shall be deemed to be gainfully employed on a full-time basis if (i) he or she is caring for one or more family members, including minor children and/or other relatives, and Trustee determines that caring for such family members reasonably precludes beneficiary from full-time employment, (ii) beneficiary is female and is on maternity leave from work pending the birth of a child, and (iii) beneficiary is unable to pursue a program of undergraduate, graduate or professional study or work on a full-time basis because of mental or physical incapacity, as determined by Trustee, in Trustee's absolute discretion.

(A) The term "education" as used herein shall be construed to include education at an accredited public or private college or university and postgraduate study and technical, vocational, music, art, religious or trade school so long as pursued to advantage by beneficiary at an institution of beneficiary's choice.

(i) Trustee may establish reasonable criteria for beneficiary to achieve, including maintaining a minimum grade point average, minimum class schedule and acceptable standards of behavior at school.

(ii) The costs of education which may be paid or supported by Trustee shall include, but not be limited to, tuition, room, board, books, supplies, student fees, travel costs to or from the institution, overseas or domestic travel directly related to furtherance of the educational program and living expenses incurred in connection with the

educational program. The costs of education that are part of the support obligations of a Trustee in office hereunder shall not be paid.

(iii) Trustee shall have the option to distribute funds directly to or on behalf of beneficiary for the above purposes, or to loan funds to beneficiary, under such terms and conditions as Trustee deems reasonable and appropriate.

(iv) Payments made on behalf of beneficiary shall be paid to the guardian, legal representative, institution, or other third party for the benefit of beneficiary.

(B) The term "purchase or refurbishing of beneficiary's principal residence" shall mean that funds are used to acquire or improve the principal residence occupied by beneficiary, so long as the expenditure is reasonable. Trustee should consider the size, location and ultimate use of the residence, as well as the extent of beneficiary's own investment in the residence in determining what is reasonable. Settlor's expect (but do not direct) that distributions to any beneficiary for the purchase of a residence shall not exceed the amount necessary to provide a twenty percent (20%) down payment thereon, and that beneficiary (and/or beneficiary's spouse) will have the ability to service any debt thereon.

(C) The term "establishment of or investment in a business" shall refer to Trustee's discretion to provide funds for beneficiary to establish and/or invest in a business (which business may include a partnership, limited liability company or corporation involving other individuals), which discretion shall be exercised only after Trustee is assured that such funds will be used for business purposes, by reviewing such documents and contracts as would ordinarily be required for the type of business purpose being pursued (i.e., leases, purchase contracts, supply contracts, loan applications, bills of sale, etc.) and that such business is a reasonable and prudent opportunity for beneficiary.

(D) The term "support in the event of physical or mental incapacity" shall mean that Trustee shall consider the opinion of beneficiary's physician in determining the extent and duration of beneficiary's incapacity. It is not necessary that the incapacity be



total; rather, Trustee can assist a beneficiary whose capacity to provide for himself or herself has been materially affected by physical or mental illness, injury or other infirmity, beyond the control of the beneficiary. The term "support" as used herein shall mean reasonable income to provide beneficiary with a comfortable standard of living, including payment of medical expenses, but shall not include the provision of income to replace the support obligation of a Trustee in office hereunder.

(E) The term "health" as used herein shall mean any and all inpatient or outpatient medical or mental health services, drugs and medically necessary devices or supplies, including, without limitation, accommodations in a hospital, medical center, nursing home or any other short, intermediate or long-term health care facility, ancillary health care services including in-home care, substance-abuse program services, detoxification services, dietary services, physical conditioning services, x-ray and laboratory services, medication management services, drugs and medicines, premiums for health insurance not otherwise provided, any outpatient aftercare program services following inpatient stays for rehabilitation, and ambulance or other transportation services. Notwithstanding the foregoing, "health" shall not include elective cosmetic surgery unless needed to correct a disfigurement caused by injury, illness or birth defect.

(F) The term "additional income to beneficiary engaged in public service" as used herein shall refer to Trustee's discretion to provide additional income to a beneficiary engaged in public service, including work for charitable organizations, teaching and governmental service. This is intended to encourage a beneficiary to devote beneficiary's efforts for the public good, if the beneficiary so desires, without adverse economic consequences.

**[OPTIONAL]**

(c) In the event that a beneficiary has substance abuse problems or has been arrested for driving under the influence of a controlled substance, Trustee may withhold all distributions hereunder until such time as Trustee, in Trustee's absolute discretion, is satisfied that beneficiary is free of such substance abuse problems. A beneficiary shall be deemed to have a substance abuse problem if a physician selected by Trustee renders an opinion which satisfies Trustee that beneficiary's use of a controlled substance renders him

or her unable to work, care for himself or herself and/or prudently manage his or her own assets. Trustee may require such beneficiary to undergo periodic testing for substance use using the latest technology, which technology shall include, but not be limited to, sampling of urine, blood and/or hair. If, at any time, a beneficiary fails or refuses to take a test when requested, Trustee may withhold distributions as provided herein. In the event Trustee withholds distributions to a beneficiary pursuant to the foregoing provisions of this subparagraph (c), Trustee shall nevertheless pay from beneficiary's share of the Trust Estate for any needed medical care, rehabilitation costs and/or basic support (e.g., rent, groceries) with regard to a beneficiary who tests positive to any of the drug tests; however, such funds shall be distributed by Trustee directly to the health care provider, rehabilitation facility or vendor (e.g., landlord, supermarket) on behalf of beneficiary, and not to beneficiary directly for such costs.

(d) When beneficiary attains the age of thirty (30) years, Trustee shall distribute to beneficiary one-third (1/3) of the principal of beneficiary's share as then constituted. When beneficiary attains the age of thirty-five (35) years, Trustee shall distribute to beneficiary the remaining principal of beneficiary's share of the Trust Estate. If beneficiary has already attained the age of thirty (30) years or thirty-five (35) years at the time beneficiary's share is established, Trustee shall distribute to beneficiary one-third (1/3) or all of beneficiary's share, respectively, and such distribution may be made directly to beneficiary without first establishing and physically funding beneficiary's separate share hereunder.

**[OPTIONAL]**

(e) Notwithstanding the foregoing, Trustee may postpone any distribution provided for in subparagraph (d) above, in whole or in part, if Trustee, in the reasonable exercise of Trustee's discretion, determines that such distribution would not be in beneficiary's best interests. By way of example but not by way of limitation, postponement may be warranted under the following circumstances: (i) beneficiary is suffering from any physical, mental, emotional or other condition that might adversely affect his or her ability to manage, invest and conserve such distribution; (ii) beneficiary is addicted to a substance the use of which might adversely affect his or her ability to manage, invest and conserve

such distribution; (iii) beneficiary is going through a period of emotional, marital or other stress that might adversely affect his or her ability to manage, invest and conserve such distribution; (iv) beneficiary's property is subject to conflicting claims, tax deficiencies or liabilities, contingent or otherwise; (v) beneficiary does not have the maturity, judgment and ability to manage, invest and conserve such distribution; or (vi) beneficiary is under the influence of one or more individuals or organizations who or which may successfully endeavor to induce beneficiary to part with such distribution. The period of postponement shall be determined by Trustee, in Trustee's discretion. Any such postponement may be continued from time to time, up to and including the entire lifetime of beneficiary. During the period of postponement, beneficiary's share of the Trust Estate shall continue to be held, administered and distributed in the manner provided in subparagraphs (b) and/or (c) above.

(f) Trustee shall be held harmless, defended and indemnified for any costs, expenses, actions, liabilities and/or judgments that may arise in connection with the exercise of Trustee's discretion (to make or not make distributions) under this paragraph. All such costs and expenses shall be paid first out of beneficiary's share of the Trust Estate if beneficiary disputes Trustee's exercise of discretion. Any expense which exceeds the disputing beneficiary's share shall be paid from the balance of the Trust Estate and allocated proportionately to the other beneficiaries.

(g) If beneficiary dies before becoming entitled to receive distribution of beneficiary's entire share of the Trust Estate, then beneficiary shall have the powers of appointment described below over beneficiary's exempt share and nonexempt share (as described in Paragraph \_\_\_\_ below). Should any partially exempt share come to exist, for this purpose such share shall be treated as a nonexempt share.

(1) Upon beneficiary's death, any remaining principal and undistributed income of beneficiary's exempt share shall be subject to a testamentary limited power of appointment exercisable in favor of any one or more of beneficiary's issue, upon such terms and conditions, with such powers, in such manner and at such times as beneficiary appoints and directs.

(2) Upon beneficiary's death, any remaining principal and undistributed income of beneficiary's nonexempt share shall be subject to a testamentary general power of appointment exercisable in favor of any one or more of beneficiary's issue and the creditors of beneficiary's estate, upon such terms and conditions, with such powers, in such manner and at such times as beneficiary appoints and directs.

(3) Each power of appointment granted herein may be exercised only by beneficiary's last Will (whether or not admitted to probate) or in a writing witnessed by at least two (2) disinterested witnesses or acknowledged before a notary public and delivered to Trustee during beneficiary's lifetime, referring specifically to such power of appointment. The writing delivered to Trustee and bearing the date nearest preceding beneficiary's death shall supersede conflicting provisions of any earlier exercise. Unless within ninety (90) days after beneficiary's death, Trustee acquires knowledge of the existence of a Will or a lifetime writing by beneficiary which purports to exercise such power of appointment, it shall be deemed for all purposes hereunder that such power of appointment was not exercised.

(4) If and to the extent beneficiary has not exercised either power of appointment granted herein, then upon the death of beneficiary, the undistributed balance of beneficiary's share of the Trust Estate shall be divided into shares for the benefit of beneficiary's issue, by right of representation. If there are no such issue then living, the share of the deceased beneficiary shall pass to such beneficiary's sibling or siblings, in equal shares. If any such sibling is then deceased but leaves issue surviving, the share of such sibling shall pass to the issue of such sibling, by right of representation. If there are no such siblings of the beneficiary or issue of such siblings then living, the share of the deceased beneficiary shall pass to Settlor's remaining issue, by right of representation. Any share of the Trust Estate reallocated under this paragraph shall be held and administered in accordance with the provisions of this paragraph.

(g) If under the foregoing provisions a portion of the Trust Estate shall not be effectively disposed of, such portion shall be distributed in accordance with the provisions of Paragraph \_\_\_ below.

**EXHIBIT E**  
**SAMPLE PROVISIONS FOR ISSUE # 2**  
**(ALCOHOLISM/DRUG ADDICTION)**

**ARTICLE X**  
**DISTRIBUTION TO SETTLOR'S CHILDREN**

**10.01 SCOPE OF ARTICLE**

This Article X describes the manner in which principal and income shall be distributed to Settlers' children.

**10.02 DISTRIBUTION TO CHILDREN**

Each share of the Trust Estate which is required to be held for the benefit of a child of Settlers shall be held as a separate trust and managed, administered and distributed as follows:

- (a) Mandatory Distribution of Income. Trustee shall distribute to or apply for the benefit of a child of Settlers all of the net income of such child's Trust, in monthly or other convenient installments, but not less frequently than quarterly.
- (b) Discretionary Distribution of Principal. If at any time Trustee deems the mandatory distributions provided for under Paragraph 10.02(a) above to be insufficient to provide for a child's health, support, maintenance and/or education, taking into consideration any income and other resources known by Trustee to be reasonably available to such child for such purposes, Trustee may pay to or apply for the benefit of such child as much of the principal of such child's Trust as Trustee, in Trustee's absolute discretion, deems necessary or advisable for such purposes.
- (c) Principal Available for Withdrawal. From and after the date which is the one (1) year anniversary of Surviving Settlor's death, a child shall have the continuing right to withdraw, at any time, all or any part of the portion of her Trust. A child who wishes to make such a withdrawal shall so notify Trustee in writing, and Trustee shall thereupon distribute to such child the amount so withdrawn. The right to make such withdrawal shall be a continuing right until the termination of such child's Trust or the death of such child, whichever shall first occur. Trustee shall continue to

administer the principal of such child's Trust subject to withdrawal under this Paragraph 10.02(c), but not so withdrawn, under the terms and provisions of this Paragraph 10.02.

**(d) Trustee's Power to Postpone Effective Date of Right of Withdrawal.**

(1) Notwithstanding the provisions of Paragraph 10.02(c) above, Trustee shall postpone the effective date of any right of withdrawal provided for therein, in whole or in part, if Trustee, in the reasonable exercise of Trustee's discretion, determines that the distribution of the amount subject to such right of withdrawal would not be in a child's best interests. By way of example but not by way of limitation, postponement may be warranted under the following circumstances: (i) a child is suffering from any physical, mental, emotional or other condition that might adversely affect her ability to manage, invest and conserve such distribution; (ii) subject also to Paragraph 10.02(d)(2) below, a child is addicted to a substance the use of which might adversely affect her ability to manage, invest and conserve such distribution; (iii) a child is going through a period of emotional, marital or other stress that might adversely affect her ability to manage, invest and conserve such distribution; (iv) a child's property is subject to conflicting claims, tax deficiencies or to liabilities, contingent or otherwise; (v) a child does not have the maturity, judgment and ability to manage, invest and conserve such distribution; or (vi) a child is under the influence of one or more individuals or organizations who or which may successfully endeavor to induce such child to part with such distribution. The period of postponement shall be determined by Trustee, in Trustee's discretion. Any such postponement may be continued from time to time, up to and including the entire lifetime of a child. During the period of postponement, a child's Trust (or the portion thereof subject to such postponement) shall continue to be held, managed, administered and distributed in the manner provided in the other provisions of this Paragraph 10.02 (other than Paragraph 10.02(c) above).

(2) Subject to the provisions of Paragraph 15.22(b) below, if the Special Trustee believes, in the Special Trustee's absolute discretion, that such child is abusing alcohol, drugs, or other controlled substances, then Trustee may make only "Qualified Distributions", as defined in Paragraph 15.22 below, to or for the benefit of such beneficiary. No other distribution of net income or principal may be made by Trustee from any Trust hereunder to or for such child unless she refrains from the

abuse of alcohol, drugs, or other controlled substances. This restriction is made not only to strongly encourage each child of Settlers to avoid such abuse but also to prevent her from squandering any distributions which would otherwise be made to her if she were abusing alcohol, drugs or other controlled substances.

Whether or not a child of Settlers is refraining from the abuse of alcohol, drugs or other controlled substances shall be determined from time to time in the sole discretion of Trustee. Trustee may require a child, if she has abused alcohol, drugs or other controlled substances in the past, or if she is suspected by Trustee of currently abusing same, to undergo periodic drug and/or alcohol testing and/or attend anti-addiction meetings, therapy or counseling in order for such child to be eligible to receive future distributions hereunder. Such testing may be done on a periodic basis and should always be done on a completely random basis without advance notice or warning. Settlers do not want a child to have the opportunity to mask or alter her body chemistry for any period of time while she awaits such a test. All costs of such testing shall be paid from the Trust share of the child being tested.

If a child of Settlers either refuses to timely take such a test demanded by Trustee or if a child fails such a test, then that child shall be completely disqualified from receiving any distributions (other than Qualified Distributions as defined in Paragraph 15.22(a) below) from her Trust hereunder for a period of two (2) years from the date of the last such refusal or failure. Once a child has failed or refused to take such a test, she must, on a periodic and random basis, take additional tests during such two (2) year period and pass all such tests in order to be eligible to receive distributions other than Qualified Distributions after the expiration of such two (2) year period. Until a child of Settlers has thereafter been free from the abuse of alcohol or drugs for at least two (2) years, no such distributions may be made other than Qualified Distributions.

The balance of any mandatory distribution, to the extent suspended (that is, the mandatory distribution reduced by Qualified Distributions, which Trustee is hereby authorized to continue to make) shall continue to be held, managed, administered and distributed in the manner provided in the other provisions of this Paragraph 10.02.

**(e) Exoneration of Trustee.** Trustee shall be held harmless, defended and indemnified for any costs, expenses, actions, liabilities and/or judgments that may arise in connection with the exercise of Trustee's discretion (to make or not make

distributions or to postpone or not postpone the effective date of any right of withdrawal) under this Paragraph 10.02. All such costs and expenses shall be paid first out of the disputing child's Trust if that child disputes Trustee's exercise of discretion. Any expense which exceeds the disputing child's Trust shall be paid from and allocated proportionately among the other Trusts then being administered under this Paragraph 10.02 and Paragraph 10.03 below.

(f) Death of Child Prior to Distribution of Entire Share. If a child dies before receiving distribution of her entire Trust, then such child shall have the power of appointment described below over her Trust.

(1) Upon a child's death, any remaining principal and undistributed income of her Trust shall be subject to a testamentary general power of appointment exercisable in favor of any person or entity, including such child, such child's estate, such child's creditors and the creditors of such child's estate, upon such terms and conditions, with such powers, in such manner and at such times as such child appoints and directs.

(2) The power of appointment granted in this Paragraph 10.02(f) may be exercised only in the manner provided in Paragraph 13.14 below.

(3) If and to the extent a child has not exercised the power of appointment granted in this Paragraph 10.02(f), then upon the death of such child, the undistributed balance of such child's Trust shall be divided into shares for the benefit of such child's issue, by right of representation. If there are no such issue then living, the deceased child's Trust shall pass to Settlers' issue, by right of representation.

(A) Any share of the Trust Estate reallocated under this Paragraph 10.02(f)(3) to a child of Settlers shall be held in trust and managed, administered and distributed in accordance with the provisions of this Paragraph 10.02.

(B) Any share allocated to a grandchild or more remote individual issue of Settlers of Settlers shall be added to and held, managed, administered and distributed as provided in Paragraph 10.03 below.

\* \* \*



## **15.22 “QUALIFIED DISTRIBUTIONS” DEFINED**

**(a)** For purposes of Paragraphs 10.02 and 10.03 above, Qualified Distributions shall include only distributions for the following purposes:

(i) Distributions of income and/or principal of a beneficiary’s share directly to health care providers and other third party vendors for medical care, medical insurance, drug or alcohol rehabilitation, or related counseling;

(ii) Distributions directly to third party vendors for purposes including, but not limited to, rent, mortgage payments, property taxes, homeowner’s insurance, vehicle loan payments, gasoline, vehicle insurance, groceries and the like; and

(iii) Such distributions directly to the beneficiary (or by providing the beneficiary with a credit or debit card with a low credit limit) for such purposes as the Special Trustee deems appropriate and in the beneficiary’s best interests.

**(b)** No Qualified Distributions shall be made unless Trustee is directed by the Special Trustee, in writing or by facsimile or e-mail, to make such distribution. The Special Trustee shall also advise Trustee whether a substance abuse problem (as defined in Paragraphs 10.02 and 10.03 above) exists.

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## **4.04 APPOINTMENT OF SPECIAL TRUSTEE**

As used in this instrument, the term “Special Trustee” refers to an individual Trustee who is appointed for a limited purpose expressly authorized in this instrument. Subject to the provisions of Paragraph 15.22(b) below, if at any time Trustee, in Trustee’s discretion, determines that it is necessary to appoint a Special Trustee in order to carry out any of the purposes of this Trust, Trustee shall appoint as Special Trustee an individual who is not “related or subordinate” to Trustee or any beneficiary hereunder, as that term is defined and construed in accordance with applicable provisions of IRC Section 672, its regulations and relevant case precedent. Such appointment shall be made by written instrument delivered to the appointee, and may be made for an indefinite period of time or for a reasonable, limited period of time necessary for the Special Trustee to carry out his or her duties with respect to the purpose for which he or she was appointed. The Special Trustee shall exercise the Special Trustee’s powers by written instrument delivered to Trustee.

Trustee shall abide by the written direction of the Special Trustee and shall have no liability to any person interested in this Trust for doing so. No bond shall be required of any Special Trustee. A Special Trustee may resign at any time in the manner provided herein applicable to a Trustee. A Special Trustee shall have no liability for the acts or omissions of any Trustee or of any other Special Trustee. Trustee shall be relieved of any liability and responsibility in connection with the Special Trustee's exercise of (or failure to exercise) the authority granted to the Special Trustee hereunder

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**EXHIBIT F**  
**SAMPLE PROVISIONS FOR ISSUE # 3**  
**(HUGE ESTATE)**

**ARTICLE VII**  
**DISTRIBUTION TO BENEFICIARIES FOLLOWING DEATH OF SETTLOR**

**7.01 SCOPE OF ARTICLE**

This Article describes the manner in which principal and income shall be distributed to beneficiaries other than Settlor.

**7.02 DISTRIBUTIONS TO ISSUE**

Each share of the Trust Estate which is required to be held for the benefit of a child or more remote individual issue of Settlor (hereinafter individually referred to as "beneficiary") pursuant to Paragraph 6.06 above shall be held as a separate trust and administered and distributed pursuant to the provisions of this Paragraph 7.02.

(a) Guidelines for Trustee. Trustee shall hold, administer and distribute each beneficiary's share of the Trust Estate for such period of time as Trustee, in Trustee's absolute discretion, shall determine, subject to the provisions of Paragraph 11.11 below [reference to rule against perpetuities]. During such time, Trustee shall be guided by the following provisions of this Article VII.

(b) Distributions to Effect Beneficiary Plan. Settlor requests, but does not direct, that Trustee distribute to each beneficiary income and/or principal of his or her share beginning when he or she attains the age of thirty (30) years, outright and free of trust or in further trust, and in one or more installments, as Trustee, in Trustee's sole and absolute discretion see fit, if the beneficiary has provided Trustee with a plan (hereinafter "Beneficiary Plan") for the use of such funds which demonstrates to Trustee, in Trustee's sole and absolute discretion, that the beneficiary is committed to using the funds for a meaningful project, such as starting, expanding or investing in a business, making philanthropic gifts and being personally involved with the grantee (whether by sitting on its Board of Directors or otherwise) or some other project that

demonstrates a strong personal commitment by the beneficiary. Settlor requests that Trustee consider each beneficiary's use of such funds as a factor in determining whether, when, in what amounts and for what purposes further distributions shall be made to such beneficiary from his or her Trust share. Each beneficiary may hire professional advisors to assist him or her in developing any Beneficiary Plan pursuant to this Paragraph 7.02(b), and all reasonable fees for such professional advice shall be paid for by Trustee from such beneficiary's Trust share.

Trustee shall work with the beneficiary and his or her professional advisors to refine and finalize any Plan to be submitted to Trustee pursuant to this paragraph. If and when Trustee has approved the Beneficiary Plan, Trustee shall distribute funds in accordance with such Beneficiary Plan and to carry out its purposes.

**(c) Distributions to Productive and Hardworking Beneficiaries.**

**(1) Distributions to Beneficiaries Who Are Good Citizens.**

Settlor requests, but does not direct, that, in addition to or in lieu of any distributions pursuant to Paragraph 7.02(b) above, and whether or not a beneficiary has submitted a Beneficiary Plan, if any beneficiary has shown himself or herself to be "productive and hardworking," as those terms are elaborated upon in Paragraph 7.02(c)(2) below, Trustee distribute to or for the benefit of such beneficiary, in one or more installments, such amounts of the income and/or principal of said beneficiary's share as Trustee, in Trustee's absolute discretion, deems appropriate to reward such beneficiary for being productive and hardworking. Settlor requests that Trustee consider each beneficiary's use of such funds as a factor in determining whether, when, in what amounts and for what purposes further distributions shall be made to such beneficiary or for his or her benefit from his or her Trust share.

**(2) Reward Beneficiary Who is Productive and Hardworking.** It is Settlor's objective to foster hard work, responsibility and initiative on the part of each beneficiary. Distributions should be made as a method of rewarding and stimulating these qualities and not as a substitute for self-reliance, and whether a beneficiary is leading a productive life should be a significant factor considered by Trustee in deciding

whether to make discretionary distributions hereunder. By way of example but not by way of limitation, and whether or not a beneficiary has submitted a Beneficiary Plan, if a beneficiary is making satisfactory progress at an accredited college or university or is pursuing a graduate or professional degree on a full-time basis (or, if the beneficiary is working, then satisfactorily carrying a reasonable number of credits in view of his or her work schedule), distributions may be made to reward the beneficiary's efforts and to help the beneficiary to achieve his or her career goals. Similarly, if a beneficiary is working hard, even if for low wages, distributions may be made in recognition of the beneficiary's efforts and productivity. If a beneficiary is ambitious and is working his or her way up the organizational hierarchy of his or her employer or if a beneficiary obtains a new position with a different employer at a higher level, distributions may be made to recognize and reward each promotion received or new level attained by the beneficiary. Settlor expects that distributions for personal use and/or consumption shall be made to reward beneficiaries who are leading productive lives.

**(d)** Additional Permissible Distributions. In addition to any distributions made pursuant to the preceding provisions of this Paragraph 7.02, Trustee, in Trustee's absolute discretion, may distribute the net income and/or principal of any Trust share held hereunder for the benefit of a beneficiary, up to and including the whole thereof, in any one or more of the following ways, and Trustee may also exercise Trustee's discretion to make distributions to or for the benefit of a beneficiary for other purposes, keeping in mind Settlor's objectives described below in this Paragraph 7.02.

**(1)** Provide Support for Disabled Beneficiary. Trustee, in Trustee's reasonable exercise of discretion, may use funds from a beneficiary's trust to provide support for the beneficiary in the event of physical or mental incapacity. The term "support for the beneficiary in the event of physical or mental incapacity" shall mean that Trustee shall consider the opinion of the beneficiary's physician in determining the extent and duration of the beneficiary's incapacity. It is not necessary that the incapacity be total; rather, Trustee can assist a beneficiary whose capacity to provide for himself or herself has been materially affected by physical or mental illness, injury or other infirmity, beyond the control of the beneficiary. The term "support" as

used herein shall mean reasonable income to provide a beneficiary with a comfortable standard of living, including payment of medical expenses as provided below.

**(2)** Provide Funds for Education. Trustee, in Trustee's reasonable exercise of discretion, may distribute income and/or principal to any beneficiary to defray or assist in defraying the costs of the beneficiary's education. The term "education" as used herein shall be construed to include preschool and primary and secondary private education as well as education at an accredited public or private college or university, postgraduate study and technical, vocational, music, art, religious or trade school so long as pursued to advantage by the beneficiary at an institution of the beneficiary's choice.

**(A)** Trustee may establish reasonable criteria for the beneficiary to achieve, including maintaining a minimum grade point average, minimum class schedule and acceptable standards of behavior at school.

**(B)** The costs of education which may be paid or supported by Trustee shall include, but not be limited to, tuition, room, board, books, supplies, student fees, travel costs to or from the institution, overseas or domestic travel directly related to furtherance of the educational program and living expenses incurred in connection with the educational program.

**(C)** Trustee shall have the option to distribute funds directly to or on behalf of the beneficiary for the above purposes, or to loan funds to the beneficiary, under such terms and conditions as you deem reasonable and appropriate.

**(3)** Provide Funds for Health. Trustee, in Trustee's reasonable exercise of discretion, may distribute income and/or principal to any Beneficiary to defray or assist in defraying the costs of the beneficiary's health care. The term "health" shall mean any and all inpatient or outpatient medical or mental health services, drugs and medically necessary devices or supplies, including, without limitation, accommodations in a hospital, medical center, nursing home or any other short, intermediate or long-term health care facility, ancillary health care services including in-

home care, substance-abuse program services, detoxification services, dietary services, physical conditioning services, x-ray and laboratory services, medication management services, drugs and medicines, premiums for health insurance not otherwise provided, any outpatient aftercare program services following inpatient stays for rehabilitation, and ambulance or other transportation services, but shall not include elective cosmetic surgery unless necessary to correct a disfigurement caused by injury, illness or birth defect.

**(e) Provisions Regarding Discretionary Distributions.**

**(1) Trustee Discretions.** Trustee shall be under no obligation to make any distribution of net income or principal from beneficiary's share to or for the benefit of beneficiary for any reason. Settlor intends that Trustee have the broadest possible discretion to make or not make distributions hereunder. In no event shall the terms of this instrument be construed as creating a right in any individual or entity to the net income or principal of any Trust share unless and until beneficiary has effectively exercised the testamentary general power of appointment granted in Paragraph 7.02(g)(1) below or until the expiration of the perpetuities period described in Paragraph 11.11 below. If Trustee elects to make a distribution to or for the benefit of beneficiary, the fact that such distribution was made shall not be construed as obligating Trustee to make any additional distribution(s) to or for the benefit of such beneficiary thereafter. Trustee shall be held harmless, defended and indemnified for any costs, expenses, actions, liabilities and/or judgments that may arise in connection with Trustee's discretion to make or not make distributions under this Paragraph 7.02. All such costs and expenses shall be charged to and paid first out of beneficiary's share of the Trust Estate if beneficiary disputes Trustee's exercise of discretion. Any costs and/or expenses which exceed the disputing beneficiary's share shall be paid from the balance of the Trust Estate being administered pursuant to this Paragraph 7.02 and allocated proportionately to the other beneficiaries of Trust shares being so administered.

**(2) Distributions Need Not Be Equal or Proportional.** If Trustee elects to make a distribution to any beneficiary as provided in this Paragraph 7.02,

Trustee shall be under no obligation to make an equal or proportional distribution to any other beneficiary. Trustee may pay more to or apply more for the benefit of some beneficiaries than others, and may elect to make no distributions at all to one or more beneficiaries, as Trustee, in Trustee's absolute discretion, shall determine. Trustee shall not be subject to any obligation, liability or surcharge for making distributions from the beneficiaries' respective trusts to or for the benefit of the beneficiaries in different amounts or for not making any distributions to one or more beneficiaries.

**(3)** Manner of Distribution. If Trustee elects to make a distribution from beneficiary's trust as provided in this Paragraph 7.02, such distribution may be made directly to beneficiary in a lump sum, in two (2) or more installments, or may be made for the benefit of beneficiary, as Trustee, in Trustee's absolute discretion, deems advisable. Alternatively, despite the use of the term "distribution" or words of similar import in this instrument, Trustee may elect to loan funds to beneficiary, under such terms and conditions as Trustee, in Trustee's absolute discretion, deems reasonable and appropriate.

**(4)** Discretion of Certain Trustees. Notwithstanding any other provision of this Declaration of Trust, if and for so long as any beneficiary of a share held pursuant to this Article is acting as the Trustee or a Co-Trustee thereof, such beneficiary shall take no part in any decision regarding whether to distribute income and principal of such share to himself or herself. Instead, all such decisions shall be made by the other Trustee(s) then in office or, if there shall be none, by a Special Trustee appointed for such purpose as provided in Article IV above.