

TAB 2

UNannotated Will of John Doe

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The Annotated Will 2010



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Continuing Legal Education

WILL OF JOHN DOE¹

I, JOHN DOE, of the City of Toronto, in the Province of Ontario, [insert occupation], declare that this is my Last Will and Testament [made this XXX day of January, 2010].

OR

I, JOHN DOE, resident in the City of London, in the United Kingdom, but domiciled in the Province of Ontario, Canada, declare that this is my Last Will and Testament.

OR

I, JOHN DOE, of the City of Toronto, in the Province of Ontario, declare that this is my Last Will and Testament made in contemplation of my marriage to JANE SMITH and is intended to take effect whether or not the marriage takes place.

REVOCATION

I revoke all Wills and Codicils previously made by me.

DISPOSITION OF BODY

Pursuant to the *Trillium Gift of Life Network Act* (Ontario), I consent to the use of my body or any part or parts of it after my death for therapeutic purposes only [*or*, for therapeutic purposes, scientific research or medical education]. I request that my remains be cremated.

RRSPS

I hereby designate my wife, JANE DOE, if she survives me, as my beneficiary under each registered retirement savings plan and other plan (within the meaning of Part III of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 (“the Act”)) which I may own or under which I may be entitled to benefits at the date of this Will, to receive all proceeds payable thereunder after my death (including payments made as a consequence of my death as well as contractual payments continuing after my death). This is a designation within the meaning of the Act. I hereby revoke any previous designation made in respect of any plan to the extent of any inconsistency with this designation.

¹ This work appears as part of the Law Society of Upper Canada’s initiatives in continuing legal education. It aims to provide information and opinion, which will assist lawyers in maintaining and enhancing their competence. It does not, however, represent or embody any official position of, or statement by, the Society, except where this may be specifically indicated; nor does it attempt to set forth definitive practice standards or to provide legal advice. Precedents and other material contained herein are intended to be used thoughtfully, as nothing in the work relieves readers of their responsibility to consider it in the light of their own professional skill and judgement.

OR

I hereby designate my wife, JANE DOE, if she survives me, as my beneficiary under each registered retirement income fund which I may own or under which I may be entitled to benefits at my death, to receive all proceeds payable thereunder after my death (including payments made as a consequence of my death as well as contractual payments continuing after my death). This is a designation within the meaning of Part III of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26. I hereby revoke any previous designation made in respect of any registered retirement income fund to the extent of any inconsistency with this designation.

OR REPLACE SECOND SENTENCE WITH

This is a declaration within the meaning of s. 190 of the *Insurance Act*, R.S.O. 1990, c. I.8.

INSURANCE DECLARATION

I hereby designate my wife, JANE DOE, if she survives me, as beneficiary of the proceeds of all policies of insurance on my life (collectively, the "Insurance Proceeds"), including without limitation, my policy with the Life Insurance Company, being Policy No. 01234, no matter to whom the same may presently be payable in connection with the terms thereof or of any declaration prior in date hereto. For greater certainty, I designate my wife, JANE DOE, for purposes of the *Insurance Act*, R.S.O. 1990, c. I.8 as the beneficiary of the Insurance Proceeds. This designation is a designation within the meaning of the Insurance Act and I revoke any previous designation in respect of the Insurance Proceeds.

INSURANCE TRUST

2. I direct and declare that the proceeds of all policies of insurance on my life (including, without limitation, my [insurance company name] policy 12345), no matter to whom the same may currently be payable in connection with the terms thereof or of any declaration prior in date hereto shall be paid over in a lump sum to my wife, JANE DOE, to be held and administered by her as the trustee of a separate insurance trust fund (hereinafter referred to as "the Insurance Trust") in accordance with the provisions of this Clause 2 of this my Will. If my wife, JANE DOE, should predecease me, the proceeds of all such policies of insurance on my life shall be paid over in a lump sum to my wife's father, JOHN SMITH, my wife's sister, SANDRA SMITH, and my brother, ROBERT DOE, jointly, or to the survivor or survivors of them, to be held and administered by them as the trustees of the Insurance Trust in accordance with the provisions of this Clause 2 of this my Will. This is a declaration within the meaning of the *Insurance Act*, R.S.O. 1990, c. I.8 (the "Insurance Act") and for greater certainty, I designate the trustees of the Insurance Trust for purposes of the Insurance Act as the beneficiary of the said insurance proceeds. For greater certainty, the Insurance Trust shall not form part of my estate and shall be administered as a separate trust

notwithstanding that one or more of the trustees of the Insurance Trust may be trustees of my estate.

In the event that my wife, JANE DOE, should survive me but become at any time after the date of my death unable or unwilling for any reason to act or to continue to act as the trustee of the Insurance Trust in accordance with the provisions of this Clause 2 of this my Will, I appoint my wife's father, JOHN SMITH, my wife's sister, SANDRA SMITH, and my brother, ROBERT DOE, jointly, or to the survivor or survivors of them,, to be the trustees of such Insurance Trust in accordance with the preceding provisions of this Clause 2 of this my Will in her place and stead. The trustees of the Insurance Trust, whether original or substituted in accordance with the preceding provisions of this Clause 2 of this my Will, shall have the same powers and rights in connection with the administration of the Insurance Trust as have "my Trustees" (as hereinafter defined) for the administration of my estate and for such purpose I hereby incorporate by reference the provisions of Clauses [paragraph numbers of administrative provisions only, not dispositive provisions] of this my Will into this Clause 2 of my Will, *mutatis mutandis*, as terms of the Insurance Trust. Whenever there are more than two persons acting as trustees of the Insurance Trust I will and direct that a majority decision of such trustees shall be final and binding upon all such trustees unless a unanimous decision is specifically required by the terms of this my Will.

The trustees of the Insurance Trust shall deal with the income and capital thereof in accordance with the following terms, trusts and conditions:

(1) The trustees of the Insurance Trust may, in their discretion, use the income and capital thereof to pay all income, capital gain, gift, inheritance, succession and accession duties or taxes, whether imposed by or pursuant to the law of this or any other jurisdiction that may be payable in respect of my estate or in respect of any property passing (or deemed to pass by any governing law) on my death, and whether such duties or taxes may be payable in respect of estates or interests which fall into possession at my death or at any subsequent time and in relief of those persons who would otherwise be liable for the payment of such duties and taxes.

(2) I authorize and empower the trustees of the Insurance Trust, in their discretion, to advance such life insurance proceeds, or any part thereof, by way of loan to my general estate and, if they consider it desirable to do so, to invest such proceeds, or any part thereof, in investments and assets of my general estate, whether movable or immovable, real or personal, and regardless of whether or not such property is in the form of an investment in which trustees, by law, are bound to invest and even if such property is of a non-income-producing nature.

(3) Subject to the foregoing, the trustees shall invest and reinvest the Insurance Trust and may at any time and from time to time pay to or apply for the benefit of such one or more of my wife, JANE DOE, and my issue as may be living from time to time, to the exclusion of the other or others, all or

so much of the annual net income of the Insurance Trust and all or any part or parts of the capital thereof, in such shares and proportions as the trustees of the Insurance Trust shall in their absolute discretion consider advisable.

Subject to the foregoing, the trustees of the Insurance Trust shall accumulate the whole or any part or parts of the annual net income thereof for any year as the trustees may in their absolute discretion consider advisable including any part of the annual net income not otherwise before herein paid by the Insurance Trustees and in such year shall add such accumulated income to the capital thereof to be dealt with as part thereof. Notwithstanding the foregoing, in any year that the trustees of the Insurance Trust are required by law to distribute income, the trustees shall pay to or apply for the benefit of such one or more of my wife, JANE DOE, and my issue as may be living from time to time, to the exclusion of the other or others, all of the annual net income of the Insurance Trust, in such shares and proportions as the trustees of the Insurance Trust shall in their absolute discretion consider advisable and in the event the trustees fail to exercise their discretion within thirty (30) days of the end of such year any annual net income not so paid or applied shall be paid or applied to my wife, JANE DOE, if she is then alive and if she is not then divided among my issue then living in equal shares per stirpes.

(4) Subject to provisions equivalent to the provisions of Clauses [paragraph numbers of administrative provisions] of this my Will (which hereinbefore have been incorporated by reference into the terms of this Insurance Trust), *mutatis mutandis*, upon the later of:

- (i) the date of my death;
- (ii) the date of death of my wife, JANE DOE; and
- (iii) the date upon which there is no longer a child of mine living and under the age of thirty-five (35) years,

the balance of the Insurance Trust then remaining shall be divided among my issue who are then living in equal shares per stirpes and not per capita;

(5) In the event that on the date of my death or at any time subsequent thereto none of my wife, JANE DOE, and my issue are living to take an absolutely vested interest in the Insurance Trust in accordance with the foregoing provisions of this Clause 2, I direct the trustees of the Insurance Trust to divide the Insurance Trust or such portion thereof remaining on the date of death of the last survivor of me, my wife, JANE DOE, and my issue (such date shall hereinafter be referred to as the "Trust Distribution Date") among such persons, upon the same trusts, terms and conditions as to the payment of income and capital as provided in Clause [paragraph number of "disaster clause"] of this my Will, but with the beneficiaries determined as if the Date of Final Distribution

specified in Clause [paragraph number of “disaster clause”] were the Trust Distribution Date.

AIR MILES DESIGNATION

I designate my wife, JANE DOE, if she survives me, as beneficiary to receive all my Air Canada Air Miles points, being account number 1234567. In the event that my wife has predeceased me then my Trustees (as hereinafter defined) shall divide all my Air Canada Air Miles points in equal shares between my son, JACK DOE, and my daughter, JILL DOE, if they are both alive on the date of my death, or all to the survivor of them if only one of my son and my daughter is then alive.

JOINT ACCOUNTS

I confirm that if my wife, JANE DOE, survives me she shall by right of survivorship receive every right, title or interest that I may have in any real or personal property which I own jointly with her at the time of my death. I confirm that if my daughter, JILL DOE, survives me she shall by right of survivorship receive every right, title or interest that I may have in any real or personal property which I own jointly with her at the time of my death.

OR

I declare that my interest in [description of property] which I own as joint tenants with my wife, JANE DOE, shall not pass by right of survivorship to my wife as a consequence of my death. My interest in such property shall form part of my estate to be dealt with in accordance with the provisions of this my Will. I also declare that my interest in [description of property] which I own as joint tenants with my daughter, JILL DOE, shall not pass by right of survivorship to my daughter as a consequence of my death. My interest in such property shall form part of my estate to be dealt with in accordance with the provisions of this my Will.

OR

I declare that unless otherwise indicated in a memorandum signed by me and kept with my Will, all accounts and other assets jointly registered in the names of me and any one or more of my children are not intended to pass to such child or children by right of survivorship but remain beneficially owned by me and shall be dealt with after my death in accordance with my Will.

APPOINTMENT OF EXECUTORS

I appoint my wife, JANE DOE, of the City of Toronto, Ontario, to be the Executrix of my Will and Trustee of my estate. If my wife shall predecease me or otherwise be unable or unwilling to act as Executrix of my Will and Trustee of my estate before all the trusts set out in my Will have been fully performed, I appoint my friend, ROBERT JONES, of the City of Toronto, to be the Executor of my Will and Trustee of my estate in her place and stead. If my friend, Robert Jones, shall predecease me or

otherwise be unable or unwilling to act as Executor of my Will and Trustee of my estate before all the trusts set out in my Will have been fully performed, I appoint my solicitor, LINDA LAWYER, of the City of Toronto, to be the Executrix of my Will and Trustee of my estate in his place and stead.

I declare that the expression "my Trustees" used throughout my Will shall include, where the context permits, the Executrix, Executor or Executors and Trustee or Trustees for the time being, whether original, additional or substitutional. I declare that if any of my wife, Jane Doe, my friend, John Smith or my solicitor, Linda Lawyer acts as an Executor and Trustee of my Will he or she shall not be required to post a bond as security. I further declare that no Trustee who is not resident in Ontario shall be required to post a bond as security for acting as my Trustee.

ADD IF APPLICABLE

If at any time my Trustees in their absolute discretion determine that, for tax or other reasons, it advisable for them to do so, my Trustees may appoint one or more other individuals or a trust company to act as an Executor and Trustee of my Will together with my Trustees or in the place of any or all of them, and each individual or trust company so appointed shall thereafter have all the powers and discretions, and shall be subject to all the same duties and trusts, as if I had directly appointed him, her or it as one of my Trustees.

ADD IF APPLICABLE

I direct that should any difference of opinion at any time exist among my Trustees in relation to the commission or omission of any act in the execution of the trusts of my Will, the opinion of my Trustees having the majority of votes shall prevail, notwithstanding that any one or more of my Trustees may be personally interested or concerned in the matter in dispute or question.

OR ADD

I direct ... the opinion of my Trustees having the majority of votes (of which [Name] shall be one) shall prevail,....

ADD IF APPLICABLE

For those estates of which I am the sole Trustee or the sole surviving Trustee, except for the estate of my wife, Jane Doe, and any person related to me by blood or marriage or adoption, I appoint my colleague, LINDA LAWYER, to be the successor Executrix and Trustee in my place and stead, provided that if Linda Lawyer is not then living or is or becomes unwilling or unable to act as the Executrix and Trustee, I appoint my colleague, SAM SOLICITOR, to be such Executor and Trustee.

DEFINITION OF ISSUE

Any reference in my Will to a “child”, “children” or “issue” includes adopted persons but does not include a person born outside marriage nor a person who comes within the description traced through another person who was born outside marriage unless such person comes within the description by virtue of adoption; provided, however, that where the mother or father of a person born outside marriage has, in the unanimous opinion of my Trustees, demonstrated a settled intention to treat such person as his or her child, such person shall be deemed to be a child of such mother or father for purposes of my Will.

OR

Unless otherwise specifically provided, any reference in this my Will or in any Codicil hereto to my children (including a reference to a son or daughter of mine) or to my more remote issue, or to the children or more remote issue of any other person or persons shall not include a person born outside marriage, nor a person who comes within the description traced through another person who was born outside marriage, provided that any person who was born outside marriage but whose parents subsequently married one another shall not be regarded as being a person born outside marriage but shall be regarded as having been born in lawful wedlock; provided further that any person who has been legally adopted shall be regarded as having been born in lawful wedlock to the adopting parent.

“In equal shares per stirpes” means a division according to the normal and general rule, whereby remoter issue shall only be entitled to a share of my estate if they stand in substitution for a deceased parent and shall not be entitled to a share in competition with or concurrently with a living parent.

DEFINITION OF SPOUSE

Any reference in my Will or any Codicil hereto to the “spouse” of one of my issue means a person who is cohabiting with such issue in a conjugal relationship, whether or not such person is married to such issue, or if such issue has died, who was cohabiting with such issue in a conjugal relationship at the time of such child’s death.

OR

Whenever my Trustees are authorized or directed by my Will to make any payment or distribution to the spouse of a living individual, such payment or distribution may only be made to a person who, in the opinion of my Trustees:

- (a) is married to such individual and is not living separate and apart from such individual at the relevant time;
- (b) has in good faith gone through a form of marriage with such individual which is void or voidable and the two of them are cohabiting or have cohabited within the previous twelve-month period;

- (c) though not married to such individual, is cohabiting with him or her and has cohabited with him or her continuously for a period of not less than five [or some other quantum] years;
- (d) though not married to such individual, is cohabiting with him or her in a relationship of some permanence where there is a child born of whom they are the natural parents; or
- (e) is a person in favour of whom an order for support, alimony or maintenance has been made by a Court of competent jurisdiction against such individual under which such individual continues to have obligations;

and wherever payment or distribution is authorized or directed to be made to a spouse of a deceased individual such payment or distribution may only be made to a person to whom a payment or distribution might have been made as the spouse of such individual immediately before such individual's death. Before making any payment or distribution to a person as the spouse of an individual, my Trustees may require such person to provide to my Trustees evidence to establish to my Trustees' satisfaction that person's entitlement to such payment or distribution.

VESTING CLAUSE

I give all my property of every nature and kind wherever situate, both real and personal and including any property over which I may have a general power of appointment, to my Trustees upon the following trusts.

SPECIFIC GIFT OF PARTICULAR ITEM OF PERSONALTY

My Trustees shall give my Rolex watch to my son, JACK DOE, if he survives me.

GIFT OF REMAINING PERSONAL EFFECTS

My Trustees shall give those remaining articles of personal, domestic or household or garden use or ornament which I shall own at my death and all boats, automobiles and accessories thereto (collectively, "the Personal Articles"), to my wife, JANE DOE, if she survives me by thirty (30) days, and if she fails to survive me by thirty (30) days to divide the said articles among those of my children as are alive on the date of my death, in such manner as they may agree upon, or, if they do not agree, then in such manner as my Trustees in an absolute discretion shall consider equitable.

ADD IF APPLICABLE

If any of my children is under the age of majority at my death, my Trustees may retain any or all of the Personal Articles for any period that my Trustees consider advisable, and from time to time may deliver any or all of the Personal Articles to any one or more of my children and to accept the receipt of a child as sufficient

discharge for such Articles so delivered even if he or she has not attained the age of majority.

BINDING AND PRECATORY MEMORANDA

I have made a memorandum dated the day of , 200 , which gives certain articles of personal and household use and ornament, and I have deposited it with my Will. I direct my Trustees to deliver the articles of personal and household use and ornament described in the memorandum in accordance with the memorandum.

OR

I hereby advise my Trustees that I have prepared a written memorandum (the "Written Memorandum"), which I have left among my personal papers, regarding the division and disposition of articles of personal and household use and ornament owned by me on the date of my death. I hereby further advise that it is my strong wish and desire that my Trustees, together with those of my children as are alive on the date of my death, give effect to the terms of the Written Memorandum, although I recognize that there is no legal obligation upon them to do so, regarding the division and disposition of all articles of a personal and household use and ornament owned by me on the date of my death (collectively, the "Personal and Household Articles") and listed on the Written Memorandum. In the event that I do not leave the Written Memorandum or in the event the Written Memorandum I have left does not deal with the division and disposition of all of the Personal and Household Articles, I direct that the Personal and Household Articles which have not been divided and disposed of pursuant to the Written Memorandum shall be divided among those of my children as are alive on the date of my death, in such manner as they may agree upon, or, if they do not agree, then in such manner as my Trustees in an absolute discretion shall consider equitable.

OR

My Trustees shall distribute those articles of personal, domestic or household or garden use or ornament which I shall own at my death and all boats, automobiles and accessories thereto, as my Trustees in their personal, and not fiduciary, capacities may appoint, including to themselves. Without imposing any legal obligation on them, it is my wish that my Trustees have regard to any note or memorandum expressing my wishes as to the disposition of such articles, and that they dispose of any articles not so distributed and add the proceeds of disposition, if any, to the residue of my estate.

OR

My Trustees shall deliver to those of my children alive at my death, or any one or more of them, all articles of personal, domestic or household or garden use or ornament which I shall own at my death and all boats, automobiles and accessories thereto, in trust to distribute the same among themselves and among such other persons as they may unanimously agree. The receipt of the child or children to whom such articles are delivered shall be a sufficient discharge to my Trustees who shall be under no

obligation to supervise the manner in which such subsequent distribution is carried out, provided that if at any time my children are unable to agree upon the manner of distribution of any such articles, they may seek the advice and direction of my Trustees, whose decision regarding the distribution, sale or disposal of such articles shall be final and binding on my children and on all other persons interested in my estate

REGISTERED EDUCATION SAVINGS PLAN

I hereby advise my Trustees that I am the sole subscriber of a Registered Education Savings Plan held with [NAME OF INSTITUTION] Account No. * (hereinafter referred to as the "RESP"), for the benefit of my children, JILL DOE and JACK DOE. If any one or more of my children alive on the date of my death then qualifies or may qualify for educational assistance payments (as such term is defined in the Income Tax Act) after the date of my death (hereinafter referred to as the "Qualifying Children"), it is my intention and I hereby direct that my Trustees take such steps and do all such things as are necessary, including the making of contributions to the RESP from the income and/or capital of the residue of my estate in accordance with the following provisions of this my Will, in order for them to become subscribers (as such term is defined in the Income Tax Act) of the RESP. Upon becoming subscribers of the RESP, my Trustees shall hold the RESP for the benefit of the Qualifying Children until the date (hereinafter referred to as the "RESP Termination Date") that is the earliest of:

- (i) such time as there are no longer any funds available in the RESP;
- (ii) such time as none of the Qualifying Children qualify or may qualify for educational assistance payments, such determination to be made by my Trustees in their absolute discretion; and
- (iii) such time as all of the Qualifying Children have completed a qualifying educational program at a post-secondary educational institution thereby no longer requiring the RESP, such determination to be made by the my Trustees in their absolute discretion;

and during such period, my Trustees shall manage the RESP on behalf of and for the benefit of the Qualifying Children in such manner and upon such terms as they in the exercise of an absolute discretion determine, with all the powers and authorities hereinbefore granted to them pursuant to the provisions of this my Will. Notwithstanding anything in this my Will to the contrary, my Trustees may set aside such amount or amounts from the income and/or capital of the residue of my estate as my Trustees in exercise of an absolute discretion determine appropriate, and shall contribute such amount or amounts so set aside to the RESP to be dealt with as part thereof.

Upon the RESP Termination Date, the RESP or such portion thereof then remaining shall be dealt with by my Trustees in the following manner, provided that it is my intention that the following provisions not conflict with any applicable contractual provisions governing the RESP and to the extent of such a conflict, the contractual

provisions governing the RESP shall prevail: [applicable distributive provisions to be inserted here]

Notwithstanding anything in the foregoing to the contrary, if my Trustees determine that it would be administratively more efficient or cost effective to terminate and transfer the funds in the RESP to any trust funds established for the Qualifying Children hereunder to be dealt with as part thereof, then they shall have the authority to do so in their absolute discretion, provided they take into consideration any income tax consequences that may arise with respect to a termination and withdrawal of the funds in the RESP.

OR

If at the date of my death I am the sole remaining subscriber to one or more Registered Education Savings Plans for the benefit of one or more of the children of myself and my wife, Jane Doe (collectively, the “RESPs”), and if any one or more of our children qualifies or may qualify for educational assistance payments at my death or at any time in the future, then it is my intention and I hereby direct that my Trustees pay such sum as they in their absolute discretion deem advisable to the guardian of such qualified child or children on the following conditions:

- (a) that such guardian shall contribute such sum to an RESP that has been established for the benefit of such qualified child such that they become the successor annuitant for such RESP;
- (b) that such guardian agrees to take such further steps as are necessary in order for the RESP to be maintained by her or him for the benefit of such child, until such time as such child qualifies or may qualify for educational assistance payments; and
- (c) that such guardian agrees that should any funds remain in such RESP immediately before the date on which the RESP must be terminated pursuant to its terms, and should such child not qualify for educational assistance payments at that time, such guardian shall take all such steps as are necessary and permitted under the RESP to obtain a refund of payments and/or an accumulated income payment on behalf of such child, either by transferring the right to withdraw contributions to such child, or by withdrawing all contributions and transferring them to such child for his or her own use absolutely.

provided that if such conditions are not met, the RESPs shall be collapsed and the net proceeds shall fall into and form part of the residue of my estate to be dealt with as part thereof with the beneficiaries thereof determined as of the date the RESPs fall into the residue of my estate

DEBTS, FUNERAL AND TESTAMENTARY EXPENSES

My Trustees shall pay my just debts, funeral and testamentary expenses and income taxes, and all estate, legacy, succession or inheritance duties and taxes whether imposed pursuant to the laws of Ontario or any other jurisdiction that may be payable in connection with any property passing on my death (or deemed so to pass) or in connection with any proceeds of any insurance and/or annuities on my life or any gift or benefit given or conferred by me either in my lifetime or by survivorship or by my Will or any Codicil thereto and whether such duties and taxes be payable in respect of estates or interests which fall into possession at my death or at any subsequent time. All such debts, expenses, duties and taxes are to be paid out of and be a charge on firstly the personal property and secondly the real property constituting the residue of my estate. I hereby authorize my Trustees in their unfettered discretion to commute or prepay or defer the payment of any such duties or taxes.

ADD IF APPLICABLE

For the purposes of this paragraph of my Will, the reference to funeral expenses shall include all expenses relating to:

- (a) my visitation, wake, burial and/or cremation;
- (b) any tombstone, marker and/or monument associated with my grave or columbarium; and
- (c) reasonable travel expenses inclusive of transportation and accommodation of any relatives and/or friends of mine whom my Trustees determine it would be desirable to be present at my funeral and for whom attendance may create a significant financial burden, all such decisions to be made by my Trustees in their absolute discretion, and to be final and binding on all of the beneficiaries of this my Will. I hereby direct that my Trustees shall have no obligation under any circumstances to advise my relatives and friends of the availability of this particular provision, nor shall they have any obligation to consider whether this provision is applicable or should be available to any of my relatives or friends. I appreciate that the matters encompassed by this provision may have already been attended to prior to my Trustees being aware of this provision. In such circumstances my Trustees shall have no obligation or liability to any relative or friend of mine who may have benefited from this provision had my Trustees been aware of its existence.

POWERS OF SALE AND RETENTION

I authorize my Trustees to use their unfettered discretion in the realization of my estate. My Trustees shall have the power to sell or otherwise convert into money any part of my estate not consisting of money, at such time and upon whatever terms my Trustees shall decide, with power and discretion to decide against such conversion in connection with all or any part of my estate or to postpone the conversion of my estate or

any part thereof for any length of time. I authorize and empower my Trustees to retain any portion of my estate in the form in which it may be at my death (whether it is in the form of investments in which trustees are by law authorized to invest trust funds and whether there may be any liability attached thereto) for any length of time that my Trustees consider to be in the best interests of my estate, and I also declare that no property not in fact producing income shall be treated as producing income.

CASH LEGACIES

My Trustees shall pay to my sister, CARRIE CUSTODY, the amount of Ten Thousand Dollars (\$10,000), if she survives me, provided that if she does not survive me such legacy shall lapse.

OR

John's Will:

If my wife predeceases me or fails to survive me by thirty (30) days, then on the death of the survivor of me and my wife, my Trustees shall pay to my sister, CARRIE CUSTODY, if she is then alive, the amount of Ten Thousand Dollars (\$10,000).

Jane's Will:

If my husband predeceases me or fails to survive me by thirty (30) days, then on the death of the survivor of me and my husband, my Trustees shall pay to my sister-in-law, CARRIE CUSTODY, if she is then alive, the amount of Ten Thousand Dollars (\$10,000), provided that in the event that my husband and I have died within a period of thirty (30) days of each other, then this legacy shall be reduced by any amount paid to the said Carrie Custody pursuant to paragraph * of the Will dated * of my husband.

ADD IF APPLICABLE

All dollar figures referred to in this Will shall be adjusted on the division date (and in the case of the payments described in section *, on each anniversary date thereof) in accordance with the All Items Consumer Price Index for the City of Ottawa (not seasonally adjusted) with base year [year that Will is signed] equal to 100, as provided by Statistics Canada.

CHARITABLE GIFT

My Trustees shall pay to THE KIDS CHARITY (BN123456789RR0001) the sum of Ten Thousand Dollars (\$10,000.00). The receipt of the treasurer or other proper officer of this organization shall be a sufficient discharge to my Trustees.

Should any of the aforesaid organizations not be in existence at my death, I direct my Trustees to transfer the sum set aside for such organization to such other

charitable or community organization as my Trustees in their absolute discretion consider to be the successor to such organization or to carry on similar works for the benefit of a similar group of people.

OR

My Trustees shall distribute the sum of Fifty Thousand Dollars (\$50,000) among such registered charities as my Trustees may in their absolute discretion select, and in such proportions and on such terms and conditions as my Trustees may in their absolute discretion determine. Without imposing any trust or legal obligation upon them, I request that my Trustees carry out any wishes with regard to the distribution of this sum that I may have expressed in a memorandum which I intend to make and to leave with my Will. The receipt of the treasurer or other proper officer of each charity shall be a sufficient discharge to my Trustees for the amount paid to such charity.

GIFT OF REAL ESTATE

My Trustees shall transfer and convey to my wife, JANE DOE, if she survives me for thirty (30) clear days, as her absolute property but subject to any encumbrance thereon, whatever interest I may have at my death in the residential property municipally known as XXX Road, Toronto.

PRINCIPAL RESIDENCE TRUST

XXX If my wife, JANE DOE, survives me my Trustees shall set aside in trust any right, title or interest that I may have in my urban residence at XXX Road, Toronto, at the date of my death, to be dealt with in accordance with the provisions of this Clause XXX of this my Will. In the event that on the date of my death my wife and I are not living at XXX but are living together in another home which I own, the provisions of this Clause XXX shall apply equally to such property which I own and am using as our urban residence on my death. My Trustees shall hold such real property in trust upon the following terms and conditions (such real property or any property substituted therefor in accordance with the following provisions of this Clause XXX being hereinafter referred to in this my Will as “the Real Property”):

- (1) Subject to the following provisions of this Clause XXX, if my wife survives me and so long as she is living my Trustees shall allow my wife to have the exclusive benefit, use, occupation and enjoyment of the Real Property during her lifetime;
- (2) As a condition of allowing my wife to live in the Real Property rent free, she shall be solely responsible for paying any and all costs of operating and maintaining the Real Property including, without limitation, all costs of maintenance and upkeep of the Real Property, capital repairs to the Real Property, maintenance and administrative fees, realty, municipal or other taxes associated with

the Real Property, costs of insuring the Real Property and all costs of utilities necessary for the enjoyment of the Real Property and all other costs of every nature and kind associated with the use of the Real Property;

- (3) It is my express intention that my estate shall bear no responsibility to make any payments in any manner and for any purpose in respect of the Real Property while it is held in trust for my wife pursuant to this Clause XXX. If at any time my wife shall fail to make any payments which in the absolute discretion of my Trustees they consider necessary for the upkeep, maintenance or preservation of the Real Property, the right of my wife to the use and enjoyment of the Real Property pursuant to this Clause XXX shall immediately cease and my Trustees shall deal with the Real Property or the proceeds of sale thereof in accordance with the provisions of Clauses XXX(4) to XXX(11) of this my Will;
- (4) Subject to the provisions of paragraph XXX(11), below, my Trustees shall have the power to sell, partition, exchange or otherwise dispose of the whole or any part or parts of the Real Property in such manner and at such time or times and on such terms as to price, credit or otherwise as my Trustees determine with power to my Trustees to accept purchase money mortgages for any part of the purchase or exchange price, and in such an event my Trustees shall add the net proceeds of sale to a trust fund for the benefit of my wife, and shall deal with such trust fund in accordance with the provisions of paragraph XXX(7) of this my Will;
- (5) Subject to the provisions of paragraph XXX(11), below, my Trustees shall have the power to sell the Real Property and may use the net proceeds of sale to purchase and provide for or contribute toward the purchase, lease or other use of another Real Property or Real Properties, anywhere in the world, for the exclusive benefit, use, occupation and enjoyment of my wife during her lifetime upon the same terms and conditions as herein provided in this Clause XXX and so on from time to time. Any proceeds of any sale not so used for the provision of another Real Property or Real Properties shall be added to the trust fund set aside for the benefit of my wife to be dealt in accordance with the provisions of paragraph XXX(7) of this my Will;
- (6) Subject to the provisions of paragraph XXX(11), below, my Trustees shall have the power to lease all or any portion of the Real Property for such length of time and upon such terms, covenants and conditions as my Trustees shall determine and in such event

shall add the net lease income to the trust fund set aside for the benefit of my wife to be dealt in accordance with the provisions of paragraph XXX(7) of this my Will;

- (7) My Trustees shall during the lifetime of my wife invest and reinvest the balance of any trust fund set aside pursuant to the provisions of this Clause XXX of this my Will and shall pay the annual net income derived from such trust fund to or for the benefit my wife in such quarterly or more frequent periodic payments as my Trustees in their absolute discretion consider advisable. I expressly relieve my Trustees from any obligation they may have in maintaining an even hand between my wife and the ultimate beneficiaries of the trust fund;
- (8) Subject to the foregoing, my Trustees shall not be responsible for the care, maintenance or supervision of the Real Property, except as they in the exercise of an absolute discretion consider appropriate and they shall not be liable for waste;
- (9) On the date of death of my wife, the Real Property and the balance of any trust fund set aside pursuant to the provisions of this Clause XXX shall fall into the residue of my estate to be dealt with in accordance with the provisions of Clause YYY of this my Will, but with the beneficiaries thereof determined as of the date of death of my wife;
- (10) Notwithstanding the foregoing provisions of this Clauses XXX of this my Will, the Real Property trust in favour of my wife shall be subject to the condition that my estate and my wife shall jointly elect that the Real Property shall be designated as his principal residence for income tax purposes during the entire period of her use of the Real Property pursuant to this Clause XXX. It is a condition of the use of the Real Property pursuant to this Clause XXX that should my wife fail to designate the Real Property as her principal residence for all years during which she was enjoying the use of the property, she (or her estate) shall be responsible for all capital gains taxes otherwise payable by my estate upon the sale of the Real Property;
- (11) So long as my wife is living and not suffering from any mental incapacity, she shall have sole authority to direct my Trustees in respect of the retention, sale, substitution, lease and other use of the Real Property. For greater certainty, my wife, while she is living and able, shall have full and sole authority to direct my Trustees to:

- (i) sell any Real Property held pursuant to the provisions of this Clause XXX;
 - (ii) purchase any Real Property selected by my wife using for such purpose the net proceeds of sale of any previously sold real property, plus any amount held in trust pursuant to this Clause XXX, provided that in determining the amount of proceeds of sale available my Trustees shall not deduct the amount of debts secured thereon;
 - (iii) sell the Real Property and to use the net proceeds thereof and any trust fund resulting therefrom to pay rental or lease costs of accommodation of any type selected by my wife;
- (12) For greater certainty, the provisions of this Clause XXX shall apply equally and independently to each Real Property or other real property held by my Trustees in trust pursuant to this Clause XXX of this my Will.

TRUST OF COTTAGE PROPERTY

If at the date of my death I own or have an ownership interest in a cottage property located in [INSERT A FULL AND PROPER LEGAL DESCRIPTION OF THE COTTAGE PROPERTY] (hereinafter referred to as the "Cottage Property"), I direct my Trustees as follows:

(a) To hold the Cottage Property and all of the articles of domestic, household and garden use or ornament, belonging to me on the date of my death, which are located in or about or used in connection with the Cottage Property, including consumable stores, all vehicles, boats, motors and accessories thereto, (hereinafter referred to as the "Cottage Contents and Related Articles") until the earlier of five (5) years from the date of my death and such earlier date as my children agree upon unanimously and so advise my Trustees in writing (the earlier of which is hereinafter referred to as the "Cottage Property Termination Date") and until the Cottage Property Termination Date to allow my children and their respective families the exclusive use of the Cottage Property and the Cottage Contents and Related Articles. My children shall agree among themselves on the use and care of the Cottage Property and the Cottage Contents and Related Articles. All decisions in this respect shall be left to my children; including all decisions relating to whether they use the Cottage Property and the Cottage Contents and Related Articles on a partially or totally shared basis or determine to set aside specific time periods for the exclusive use by their respective families. If my children are unable to agree, then all such decisions shall be made by my Trustees, in their absolute discretion;

(b) To set aside and keep invested in a separate fund (hereinafter referred to as the "Cottage Fund") such assets of my estate as my Trustees in their absolute discretion consider sufficient to satisfy the following payments (collectively, the

Cottage Property Payments) until the Cottage Property Termination Date, having regard both to the capital of the Cottage Fund and the annual net income which will be derived from such fund:

- (i) insurance of the Cottage Property and the Cottage Contents and Related Articles against damage or destruction as well as public liability indemnity insurance;
- (ii) local and municipal taxes in respect thereof;
- (iii) maintenance costs and repairs including expenses related to opening and closing the Cottage Property, storage costs associated with any of the Cottage Contents and Related Articles and any road or other allowances required to ensure full enjoyment of the Cottage Property; and
- (iii) all utilities.

(c) To pay all Cottage Property Payments each year, first, out of the annual net income of the Cottage Fund and to the extent of a deficiency, then out of the capital of the Cottage Fund. If the annual net income exceeds the amount of the charges in any year, such excess shall be accumulated and added to the capital of the Cottage Fund at the end of each year. Except for the payments noted above, my Trustees shall not be responsible for the care, maintenance or supervision of the Cottage Property and the Cottage Contents and Related Articles and shall not be liable for waste.

(d) Upon the Cottage Property Termination Date, to divide and distribute the Cottage Property and the Cottage Contents and Related Articles among my children, who are then alive, in such manner as they shall unanimously agree upon. Such agreement may involve a division of the Cottage Property and the Cottage Contents and Related Articles between all of my children provided that if only one of my children acquires an interest in the Cottage Property and the Cottage Contents and Related Articles (or if any child of mine is not then alive but shall have left issue then alive), then, subject to the provisions of the following sentence of this Paragraph, any such acquisition shall be by purchase from my estate at the then fair market value (such fair market value to be determined by my Trustees after obtaining and considering one or more appraisals obtained from qualified real estate appraisers, provided that the ultimate decision shall be made by my Trustees in their absolute discretion and shall be binding on all of the beneficiaries of my estate) with complete payment to my estate, in cash or by certified cheque, upon the closing of any such transaction. To the extent possible, such child who acquires an interest in the Cottage Property and the Cottage Contents and Related Articles, shall be entitled to have his interest in the residue of my estate, as set out in [RESIDUE CLAUSE], of this my Will, to be satisfied in whole or in part, through the allocation of the Cottage Property and the Cottage Contents and Related Articles, assuming that my Trustees and both of my children are so agreeable. In the event that my children are not able to agree on the manner in which the Cottage Property and the Cottage Contents and Related Articles shall be divided between them by the Cottage

Property Termination Date, then my Trustees shall sell the Cottage Property and the Cottage Contents and Related Articles and the net proceeds of such sale shall fall into and form part of the residue of my estate to be dealt with as part thereof in accordance with the provisions of [RESIDUE CLAUSE] of this my Will with all references therein to the date of my death being read as references to the Cottage Property Termination Date.

(e) Upon the Cottage Property Termination Date, to add any part of the Cottage Fund then remaining to the residue of my estate to be dealt with as part thereof in accordance with the provisions of [RESIDUE CLAUSE] of this my Will with all references therein to the date of my death being read as references to the Cottage Property Termination Date.

OPTION TO PURCHASE COTTAGE PROPERTY

If at the date of my death I own or have an ownership interest in a cottage property located in [INSERT A FULL AND PROPER LEGAL DESCRIPTION OF THE COTTAGE PROPERTY] (hereinafter referred to as the "Cottage Property"), I direct my Trustees as follows:

(a) My Trustees shall give to my sister, Carrie Custody, if she survives me, a first option to purchase from my estate the Cottage Property and all of the articles of domestic, household and garden use or ornament, belonging to me on the date of my death, which are located in or about or used in connection with the Cottage Property, including consumable stores, all vehicles, boats, motors and accessories thereto, (hereinafter referred to as the "Cottage Contents and Related Articles") at their fair market value at my death (such fair market value to be determined by my Trustees after obtaining and considering one or more appraisals obtained from qualified real estate appraisers, provided that the ultimate decision shall be made by my Trustees in their absolute discretion and shall be binding on all of the beneficiaries of my estate) with complete payment to my estate, in cash or by certified cheque, upon the closing of any such transaction. Carrie Custody shall have thirty (30) days from the date that express written notice from my Trustees of this option is given to her to exercise the said option by entering into an enforceable agreement with my Trustees to purchase the Cottage Property and the Cottage Contents and Related Articles on the terms above set out, failing which the option given to Carrie Custody by this paragraph shall be null and void.

(b) If Carrie Custody does not exercise the said option, then my Trustees shall give to my eldest child alive at my death a second option to purchase the Cottage Property and the Cottage Contents and Related Articles on the same terms and conditions on which they were offered to Carrie Custody. Such child shall have thirty (30) days from the date that express written notice of this option is given by my Trustees to such child to exercise the said option by entering into an enforceable agreement with my Trustees to purchase the Cottage Property and the Cottage Contents and Related Articles on the terms above set out, failing which the option given to such child by this paragraph shall be null and void, and my Trustees shall give to the next eldest child of mine alive at my death a third option to the purchase the Cottage Property and the Cottage Contents and Related Articles, and so on.

(c) If either Carrie Custody or any child of mine fails to complete the purchase of the Cottage Property and the Cottage Contents and Related Articles within a reasonable period of time after having exercised the option given to him or her, such time to be determined by my Trustees in the exercise of an absolute discretion, the option given to such person and its exercise shall be null and void.

(d) If neither Carrie Custody nor any child of mine purchases the Cottage Property and the Cottage Contents and Related Articles as provided for above, then my Trustees shall sell the Cottage Property and the Cottage Contents and Related Articles and the net proceeds of such sale shall fall into and form part of the residue of my estate to be dealt with as part thereof in accordance with the provisions of [RESIDUE CLAUSE] of this my Will.

EDUCATION TRUST FOR GRANDCHILDREN

My Trustees shall set aside in a separate fund (the "Education Fund") assets of my estate having a value for probate purposes of THREE HUNDRED THOUSAND DOLLARS (\$300,000) and shall hold the Education Fund in trust until the date (the "Education Fund Termination Date") that there are no grandchildren of mine alive and under the age of twenty-five (25) years. Until the Education Fund Termination Date, my Trustees shall pay, firstly out of the annual net income of the Education Fund and then, to the extent of any deficiency, out of the capital of the Education Fund, all or such part as my Trustees think fit of the expenses related to the post-secondary education of those of my grandchildren who are from time to time under the age of twenty-five (25) years, or any one or more of them to the exclusion of the other or others and in any proportions that my Trustees think fit, which expenses may include tuition, ancillary fees, the cost of books and materials, rent, reasonable living expenses, and the costs of travelling between such grandchild's ordinary place of residence and the institution attended by such grandchild. If in any year any part of the net income derived from the Education Fund is not applied to such expenses, such part shall be accumulated and added to the capital of the Education Fund at the end of the year, provided that if my Trustees are still holding the Education Fund or any part thereof on the expiration of the maximum period for accumulation of income permitted by law, they shall thereafter divide such part of the income in equal shares per capita among those of my grandchildren who have not attained the age of twenty-five (25) years. On the Education Fund Termination Date, the Education Fund or the part thereof then remaining shall fall into and form part of the residue of my estate to be dealt with as part thereof in accordance with the provisions of [RESIDUE CLAUSE] of this my Will with all references therein to the date of my death being read as references to the Education Fund Termination Date.

RESIDUE

GIFTS TO SPOUSE

Outright Gift of Residue to Surviving Spouse

My Trustees shall pay and transfer the said residue of my estate to my wife, JANE DOE, if she survives me by thirty (30) days.

If my wife predeceases me or fails to survive me by thirty (30) days, then on the death of the survivor of me and my wife ("the Division Date"), my Trustees shall divide the residue of my estate... *[See options below for Gifts to Issue]*

Trust Fund for Surviving Spouse

My Trustees shall hold the residue of my estate in trust during the lifetime of my wife, JANE DOE. My Trustees shall pay to or apply for the benefit of my wife the annual net income in such monthly, quarterly or other periodic payments as my Trustees in their absolute discretion consider advisable. My Trustees may at any time or times pay to or apply for the benefit of my wife any amount of the capital of the residue of my estate as my Trustees in their absolute discretion consider appropriate. My Trustees are expressly relieved of any duty to maintain an even hand among beneficiaries in respect of the investment management of the residue of my estate and shall be entitled to adopt an investment policy that favours my wife, Jane Doe, at the expense of the residuary beneficiaries.

Upon the date of death of the survivor of me and my wife (the "Division Date"), my Trustees shall divide the residue of my estate or the part thereof then remaining... *[See options below for Gifts to Issue]*

Dual Trusts For Surviving Spouse

If my wife, JANE DOE, survives me, my Trustee shall divide the residue of my estate into two separate funds. The first such fund (the "Family Trust") shall consist of the sum of ONE DOLLAR (\$1.00) together with any other assets of my estate that my Trustees in their absolute discretion shall allocate to the Family Trust within a period of thirty-six (36) months after my death, and shall be dealt with in accordance with subparagraph (i). The second such fund (the "Spouse Trust") shall consist of all assets of my estate that my Trustees have not specifically allocated to the Family Trust, and shall be dealt with in accordance with subparagraph (ii).

- (i) My Trustees shall hold the Family Trust during the lifetime of my wife and may at any time and from time to time pay to or apply for the benefit of my wife and issue, or any one or more of them to the exclusion of the other or others of them and in such proportions as my Trustees in their absolute discretion deem advisable, all or such part of the net income derived from the Family Trust, and such part or parts of the capital thereof, as my Trustees in their absolute discretion consider to be in the

best interests of my wife and issue. In exercising the said discretion, my Trustees shall give primary consideration to the welfare of my wife and shall ensure that she continues to enjoy the same standard of living following my death as she enjoyed at the time of my death. Any net income derived from the Family Trust that is not so used in any year shall be accumulated and added at the end of the year to the capital of the Family Trust, provided that after the expiration of the maximum period for accumulation of income permitted by law, my Trustees shall pay to or apply for the benefit of my wife and issue, or any one or more of them to the exclusion of the other or others and in such proportions as my Trustees may determine, the whole of the net income derived from the Family Trust.

- (ii) My Trustees shall hold the Spouse Trust during the lifetime of my wife and shall pay the annual net income derived therefrom to or for the benefit of my wife, in such annual or more frequent periodic payments as my Trustees in their absolute discretion consider advisable. In addition, my Trustees may at any time or times pay to or for the benefit of my wife any amount or amounts out of the capital of the Spouse Trust as my Trustees in their absolute discretion consider advisable. My Trustees are expressly relieved of any duty to maintain an even hand among beneficiaries in respect of the investment management of the Spousal Trust and shall be entitled to adopt an investment policy that favours my wife at the expense of the residuary beneficiaries.

Without placing any legal obligation on my Trustees, I desire that they engage legal and accounting experts to advise them as to the income tax consequences under the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1, as amended (the “Income Tax Act”), and any other tax consequences of any kind pursuant to any legislation of any jurisdiction, of allocating or not allocating any of the assets of my estate to the Family Trust or the Spouse Trust. In particular, as well as considering the provisions of both the Family Trust and the Spouse Trust, I should like my Trustees to consider the relative advantages of deferring income tax liabilities arising at my death in respect of my assets, by allowing a portion or all of the residue of my estate to be administered as part of the Spouse Trust and thereby taking advantage of the provisions of Subsection 70(6) of the Income Tax Act, as compared to permitting income tax liabilities to arise at my death pursuant to Subsection 70(5) of the Income Tax Act by allocating a portion or all of the residue of my estate to this fund. I specifically exonerate my Trustees from responsibility for any liability to my estate or to any beneficiary thereof as a result of their allocation of assets between the Family Trust and the Spouse Trust if my Trustees act bona fide in making such allocation.

Upon the date of death of the survivor of me and my wife (the “Division Date”), my Trustees shall divide the residue of my estate or the part thereof then remaining (which shall include both the Family Trust and the Spouse Trust)... [*See options below for Gifts to Issue*]

GIFTS TO ISSUE

Outright Distribution to Issue

[My Trustees shall divide the residue of my estate - *see options above for Gifts to Spouse*] among my issue alive at the Division Date in equal shares per stirpes.

Simple Trust For All Issue

[My Trustees shall divide the residue of my estate - *see options above for Gifts to Spouse*] among my issue alive at the Division Date in equal shares per stirpes, and to hold the share (the "Share") allocated to each such issue (the "Beneficiary") in a separate trust in accordance with the following provisions:

- (i) My Trustees shall pay and transfer to the Beneficiary all of the capital of the Share when he or she attains the age of 25 years for his or her own use absolutely and meanwhile to stand possessed of the capital and income of the Share and to pay or apply the whole or such part or parts of the capital and income thereof as my Trustees shall from time to time in their unfettered discretion determine to or for the benefit of the Beneficiary at such time or times and in such manner and in such amounts as my Trustees shall in their unfettered discretion from time to time determine necessary or advisable for any reason whatsoever and, until the expiration of the maximum period permitted by law for the accumulation of income, to accumulate and add to the capital of the Share for all purposes of my Will any income not so paid or applied in any year and to pay all such income arising after the expiration of that period to or for the benefit of the Beneficiary for his or her own use absolutely.
- (ii) If at any time the Beneficiary shall die before attaining the age of 25 years, my Trustees shall divide and allocate the Share, or the part thereof then remaining:
 - (A) among the issue of the Beneficiary, if any, then alive, or, failing such issue,
 - (B) among the issue of the parent of the Beneficiary, who is me or one of my issue, if any, then alive, or failing such issue,
 - (C) among the issue of the grandparent of the Beneficiary who is me or one of my issue, if any, then alive, or failing such issue,
 - (D) among my issue then alive,

in each case in equal portions per stirpes and to deal with each such portion in accordance with the provisions of this subparagraph * of my Will as if references therein to the "Beneficiary" referred to the individual

to whom such portion shall have been so allocated and as if references in the said subparagraph * to a "Share" referred to such portion.

- (iii) Notwithstanding any of the foregoing provisions of this paragraph * of my Will, in the event that, on the twentieth (20th) anniversary (the "perpetuity date") of the death of the last survivor of me, my wife, Jane Doe, and all of my issue alive at my death, any Share or portion shall be held by my Trustees in trust to apply the capital and income thereof in accordance with any of the foregoing provisions of this said paragraph * for the benefit of any individual who shall not then have attained the age of 25 years, the beneficial interest of such individual in the capital and income of such Share or portion shall thereupon vest absolutely in possession in such individual for his or her own use absolutely as if such individual had on the perpetuity date attained the age of 25 years.

Staged Distributions to Children

[My Trustees shall divide the residue of my estate - *see options above for Gifts to Spouse*] among my issue alive at the Division Date in equal shares per stirpes, provided that my Trustees shall hold any share (a "Share") allocated to a child of mine ("my child") who has not attained the age of thirty (30) years in a separate trust in accordance with the following provisions:

- (i) While the Share or any part thereof is held in trust, my Trustees may from time to time pay to or apply for the benefit of my child the whole or such part of the net income derived from the Share, and such part or parts of the capital thereof, as my Trustees in their uncontrolled discretion from time to time consider necessary or advisable for the benefit of my child. Any net income derived from the Share that is not paid to or applied for the benefit of my child in any year shall be accumulated and added at the end of the year to the capital of the Share, provided that if my Trustees are still holding the Share on the expiration of the maximum period for accumulation of income permitted by law, they shall thereafter pay to or apply for the benefit of my child all of the net income derived from the Share or the part thereof from time to time remaining.
- (ii) One-quarter (1/4) of the Share or the part thereof then remaining shall be paid or transferred to my child on the later of the Division Date and the date that my child attains the age of twenty-one (21) years, one-third (1/3) of the part of the Share then remaining shall be paid or transferred to my child on the later of the Division Date and the date that my child attains the age of twenty-five (25) years; and the remainder of the Share shall be paid or transferred to my child when he or she attains the age of thirty (30) years.
- (iii) If my child dies before attaining the age of thirty (30) years, my Trustees shall divide the Share or the part thereof then remaining among the issue

of such child alive at his or her death in equal shares per stirpes; provided that if my child should die without leaving issue him or her surviving, the Share or the part thereof then remaining shall be divided in equal shares per stirpes among my issue alive at the death of my child; provided further that the portion accruing to any other child of mine then alive and under the age of thirty (30) years shall be added to and dealt with as an accretion to the share held by my Trustees for such other child pursuant to the terms of this subparagraph.

Lifetime Trusts for Children

[My Trustees shall divide the residue of my estate - *see options above for Gifts to Spouse*] among my issue alive at the Division Date in equal shares per stirpes, provided that my Trustees shall hold any share (a "Share") allocated to a child of mine ("my child") in a separate trust in accordance with the following provisions:

- (i) If my child has not attained the age of thirty (30) years at my death, my Trustees shall hold the Share and may from time to time pay to or apply for the benefit of my child all or such part of the net income derived from the Share or the part thereof from time to time remaining, and such part or parts of the capital thereof, as my Trustees in their uncontrolled discretion from time to time consider necessary or advisable for the benefit of my child. Any net income derived from the Share that is not paid to or applied for the benefit of my child shall be accumulated and added at the end of the year to the capital of the Share.
- (ii) On the later of my death and the date that my child attains the age of twenty-five (25) years, my Trustees shall pay or transfer to my child, for his or her own use absolutely, any portion of the Share, to a maximum of one-third (1/3) of its value at that time, that my child may request in writing.
- (iii) On the later of my death and the date that my child attains the age of thirty (30) years, my Trustees shall pay or transfer the Share or the part thereof then remaining to my Child's Trustees in respect of the Share (as defined in clause (vi) of this paragraph *).
- (iv) My Child's Trustees shall thenceforth hold the Share and may from time to time pay to or apply for the benefit of my child and his or her spouse and issue, or any one or more of them to the exclusion of the other or others of them and in any proportions that my Child's Trustees may in their absolute discretion determine, all or such part of the net income derived from the Share or the part thereof from time to time remaining, and such part or parts of the capital thereof (even to the exhaustion of the Share), as my Child's Trustees in their uncontrolled discretion from time to time considers necessary or advisable for the respective benefit of my child and his or her spouse and issue. In making any such determination, I

specifically authorize my Child's Trustees to place the interests of my child above those of any other beneficiary. My Child's Trustees are also expressly relieved of any duty to maintain an even hand among beneficiaries in respect of the investment management of the Share and shall be entitled to adopt an investment policy that favours my child at the expense of the residuary beneficiaries. Any net income derived from the Share that is not paid to or applied for the benefit of my child and his or her spouse and issue in any year shall be accumulated and added at the end of the year to the capital of the Share, provided that if my Child's Trustees are still holding the Share on the expiration of the maximum period for accumulation of income permitted by law, they shall thereafter pay to or apply for the benefit of my child and his or her spouse and issue, or any one or more of them to the exclusion of the other or others of them and in such proportions as my Child's Trustees may in their absolute discretion determine, all of the net income derived from the Share or the part thereof from time to time remaining.

- (v) On the death of my child, my Child's Trustees shall distribute the Share or the part thereof then remaining among the issue of my child alive at his or her death in such proportions and on such terms and conditions as my child may have directed by Will. If my child has made no such direction or if and to the extent that the direction is void, my Child's Trustees shall divide the Share or the part thereof then remaining among the issue of my child alive at his or her death in equal shares per stirpes. If my child should die without leaving issue alive at his or her death, the Share or the part thereof then remaining shall be held for or distributed among my other issue in accordance with this paragraph * as if I had died immediately after my child, or if there are no other issue of mine alive at the death of my child, the Share or the part thereof then remaining shall be added to the residue of my estate and shall be distributed in accordance with paragraph * of my Will [being the clause setting out the alternate distribution if there are no spouse or issue surviving].
- (vi) The Child's Trustees in respect of the Share shall be my child for whom the Share was set aside pursuant to this paragraph * and such other person or persons as my child may select by instrument in writing to be a Child's Trustee in respect of the Share. My child (or after his incapacity to manage property or his death, his attorneys for property or guardians of property or the estate trustees of his estate) may at any time and from time to time by instrument in writing resign from the office of Child's Trustee, remove any other person acting as Child's Trustee from such office, or appoint additional or successor Child's Trustees.
- (vii) I hereby declare that in administering the Share set aside for a child of mine as provided in this paragraph *, my Child's Trustees in respect of the Share shall have all of the same powers and authorities as the Executors and Trustees of my general estate.

Hotchpot Clause

I declare that I have advanced by way of loan to my son, JACK DOE, the amount of \$x and this amount, together with any other sum or sums that I may after the date of this my Will advance to him or for his benefit, or so much thereof as may be owing to me at my death, shall not be charged or claimed as a debt owing to me from him or his representatives, but every such sum, whether legally constituting a debt or not, with interest thereon from my death at the rate of 2% per cent per annum, but not any interest thereon prior to my death, shall be brought into account by way of hotchpot, in the division of the residue of my estate, as against my son, JACK DOE, and his wife and issue or other person or persons interested in his share of the residue of my estate.

GIFTS IF THERE ARE NO SURVIVING SPOUSE OR ISSUE

If none of my issue are alive at the Division Date or at any time subsequent thereto to take an absolutely vested interest in the residue of my estate, then upon the date of death of the survivor of me, my wife and all of my issue alive from time to time (the "Date of Final Distribution"), my Trustees shall divide the balance of the residue of my estate then remaining as follows:

- (a) If any one or more of my brother, Gary Doe, my sister, Carrie Custody, my mother, Jessica Doe and my father, Justin Doe, are alive on the Date of Final Distribution, my Trustees shall set aside one (1) equal share of the said residue and to divide such one (1) equal share into the requisite number of equal parts to give effect to the following provisions:
 - (i) if my brother, Gary Doe is then alive, to pay one (1) equal part to my brother, Gary Doe;
 - (ii) if my sister, Carrie Custody is then alive, to pay one (1) equal part to my sister, Carrie Custody; and
 - (iii) if either or both of my mother, Jessica Doe and my father, Justin Doe, are then alive, to pay one (1) equal part to my mother, Jessica Doe, and my father, Justin Doe, equally if they are both then alive, or all to the survivor of them if only one of them is then alive; and
- (b) If any one or more of my brother-in-law, Sam Smith, my sister-in-law, Sophie Smith, my mother-in-law, Stephanie Smith and my father-in-law, William Smith are alive on the Date of Final Distribution, my Trustees shall set aside one (1) equal share of the said residue and to divide such one (1) equal share into the requisite number of equal parts to give effect to the following provisions:
 - (i) if my brother-in-law, Sam Smith is then alive, to pay one (1) equal part to my brother-in-law, Sam Smith;

- (ii) if my sister-in-law, Sophie Smith is then alive, to pay one (1) equal part to my sister-in-law, Sophie Smith; and
- (iii) if either or both of my mother-in-law, Stephanie Smith and my father-in-law, William Smith are then alive, pay one (1) equal part to my mother-in-law, Stephanie Smith and my father-in-law, William Smith equally if they are both then alive, or all to the survivor of them if only one of them is then alive.

“HENSON TRUST” FOR DISABLED BENEFICIARY

If my daughter, ANN DOE (“Ann”), is alive at the Division Date, then my Trustees shall pay the sum of * (the “Ann Doe Trust Fund”) to my son, JACK DOE, as trustee thereof (my said son and any other person or persons acting as a trustee of the trust created hereunder being hereinafter referred to as “Ann’s Trustees”), and declare that Ann’s Trustees shall have all the powers, authorities and discretions of my Trustees under my Will. Ann’s Trustees shall stand possessed of and keep invested the Ann Doe Trust Fund on the following trusts:

- (a) until the date of the death of Ann, Ann’s Trustees may pay or apply so much of the income of the Ann Doe Trust Fund together with so much of the capital thereof to or for the benefit of Ann, in such amounts (including, for greater certainty, the whole of such income and the whole of such capital), and subject to such trusts, terms and conditions (including the giving of discretion to trustees or others) as Ann’s Trustees shall in the exercise of their absolute and unfettered discretion consider advisable from time to time and to deal with any income not so paid or applied as aforesaid in any year in the manner hereinafter provided:
 - (i) until the day that is 21 years from the date of my death to accumulate all such income, such income so accumulated to be added to the capital and treated as a part thereof;
 - (ii) after the day that is 21 years from the date of my death to pay all such income arising after that day to those of the issue of Ann [or specify other beneficiaries], who shall be alive after such day in such shares as Ann’s Trustees may determine;

and for greater certainty I hereby declare that neither the Ann Doe Trust Fund nor any interest in it nor any income therefrom shall vest in Ann and the only interest she shall have shall be in payments actually made to her, or on her behalf, and received by her or in property purchased for her;

- (b) without in any way binding the discretion of Ann’s Trustees, I hereby declare that it is my wish that in exercising their discretion in accordance with the provisions of subparagraph *(a) of my Will, Ann’s Trustees should provide extra comforts and amenities of life for Ann without, to the extent reasonable in the circumstances, impairing the benefits which she

might receive from other sources, including but not limited to governmental sources;

- (c) Ann's Trustees, in exercising any of the powers conferred on them, are hereby expressly relieved of any duty to maintain an even hand among beneficiaries, with the intent that Ann's Trustees should have access in their absolute and unfettered discretion to the entire income and capital of the Ann Doe Trust Fund for payments to or on behalf of Ann as they should in their absolute and unfettered discretion consider advisable. Ann's Trustees are also expressly relieved of any duty to maintain an even hand among beneficiaries in respect of the investment management of the Ann Doe Trust Fund and shall be entitled to adopt an investment policy that favours Ann at the expense of the residuary beneficiaries; and
- (d) On the death of Ann, Ann's Trustees shall divide the Ann Doe Trust Fund, or so much as shall remain thereof, along with any accumulated income, into equal shares per stirpes among the issue of Ann alive at the date of her death, and if there are none, Ann's Trustees shall pay the Ann Doe Trust Fund to *.

PAYMENTS DURING MINORITY

If any beneficiary acquires a vested interest in any share of my estate before attaining the age of majority, my Trustees shall hold and keep the interest of such beneficiary invested and, subject to the applicable law against accumulations and the provisions of my Will providing for distribution of any share of my estate later than upon a beneficiary attaining the age of majority, my Trustees shall pay, apply or use the income and capital, or so much thereof as my Trustees shall in their unfettered discretion determine necessary or advisable, for the benefit of such beneficiary until he or she attains the age of majority.

RECEIPTS

In making any payment or transfer to, or in applying any amounts to or for the benefit of, any beneficiary under the age of majority in accordance with the provisions of my Will, my Trustees are authorized and empowered to make such payment or transfer, or apply such amounts, to any one or more of the following persons:

- (i) the beneficiary;
- (ii) any parent of the beneficiary;
- (iii) the legal guardian of the beneficiary; and
- (iv) any other person or persons, whether or not the legal guardian of the beneficiary, who, in the sole and unfettered opinion of my Trustees, shall have the care and custody of the beneficiary;

and my Trustees shall not be under any obligation to see to the application of any funds so paid, transferred or applied and the receipt of the recipient thereof shall be a good and sufficient discharge to my Trustees.

ADD IF APPLICABLE

Without limiting the generality of the foregoing, I authorize my Trustees to pay or transfer the whole share or interest to which a beneficiary becomes entitled before attaining the age of majority to a parent or legal guardian of the beneficiary as successor trustee thereof.

GENERAL ADMINISTRATIVE PROVISIONS

In addition to all other powers vested in trustees by law or otherwise and without restricting the general powers, discretions and authorities in my Will given to my Trustees, my Trustees shall have the power, discretion and authority to deal with the assets of my estate (which for purposes of my Will shall include assets held in any trust created in my Will), without the interference of any person entitled hereunder, as follows:

INVESTMENTS

My Trustees shall invest the moneys of my estate (including moneys arising from the sale and conversion referred to in paragraph * of my Will) in any investment or investments which my Trustees shall in their absolute discretion deem advantageous to my estate, not being limited to investments expressly authorized by law, including advances or loans, with or without security, to any person or persons, and in like manner from time to time to alter or vary such investments. When making investments, my Trustees shall not be subject to the criteria in planning for, or the requirements for diversifying, the investment of trust property which are prescribed by law for trustees. In particular, my Trustees may invest in any units, shares or fractional interests in any mutual fund, unit trust or other investment corporation, trust or partnership, whether or not:

- (i) such units, shares or fractional interests are widely held or are closely held by any one or more of my Trustees, the beneficiaries and any other persons, trusts, corporations or other legally recognized entities; or
- (ii) the purchase of such units, shares or fractional interests might otherwise be considered as a delegation of the powers conferred upon my Trustees, as involving a commingling of all or part of my estate with the property of other persons, estates or trusts or as in any other respect a breach of the fiduciary responsibilities of my Trustees.

RELIEF FROM LIABILITY

No Trustee shall be liable for any loss or damage which may happen to my estate or any part thereof (including without limitation any company or other entity whose shares or ownership interests are comprised in my estate) or the income thereof at

any time from any cause whatsoever unless such loss or damage shall be caused by her or his own actual fraud or gross negligence. A Trustee shall not be liable, answerable or accountable for any loss or damage resulting from the exercise of a discretion or a refusal to exercise a discretion. A Trustee shall be liable, answerable and accountable for her or his own dishonesty or gross negligence. A Trustee is liable, answerable and accountable only for money and securities actually received by her or him even though she or he has signed a receipt or other instrument for the sake of conformity. A Trustee is not liable, answerable or accountable for the acts, receipts, neglects or defaults of any other Trustee or any other person, firm or corporation having custody of any part of my estate and is not liable, answerable or accountable for any loss of money or security for money unless the same happens through her or his own dishonesty or gross negligence. Honesty and good faith shall be presumed in favour of each Trustee unless such presumption is rebutted.

Every Trustee shall be entitled in the purported exercise of her or his duties and discretions hereunder (including without limitation the management or administration of any company or other entity whose shares or ownership interests are comprised in my estate) to be indemnified out of my estate and the income thereof against all expenses and liabilities notwithstanding that such exercise constituted a breach of such Trustee's duties unless brought about by her or his own actual fraud or gross negligence. The indemnity hereby granted to each Trustee shall extend to the expenses and liabilities incurred by a Trustee in any legal proceedings brought by the beneficiaries or any one or more of them notwithstanding that such proceedings shall be brought in respect of an alleged breach of duty by such Trustee unless it shall be established that such breach of duty was brought about by such Trustee's own actual fraud or gross negligence.

INVESTMENT COUNSEL

My Trustees may employ and remunerate any investment counsel or other investment advisors to assist them in investing the assets of my estate and the trusts created in my Will on such terms and with such delegated powers as they may consider advisable including, for greater certainty, delegated powers to choose, acquire and dispose of investments. I declare that my Trustees shall not be liable for any losses incurred as a consequence of the exercise, or failure to exercise, any such delegated powers by any such investment counsel or investment advisor.

EMPLOYMENT OF AGENTS

I authorize my Trustees to engage agents as they in their discretion shall select to assist them in the administration of my estate or to do any act they consider reasonable or necessary in respect of such administration. They shall have the power to delegate to any such agent such authority as they consider appropriate in all the circumstances of my estate, provided they shall not delegate to such agent the discretionary right to distribute the income or the capital from my estate. My Trustees shall pay the charges for any such services either out of the income or the capital of my

estate as they shall see fit, notwithstanding that one or more of my Trustees may be a member of or associated with any agent so employed.

ADD IF APPLICABLE

Without limiting the generality of the foregoing, I authorize my Trustees to engage a lawyer or accountant to assist them in preparing accounts for presentation to the beneficiaries for approval or submission to the court on a passing of accounts, and in preparing tax returns for myself, my estate and any trust created by my Will, and the reasonable costs of obtaining such assistance shall not be deducted from any compensation to which my Trustees may otherwise be entitled.

CORPORATIONS

If at any time my Trustees hold in my estate any investment in or in connection with any company or corporation, my Trustees may join in or take any action in connection with such investment or exercise any rights, powers and privileges which at any time may exist or arise in connection with any such investment to the same extent as I could if I were alive and the sole owner of such investment.

REAL ESTATE

My Trustees shall have unfettered discretion to sell, mortgage or lease any real or leasehold property that forms part of my estate upon such terms and conditions as my Trustees think fit. My Trustees may accept surrenders of such leases and tenancies. My Trustees may expend money in repairs and improvements and generally manage such property. My Trustees may give any options with respect to such property as they consider advisable. My Trustees may renew and keep renewed any mortgage upon any such property and may pay off or renegotiate any mortgage which may be in existence at any time.

BORROWING

My Trustees may borrow money, from themselves individually or from others, for such purposes (including for the payment of taxes, debts, duties, legacies or expenses) and upon such terms and conditions as they shall deem advisable, and to secure the repayment of the money so borrowed, may mortgage, pledge, hypothecate or otherwise encumber any of the property, real or personal, entrusted to them or from time to time held by them under my Will.

LOANS TO BENEFICIARIES

I authorize and empower my Trustees to lend the whole or any part of my estate upon any security they may deem sufficient or upon no security whatsoever; to enter into guarantees or indemnifications for the benefit of the beneficiaries of my Will and persons, firms or corporations other than the beneficiaries of my Will and to give security therefor as my Trustees may in their discretion decide; and to renew and keep renewed such guarantees and indemnifications as my Trustees see fit.

USE OF ASSETS BY BENEFICIARIES

My Trustees may use any assets held in trust for a beneficiary of my Will to purchase or lease a residential property or any chattels, and may permit such beneficiary or any member of such beneficiary's family to use the residential property or chattels either free of any costs or upon such conditions as to payment of related expenses, and for such period and generally upon such terms as my Trustees may determine.

DISTRIBUTION IN KIND

Notwithstanding the references in my Will to equal shares or a portion of my estate, my Trustees may make any division or distribution of the assets of my estate *in specie* and at such valuations as my Trustees in their unfettered discretion consider appropriate. In determining such valuations, my Trustees may take account of potential liabilities or benefits relating to any assets. The decision of my Trustees shall be final and binding on all persons concerned notwithstanding any fluctuation in market value and notwithstanding that one or more of my Trustees may be beneficially interested in any of the assets so valued.

ELECTIONS

My Trustees may exercise all discretions and make all designations, elections, determinations and applications under the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1, as amended, as my Trustees shall in their absolute discretion think fit.

My Trustees shall have the discretion, if they deem it appropriate, to allocate, designate, pay to or apply as part of the dispositive provisions of my Will related to income and capital, the entirety or any portion of the income, capital gains (including deemed and "phantom" income and gains).

GUARANTEES

If at the time of my death I am liable as endorser, guarantor, or otherwise for any liability of any person, my Trustees may, in their unfettered discretion, renew from time to time the bills, notes, guarantees or other securities or contracts evidencing such liability and for that purpose may enter into, execute or issue new bills, notes, guarantees or other securities or contracts for or on behalf of my estate. My intention in conferring upon my Trustees these powers and discretions is to give them such powers and authorities as are necessary to assist in the gradual liquidation of the liabilities which I may be under in order that the person for whom I may be liable may not be unduly embarrassed.

SIGNING OF DOCUMENTS

My Trustees may appoint any one or more of my Trustees to sign all or any banking documents, stock transfers, receipts, promissory notes, negotiable

instruments and any other documents of any kind required to be signed by my Trustees at any time.

PURCHASE BY TRUSTEES

Any of my Trustees may purchase in their personal capacity any assets from my estate if the purchase price and other terms are unanimously approved by my Trustees and the adult beneficiaries of my estate. My Trustees shall not be required to obtain the approval of any court to such a purchase.

SETTLEMENT OF DEBTS

I will and direct that as regards any debts owing to or by me, on the date of my death, my Trustees shall have absolute power to deal with the same as they see fit including without limitation the power and authority to enforce immediate collection, to postpone or defer enforcement, or to compromise or settle the same for less than full value, all as they in the exercise of an absolute discretion consider to be in the best interests of my estate and the beneficiaries of my Will.

STOCK DIVIDENDS

I direct that all dividends paid in the form of stock received by my Trustees in connection with any shares of stock from time to time held by them shall be deemed to be and shall be dealt with as capital of my estate.

POOLED OR SEPARATE TRUST FUNDS

I authorize my Trustees in their absolute discretion, if they deem it advisable so to do, either to maintain the residue of my estate in one common fund or to set aside and apart as many separate funds and trusts for the beneficiaries of my Will as they deem it advisable so to do with further power from time to time to re-allocate assets from one trust to another or to discontinue one or more or all trusts established and to re-establish such separate trusts or common funds as they from time to time deem it advisable so to do.

COMPENSATION

I authorize my Trustees to take and transfer at reasonable intervals from the income and/or capital of my estate amounts on account of their compensation which my Trustees reasonably anticipate will be requested at the end of the accounting period in progress, either upon the audit of the estate accounts or on approval of the then adult beneficiaries of my estate. If the amount subsequently awarded on Court audit or agreed to by the then adult beneficiaries is less than the amount so taken, the excess shall be repaid to my estate without interest.

OR

I declare that THE ABC TRUST CORPORATION shall be entitled to receive and shall be paid out of my estate, as compensation for its acting as an Executor and Trustee of and under my Will, the fees, reimbursement and other compensation provided for in the Compensation Agreement between THE ABC TRUST CORPORATION and myself signed on the _____ day of _____, 2003, prior to the execution of my Will and I declare that the terms of the said Compensation Agreement shall be valid and binding in all respects to fix the compensation payable to THE ABC TRUST CORPORATION as though the Compensation Agreement was expressly embodied in my Will.

OR

My Trustees may claim and receive from the capital of my estate, as compensation for their time, trouble, care and skill in administering my estate, compensation in the amount of Forty Thousand Dollars (\$40,000). This amount may be taken at intervals, without the pre-approval of any beneficiary or the court, but is subject to pro-rata should any single Trustee not complete the task of administering my estate.

OR

My Trustees shall not be entitled to claim or receive compensation from my estate, but shall be entitled to receive reimbursement for all expenses incurred in acting as my Trustees. Without limiting the generality of the foregoing, such expenses may incur fees paid to an accountant or bookkeeper to prepare tax returns and executor's accounts, fees paid to obtain valuations of my assets, travel expenses including mileage, and long distance telephone and postage costs.

PROFESSIONAL FEES

Where at any time any of my Trustees is a solicitor, accountant or other person engaged in any profession or business, he or she shall be entitled, in addition to the compensation to which he or she may be entitled as Trustee, to charge and be paid all usual professional fees or other charges for business transacted, time expended and acts done by him or her or his or her firm in connection with the administration of my estate and the trusts of my Will, including acts which a Trustee not being in any profession or business could have done personally.

MAINTAIN SPOUSAL TRUST STATUS UNDER THE INCOME TAX ACT

Notwithstanding anything in my Will to the contrary, during the lifetime of my wife, Jane Doe, none of the administrative provisions of my Will, and, in particular, paragraphs * through * inclusive, shall authorize or empower my Trustees to act in a manner which may jeopardize the trust fund established pursuant to the provisions of paragraph * of my Will from qualifying as an exclusive spousal trust in accordance with subsection 70(6)(b) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1, as amended, and more particularly in this regard my Trustees are prohibited from carrying out any act (through commission or omission) which may permit someone other

than my wife from, directly or indirectly, receiving or otherwise obtaining the use of any of the income or capital of such trust fund during the lifetime of my wife.

MAINTAIN TESTAMENTARY TRUST STATUS UNDER THE INCOME TAX ACT

Notwithstanding anything in this my Will to the contrary, during the term of any trust fund established pursuant to the provisions of this my Will, none of the administrative provisions of this my Will being, for greater certainty, Paragraphs 5 through 21 inclusive, including in particular the credit facilities provided for in this my Will, shall authorize or empower my Trustees to act in a manner which may jeopardize any trust fund established pursuant to the provisions of this my Will qualifying as a testamentary trust in accordance with the definition provided for in subsection 108(1) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 (the "Income Tax Act"), as amended, and more particularly in this regard my Trustees are prohibited from carrying out any act (through commission or omission) which may result in a trust fund established pursuant to the provisions of this my Will incurring a debt or any other obligation owed to, or guaranteed by, a beneficiary of such trust fund or any other person or partnership with whom any beneficiary of such trust fund does not deal at arm's length other than as permitted in subsection 108(1) of the Income Tax Act or any successor section thereto.

SURVIVORSHIP

Any person who does not survive me by at least thirty (30) clear days shall be deemed to have predeceased me for all purposes of my Will, and the income from my estate during the period of thirty (30) clear days from my death shall be accumulated and added to the capital thereof. Notwithstanding the foregoing, any person appointed an Executor by my Will may act as such from the date of my death.

FAMILY LAW ACT

I declare that all property:

- (i) acquired by a person as a result of my death; or
- (ii) acquired by a person as a result of a gift made by me during my lifetime;

together with any property into which such property can be traced, and all income from such property into which such property can be traced, including income on such income, shall be excluded from such person's net family property for the purposes of Part I of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended (the "Family Law Act") and for the purposes of any provisions in any successor legislation or other legislation in any jurisdiction. For the purposes of this paragraph, the term "net family property" includes any property available for division or for satisfying any financial claim, between spouses upon separation, divorce, annulment or death of one of them and, for greater certainty, such term includes any net family property within the meaning of the Family Law Act. This declaration shall be an express statement within the meaning of paragraph 4(2)2 of

the Family Law Act and shall have effect to the extent permitted by that statute, any successor legislation thereto or any other legislation in any jurisdiction.

CUSTODY AND GUARDIANSHIP OF PROPERTY

In the event of the death of me and my wife, Jane Doe, before all my children have attained the age of eighteen years, I appoint my sister, CARRIE CUSTODY, to have custody of any infant child of mine and desire that Carrie Custody shall have charge of and be responsible for the care and management of the real and personal property of such minor children. If my sister, Carrie Custody does not survive me or otherwise is or becomes unable or unwilling to act as the guardian and custodian of my minor children, I appoint my brother, GARY DOE, to be the guardian of and to have custody of any minor child of mine and desire that Gary Doe shall have charge of and be responsible for the care and management of the real and personal property of such minor children. In the event that my sister, Carrie Custody or my brother, Gary Doe, as the case may be, consents to have custody of any such minor child, I request him or her to apply to a court of competent jurisdiction within ninety (90) days of my death for appointment as the custodian and the guardian of the property of such child.

ADD IF APPLICABLE

My Trustees shall, to the extent reasonable, assist any person who may be appointed as the custodian of an minor child of mine by making available mortgage financing or by paying a portion of the mortgage or rental payments and other expenses to provide comfortable accommodation for my minor children, including the payment of a nanny or housekeeper or other such assistance. I wish to emphasize to my Trustees that I consider it very important that my children not be separated from each other and that liberal payments be made to the custodian of my children in order that a very happy home life should be created for my children while they are growing up. I desire my Trustees to place emphasis on the financial needs of my minor children and the custodian during this period of time, rather than to be unduly concerned about the fact that any such payment would reduce the funds available to my children when reaching any age specified in my Will.

TESTIMONIUM

IN TESTIMONY WHEREOF I have to this my Last Will and Testament, written upon this page and the [Number of Pages] preceding pages of paper, subscribed my name this day of , 200 .

SIGNED, PUBLISHED AND DECLARED)
by the said Testator, John Doe,)
as and for his Last Will)
and Testament, in the presence of us, both)
present at the same time, who at his request,)
in his presence and in the presence of each)
other have hereunto subscribed our) JOHN DOE

names as witnesses: _____)

Signature _____

Printed Name _____

Address _____

Occupation _____

Signature _____

Printed Name _____

Address _____

Occupation _____

MULTIPLE WILLS FOR ONTARIO PROBATE TAX PLANNING PURPOSES

Introductory Clause

For the “non probate” or Private Assets Will:

I, JOHN DOE, of the City of Toronto and Province of Ontario hereby declare that this is my Last Will and Testament with respect to my Private Assets (as hereinafter defined), made this XXX day of January, 2010.

For the “probate” or General Will:

I, JOHN DOE, of the City of Toronto and Province of Ontario hereby declare that this is my Last Will and Testament with respect to my Public Assets (as hereinafter defined), made this XXX day of January, 2010.

Revocation

For the “non probate” or Private Assets Will:

I revoke all Wills and Codicils made by me at any time before the XXX day of January, 2010 with respect to my Private Assets (as hereinafter defined), and

declare this to be my Last Will and Testament with respect to such Private Assets. I hereby declare that I have an existing general Will dealing with my Public Assets (as hereinafter defined) which was executed on this XXX day of January, 2010, and which I do not intend to revoke by the provisions of this my Will with respect to my Private Assets.

For the “probate” or General Will:

I revoke all Wills and Codicils made by me at any time before the XXX day of January, 2010 with respect to my Public Assets (as hereinafter defined) and declare this to be my Last Will and Testament with respect to such Public Assets.

Definitions

For the “non probate” or Private Assets Will:

I hereby further declare that:

- (1) In this my Will the term “Private Assets” shall be interpreted to include:
 - (a) all shares, if any, owned by me at my death in the capital stock of ABC LIMITED, XYZ INC. 1234 LIMITED, and any other corporation none of the shares of which are listed on a public stock exchange (in this my Will collectively referred to as the “Corporations”), those of my assets, if any, which are held in trust for me by any one or more of the Corporations and all amounts owing to me, including declared but unpaid dividends, from any of the Corporations;
 - (b) any interest I have in any limited partnership, partnership or joint venture (in this my Will collectively referred to as the “Partnerships”), those of my assets, if any, which are held in trust for me by any one or more of the Partnerships, and all amounts owing to my from any of the Partnerships;
 - (c) any beneficial interest I have in any trust;
 - (d) any interest I have in any real property in respect of which transmission can be accomplished without a grant of authority by a court of competent jurisdiction;
 - (e) all personal and household articles owned by me at my death, including artwork, antiques, consumable stores and all automobiles and boats and accessories thereto;
 - (f) all amounts owing to me by any person, trust or trustees; and

- (g) all property over which I may have a general power of appointment to the extent such property is compromised in (a) to (f) above.

It is my intention to include the foregoing assets and none other in the definition of my Private Assets.

- (2) In this my Will the term "Public Assets" shall be interpreted to include all my property of every nature and kind other than my Private Assets.

- (3) All references in this my Will to "my property", "my estate", "my Will" and any related terminology shall, unless the context otherwise requires, include all my Private Assets and shall not include any of my Public Assets.

For the "probate" or General Will:

I hereby further declare that:

- (1) In this my Will the term "Private Assets" shall be interpreted to include:

- (a) all shares, if any, owned by me at my death in the capital stock of ABC LIMITED, XYZ INC. 1234 LIMITED, and any other corporation none of the shares of which are listed on a public stock exchange (in this my Will collectively referred to as the "Corporations"), those of my assets, if any, which are held in trust for me by any one or more of the Corporations and all amounts owing to me, including declared but unpaid dividends, from any of the Corporations;

- (b) any interest I have in any limited partnership, partnership or joint venture (in this my Will collectively referred to as the "Partnerships"), those of my assets, if any, which are held in trust for me by any one or more of the Partnerships, and all amounts owing to my from any of the Partnerships;

- (c) any beneficial interest I have in any trust;

- (d) any interest I have in any real property in respect of which transmission can be accomplished without a grant of authority by a court of competent jurisdiction;

- (e) all personal and household articles owned by me at my death, including artwork, antiques, consumable stores and all automobiles and boats and accessories thereto;

- (f) all amount owing to me by any person, trust or trustees; and

- (g) all property over which I may have a general power of appointment to the extent such property is comprised in (a) to (f) above.

It is my intention to include the foregoing assets and none other in the definition of my Private Assets.

(2) In this my Will the term "Public Assets" shall be interpreted to include all my property of every nature and kind other than my Private Assets.

(3) All references in this my Will to "my property", "my estate", "my Will" and any related terminology shall, unless the context otherwise requires, include all my Public Assets and shall not include any of my Private Assets.

No Obligation to Obtain Probate of Private Assets Will

For greater certainty, I declare that my Trustees shall have no obligation to obtain a Certificate of Appointment of Estate Trustee with respect to this my Private Assets Will if, in their unfettered discretion, they determine that they will otherwise be able to perform their responsibilities hereunder and they shall not be liable for any loss suffered by my estate, or by any of the beneficiaries hereunder, as a consequence of their not obtaining such certificate.

If for any reason the executors and trustees of this Will determine that they cannot deal with any of the assets listed in paragraph * without obtaining a Certificate of Appointment of Estate Trustee With a Will, I direct them immediately to renounce their interest in such asset by instrument in writing delivered to the executors and trustees of my Last Will and Testament dated * with respect to my property other than my Private Assets.

Confirmation of No Revocation

For the "non probate" or Private Assets Will:

(4) For greater certainty, nothing in this my Will shall revoke or override any Will made by me on the XXX day of January, 2010, that purports to dispose of my Public Assets. Neither the execution of this my Private Assets Will nor the execution of my general Will dealing with my Public Assets is intended to revoke the other; they are to operate concurrently.

For the "probate" or General Will:

(4) For greater certainty, nothing in this my Will shall revoke or override any Will made by me on the XXX day of January, 2010, that purports to dispose of my Private Assets. Neither the execution of this my Public Assets Will nor the execution of my Will dealing with my Private Assets is intended to revoke the other; they are to operate concurrently.

Addition to Debts Clause

For the "probate" or General Will

My Trustees shall determine in their discretion how my said just debts, funeral and testamentary expenses, duties and taxes referred to above shall be allocated between that part of my estate dealt with pursuant to this my Will in respect of my Public Assets and that part of my estate dealt with pursuant to my Private Assets.

For the “non probate” or Private Assets Will

My Trustees shall determine in their discretion how my said just debts, funeral and testamentary expenses, duties and taxes referred to above shall be allocated between that part of my estate dealt with pursuant to this my Will and that part of my estate dealt with pursuant to my Will in respect of my Public Assets.

MULTIPLE WILLS FOR ASSETS SITUATE IN DIFFERENT JURISDICTIONS

Introductory Clause

For the Will dealing with property in a particular jurisdiction:

I, JOHN DOE, of the City of Toronto, in the Province of Ontario, declare that this is my Last Will and Testament with respect to my Florida Estate (as hereinafter defined).

For the “worldwide” or General Will:

I, JOHN DOE, of the City of Toronto, in the Province of Ontario, declare that this is my Last Will and Testament with respect to my property other than my Florida Estate (as hereinafter defined).

Revocation

For the Will dealing with property in a particular jurisdiction:

I revoke all Wills and Codicils made by me at any time before _____, 20____ and declare this to be my Last Will and Testament with respect to my Florida Estate (as hereinafter defined), and I declare that this document is the only executed copy of my Last Will and Testament with respect to my Florida Estate.

For the “worldwide” or General Will:

I revoke all Wills and Codicils made by me at any time before _____, 20____ and declare this to be my Last Will and Testament with respect to my property other than my Florida Estate (as hereinafter defined), and I declare that this document is the only executed copy of my Last Will and Testament with respect to my property other than my Florida Estate.

OR FOR THE WILL SIGNED SECOND

I revoke all Wills and Codicils made by me prior to the date hereof, other than my Last Will and Testament dated * which deals with [my Florida Estate (as hereinafter defined) *or* all my property other than my Florida Estate (as hereinafter defined)] ...

OR

I revoke all Wills and Codicils made by me prior to the date hereof to the extent that they deal with those of my assets forming part of my Florida Estate (as hereinafter defined). For greater certainty, it is my intention that my Will dated * shall continue to be effective in respect of all my assets, wherever situated, save and except for those of my assets forming part of my Florida Estate, which shall hereafter be governed by this Will.

Definitions

For the Will dealing with property in a particular jurisdiction:

I declare that in my Will the following terms shall be interpreted as follows:

- (a) “my Florida Estate” shall mean
 - (i) [describe particular property existing at the date of the Will]
 - (ii) any [other] real property physically located in the State of Florida in which I may have an interest at the date of my death, and
 - (iii) any bank accounts and investments administered pursuant to the laws of the State of Florida in which I may have an interest at the date of my death.
- (b) “my property” and “my estate” shall, unless the context otherwise requires, include only my Florida Estate.

For the “worldwide” or General Will:

I declare that in my Will the following terms shall be interpreted as follows:

- (a) “my Florida Estate” shall mean
 - (i) [describe particular property existing at the date of the Will]
 - (ii) any [other] real property physically located in the State of Florida in which I may have an interest at the date of my death, and

- (iii) any bank accounts and investments administered pursuant to the laws of the State of Florida in which I may have an interest at the date of my death.
- (b) “my property” and “my estate” shall, unless the context otherwise requires, include all my property other than my Florida Estate.

ROADMAP FOR DRAFTING OF A TRUST IN A WILL

1. Who are the beneficiary/ies to be?
2. When are the beneficiaries to be determined?
3. For how long is the trust to exist?
4. How is the annual net income to be dealt with?
5. If on a discretionary basis, then
 - (i) for what purposes can income be distributed;
 - (ii) can income be distributed directly to a beneficiary and/or to a third party on their behalf;
 - (iii) what happens if the trustees fail to exercise their discretion in a year, how is the income to be dealt with; and
 - (iv) how is income that is not distributed in a year to be dealt with?
6. If undistributed income is to be accumulated, what is to happen after the accumulation period ends?
7. Are capital distributions permitted prior to the termination of the trust? If yes,
 - (i) for what purposes can capital be distributed;
 - (ii) can capital be distributed directly to a beneficiary and/or to a third party on their behalf; and
 - (iii) how often?
8. Is preference to be given to any particular beneficiary with respect to income and/or capital distributions?
9. Is a certain minimum amount of income to be paid out each year? Should this be subject to a cost-of-living adjustment (“COLA”)? If yes, when should the COLA calculation start? Should there be a cap on the COLA calculation in a year?
10. On the termination date, how is the capital to be distributed?
11. If the termination date is dependant upon a beneficiary living until an age beyond the age of 18 years, is a gift-over provided for in the event the beneficiary doesn’t live to the specified age? If not, why not?