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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**06/11/2019** at 05:09:20 PM  
Clerk of the Superior Court  
By Maria Galvan, Deputy Clerk

8 Attorney for Petitioner, Lydia Abrams

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **SAN DIEGO COUNTY, PROBATE DIVISION**

11 In the Matter of

12 THE RESTATEMENT OF THE CLEM  
13 ABRAMS TRUST AGREEMENT DATED  
14 1991

) Case No.: 37-2019-00030018-PR-TR-CTL

) **Roa #1**

) PETITION:  
) FOR AN ACCOUNTING;  
) TO MODIFY THE TRUST PURSUANT TO  
) PROBATE CODE SECTION 15409; AND  
) TO INVALIDATE THE PRENUPTIAL  
) AGREEMENT BETWEEN CLEM ABRAMS  
) AND LYDIA KENSHALO ABRAMS

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19 Lydia ("Dia") Kenshalo Abrams ("Petitioner" or "Dia"), brings this petition pursuant to  
20 probate code section 17200 for an accounting, to modify the trust pursuant to Probate Code section  
21 15409, and to invalidate terms of the prenuptial agreement between Clem and Dia.

22 The Petitioner was married to the decedent, Clem Abrams, for 34 years and raised their  
23 two children, Crisara Brett Abrams and Clinton Karcher Abrams. Clem had substantial wealth,  
24 which he continued to invest and grow through their marriage. Dia had little assets of her own, but  
25 Clem provided for Dia during the entirety of their marriage, until his death.

26 Upon his death, Clem nominated his two children to act as the executors of his Estate and  
27 Trustees of his Trust. Petitioner's understanding is that Clem's large and complex estate has been  
28 difficult to administer and, owing to its size and complexity, the Trustees have not completed their

1 inventory and administration. As a result, many of the expenses and financial responsibilities that  
2 were assumed by Clem during his lifetime have remained unpaid since his death.

3 As of the date of this filing, it is unclear whether Dia will be adequately provided for as  
4 Clem's surviving spouse. However, Dia brings these claims before the court to preserve her  
5 rights to Clem's estate, and to avoid any possibility of losing what is rightfully hers.

6 **I.**

7 **JURISDICTION AND VENUE**

8 1. Probate Code section 17000(a)-(b) grants this court Subject Matter Jurisdiction.  
9 The Superior Court has exclusive jurisdiction of all proceedings concerning the internal affairs of  
10 trusts and concurrent jurisdiction of actions to determine the existence of trusts, actions by or  
11 against creditors or debtors of trusts, and other actions or proceedings involving trustees and third  
12 persons. Further, under Probate Code section 17001 the Probate Court of the Superior Court  
13 hearing proceedings concerning the internal affairs of trusts, has all the powers of the Superior  
14 Court.

15 2. The principal place of administration of the Restatement of the Clem Abrams Trust  
16 Agreement Dated 1991 is in San Diego County, California. (Prob. Code., §§ 17002-17005.)

17 3. Additionally, the Restatement was executed in San Diego County, California and  
18 identifies California as its governing law.

19 4. As such, this court is the proper venue for an action brought under the Restatement.

20 **II.**

21 **THE 1984 PRENUPTIAL AGREEMENT**

22 1. Dia and Clem met in or around 1979 when Dia was 25 years old and Clem was 39  
23 years old. At that time, Clem was already a multi-millionaire, having inherited substantial assets  
24 that continued to generate revenue, which he reinvested into other development projects. Dia had  
25 modest savings but had her baccalaureate degree from San Diego State University and was  
26 gainfully employed.

27 2. Approximately 5 years later, Dia and Clem became engaged. Dia does not recall  
28 any discussion regarding a prenuptial agreement at any time during their courtship.

1           3.       At some point during the whirlwind of wedding preparation, Clem presented Dia  
2 with a prenuptial agreement. The invitations to over 100 guests had been sent, their church  
3 wedding arranged, and Sea World was reserved as their reception venue. In addition to the usual  
4 wedding stress, Dia was also 4 months pregnant.

5           4.       Despite the unfavorable terms of the prenuptial agreement, Dia had no bargaining  
6 power and felt she had no choice but to sign the agreement and marry Clem. This was the only  
7 alternative to becoming an unwed mother without any assurance of support.

8           5.       Dia and Clem ultimately executed a prenuptial agreement (herein referred to as “the  
9 Prenup”) on October 18, 1984. A true and correct copy of the Prenup is attached here to as Exhibit

10 A.

11 **A.     The Prenup Eliminated Community Property**

12           6.       The essential term of the Prenup, relevant here, provided that Dia’s income during  
13 marriage would remain *her* separate property, and that Clem’s income during marriage would  
14 remain *his* separate property.

15           7.       However, Clem encouraged Dia *not* to work. When she was offered a position as a  
16 district manager at a clothing company, around the time of her marriage, Clem asked that Dia turn  
17 it down. The position would have required her to travel and Clem wanted her to be at home. At  
18 times, Clem reiterated that it was unnecessary for Dia to work and that her income would only  
19 increase their tax obligations.

20           8.       Dia acquiesced to Clem’s wishes and, after their marriage, did not continue to work.  
21 Instead, she stayed home to care for their children, their home, and Clem. As a result, Dia did not  
22 accrue any significant separate property, other than selling a few antiques and modest lawsuit  
23 recovery cumulatively totaling less than \$100,000. Meanwhile, Clem’s separate property coffers  
24 continued to grow in the millions.

25           9.       Clem further restricted Dia’s independence by assuming *complete* control of the  
26 family’s finances and assets. Dia had access to a sweep bank account on which she was permitted  
27 to write checks that Clem paid. However, any excess funds were swept out such that Dia was never  
28 able to save the money or have access to any unused money.

1           10.     Although the Prenup indicated that the parties may acquire property as community  
2 property, which would be listed on a future “Exhibit ‘C’”, no community property Exhibit is known  
3 to have ever been created.

4           11.     Dia is aware of 3 properties which were titled in joint tenancy, and which she  
5 inherited pursuant to her right of survivorship after Clem’s death. The value of these ranch-like  
6 properties is unknown as of this filing, but they are each saddled with mortgage obligations that  
7 Dia must now assume without any income. It is unknown whether any other property exists to  
8 which Dia holds any title.

9 **B.     The Prenup Does Not Adequately Contemplate the Death of a Spouse**

10          12.     The Prenup identifies the personal and real property that Clem would provide to  
11 Dia “[u]pon dissolution,” but it does not specify what Dia is entitled to upon Clem’s death. In fact,  
12 the Prenup is entirely silent as to distribution on the death of either party, other than to add that  
13 either party could nominate the other to act as executor of the survivor’s estate.

14                   **The Restatement of the Clem Abrams Trust Agreement Dated 1991**

15          13.     Clem created a trust in 1991 and restated it on April 3, 2015. Attached hereto as  
16 Exhibit B is a true and correct copy of the Restatement of the Clem Abrams Trust Agreement  
17 Dated 1991 (“Abrams Trust”), which was served upon Petitioner on February 12, 2019.

18          14.     The Abrams Trust provides only for the management and distribution of Clem’s  
19 Separate Property. Thus, if any community property is identified or the Prenup is invalid, the Trust  
20 would not apply as to those assets.

21          15.     On November 4, 2016, Clem executed a First Amendment to the Trust, which  
22 nominated Crisara and Clinton to serve as Co-Trustees upon his death. A true and correct copy of  
23 the First Amendment to Agreement of Trust is attached as Exhibit C.

24          16.     Clem died on December 12, 2018.

25          17.     Upon information and belief, the Abrams Trust and Estate is comprised of over \$11  
26 million, but the exact value has not yet been determined. Because Clem tightly controlled all of  
27 the family’s finances and assets, it is also unknown which assets would be community property if  
28 not for the Prenup and which are traceable to separate property.

1 **A. Clem Intended That His Trust Provide for Dia During Her Lifetime**

2 18. The terms of the Abrams Trust are clear that Clem intended to provide for Dia  
3 during her lifetime. However, that intention may not be effectuated without court intervention, due  
4 to the unanticipated raise of the federal estate tax exemption.

5 19. Article 3 of the Abrams Trust provides that after three specific distributions of  
6 \$100,000, that the residue shall be allocated among the Family Trust, the Contingent Marital Trust  
7 and the Marital Trust as provided in the Marital Formula Article.

8 20. Dia is not entitled to any outright distributions, but she is entitled to the income of  
9 the Exempt and Nonexempt Marital Trusts for her lifetime, and so much of the principal as is  
10 necessary to provide for her medical care if there are otherwise insufficient assets. (See Paragraphs  
11 4.01 and 4.02 of the Abrams Trust.)

12 21. Upon information and belief, Clem's assets generate substantial monthly revenue,  
13 but the exact amount is unknown. Further, Paragraph 10.03, subdivision (b) requires that the assets  
14 in the Marital Trusts be productive and permits Dia to request that the Trustee convert any  
15 unproductive property into productive property for her benefit.

16 22. Thus, it was anticipated that the Marital Trust would contain productive, income-  
17 generating assets for Dia's benefit.

18 23. Article 10 of the Abrams Trust explains that the Family Trust shall be funded by  
19 the maximum amount possible that will produce the lowest possible federal and state death taxes.  
20 In other words, the Family Trust must be funded before the Marital Trust, by a value that is based  
21 on the applicable estate tax exemption limits at the time of Clem's death.

22 24. The Marital Trusts are only funded with the residue remaining *after* the Family  
23 Trust is funded.

24 25. When the Abrams Restatement was executed in 2015, the estate tax limit was \$5.43  
25 Million, with the expectation that it would increase slightly year after year.

26 26. Circumstances changed drastically after President Trump signed into law the Tax  
27 Cuts and Jobs Act (TCJA) in December 2017. The TCJA increased the 2018 estate tax limit,  
28 applicable here, to \$11,180,000.

1           27.     Thus, it is possible that the Marital Trusts, on which Dia relies to generate income  
2 for her lifetime, may not be sufficiently funded owing to the changed law.

3           28.     If Clem had died one year earlier, the Family Trust would likely have been funded  
4 with approximately \$5,490,000 while the Marital Trust would have been funded with the  
5 remaining qualifying assets which are believed to exceed \$5 Million.

6           29.     Although Clem did not seem to anticipate the spike in the estate tax exemption, he  
7 did anticipate a complete repeal of estate taxes.

8           30.     Paragraph 9.08 of the Abram Trust provides:

9           Estate Tax Repeal. If the federal estate tax is repealed at my death, the optimal  
10 amount and federal optimal amount for purposes of the Marital Trust and  
11 Family Trust Formula Allocations paragraph shall be equal to the difference of  
12 the trust residue reduced by the product of \$6,000,000 multiplied by the  
13 inflation factor. Any other provisions of this instrument that refer to the federal  
14 estate tax law shall be treated as referring to that law as in existence  
15 immediately before repeal was in effect. The federal estate tax is repealed at an  
16 individual's death if the tax does not apply to the estates of United States citizens  
17 dying at that individual's death.”

18           31.     Pursuant to the foregoing language, if there are no estate tax laws applicable to  
19 Clem's estate, the Trustee should fund the Family Trust with the Trust's residue *less* \$6 million  
20 multiplied by the inflation factor. Applying the Marital Trust formula, this results in the Marital  
21 Trusts being funded by the \$6 million plus.

22           32.     Thus, Petitioner contends that it was Clem's intent that the Marital Trust be funded  
23 by a minimum of \$6,000,000 multiplied by the inflation factor.

24           33.     According to the Trust, the inflation factor is a fraction wherein the numerator is  
25 that cost of living as of January 1 of the year of the contemplated payment based on the Consumers  
26 Price Index-All Urban Consumers, Los Angeles-Riverside-Orange County and the denominator is  
27 the corresponding number as of January 1, 2015. On January 1, 2015, the Consumer Price Index  
28 was 239.724. However, this Index was discontinued in 2017 and was replaced by the Consumers  
Price Index – All Urban Consumers, Los Angeles-Long Beach- Anaheim. In January 2019, the  
index reflected 269.468. As such, the inflation factor is 1.124.



1           41.     Although the estate taxes were not technically repealed, they were changed so  
2 dramatically that Clem’s intent may not be realized absent court intervention.

3           42.     Dia respectfully requests that, in the event that the unexpected change in law results  
4 in an insufficiently funded Marital Trust, that the Court instruct the Trustee to administer the  
5 Abrams pursuant to the terms of Paragraph 9.08, so that the Marital Trusts be funded, at a  
6 minimum, as though the federal estate tax exemption had been repealed.

7 **B.     The Prenuptial Agreement between Dia and Clem Should be Declared to**  
8 **Be Invalid on the Grounds that the Agreement was Not Voluntary, the**  
9 **Terms are Unconscionable, and Violate Public Policy**

10 **1.     Dia Did not Voluntarily Consent to the Terms of the Prenuptial**  
11 **Agreement**

12           43.     An agreement is not voluntary (i.e. lacks mutual consent) if a party did not freely  
13 enter into the agreement because of duress, fraud, undue influence, or mistake. Civil Code section  
14 1567. These defenses provide a ground for rescission of the contract. (Civil Code § 1689, subd.  
15 (b).)

16           44.     In this case, Dia was already pregnant with Clem’s child, had already planned her  
17 wedding, invited the guests, and was weeks away from her wedding when she was first presented  
18 with the Prenup. Although she sought legal counsel, Dia had no bargaining power owing to her  
19 own minimal resources and the pressures of a wedding and new baby. Moreover, Dia only  
20 understood that the Prenup would apply if she and Clem divorced, but she did not understand that  
21 it could apply at Clem’s death after nearly 35 years of marriage and a 40-year relationship.

22 **2.     The Terms of the Prenup are Unconscionable, as Applied Today**

23           45.     The Prenup executed by Dia and Abrams eliminates the acquisition of community  
24 property between the parties. As applied to Dia and Clem, the result of this agreement is  
25 unconscionable, because Dia was entirely dependent on Clem and thus, never acquired her own  
26 separate property.

27           46.     To determine whether the Prenup is unconscionable, the court may look to the  
28 economic circumstances of the parties resulting from the agreement, and any other relevant  
evidence such as the conditions under which the agreement was made, including the knowledge  
of the other party. The First District determined that a spousal support provision in a pre-2002

1 agreement was “presently unconscionable” because at the time of enforcement, Husband’s self-  
2 reported separate property was worth in excess of \$10 million and he was earning \$1 million per  
3 year. Wife, on the other hand, had no separate property during the marriage and had no income at  
4 all. Thus, the Court determined that it had little difficulty concluding that the Agreement’s spousal  
5 support waiver was “presently unconscionable.” (*In re Marriage of Facter* (2013) 212 Cal. App.  
6 4th 967, 984.)

7 47. The same situation applies here. It is believed that Clem’s net worth exceeds \$10  
8 million, with substantial ongoing income that survives his death. In contrast, Dia acquired no  
9 separate property during the marriage and has no ongoing income at all. More to the point, Clem  
10 specifically instructed Dia not to work because her income was not necessary and only added to  
11 their tax liability. Regretfully, Clem controlled Dia’s entire financial life. It would be  
12 unconscionable to hold that she is not entitled to any of income Clem generated during their  
13 marriage while she sidelined her career to care for him, their children, and their home.

14 **3. The Prenuptial Agreement Violates Public Policy Because It Alters**  
15 **the Statutory Obligation of Spouses to Mutually Support Each**  
16 **Other**

17 48. The public policy against waiving statutory spousal obligations dates back to 1872,  
18 when the Legislature enacted former section 159 of the Civil Code providing, “a husband and wife  
19 cannot, by any contract with each other, alter their legal relations, except as to property and except  
20 that they may agree to an immediate separation, and may make provision for the support of either  
21 of them and of their children during separation.” The public policy was still in effect 100 years  
22 later, when in 1973, the California Supreme Court concluded in *In re Marriage of Higgason* (1973)  
23 10 Cal. 3d 476, that premarital agreements designed to waive, diminish, or alter the statutory  
24 obligation of spouses to mutually support each other were contrary to public policy and therefore  
25 void and unenforceable.

26 49. Here, it would violate public policy to enforce a Prenup that allowed Clem complete  
27 control over Dia’s life and finances causing her to be completely dependent on him, and then leave  
28 her with unsupported at his death.

1 50. Petitioner requests that the Court void the terms of the Prenup that eliminate the  
2 accrual of community property during the marriage of Clem and Dia.

3 **NOTICE**

4 51. The following individuals are entitled to notice of the hearing on this Petition:

5

<u>Name</u> <u>(Relationship to Clem Abrams)</u>	<u>Address</u>	<u>Age</u>
6 Crisara Brett Abrams	4472 Alabama St. San Diego, CA 92116-4129	Adult
7 Clinton Karcher Abrams	8015 La Jolla Scenic North, La Jolla, CA 92037	Adult

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10 WHEREFORE, Petitioner respectfully requests the Court to enter Judgment as follows:

- 11 1. For an accounting;
- 12 2. For a court order invalidating the 1984 Prenuptial Agreement between Lydia Abrams  
13 and Clem Abrams;
- 14 3. For an order instructing the Trustee to administer the Abrams Trust pursuant to the  
15 terms of Paragraph 9.08 if the Marital Trusts is insufficiently funded as a result of the  
16 unexpected changed federal estate tax exemption limit; and
- 17 4. Any other such orders as the court deems necessary and proper.
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20  
21 Dated: June 11, 2019



22 Tara R. Burd, Esq.  
23 T.BURD LAW GROUP, APC  
24 402 W Broadway, Suite 800  
San Diego, CA 92101

25 Attorney for Petitioner, Lydia Abrams

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3 **VERIFICATION**

4 I am the Petitioner of the above-entitled proceeding. I have read the foregoing petition  
5 and the attachments hereto and know the contents thereof. The same is true of my own  
6 knowledge, except as to those matters which are therein stated on information belief, and as to  
7 those matters, I believe them to be true. I declare under penalty of perjury under the laws of the  
8 State of California that the foregoing is true and correct.

9 Dated: 06/11/2019

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12 Lydia Abrams, Petitioner  
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# **Exhibit A**

PRENUPTIAL AGREEMENT

ARTICLE ONE: PREFACE

Introduction. This Agreement is made October , 1984, at San Diego, California, between DIA KENSHALO and CLEM ABRAMS.

Primary Purpose of Agreement. The parties to this Agreement intend and desire to define their respective property rights in the existing and future property of the other, and to avoid such interest which, except for the operation of this agreement, they might acquire in the property of the other as incidents of their marriage relationship. This Agreement supersedes any prior understanding the parties may have had regarding their property or marital rights.

Factual Context for Agreement. The Agreement is made with reference to the following facts:

1. DIA KENSHALO and CLEM ABRAMS are single and are contemplating marriage;
2. DIA KENSHALO and CLEM ABRAMS are in good health and are 30 and 44 years old, respectively.
3. DIA KENSHALO, hereinafter referred to as "wife", has an ownership interest in the real and personal property listed in Exhibit "A", an attachment that is part of this Agreement, and she is liable for the obligations listed there. The exhibit is intended to disclose all the property she owns, the extent of her interest in the property, and the obligations for which she is liable.

CLEM ABRAMS, hereinafter referred to as "husband", has an ownership interest in the real and personal property listed in Exhibit "B", an attachment that is part of this Agreement, and he is liable for the obligations listed there. The exhibit is intended to disclose all the property he owns, the extent of his interest in the property, and the obligations for which he is liable.

Consideration for Agreement. The parties enter into this Agreement in consideration of their mutual promises stated in the Agreement. The Agreement is effective at the time of the signing hereof.

Spousal Support. The parties realize they may not disclaim the mutual duty of spousal support that is imposed by law. So as to promote reconciliation, should there be a separation of the parties, CLEM ABRAMS hereby agrees to pay DIA KENSHALO \$2,000.00 per month as adjusted (increased) for inflation as measured by the Consumer Price Index for Greater San Diego, California. Said amount as adjusted shall be payable to DIA KENSHALO by CLEM ABRAMS from the date of separation to the date the judgment is filed with the Court. After the judgment is filed with the Court, CLEM ABRAMS hereby agrees to pay DIA KENSHALO, as and for spousal support, a sum of not less than \$2,000.00 per month. The Court shall have jurisdiction concerning all relevant issues of spousal support.

Community Property. Husband and wife agree that they own no real and/or personal property as community property at this time.

Should they, however, at a later point in time, decide to purchase same, that real and personal property shall be listed on Exhibit "C" and attached to this Agreement. The parties agree that they shall have an undivided one-half (1/2) interest each in said property.

Waiver of Right to Manage and Control Community Property.

Husband and wife will have the equal right to manage and control all the community property, real and personal, that the parties will acquire by reason of their marriage. In exercising management and control, husband and wife acknowledge that they will have a duty to act in good faith.

Unrestricted Transfers of Property. This Agreement should not be construed as restricting the right of either party to transfer, during life or upon death, any property to the other. Likewise, the Agreement should not be construed as restricting the right of either party to receive property from the other at any time.

Assets as Separate Property of Parties. Each of the parties agree that the following property shall forever be (or remain) the other party's separate property:

A. All other property of any nature and in any place belonging to the other party at the commencement of this marriage;

B. All property hereafter acquired by such other party by gift, devise, bequest or inheritance.

Earnings as Separate Property of Spouses. Husband agrees that all of the earnings and income (except as may become

husband's separate property as provided in Exhibit "B") resulting from wife's personal services, skill, effort and work during the term of their marriage (including but not limited to such portion, if any, of the income from, and appreciation in value of, all property now owned or hereafter acquired by her as her separate property as might be attributable to such personal services, skill, effort and work), together with all property and the income therefrom, acquired at any time during the term of their marriage, which is traceable to such earnings and income, shall forever be her separate property, to be enjoyed by her and subject to her disposition as her separate property in the same manner as though their marriage had never been entered into. Husband acknowledges that he understands that, except for this Agreement, the earnings and income from personal services, skill, effort and work of wife throughout their marriage would be community property, and that, by this Agreement, such earnings and income during the term of their marriage are made her separate property.

Wife agrees that all of the earnings and income (except as may become wife's separate property as provided in Exhibit "A") resulting from husband's personal services, skill, effort and work during the term of their marriage (including but not limited to such portion, if any, of the income from, and appreciation in value of, all property now owned or hereafter acquired by him as his separate property as might be attributable to such personal services, skill, effort and work), together with all property and the income therefrom, acquired at any time during the term of

their marriage, which is traceable to such earnings and income, shall forever be his separate property, to be enjoyed by him and subject to his disposition as his separate property in the same manner as though their marriage had never been entered into. Wife acknowledges that she understands that, except for this Agreement, the earnings and income from personal services, skill, effort and work of husband throughout their marriage would be community property, and that, by this Agreement, such earnings and income during the term of their marriage are made his separate property.

Living Expenses. The parties agree that when either of them contributes any of his or her separate income or property, as defined in this Agreement, to their family living expenses in order to achieve or maintain the standard of living desired by them, he or she shall have no right thereafter to seek reimbursement for any part of such contributions unless otherwise expressly agreed between them in writing.

Disposition of Property to Spouse. Notwithstanding any other provision of this Agreement, either party may, by appropriate written instrument or otherwise, give, convey, devise, bequeath or transfer in any other way any property to the other, or nominate the other as executor of his or her estate. Neither party intends by this Agreement to limit or restrict in any way the right to receive any such transfer, conveyance, devise or bequeath from the other, or to act as such executor if so nominated.

No Assumptions. Nothing contained in this Agreement shall be construed as an assumption of, or an agreement to assume, the

liabilities of either of the parties by the other party.

Specific Provisions. Upon dissolution of the parties herein, CLEM ABRAMS agrees to supply DIA KENSHALO with the following:

A. A 4 door luxury sedan vehicle not less than 2 years old (as measured from the date of separation) with \$500,000.00 worth of liability, collision and casualty insurance, naming DIA KENSHALO as the insured (to be owned free and clear by wife);

B. A \$100,000.00 fee interest in a 3 bedroom, 2 1/2 bath home in La Jolla, California. Said home shall be in good repair. Wife shall not be obligated to make any mortgage payments or to pay any expenses, taxes and insurance in regard to said home until she is remarried. Upon the date of remarriage and thereafter, wife shall pay her pro rata interest in said expenses, payments, insurance and taxes. Wife shall not be, however, responsible for any back payments, expenses, taxes and insurance (i.e. prior to her remarriage). Husband shall be liable for all mortgage payments, taxes, insurance and expenses of said real property.

C. Major Medical Insurance and the deductible to be paid by husband for and on behalf of DIA KENSHALO and any children the parties may have.

These items are in no way to be considered child or spousal support. "Separation" is when the parties live apart with no intent to live together.

Termination of this Agreement. This Agreement shall be valid from the date of the signing hereof until the parties mutually revoke, rescind or cancel it, in writing.

Entire Agreement. This Agreement contains the parties'

entire understanding. The Agreement supersedes any other express or implied agreement the parties may have made with respect to the subject matter of this contract.

Further Acts to Implement Agreement. On the demand of the other, each party will promptly execute any document or perform any other act reasonably necessary to implement the terms of this Agreement. Both parties covenant that they shall willingly, at the request of either party or his or her successors or assigns, execute, deliver, and properly acknowledge any deeds or other documents in order that good and marketable title to any separate property can be conveyed by one party free from any claim of the other party acquired by him or her by reason of their marriage.

Binding Effect. This Agreement shall bind the parties, their heirs, executors, administrators, personal representative, successors, and assigns.

Expenses of Enforcing, Interpreting Agreement. If either party institutes an action or proceeding to enforce or interpret the entirety or any part of this Agreement, the party prevailing in the action or proceeding shall be entitled to recover any expenses, including reasonable attorney's fees, related to the action or proceeding.

Interpretation. No provision in this Agreement is to be interpreted for or against a party because the party's attorney drafted the provision.

Governing Law. This Agreement will be interpreted according to the laws of the State of California.

Partial Invalidity. If a court of competent jurisdiction rules that any part of this Agreement is illegal, void, or unenforceable, the rest of the Agreement will remain valid and unimpaired.

Modification. This Agreement may be modified only by a writing that both parties have executed. Each party waives the right to ever assert that the Agreement has been in any way modified orally or by conduct. A failure to insist upon strict performance of a provision or to object to its breach shall not be construed as a waiver of the provisions, which may be waived only in writing, the remainder of the Agreement shall continue in full force.

Independent Counsel. Husband and wife stipulate that each has been represented by counsel of his or her own choosing in the negotiations for and preparation of this Agreement, and that he or she has read this Agreement, has had its contents explained to him or her by such counsel. If husband or wife have not retained an attorney, he or she agrees that he or she read this Agreement and fully understands it.

Recordation. It is understood by CLEM ABRAMS and DIA KENSHALO that this Agreement shall be executed and signed in duplicate and that an abstract of the Agreement shall be recorded in each of the counties where real property described herein is located. CLEM ABRAMS shall be responsible for performing said recordations. Upon recording, CLEM ABRAMS or his attorney shall send evidence of the recording to DIA KENSHALO.

Settlement Conditioned Upon Marriage. This Agreement is entered into in consideration of marriage between the parties actually taking place; and if, for any reason, the marriage is not consummated, this Agreement will be of no force or effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below.

Dated: 10/18/84

Dated: 10-18-84

*Dia Kenshalo*  
DIA KENSHALO  
*Clem Abrams*  
CLEM ABRAMS

EXHIBIT "A"  
TO  
PRENUPTIAL AGREEMENT BETWEEN  
DIA KENSHALO and CLEM ABRAMS

ASSETS

Personal effects and miscellaneous jewelry.

LIABILITIES

Nordstrom

Neiman Marcus

Bullocks

Robinsons

## EXHIBIT "B"

TO

PRENUPTIAL AGREEMENT BETWEEN

DIA KENSHALO and CLEM ABRAMS

	<u>Description</u>	<u>Fair Market Value</u>
1.	80 Acres, Poway, Calif. (Land Sites)	\$ 160,000
2.	7540 High Avenue La Jolla, Calif. (House and pool)	210,000
3.	8 Acres, Ramona, Calif. (Land Sites)	24,000
4.	CM Co. Shopping Center La Jolla, California (Commercial Center) (Title held in name of CM Company, Inc.)	1,500,000
5.	40 Acres, Trinity County, Calif. (Undeveloped, wooded)	20,000
6.	7467 Girard, La Jolla, Calif. (Commercial and apartments)	300,000
7.	325 East Bradley, El Cajon, Calif. (114 Condominiums)	4,600,000
8.	6879 Fairway Road, La Jolla, Calif. (Residence)	370,000
9.	1027 Pearl Street, La Jolla, Calif. (Six Condominiums)	490,000
10.	Mount Soledad, La Jolla, Calif. (Two View lots)	600,000
11.	7585 Eads Ave., La Jolla, Calif. (Condominiums)	750,000
12.	3535 E. Monair, San Diego, Calif. (Condominiums)	105,000
13.	9.31 Acres, Mira Mesa, Calif. (Undeveloped)	1,650,000

CONTINUATION OF EXHIBIT "B"  
TO  
PRENUPTIAL AGREEMENT BETWEEN  
DIA KENSHALO and CLEM ABRAMS

<u>Description</u>	<u>Fair Market Value</u>
14. Woodglen 160 Unit, Lakeside, CA. (Undeveloped)	\$ 1,550,000
15. 13 Acres, Mira Mesa, CA. (Undeveloped)	1,000,000
16. 10750-30 Rickert Road Mira Mesa, CA. (Five condominiums)	425,000
17. 7459-61 Girard, La Jolla, CA. (Commercial) (Title held in name of CM Company, Inc.)	600,000
18. Rancho Penasquitos, San Diego, CA. (80 Apartments) (Title held in name of Rancho Villa Apartments)	4,000,000
19. 38 Nonohe Place Paia, Maui, Hawaii (Residence)	300,000
20. 100% of the outstanding shares of Abrams Company, Inc., a California corporation.	
21. One-third interest in the general partnership more commonly known as the Stephens Land Company.	
22. 187 and 40 unit properties in the vicinity of Rancho Penasquitos Blvd. (In process of acquiring).	
23. A partnership interest in an apartment project in the vicinity of University Town Center (In process of acquiring).	
24. Oil Stick Invention.	
25. Oxygen Meter Invention.	

CONTINUATION OF EXHIBIT 'B'  
TO  
PRENUPTIAL AGREEMENT BETWEEN  
DIA KENSHALO and CLEM ABRAMS

<u>Description</u>	<u>Fair Market Value</u>
26. Electric Sliding Door Invention.	
27. Clorine Constant Measure Invention.	
28. Personal Jewelry and Effects.	

LIABILITIES

1. Glendale Federal (first loan).
2. Prudential.
3. San Diego Trust & Savings.
4. Great Western.
5. Security Pacific.
6. Glendale Federal (second loan).
7. La Jolla Bank & Trust.
8. California First.
9. First Interstate of Hawaii.
10. Mastercard.
11. VISA.
12. American Express.

EXHIBIT "C"  
TO  
PRENUPTIAL AGREEMENT BETWEEN  
DIA KENSHALO and CLEM ABRAMS

# **Exhibit B**

**RESTATEMENT OF THE  
CLEM ABRAMS TRUST AGREEMENT DATED 1991**

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**PREPARED BY  
MCDERMOTT WILL & EMERY LLP**

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## **RESTATEMENT OF THE CLEM ABRAMS TRUST AGREEMENT DATED 1991**

I, CLEM ABRAMS, of La Jolla, California, previously established that trust instrument evidencing the CLEM ABRAMS TRUST AGREEMENT DATED 1991, DATED MAY 21, 1991 of which I now am trustee. I amend that instrument by substituting this restatement for that instrument and all prior amendments. After the date of this restatement, the trustee shall administer all property held under that instrument and any property received or receivable by the trustee from any source (the “trust property”) as follows:

### **Article 1 Background Information**

1.01 **Trust Name.** This instrument as amended from time to time shall continue to be referred to as the CLEM ABRAMS TRUST AGREEMENT DATED 1991.

1.02 **Family.** My wife is Lydia Kenshalo Abrams. My children now living are Crisara Brett Abrams (“Crisara”), born March 18, 1985, and Clinton Karcher Abrams (“Clinton”), born September 22, 1989.

1.03 **Status of Property.** I intend during my life that this trust shall hold only property which is my separate property. If, however, any part of the trust property consists of community property (“trust community property”), the following provisions shall apply:

(a) **Status of Property.** Trust community property shall continue to be community property subject to the provisions of this instrument.

(b) **My Wife Predeceases Me.** If my wife predeceases me, then on her death the trustee shall distribute to the executor of my wife’s estate my wife’s one-half share of or interest in any trust community property.

(c) **My Wife Survives Me.** If my wife is living at my death, then on my death the trustee shall distribute to my wife her one-half share of or interest in any trust community property.

(d) **Amendment.** Despite any other provisions of this instrument to the contrary, during the life of my wife this instrument may not be amended by me in any manner which would defeat or in any way impair my wife's rights with respect to her share of or interest in any trust community property unless my wife shall consent thereto in writing.

## **Article 2 Provisions During My Life**

2.01 **Revocability.** Except as otherwise provided in the Personal Effects List paragraph and the Status of Property paragraph, I may amend or revoke this instrument from time to time in whole or in part by signed instrument delivered to the trustee. I shall not be liable to any person for any action or inaction as an officeholder under this instrument.

2.02 **Income and Principal Payments.** During my life the trustee shall pay so much or all of the income and principal to me or otherwise as I direct from time to time. In addition, whenever the trustee considers that I am unable to manage my financial affairs, the trustee shall use so much or all of the income and principal as the trustee decides is advisable from time to time for the support, health, education, best interests and welfare of me and my dependents and for the support, health and education of my wife. The trustee shall add to principal any income accrued or unpaid at my death.

2.03 **Continuation of Gift Program.** If the trustee determines that future discretionary payments under the preceding paragraph would not be jeopardized, the trustee also may continue any family or charitable gift program of mine or make gifts consistent with my estate plan by distributions to or for the benefit of the donees as the trustee decides. If an independent trustee is acting, only that trustee shall make decisions

under the preceding sentence. The amount distributable in any calendar year to a trustee who participates in decisions under this paragraph shall not exceed the amount of a single federal gift tax annual exclusion for the year under Code Section 2503(b); except that if I am married at the time of distribution, the amount distributable to that trustee shall not exceed two times the federal gift tax annual exclusion for the year.

2.04 **Exercise of Personal Rights.** The rights reserved to me individually or personally may be exercised only by me while I am legally competent. If, however, I am not legally competent, an attorney-in-fact may exercise any rights reserved to me individually or personally if that attorney-in-fact is specifically authorized to do so in a durable power of attorney signed and acknowledged by me.

### **Article 3 Disposition of Assets at My Death**

3.01 **Gifts at My Death.** On my death:

(a) **Specific Gifts.** The trustee shall distribute from principal the following:

(1) An amount equal to \$100,000 multiplied by the inflation factor to Karla Beth Frey (Blume), if living at my death.

(2) An amount equal to \$100,000 multiplied by the inflation factor to Michael Wilson, if living at my death.

(3) An amount equal to \$100,000 multiplied by the inflation factor to David Rearwin, if living at my death.

(b) **Gifts Under Will.** The trustee shall satisfy from principal any cash gift or gift of specific property made in my will to the extent that the trustee determines the gift otherwise will not be satisfied in full and, in the case of a gift of specific property, the specific property is a trust asset as of my death.

(c) **Personal Effects.** The trustee shall distribute all personal effects included in the trust property in accordance with the personal effects list. The trustee shall allocate all personal effects included in the trust property not distributed pursuant to the personal effects list to my children who are living at my death, in equal shares, to be divided among them as they decide.

3.02 **Estate Obligations.** On my death the trustee shall pay the estate obligations from the pre-tax trust residue as provided in the Payment of Estate Obligations paragraph. "Pre-tax trust residue" means the trust property remaining after providing for any gifts made above.

3.03 **Allocations of Trust Residue at My Death.** On my death, the trustee shall allocate the pre-tax trust residue remaining after providing for the payments directed by the preceding Estate Obligations paragraph (the "trust residue"), but subject to the provisions of the Death Taxes paragraph, as follows:

(a) **My Wife Survives.** If my wife is living at my death, the trustee shall allocate the trust residue among the Family Trust, the Contingent Marital Trust and the Marital Trust as provided in the Marital Formula article. To the extent values permit, the trustee shall use any interest in (1) the property located at 1027 Pearl Street, La Jolla, CA 92037 (APN: 350-651-23), (the "Pearl Street property") or (2) any corporation, partnership, limited liability company or other entity, the primary asset of which is the Pearl Street property, to satisfy the allocation to the Family Trust described in this subparagraph.

(b) **My Wife Predeceases.** If my wife is not living at my death, the trustee shall allocate all of the trust residue to the Family Trust.

(c) **Exempt and Nonexempt Trusts.** The trustee shall allocate each trust created above between an exempt trust and a nonexempt trust as provided in My GST Formula paragraph.

(d) **Presumption of Survival.** For all purposes of this instrument, in determining whether my wife is living at my death for purposes of allocating trust property or receiving a distribution of trust property, exercising a power of appointment or withdrawal or being paid income or principal: (1) if the order of deaths of my wife and me cannot be proved by sufficient evidence, my wife shall be treated as dying after me; and (2) if my wife survives me for any period, my wife shall be treated as dying after me despite any contrary provision of state law.

#### **Article 4 Provisions After My Death**

4.01 **Exempt Marital Trusts.** The trustee shall administer any trust property of the Exempt Marital Trust and of the Exempt Contingent Marital Trust as follows:

(a) **Income and Principal Payments.** Beginning at my death and

during my wife's life, the trustee shall pay to my wife all of the income of the trust. In addition, during my wife's life the trustee may pay to my wife so much or all of the principal as the trustee, from time to time decides is necessary to provide for my wife's medical care for catastrophic medical issues or emergencies only if the trustee is satisfied that no other assets are available to pay for such medical care.

(b) **Disposition at My Wife's Death.** On the death of my wife, the trustee shall pay taxes as provided in the Marital Trust Death Taxes paragraph and allocate any trust property of the Exempt Marital Trust and of the Exempt Contingent Marital Trust not disposed of by the preceding provisions of this paragraph to the Exempt Family Trust.

4.02 **Nonexempt Marital Trusts.** The trustee shall administer any trust property of the Nonexempt Marital Trust and of the Nonexempt Contingent Marital Trust as follows:

(a) **Income and Principal Payments.** Beginning at my death and during my wife's life, the trustee shall pay to my wife all of the income of the trust. In addition, during my wife's life the trustee may pay to my wife so much or all of the principal as the trustee, from time to time decides is necessary to provide for my wife's medical care for catastrophic medical issues or emergencies only if the trustee is satisfied that no other assets are available to pay for such medical care.

(b) **Disposition At My Wife's Death.** On the death of my wife, the trustee shall pay taxes as provided in the Marital Trust Death Taxes paragraph and allocate any trust property of the Nonexempt Marital Trust and of the Nonexempt Contingent Marital Trust not disposed of by the preceding provisions of this paragraph, including any additions to the trust property as of my wife's death, between the Exempt Family Trust and the Nonexempt Family Trust as provided in the Nonexempt Marital Trust GST Provisions paragraph.

4.03 **Exempt Family Trust.** The trustee shall administer any trust property of the Exempt Family Trust as follows:

(a) **Income and Principal Payments.** If my wife is living at my death, then during my wife's life, the trustee shall pay to any one or more of my descendants so much or all of the income and principal in such proportions as from time to time is necessary for their respective support, health and education. In addition, during my wife's life the trustee shall pay to any one or more of my descendants so much or all of the income and principal in such proportions as the independent trustee, if any, from time to time decides is advisable for their respective best interests and welfare.

(b) **Disposition At Division Date.** On the death of the last to die of my

wife and me (the “division date”), the trustee shall allocate any trust property not disposed of by the preceding provisions of this paragraph, including any additions to the trust property as of my wife’s death, as provided in the Division Date Allocations paragraph.

4.04 **Nonexempt Family Trust.** The trustee shall administer any trust property of the Nonexempt Family Trust as follows:

(a) **Income and Principal Payments.** If my wife is living at my death, then during my wife’s life, the trustee shall pay to any one or more of my descendants so much or all of the income and principal in such proportions as from time to time is necessary for their respective support, health and education. In addition, during my wife’s life the trustee shall pay to any one or more of my descendants so much or all of the income and principal in such proportions as the independent trustee, if any, from time to time decides is advisable for their respective best interests and welfare.

(b) **Disposition At Division Date.** On the division date the trustee shall allocate any trust property not disposed of by the preceding provisions of this paragraph, including any additions to the trust property as of my wife’s death, as provided in the Division Date Allocations paragraph.

4.05 **Division Date Allocations.** On the division date, as to any trust property directed to be allocated as provided in this paragraph:

(a) **Exempt Trusts.** The trustee shall allocate any trust property of the Exempt Family Trust per stirpes among my then living descendants and retain each descendant’s share in an exempt trust named for him or her.

(b) **Nonexempt Trusts.** The trustee shall allocate any trust property of the Nonexempt Family Trust per stirpes among my then living descendants and retain each descendant’s share in a nonexempt trust named for him or her.

4.06 **Exempt Trusts Named for Descendants.** The trustee shall administer the trust property of each exempt trust named for a descendant as follows:

(a) **Income and Principal Payments.** During the life of the primary beneficiary, the trustee shall pay to any one or more of the primary beneficiary and his or her descendants so much or all of the income and principal in such proportions as from time to time is necessary for their respective support, health and education, giving priority to the primary beneficiary. In addition, during the life of the primary beneficiary the trustee shall pay to any one or more of the primary beneficiary and his or her descendants so much or all of the income and principal in such proportions as the independent trustee, if any, from time to time

decides is advisable for their respective best interests and welfare, giving priority to the primary beneficiary.

(b) **Broad Special Power of Appointment.** On the death of the primary beneficiary, the trustee shall distribute so much or all of the remaining trust property to or for the benefit of such one or more persons or organizations (other than the primary beneficiary, his or her estate, or the creditors of either) as the primary beneficiary appoints in accordance with the Powers of Appointment paragraph.

(c) **Primary Beneficiary's Death.** On the death of the primary beneficiary, the trustee shall allocate any trust property not disposed of by the preceding provisions of this paragraph (1) per stirpes among the then living descendants of the primary beneficiary, or if none, (2) per stirpes among the then living descendants of the primary beneficiary's nearest ancestor who was a descendant of mine and who has a descendant then living, or if none, (3) per stirpes among my then living descendants. The trustee shall retain each person's share in an exempt trust named for him or her.

4.07 **Nonexempt Trusts Named for Descendants.** The trustee shall administer the trust property of each nonexempt trust named for a descendant as follows:

(a) **Income and Principal Payments.** During the life of the primary beneficiary, the trustee shall pay to the primary beneficiary so much or all of the income and principal as from time to time is necessary for the support, health and education of the primary beneficiary. In addition, during the life of the primary beneficiary the trustee shall pay to the primary beneficiary so much or all of the income and principal as the independent trustee, if any, from time to time decides is advisable for the primary beneficiary's best interests and welfare.

(b) **Broad Special Power of Appointment.** On the death of the primary beneficiary, the trustee shall distribute so much or all of the remaining trust property to or for the benefit of such one or more persons or organizations (other than the primary beneficiary, his or her estate, or the creditors of either) as the primary beneficiary appoints in accordance with the Powers of Appointment paragraph.

(c) **Primary Beneficiary's Death.** On the death of the primary beneficiary the trustee shall allocate any trust property not disposed of by the preceding provisions of this paragraph (1) per stirpes among the then living descendants of the primary beneficiary, or if none, (2) per stirpes among the then living descendants of the primary beneficiary's nearest ancestor who was a descendant of mine and who has a descendant then living, or if none, (3) per stirpes among my then living descendants. The trustee shall retain each person's share in a nonexempt trust named for him or her.

4.08 **Reciprocal Right of First Refusal.** Each trust named for a descendant of mine created under this instrument is subject to the provisions of this paragraph. Following my death, in the event the trustee of a trust created for a descendant of mine receives a bona fide written offer from a financially capable third party, other than a trustee of a trust of which I am the grantor, to undertake a transfer of all or a portion of that trust's interest (a "Selling Interest") in any real property or any entity holding real property to any party other than a trustee of a trust of which I am the grantor, the trustee desiring to sell such property (the "Selling Party") shall provide the trustee of each other trust named for a descendant of mine created under this instrument (each a "Non-Selling Party") with written notice of such intention to sell to a third party providing details concerning all terms and conditions of the proposed transaction, including, without limitation, the Selling Interests involved in the proposed transaction, and the consideration to be exchanged therefor, together with copies of any documents reflecting such offer or negotiations (the "Notice of Sale"). Each Non-Selling Party shall have 90 days from the date of receipt of the Notice of Sale (the "Option Period") to purchase the Selling Interest (the "Purchase Option") under the following terms:

(a) **Method of Exercise.** The Purchase Option will be exercisable by the Non-Selling Party by delivery of written notice of exercise to the Selling Party at any time during the Option Period.

(b) **Multiple Exercises of Option.** If more than one Non-Selling Party exercises a Purchase Option, each Non-Selling Party so exercises shall have the right to purchase the a share of the Selling Interest determined by dividing the Selling Interest by the number of Non-Selling Parties who have exercised a Purchase Option.

(c) **Exercise Price.** The price that the non-selling trust must pay for the Selling Interest shall be the price set out in the Notice of Sale or, if no price is set forth, the price will be equal to the Selling Interest's fair market value, including discounts for lack of marketability, as determined by a qualified independent appraiser at the time the option is exercised (the "Exercise Price"). The Selling

Party and the Non-Selling Party shall mutually agree on the appraiser. If the parties cannot agree on the identity of the appraiser, then each party shall select a qualified independent appraiser to determine a value of the Selling Interest and the Exercise Price shall be the average of the two values. In the case that more than one Non-Selling Party has exercised a Purchase Option, the price of the Selling Interest purchased by each Non-Selling Party shall be a portion of the selling price otherwise determined under this subparagraph equal to the proportionate share of the Selling Interest so purchased.

(d) **Payment Terms.** The Exercise Price will be payable either by cash, certified check, or by a negotiable promissory note (the "Note"). If the Exercise Price is paid by Note, the Note will (i) be payable in 15 or fewer (as determined by the payee) equal annual installments commencing on the date of closing evidenced by the note bearing interest at the minimum rate necessary to avoid the imputation of income or gift for federal tax purposes, (ii) become due and payable immediately in event of default and (iii) contain full rights of prepayment without penalty or premium and other terms and conditions agreed to by the maker and the payee of the note.

(e) **Termination/Expiration of Option.** The Purchase Option will expire at the end of the Option Period. If the Purchase Option is not exercised within the Option Period, the Non-selling Party shall be deemed to have consented to the sale of the Selling Interest and the Selling Party can sell the Selling Interest to any third party. Further, if the Purchase Option is exercised by the Non-Selling Party during the Option Period, but the purchase fails to be completed by the end of the Option Period, the Purchase Option shall terminate and the Non-Selling Party shall similarly be deemed to have consented to the sale of the Selling Interest and the Selling Party can sell the Selling Interest to any third party.

(f) **Waiver of Right.** Any Non-Selling Party may waive its right to exercise its Purchase Option over any or all assets held by a trust created under this instrument at any time by signed instrument delivered to the trustee of the trust holding the asset regardless of whether a Notice of Sale has been delivered with regard to that asset.

4.09 **Default.** Any trust property not otherwise disposed of shall be distributed by the trustee as of the date such failure of disposition occurs (the "default date") to my heirs, assuming that I died intestate and unmarried on the default date, domiciled in California. The laws of that state in effect on the default date shall determine my heirs and their respective shares.

4.10 **Retention.** Despite the preceding provisions of this instrument, the trustee

may retain property otherwise required to be distributed on my death or on the termination of any trust to an individual who has not reached age 21 as a vested trust named for that individual to be distributed to him or her when he or she has reached that age, or if he or she dies before the complete distribution of the vested trust, to his or her estate. The trustee shall pay to or use for the individual so much or all of the income and principal of the vested trust named for him or her as the trustee from time to time decides is advisable for the individual's support, health, education, best interests and welfare.

### **Article 5 Other Dispositive Provisions**

5.01 **Perpetuities Provisions.** Despite any other provisions of this instrument, 21 years after the death of the last to die of the measuring lives, the trustee shall distribute any property then held in a trust hereunder to the primary beneficiary of the trust, or if none, per stirpes to such of the current beneficiaries of the trust as are living on that date and are descendants of mine, or if none, equally to the current beneficiaries of the trust living on that date. No power of appointment may be exercised to delay distribution of trust property beyond 21 years after the death of the last to die of the measuring lives and, if permitted by applicable law, any additional persons specified in the exercise of the power who are in being on the measuring date. "Measuring lives" means collectively the descendants of my parents in being on the measuring date and the descendants of my wife's parents in being on the measuring date. "Measuring date" means the date of my death.

5.02 **Payment Considerations.** Unless specifically provided elsewhere under this instrument, for purposes of this instrument:

(a) **No Advancements.** No payment to a beneficiary shall be considered an advancement.

(b) **Support.** “Support” means support in reasonable comfort and includes maintenance.

(c) **Education.** “Education” includes public, private, college, graduate, professional and vocational school education.

(d) **Other Resources.** The trustee responsible for deciding whether to make a payment to a beneficiary shall consider the beneficiary’s available resources, including the beneficiary’s ability for self support, known to that trustee and any tax effects of the use of those resources.

(e) **Multiple Trusts.** The trustee responsible for deciding whether to make a payment to a beneficiary from more than one trust under this instrument may decide whether and to what extent each trust shall contribute to the payment. The trustee shall consider the tax character of each trust in making the decision.

(f) **Minimizing GST Tax.** In administering trusts with substantially the same terms but different inclusion ratios for federal GST tax purposes, the trustee may aggregate the values of those trusts for purposes of determining a right of a beneficiary, such as a right to withdraw trust property or the right to receive an amount or other property, but may satisfy that right from those trusts as the trustee determines is likely to minimize total federal GST taxes as to all of those trusts.

5.03 **Use of Residential Property.** The trustee may retain indefinitely any interest in residential property regardless of lack of income, diversification or marketability. If the terms of a trust require all income to be paid to one beneficiary, the beneficiary may occupy any residential property held in the trust without rent, and the trustee shall pay taxes, insurance premiums and expenses of ordinary maintenance and repair unless payment by the trustee is inconsistent with the purposes for which income or principal is payable. If the terms of a trust do not require all income to be paid to one beneficiary, the trustee may allow any one or more of the beneficiaries to whom trust income then may or must be paid, if any, to occupy part or all of the residential property on the terms (including rent-free, or without obligation to pay taxes, insurance premiums or expenses) the trustee decides are consistent with the purposes for which income or principal are payable. The trustee may sell all or part of the residential property held in the

trust to a beneficiary residing in that property at its then appraised value, and if the trustee is also the beneficiary, without liability for self-dealing. Absent bad faith, the trustee shall not be liable for the condition of the residential property during its occupancy by a beneficiary.

5.04 **Use of Personal Effects.** The trustee may retain indefinitely any interest in personal effects regardless of lack of income, diversification or marketability. The trustee may sell any of the personal effects to the beneficiary at their then appraised value without liability for self-dealing. If the terms of a trust require all income to be paid to one beneficiary, that beneficiary may possess and use rent-free any personal effects constituting trust property. The beneficiary's right to possess the personal effects will be equivalent to that of a legal life tenant under applicable state law. If the terms of a trust do not require all income to be paid to one beneficiary, the trustee also may allow any one or more of the beneficiaries to whom income may then be paid to possess personal effects on any terms (including rent-free) the trustee decides are consistent with the purposes for which income and principal are payable. Absent bad faith, the trustee will not be liable for the condition of personal effects during their possession and use by a beneficiary.

5.05 **Personal Effects List.** As of the date of my death, I may dispose of certain items or interests in items of personal effects by a signed instrument (the "personal effects list") delivered to the trustee which refers specifically to this paragraph. The personal effects list will be deemed to be an amendment to this instrument and will be legally binding. If no personal effects list is filed with the trustee within 60 days after my death, it will be conclusively presumed that I left no personal effects list. If two or more personal effects lists delivered to the trustee are inconsistent in any respect, the latest by date shall

control.

5.06 **Loans to Current Beneficiary.** The independent trustee, if any, may (a) make secured or unsecured loans to a current beneficiary, on terms determined by that trustee, including with or without interest, (b) pledge trust property to secure any loans made by a third party lender to the current beneficiary, and (c) guarantee loans or advances made by a third party lender to or for the benefit of the current beneficiary, in each case only to the extent that the independent trustee determines that such action is consistent with the purposes for which income or principal is payable. If no independent trustee is acting, (x) if the terms of the trust require all income to be paid to one beneficiary, the trustee may make secured loans to that beneficiary, with or without interest, and (y) the trustee may make secured loans to any other current beneficiary only with appropriate interest.

5.07 **Trust Termination by Independent Trustee.** If the independent trustee, if any, decides that terminating a trust is advisable because of its small size, the circumstances of the beneficiaries, the anticipated distribution of the trust due to a rule against perpetuities, or changes in tax law, the trustee shall distribute the trust to such one or more of the current beneficiaries and, except with respect to a marital trust, their respective descendants in such proportions as the independent trustee decides is advisable for their respective best interests and welfare. The independent trustee shall not be liable to any person for any action taken or omitted in good faith under this paragraph.

5.08 **Trust Amendment by Independent Trustee.** Federal transfer tax or income tax laws may change or be interpreted differently, a trust hereunder may be considered not to qualify for an intended tax benefit, or the personal or financial

circumstances of one or more beneficiaries may change after my death or incapacity. Accordingly, while I am not legally competent or after my death the independent trustee, if any, may from time to time amend only those provisions of this instrument which the independent trustee reasonably determines to require amendment to carry out my intent (also as reasonably determined by the independent trustee) in a practical, tax efficient manner under the federal tax laws then in existence; provided that any exercise of the power to amend granted to my attorney-in-fact pursuant to the Exercise of Personal Rights paragraph shall supersede a contrary amendment made by the independent trustee pursuant to the provisions of this paragraph. The independent trustee may amend (a) any power of appointment to include the power holder's estate as a possible appointee or (b) any power of appointment that includes as a possible appointee the power holder's estate or the creditors of the power holder's estate to exclude as potential appointees only the power holder, his or her estate and the creditors of either. No amendment shall (x) materially affect the substance of dispositive provisions of this instrument or (y) alter the terms of this instrument so as to affect adversely a federal estate tax marital or charitable deduction otherwise available to my estate or to affect adversely the status of any trust as GST exempt. Each amendment shall be by signed instrument filed with the trust records, with a copy delivered to each current beneficiary and to any co-trustee. The independent trustee shall not be liable to any person for any action taken or omitted in good faith under this paragraph.

5.09 **Trustee's Support Obligation.** Despite any other trust payment provision of this instrument, after my death the trustee shall make no payment to any beneficiary that would directly or indirectly discharge the legal obligation of any trustee under this

instrument as an individual to support that beneficiary.

**5.10 Powers of Appointment.** A person may exercise a power of appointment in favor of permissible appointees in such proportions and subject to such trusts, powers (including powers exercisable in favor of individuals or organizations that would not have been permissible appointees of that person's power) and conditions as the person provides; except that individuals who are permissible appointees must be living at the time the exercise becomes irrevocable or be born thereafter. A power of appointment may be exercised by will, by signed, acknowledged instrument delivered to the trustee prior to the power holder's death, or by signed instrument witnessed by at least two disinterested persons delivered to the trustee prior to the power holder's death. The trustee may rely on a will admitted to probate in any jurisdiction as the will of the person or may assume the person had no will if the trustee has no actual knowledge of a will within 90 days after the person's death. If the power of appointment is exercised by signed instrument required to be delivered to the trustee, and the person exercising the power of appointment is also the trustee, then the person, in his or her capacity as trustee, must acknowledge in writing the receipt of the signed instrument. The trustee shall keep a copy of any signed instrument exercising a power of appointment that is delivered to the trustee with the trust records. Any failure to maintain a copy with the trust records shall not invalidate an otherwise valid exercise of a power of appointment. The exercise of any power of appointment (a) must be dated, (b) must refer specifically to the power being exercised and (c) unless the instrument exercising the power expressly states otherwise, shall be revocable prior to the effective date. The last dated instrument exercising a power of appointment shall be deemed to supersede all prior dated instruments signed by the same person, even if the prior dated

instrument was a will that is later duly admitted to probate. The power to appoint or withdraw includes the principal and its accrued or unpaid income.

## **Article 6 Trustees and Other Officeholders**

6.01 **Successor Trustees.** The following provisions apply to each trust hereunder regarding trustee succession.

(a) **Generally.** When I cease to act as trustee, Crisara shall be trustee. When Crisara fails or ceases to act as trustee, my wife shall be trustee. When my wife fails or ceases to act as trustee, Clinton shall be trustee. When Clinton fails or ceases to act as trustee, William Reager shall be trustee.

(b) **Primary Beneficiaries Become Own Trustee.** Despite the preceding provisions of this paragraph, but subject to the following sentence, after the primary beneficiary reaches age 25, the primary beneficiary shall be sole trustee of the trust named for him or her at any time the primary beneficiary so elects by signed instrument delivered to the trustee of that trust

(c) **Further Vacancies.** If no trustee would be acting after the application of the preceding provisions of this paragraph: (1) an individual acting as trustee may name successor trustees in accordance with the Successor Designation paragraph unless the instrument appointing the individual provides otherwise, and if none are so named, (2) the appointer shall name a successor trustee to fill the vacancy.

6.02 **Appointment of Co-Trustee.** An individual acting as sole trustee (the “original trustee”) may name another person or trust company to act as co-trustee with him or her by signed instrument delivered to that person or trust company so appointed and filed with the trust records. Any person or trust company appointed pursuant to this paragraph shall cease to act as co-trustee when the original trustee ceases to act.

6.03 **Independent Trustee.** “Independent trustee” means a trustee that is (a) a trust company or (b) an individual other than my wife, a descendant of mine, a parent of a descendant of mine or a spouse of a descendant of mine. Only an independent trustee may exercise powers granted exclusively to the independent trustee. If no independent trustee is acting who could exercise an exclusive power, the appointer may fill the vacancy in the

office of independent trustee by appointing an independent trustee.

6.04 **Officeholder Vacancies.** Except as otherwise provided in this instrument or in an instrument naming successor officeholders, whenever a vacancy in any office occurs, the appointer may, but need not, appoint any individual or trust company to act in that office by signed instrument delivered to the individual or trust company so appointed and to the trustee at any time after the vacancy occurs. An instrument of appointment may provide that an officeholder may act for a limited period of time or only for a limited purpose.

6.05 **Appointers.** Whenever the identity of the appointer is to be determined, the appointer shall be me, or if I fail to act, Crisara, or if she fails to act, Clinton, or if he fails to act, the primary beneficiary if then at least age 25 (except my wife), or if the primary beneficiary fails to act, those descendants of the primary beneficiary who then are at least age 25, or if none, those current beneficiaries who then are at least age 25, or if none, those descendants of the nearest ancestor of the primary beneficiary in my line of descent who then are at least age 25, or if none, such of my descendants who then are at least age 25. A person named as appointer shall not be deemed to have failed to act unless (a) the vacancy in any office is required to be filled and that person has not appointed a successor within 30 days after that person has been notified of the vacancy, or (b) that person declines to act as appointer to fill that vacancy or any vacancy by signed instrument delivered to the individuals or entities named to act as appointer if that person fails to act and to the trustee.

6.06 **Removers.** At any time or times the remover may remove any trustee other than me by signed instrument delivered to that trustee. I am the initial remover. Whenever

a vacancy occurs in the office of remover, the remover shall be Crisara, or if she fails, Clinton, or if he fails, the primary beneficiary (except my wife) if then at least age 25, or if the primary beneficiary fails to act, those descendants of the primary beneficiary who then are at least age 25, or if none, those current beneficiaries who then are at least age 25, or if none, those descendants of the nearest ancestor of the primary beneficiary in my line of descent who then are at least age 25, or if none, such of my descendants who then are at least age 25.

(a) **Limitations on Removal.** Despite the first sentence of this paragraph, (1) if an independent trustee is removed and any remover also may participate in filling the resulting vacancy, the removal after my death shall be ineffective unless another trustee who is not a subordinate party as to any such remover is appointed to fill the resulting vacancy, and (2) the primary beneficiary may not remove any trustee who has delayed the age at which a primary beneficiary may elect to become trustee of his or her own trust pursuant to the Primary Beneficiaries Become Own Trustee subparagraph of the Successor Trustees paragraph.

(b) **Exculpation of Remover.** The remover need not review from time to time the records or performance of the trustee and shall not be liable to any person for any act or omission under this paragraph.

6.07 **Controlling Vote.** Unless a designation naming concurrent successor trustees provides otherwise, (a) any action or decision of the majority of the trustees shall be as effective as if taken or made by all trustees and (b) if two trustees are acting with respect to any matter as to which they have joint powers, they must act jointly in order to take any action or effect any decision. With respect to any officeholders other than trustees, unless this instrument or a designation naming concurrent successors provides otherwise, majority vote among officeholders controls.

6.08 **Family Line Voting.** Despite the preceding, for all purposes of this instrument, whenever a majority of the descendants of an individual, or of the current beneficiaries if they are all descendants of the same individual, may take any action, make

any decision or approve any action or inaction, whether as individuals or concurrent officeholders, majority means those descendants who would receive more than half in value of property distributed per stirpes to that individual's then living descendants, assuming that the only descendants then living are those descendants who then are at least age 25 and legally competent.

6.09 **Co-Trustee Provisions.** Whenever more than one trustee is acting, the following provisions apply where the context admits:

(a) **Custody.** A trustee shall not be liable for leaving the trust property in the custody or control of the other trustee.

(b) **Delegation.** A trustee from time to time by writing may delegate to any other trustee, with the consent of the latter, any or all of the delegating trustee's rights, powers, duties and discretions; except that powers granted exclusively to an independent trustee may be delegated only to an independent trustee. Any trustee may exercise a ministerial power, including signing a document or receipting for property, without a written delegation from any other trustee.

(c) **Accounts.** The trustees may establish checking or other accounts and may authorize that checks or drafts be drawn on or withdrawals made from any such accounts on the individual signature of any trustee.

(d) **Presumption of Approval or Disapproval.** A trustee shall be presumed to have approved a proposed act or decision to refrain from acting if such trustee fails to indicate approval or disapproval thereof within 15 days after a written request to do so. A trustee shall not be required to continue to make a proposal which has been disapproved on at least two occasions if such trustee has informed the disapproving co-trustee that continuing disapproval will be assumed until notice to the contrary has been received.

(e) **Execution.** The trustees may execute documents by signing one document or several counterparts of the same document which, together, shall be taken as one and the same document.

6.10 **Limitations on Foreign Officeholders.** Until such time as those trustees that are United States persons determine in a signed instrument filed with the trust records that the trust should become a foreign trust, (a) at least one acting trustee shall be a United States person, and (b) no officeholder may participate in the exercise of any power or

discretion under this instrument if that officeholder is not then a United States person. Such power or discretion shall be exercised instead by the remaining officeholders who are United States persons, or if none, by such of the trustees as are United States persons. “United States person” shall have the same definition as provided for that term in Code Section 7701(a)(30).

6.11 **Declination and Resignation; Competency; Vacancy.** An individual or trust company may decline or resign any office at any time by signed instrument delivered to each other holder of the same office, to each trustee and to each successor named to fill the vacancy, or if none, to each appointer. While an individual is not legally competent, that individual shall be treated as deceased for purposes of determining who is an officeholder. Except as otherwise provided in this instrument or in an instrument naming successor trustees, a “vacancy” in any office other than appointer results when an acting officeholder ceases to act for any reason.

6.12 **Successor Designation.** The following provisions apply when an individual may name successor officeholders in accordance with this paragraph:

(a) **Method.** The individual shall file the designation with the trust records and may amend or revoke the designation until a successor acts pursuant to the designation. Unless this instrument or the instrument appointing the individual to an office provides otherwise, the individual may name one or more individuals or qualified entities as successors to act immediately, prospectively, one at a time or concurrently, including concurrently with the individual without the individual having to fail or cease to act. Despite the preceding sentence, an individual acting or named to act concurrently with another officeholder may name successors to that office to act only one at a time and may not name concurrent officeholders. The designation may: (1) specify the time during which each successor acts; (2) limit or deny the ability to name successors; (3) specify the manner for resolving conflicts among concurrent successors; (4) limit the authority of a successor officeholder or divide the powers and discretions of the office among two or more concurrent officeholders; (5) provide that a vacancy need not be filled; and (6) name successors specifically, by class or by any other method.

(b) **Priority.** The designation by any individual shall be effective only

when no other person able to fill the vacancy (1) has been named by me in this instrument or (2) has been designated by a person acting or named to act before that individual. If more than one designation is filed with the trust records by the same officeholder, then the last designation so filed shall be deemed to supersede all prior designations so filed by that person.

#### 6.13 **General Fiduciary Provisions.**

(a) **Fiduciary Officeholders.** Each trustee is a fiduciary. No other officeholder is a fiduciary. An officeholder who is not a fiduciary need not consider the interests of the beneficiaries in exercising the powers of the office, but may not act capriciously, maliciously or fraudulently.

(b) **Exoneration.** No individual officeholder shall have any liability, and shall be exculpated to the maximum extent applicable law permits, for any act or omission taken in good faith. No successor officeholder shall have any liability for any act or omission of a predecessor. A nonconcurring officeholder shall have no liability for any act or omission of a co-officeholder. I shall not be liable to any person for any action or inaction as an officeholder under this instrument.

(c) **Compensation.** Each fiduciary shall be entitled to reasonable compensation and each officeholder shall be entitled to reimbursement for reasonable expenses. After my death, if a descendant of mine is serving as trustee (a "Descendant Trustee") of a trust of which my wife or a descendant of mine is a beneficiary, the Descendant Trustee's compensation shall be limited to an annual sum equal to one-half percent (0.5%) of the value of the trust assets as agreed upon by the Descendant Trustee and all adult beneficiaries of the trust, or if the value of the trust assets cannot be agreed upon, the Descendant Trustee may, at the expense of the trust, obtain a fair market appraisal of the trust assets.

(d) **Powers of Successor Officeholders.** Except as otherwise provided in the instrument naming a successor officeholder, the successor officeholder shall have all the powers and discretions of the preceding officeholder.

(e) **Separate Officeholders for Separate Trusts.** Except as otherwise provided, (1) provisions of this instrument apply separately to each trust, (2) officeholders may differ from trust to trust and (3) any reference to an officeholder refers to the officeholder then acting with respect to the applicable trust.

### **Article 7 Special Investment Provisions**

7.01 **Special Investments.** Except as otherwise provided, the trustee is expressly authorized to invest or retain indefinitely any part or all of the trust property in special investments, regardless of any resulting risk or lack of diversification, and even

though special investments may not be marketable, may involve a high degree of business risk, may not be income-producing and may constitute a substantial part or all of the trust property. "Special investments" means (a) interests in real estate and (b) interests in or indebtedness of any corporation, partnership, limited liability company or other entity formed for business or investment purposes, at least 10% of the equity interests (by vote, income or capital) in which are owned directly or indirectly, by me, my wife, my descendants and the spouses of my descendants.

7.02 **Conflicts of Interest.** I realize that it may be necessary or advisable in the administration of the trusts hereunder for the trustee to make sales to or purchases from or otherwise deal with (a) the trustee in the trustee's individual capacity, (b) a corporation, partnership, limited liability company or other legal entity in which the trustee may be interested or associated as director, stockholder, officer, employee, creditor, partner, member, manager or in any other capacity or (c) a trust or estate of which the trustee is a beneficiary or fiduciary. I authorize the trustee to take any such action without obtaining the approval or confirmation of any court, and the trustee's actions in good faith in these respects shall be as binding and conclusive as though no such relationship or possible conflict of interest existed. The trustee shall not be required to account for any direct or indirect personal benefit the trustee receives and shall not be liable for any loss that results, in either case absent bad faith.

7.03 **Wishes Regarding Retention of Certain Property.** It is my wish, without imposing any legal obligation, that the trustee retain in perpetuity and not encumber any interests in Scripps Corporate Park, a California general included in the trust property.

## **Article 8 General Administrative Provisions**

8.01 **Facility of Payment.** Whenever the trustee considers that a person entitled to income or principal payments is incapacitated in any way so as to be unable to manage his or her financial affairs, such payments may be made directly to such person, to a duly appointed guardian or conservator of such person or to a custodian for such person under a Uniform Gifts or Transfers to Minors Act of any jurisdiction or otherwise expended for such person's benefit as the trustee considers advisable.

8.02 **Income Payments.** Except as otherwise provided, required income payments shall be made at least annually. The trustee shall add to principal periodically any income not required to be paid to a current beneficiary. Except as otherwise provided, income accrued or unpaid at the termination of any beneficial interest shall be treated as if it had accrued immediately after such termination.

8.03 **Protection from Creditors.** The interests of the beneficiaries in principal or income shall not be subject to the claims of their creditors or others, including claims for alimony, support, maintenance or other similar claims, and may not be transferred or encumbered. The preceding sentence shall not be construed as restricting in any way the voluntary exercise of any power of appointment or power of withdrawal granted by this instrument.

8.04 **Trustee Powers.** The trustee shall have the following powers and discretions and all others granted by applicable law, to be exercised in a fiduciary capacity:

(a) **General Investment.** To retain indefinitely any property received by the trustee; to sell any trust property and to invest and reinvest trust property in any property, real or personal, foreign or domestic, including stocks, bonds, mortgages, notes, commodities, partnerships, limited liability companies, joint ventures, land trusts or other title-holding trusts, investment companies, investment trusts, common trust funds or other organizations as a limited or general partner, shareholder, member, manager, creditor, owner, beneficiary or otherwise, and

successive interests, such as life estates, terms of years, remainders (contingent and vested), executory interests, reversions and reverters, without being limited by any statute or rule of law concerning trust investments and without any duty to diversify trust investments.

(b) **Contracts.** To execute, acknowledge and deliver contracts and other agreements and instruments in connection with any action that the trustee is authorized to take under this instrument, and containing such terms as the trustee decides are advisable, including granting warranties and indemnifications.

(c) **Margin Investments and Financial Products.** To purchase and sell by way of short sales, puts, calls, straddles and sales against the box, on margin or otherwise, and to maintain and operate margin accounts or otherwise secure loans or advances made in conjunction with transactions permitted under this subparagraph, and to purchase, sell or otherwise enter into futures, options, derivatives, forwards, swaps, caps, floors, collars and all other financial, equity or commodity related products, however classified and wherever traded.

(d) **Artwork.** To retain or invest any part of the trust property in non-income-producing or non-earning property, including paintings, prints, pictures and other works of art, gold, silver and other precious metals, antiques, foreign currencies, coins, jewels, postage stamps, rare books and any other type of collectible, to pay any storage charges, insurance premiums and costs of maintenance and preservation in connection therewith and to lend such works of art or other objects or collectibles to any current beneficiary or any charitable organization or exhibit them on such terms as the trustee deems consistent with the provisions for which income or principal is payable.

(e) **Leasing and Development.** To lend, lease or sublease for any term, even though extending beyond the term of the trust, any trust property; to subdivide, resubdivide, partition, abandon, dedicate, raze, alter, repair and improve any real or personal trust property; to grant easements; and to make any other contract relating to any real or personal trust property.

(f) **Underwriting Agreements.** To sell at public or private sale, contract to sell by underwriting agreements, registration or in other ways, any security as defined by federal and state securities laws; to indemnify, by insurance or in other ways, the underwriters, issuers or purchasers of such securities and any persons controlling them against any claim arising under the Securities Act of 1933, as amended.

(g) **Farm and Ranch.** To operate farm (including dairy, breeding, feeding and poultry operations), ranch, tree, timber or other agricultural properties, including related improvements, equipment and supplies, to market its production, to participate in government programs and to take such actions alone or jointly with others (including cooperatives, tenants, managers, consultants and agents).

(h) **Organizations.** To vote, give proxies to vote and otherwise exercise management rights, enter into or oppose voting, buy-sell and other agreements and to create, acquire, reorganize or continue any organization for business, investment or other purposes under the laws of any jurisdiction, alone or with others, through one or more corporations, limited or general partnerships, limited liability companies, joint ventures, real estate investment trusts, land trusts or other business, investment or property management organizations and, with respect to any such organization, to deal with such organization without individual liability; to retain employees, agents, advisers and independent contractors; and, in general, to operate any such organization with the same powers as an individual owner would have.

(i) **Natural Resources.** To maintain, improve, operate, drill, mine, develop, unitize, lease or sublease, alone or with others, oil, gas or other mineral property or interest therein, real or personal, in any jurisdiction within or without the United States of America, or any other property or interest therein relating directly or indirectly to the exploration, drilling, mining, developing, producing, processing, treatment, storage, transportation or marketing of such oil, gas or other mineral property, including all products and constituents thereof; and, in general, to deal with any such property in like manner and with the same full power, authority and discretion, alone or with others, as an individual owner would possess with respect to such property.

(j) **Borrowing.** To borrow from any source, including the trustee individually, to issue notes or other instruments of indebtedness, to guarantee borrowings by any trust or entity in which the trust or a beneficiary directly or indirectly holds an interest, and to mortgage or pledge trust property for the foregoing purposes.

(k) **Compromise.** To contest, pursue, settle or abandon claims or demands.

(l) **Title.** To retain and maintain trust property in any jurisdiction in or outside the United States of America in a land trust or other title-holding trust, in the name of any person or organization as the trustee's nominee, or in any other way without disclosing the trust or agency relationship, and to distinguish between two or more trusts with the same name by any further designation.

(m) **Delegation.** To employ agents and counsel (including investment counsel and property managers) and delegate to them without notice to any beneficiary any powers, discretions or duties of the trustee other than distribution discretions, even though the delegated function is not ministerial in nature, including the delegation to investment managers of investment review and selection, provided that the trustee may not delegate to any person prohibited from exercising such powers, duties and discretions by the provisions of this instrument. Where qualification for, or preservation of, a federal tax benefit attributable to a trust asset depends on the material participation or other management by one or

more individuals, the trustee without liability may designate each such individual as “Manager” and may delegate to that individual for that purpose those fiduciary powers selected by the trustee.

(n) **Fiduciary Accounting.** To decide how and in what proportions to credit, charge or apportion any receipts or disbursements between principal and income in accordance with applicable law.

(o) **Division.** To distribute, divide or allocate trust property in undivided or disproportionate interests, wholly or partly in kind, at its value, without adjustment for disproportionate allocation of unrealized gain for federal income tax purposes.

(p) **Additions and Segregation.** To receive additional property from any source and to segregate property otherwise directed to be added to or consolidated with the trust property of any trust as a separate trust for any tax or other reason; except that the trustee must segregate to a separate trust any addition that may change the inclusion ratio of the trust for federal GST tax purposes.

(q) **Severance.** To sever or allocate any existing trust on a fractional basis into two or more separate trusts, or by allocation to a separate account or trust a specific amount from a portion of, or specific assets included in, the trust property of any trust to reflect a partial disclaimer or for any tax or other reason.

(r) **Separate Trust Terms.** To administer any trust or account created by segregation or severance as follows:

(1) Income earned on a segregated amount, portion or specific assets after the segregation is effective shall pass to the recipient of such amount, portion or specific trust property. In administering the trust property of any separate account or trust and in making applicable tax elections, the trustee shall consider the differences in federal tax attributes and all other factors the trustee believes pertinent consistent with applicable rules and regulations.

(2) A separate trust or account created by severance or segregation shall be treated as a separate trust for all purposes from and after the date designated by the trustee as the effective date of the severance or segregation. Such trust shall be held on terms and conditions substantially equivalent to the terms of the trust from which it was severed or segregated, so that the aggregate interests of each beneficiary in the several trusts are substantially equivalent to the beneficiary’s interests in the trust before severance or segregation. Despite the preceding, if a change to a provision of the trust before severance or segregation would adversely affect qualification of the trust for any federal tax deduction, exclusion, election, exemption or other special federal tax status, that provision shall remain unchanged in each of the separate trusts.

(s) **Joint Investment; Consolidation and Merger.** To hold separate trusts under this or other instruments as a common fund in which the trusts have proportionate interests; and to consolidate and merge any trust with any other trust under this or another instrument having the same beneficiaries and substantially the same terms even if segregation is directed elsewhere under this instrument. If a trust has substantially the same terms as any other trust under this or another instrument, but different perpetuities periods, the independent trustee may consolidate the trusts so that the shorter perpetuities period would apply to all assets held in the combined trust.

(t) **Expenses and Compensation.** To pay taxes and reasonable expenses, including compensation to the trustee and the trustee's agents and investment and other counsel.

(u) **Dealing with Fiduciaries.** To deal in any way with the fiduciary of the estate of any beneficiary or any trust or estate in which any beneficiary has an interest, although the trustee is such fiduciary.

(v) **Special Trustee.** To appoint or remove by signed instrument any person or trust company, wherever located, as special trustee as to part or all of the trust property, including property as to which the trustee does not act; and the special trustee, except as specifically limited in this or the appointing instrument, shall have all of the rights, titles, powers, duties, discretions and immunities of the trustee who appointed the special trustee, without liability for any action directed to be taken or omitted under this or the appointing instrument.

(w) **Environmental.** To inspect for compliance with environmental laws real and personal property held directly or through any entity; to alleviate or eliminate environmental damage to or caused by trust property; to prevent or remedy environmental damage; to expend trust property for these purposes and for the protection of a beneficiary or fiduciary from personal liability; and to abandon or refuse to accept property which has or may have environmental damage or liability.

(x) **General.** To give receipts and discharges; to execute and deliver necessary instruments; and to perform other acts appropriate for proper trust administration.

#### 8.05 **Insurance Policies and Death Benefit Plans.**

(a) **Life Insurance and Annuity Products.** The trustee may invest in (alone or jointly with others) or exchange life insurance, annuity or endowment policies, or policies incorporating combined life, annuity or endowment features, in such form, on such life or lives and on such terms as the trustee decides. The trustee rather than the insured shall have all rights and elections under any policy owned by the trustee, including the right to change the beneficiary, borrow, apply dividends or other amounts available under such policy, surrender the policy and

have an individual policy issued when a group term policy terminates. The trustee need not monitor the financial rating or ability of an insurance company to meet its responsibilities under any insurance policy and, except as otherwise provided, the trustee may retain indefinitely any insurance policy, regardless of any resulting risk, or lack of income, diversification or marketability.

(b) **Premiums.** The trustee may pay premiums, assessments and other charges on any policy owned by the trustee from trust property, funds made available to the trustee by any person or amounts available under the policy through borrowing, dividends or otherwise, but the trustee need not pay or see to the payment of premiums, assessments or other charges on any other policy.

(c) **Collection.** The trustee shall collect the death benefits under any policy or plan payable to the trustee as the trustee considers advisable, but the trustee need not incur expense or institute legal proceedings unless indemnified.

(d) **Releases.** The trustee's receipt shall fully discharge an obligor of the obligor's liability under any policy or plan payable to the trustee.

(e) **Limitations.** If the insured (other than me) under any policy on his or her life owned by the trustee is acting as a fiduciary, the insured as fiduciary shall not exercise or direct the exercise of any incidents of ownership in the policy, but rather the trustee other than the insured shall so act. If the insured is the only trustee, the appointer (treating the insured as deceased for purposes of determining the appointer) shall appoint a special trustee to exercise those incidents of ownership.

8.06 **Third Party Relationships.** No one need see to the application of money paid or property delivered to the trustee. The trustee's certificate that the trustee is acting according to this instrument shall fully protect all persons dealing with the trustee.

8.07 **Accountings.** On the request of any current beneficiary, the trustee shall furnish to such beneficiary a current account showing receipts, disbursements and an inventory of trust assets. To the extent permitted by applicable state law, the trustee's requirement to furnish an account to any other person is hereby waived. However, any trustee at any time may file an account in court or with any person, including by virtual representation pursuant to the provisions of applicable state law, as may be necessary to bind the beneficiaries or to obtain an approval or release for its actions or inactions. A

successor trustee shall not be liable for the actions or inactions of a predecessor trustee.

8.08 **Court Supervision.** To the extent such requirements can be waived, the trustee shall not be required (a) to file any inventory of trust property or accounts or reports of the administration of the trusts, or to register the trusts, in any court, (b) to furnish any bond or other security for the proper performance of the trustee's duties or (c) to obtain authority from a court for the exercise of any power conferred on the trustee by this instrument.

8.09 **Releases.** Except as otherwise provided, a trustee or other person authorized to act under this instrument may release or waive for any period of time any power or right granted the trustee or that person under this instrument or by law. Any such release or waiver shall bind any successor acting in the same capacity unless otherwise specified.

8.10 **Reliance on Counsel.** In case of doubt as to a fiduciary's rights, powers, duties and responsibilities under this instrument, that fiduciary may select counsel and act or refrain from acting on the opinion or advice of such counsel and shall not be liable absent bad faith for any loss resulting from any such action taken or omitted to be taken in accordance with any such opinion or advice.

8.11 **Waiver of Prudent Investor Rule.** The trustee need not comply with the prudent investor rule known as the Uniform Prudent Investment Act nor any common law prudent man rule in making investment decisions about trust assets. It is my wish, without imposing any legal obligation that the trustee invest no more than 10% of the gross value of trust assets in debt instruments of the U.S. Government, and no more than 4% of the gross value of trust assets in other marketable securities.

## **Article 9 General Tax Provisions**

9.01 **Payment of Estate Obligations.** The trustee's payment of estate obligations on my death is subject to this paragraph. If an executor of my probate estate is appointed within six months after my death, the trustee shall pay estate obligations only to the extent that the executor of my probate estate certifies to the trustee that those estate obligations cannot be paid from the residue of my probate estate. Despite any state law, except as specifically directed under this instrument, no estate obligations shall be recovered from, or apportioned to, any specific property, share or gift passing under or outside this instrument. "Estate obligations" means (a) the expenses of my funeral, (b) the costs occasioned by my death of administering, transmitting and managing property included in my gross estate and located in any jurisdiction, including costs of protecting and delivering gifts and bequests, and (c) my debts (including debts owed by me to the trustee or to an executor individually) that are legally enforceable at the time of payment, excluding debts secured by residential property or real estate or by property not passing under my will or this instrument. The trustee may pay any debts legally enforceable at the time of payment without requiring that a claim be filed in my probate estate. This instrument shall not be interpreted as imposing on the trustee any additional fiduciary duties to a creditor in that capacity nor shall any creditor in that capacity be considered a current beneficiary.

9.02 **Death Taxes.** The trustee shall pay death taxes from the trust residue as provided in this paragraph. "Death taxes" means all estate, inheritance, direct skip GST taxes and other taxes (whether now in effect or later enacted) imposed by the United States or any of its political subdivisions by reason of my death on property passing or that has passed under this instrument, appreciation on such property, or the transfer or receipt of

such property. Despite the preceding sentence, death taxes shall not include (1) any GST taxes other than direct skip GST taxes or (2) any additional tax imposed by reason of a recapture event after my death resulting from a death tax election in my estate. Interest and penalties on any death tax shall be treated as a part of the tax. Death taxes shall be apportioned among the persons to whom any benefit from the trust residue accrues in the proportion that the value of the property or interest received by a person bears to the total value of the property of the trust residue, using for these purposes federal estate tax values as finally determined in my estate, or, if the federal estate tax is repealed, fair market values as of the date of my death, except that all death taxes imposed under the laws of any jurisdiction at or by reason of my death that are apportioned to the property of an exempt trust named for a descendant shall be paid from the nonexempt trust named for that descendant, if any. I recognize and it is my intent that no death taxes shall be apportioned to or paid from any property distributed or allocated pursuant to the Gifts at My Death paragraph, as such death taxes shall be apportioned and paid as provided in the preceding sentence. The benefit of any reduction in tax attributable to property of the trust residue qualifying for the marital or charitable deduction will inure to the recipient of that property and any increase in death taxes attributable to a disclaimer of property from the trust residue shall be charged to the disclaimed property. The benefit of any credit will inure to the recipient of the property of the trust residue that generated the credit, including any credit for foreign death taxes.

**9.03 Marital Trust Death Taxes.**

(a) **Exempt Marital Trusts.** To the extent that federal and state estate, inheritance, direct skip GST taxes and other taxes (whether now in effect or later enacted) imposed by the United States or any of its political subdivisions by reason of my wife's death are recoverable from or apportioned to the property of the

Exempt Marital Trust or the Exempt Contingent Marital Trust, those taxes shall be paid from the Nonexempt Marital Trust except to the extent such a payment would be an addition to either exempt trust for federal GST tax purposes. Any such taxes not paid from the Nonexempt Marital Trust shall be apportioned among the persons to whom any benefit from the property of the trusts accrues in the proportion that the value of the property or interest received by a person bears to the total value of the property of the relevant trust, using for these purposes federal estate tax values as finally determined in my wife's estate, or if the federal estate tax is repealed, fair market values as of the date of my wife's death. The benefit of any reduction in tax attributable to trust property qualifying for the charitable deduction will inure to the recipient of that property, and any increase in taxes attributable to a disclaimer of property from an exempt marital trust shall be charged to the disclaimed property. The benefit of any credit will inure to the recipient of the trust property that generated the credit, including any credit for foreign death taxes.

(b) **Nonexempt Marital Trusts.** On my wife's death the trustee shall pay from the trust property of the Nonexempt Marital Trust remaining after the payments directed by the immediately preceding subparagraph and, if exhausted, from the trust property of the Nonexempt Contingent Marital Trust all federal and state estate, inheritance, direct skip GST taxes and other taxes (whether now in effect or later enacted) imposed by the United States or any of its political subdivisions by reason of my wife's death that are recoverable from or apportioned to the property of the Nonexempt Marital Trust or the Nonexempt Contingent Marital Trust ("taxable property"). Taxes paid under this subparagraph shall be apportioned among the persons to whom any benefit from taxable property accrues in the proportion that the value of the property or interest received by a person bears to the total value of the taxable property, using for these purposes federal estate tax values as finally determined in my wife's estate, or if the federal estate tax is repealed, fair market values as of the date of my wife's death. The benefit of any reduction in tax attributable to taxable property qualifying for the charitable deduction will inure to the recipient of that property, and any increase in taxes attributable to a disclaimer of property from a nonexempt marital trust shall be charged to the disclaimed property. The benefit of any credit will inure to the recipient of the taxable property that generated the credit, including any credit for foreign death taxes.

9.04 **Funding.** Whenever the trustee distributes or allocates an asset to fund a pecuniary amount, or a fractional share with disproportionate interests, the trustee shall value that asset as of its date of distribution or allocation for purposes of satisfying the pecuniary amount or the value of the fractional share.

9.05 **Reliance.** The trustee may rely on, without liability, (a) the accuracy of an item reported on a tax return, (b) a copy of a tax return provided by the taxpayer filing the

return or the tax return preparer or (c) the representation of another fiduciary who filed a tax return as to the amount of any item reported on that return.

9.06 **Tax Elections.** The trustee may make elections or allocations authorized under tax laws in any manner that appears advisable even though such actions may favor one beneficiary over another. The trustee shall have no liability for acting in good faith in selecting assets to be sold to make payments under this article or in making allocations and elections authorized under tax laws. The trustee shall not adjust income and principal or the interests of beneficiaries to compensate for the effect of any such allocations or elections.

9.07 **Tax References.** If the context requires, terms in this instrument shall have the meanings ascribed to them under the Internal Revenue Code of 1986, as amended (the "Code") and its regulations, and corresponding provisions of future federal tax laws, as from time to time in effect.

9.08 **Federal Estate or GST Tax Repealed.**

(a) **Estate Tax Repeal.** If the federal estate tax is repealed at my death, the optimal amount and federal optimal amount for purposes of the Marital Trust and Family Trust Formula Allocations paragraph shall be equal to the difference of the trust residue reduced by the product of \$6,000,000 multiplied by the inflation factor. Any other provisions of this instrument that refer to the federal estate tax law shall be treated as referring to that law as in existence immediately before repeal was in effect. The federal estate tax is repealed at an individual's death if the tax does not apply to the estates of United States citizens dying at that individual's death.

(b) **GST Tax Repeal.** If the federal GST tax is repealed at my death or at my wife's later death, then as of the relevant death, the formula allocation provisions of the GST Provisions article that apply at such death shall be interpreted so as to maximize the property allocable to the exempt trusts. The federal GST tax is repealed at an individual's death if the tax does not apply on the date of the individual's death to generation-skipping transfers as defined for purposes of that tax.

(c) **Specific Limitations.** Despite the preceding provisions of this

paragraph, any specific ceiling or floor on the value of property passing to any trust in such formula shall continue to apply.

#### **Article 10 Marital Formula**

10.01 **Marital Trust and Family Trust Formula Allocations.** Subject to the provisions of the Federal Estate or GST Tax Repealed paragraph, if my wife is living at my death, then as of my death the trustee shall allocate the trust residue as follows:

(a) **Family Trust.** The trustee shall allocate to the Family Trust that fraction of the trust residue that has a value as finally determined for federal estate tax purposes in my estate equal to the optimal amount. "Optimal amount" means the largest amount that will produce the lowest possible total of federal estate tax and state death taxes payable from all sources by reason of my death, considering for this purpose only those state death taxes imposed by the state of my domicile at my death.

(b) **Contingent Marital Trust.** If the federal optimal amount is greater than the estate tax value of the Family Trust determined under the preceding subparagraph, then the trustee shall allocate to the Contingent Marital Trust from the remaining trust residue that fraction of the trust residue that has an estate tax value equal to the excess. "Federal optimal amount" means the largest amount that will produce the least federal estate tax payable from all sources by reason of my death considering any federal credit for state death taxes only to the extent that state death taxes payable from all sources by reason of my death are not thereby increased.

(c) **Marital Trust.** The trustee shall allocate the balance of the trust residue to the Marital Trust.

(d) **QTIP Election and Reallocation.** Despite any other provision of this instrument, if an independent trustee is acting at the time the federal estate tax return is filed, (1) only the independent trustee may decide whether and to what extent the election to qualify property of the Contingent Marital Trust for the federal estate tax marital deduction in my estate ("federal QTIP election") and any similar election for state death tax purposes ("state QTIP election") will be made for my estate, and (2) except as provided in the following sentence, the trustee shall allocate to the Family Trust any property of the Contingent Marital Trust for which no federal QTIP election is made. However, if the state QTIP election in the state of my domicile at my death may be made differently from the federal QTIP election, the trustee shall make the allocation required under the immediately preceding sentence only if neither a federal QTIP election nor such state QTIP election is made for that property. A reallocation to the Family Trust under this subparagraph shall not be taken into account in determining the optimal amount.

10.02 **Effect of Disclaimers and Tax Elections.** In determining the optimal amount and the federal optimal amount the trustee shall (a) ignore any disclaimer and (b) unless the federal estate tax is repealed at my death, assume that a federal estate tax marital deduction is allowed for property allocated to any marital trust and is not allowed for property allocated to the Family Trust. In other respects, subject to the provisions of the Federal Estate or GST Tax Repealed paragraph, the trustee shall determine the optimal amount and federal optimal amount after giving effect to the exercise of tax elections. No particular exercise of any tax election is required. If my wife disclaims all interests in any property otherwise allocable to a marital trust, the trustee shall allocate that property to the Family Trust, and my wife shall have no power to appoint that disclaimed property if the retention of that power of appointment would cause my wife's disclaimer not to be a "qualified disclaimer" under the Code.

10.03 **Marital Savings Clause.** If the federal estate tax is not repealed at my death, I intend that property allocated to any marital trust be able to qualify for the federal estate tax marital deduction, the provisions of this instrument shall be construed liberally to effect my intent, and despite any other provision of this instrument, with respect to each marital trust:

(a) **Consistent with Deduction.** Each power, right or discretion granted under this instrument shall be exercisable only to cause property allocated to the trust to be able to qualify for the federal estate tax marital deduction, but the trustee need not elect to so qualify.

(b) **Unproductive Property.** Within a reasonable time after receiving written notice from my wife, the trustee shall convert unproductive property in the trust to property that produces income.

(c) **Installment Payments.** If the trust is a beneficiary of installment payments from any retirement arrangement, plan or trust because of my death, my wife may from time to time direct the trustee to withdraw the income earned by such arrangement, plan or trust during the calendar year and to pay that income to

my wife.

#### **Article 11 GST Provisions**

11.01 **My GST Formula.** Subject to the provisions of the Federal Estate or GST Tax Repealed paragraph, as of my death, the trustee shall allocate the Family Trust, if any, the Contingent Marital Trust, if any, and the Marital Trust, if any, as follows:

(a) **Family Trusts.** The trustee shall allocate from the trust property of the Family Trust to the Exempt Family Trust (1) any property that has no transferor for federal GST tax purposes and (2) the largest fraction of the Family Trust that will result in the Exempt Family Trust being GST exempt. The trustee shall allocate all remaining trust property of the Family Trust, if any, to the Nonexempt Family Trust.

(b) **Contingent Marital Trusts.** If the estate tax value of the Family Trust is less than my unused GST exemption, then the trustee shall allocate from the trust property of the Contingent Marital Trust to the Exempt Contingent Marital Trust the largest fraction of the Contingent Marital Trust that will result in the Exempt Contingent Marital Trust being GST exempt. The trustee shall allocate all remaining trust property of the Contingent Marital Trust, if any, to the Nonexempt Contingent Marital Trust.

(c) **Marital Trusts.** If the sum of the estate tax values of the Family Trust and the Contingent Marital Trust is less than my unused GST exemption, then the trustee shall allocate from the trust property of the Marital Trust to the Exempt Marital Trust the largest fraction of the Marital Trust that will result in the Exempt Marital Trust being GST exempt. The trustee shall allocate all remaining trust property of the Marital Trust, if any, to the Nonexempt Marital Trust.

(d) **GST Assumptions and Definitions.** The trustee shall assume for purposes of the allocations under this paragraph that my unused GST exemption will be allocated to trusts under this instrument in an amount that will result in a trust being GST exempt, in the following order: the Exempt Family Trust, the Exempt Contingent Marital Trust, the Exempt Marital Trust. "My unused GST exemption" means the amount of the unused portion of my GST exemption (as described in Code Section 2631) remaining after all allocations of such exemption before or after my death other than to the trusts created under this instrument. "Estate tax value" of a trust means the value of the property allocable to that trust as of my death as finally determined for federal estate tax purposes in my estate.

11.02 **Nonexempt Marital Trust GST Provisions.** Subject to the provisions of the Federal Estate or GST Tax Repealed paragraph, if my wife is living at my death, the

following subparagraphs shall apply as of my wife's death to any trust property of the Nonexempt Marital Trust, including any trust property added to that trust as of my wife's death, remaining after the exercise by my wife of any power of appointment:

(a) **No Transferor.** The trustee shall allocate to the Exempt Family Trust any remaining property of the Nonexempt Marital Trust that has no transferor for federal GST tax purposes.

(b) **Wife Not Transferor.** The trustee shall allocate to the Nonexempt Family Trust any remaining property of the Nonexempt Marital Trust that has a transferor other than my wife for federal GST tax purposes.

(c) **Marital Trust Taxes.** The trustee shall make tax payments from any property of the Nonexempt Marital Trust remaining after the above allocations as directed in the Marital Trust Death Taxes paragraph.

(d) **My Wife's GST Formula.** The trustee shall:

(1) Allocate to the Exempt Family Trust the largest fraction of the trust property of the Nonexempt Marital Trust remaining after the above allocations and payments, if any, that will result in the Exempt Family Trust being GST exempt, assuming that any of my wife's GST exemption remaining after all allocations of my wife's GST exemption before or after my wife's death other than to the trusts under this instrument will be allocated to the Exempt Family Trust.

(2) Allocate any remaining balance of the Nonexempt Marital Trust to the Nonexempt Family Trust.

11.03 **Payment of GST Tax on Terminations.** Whenever the termination of an interest results in a federal or state GST tax, the tax and related expenses shall be paid from that principal to which the tax relates after the distributions or allocations that would result from the termination.

11.04 **GST Definitions.** For purposes of this instrument:

(a) **GST Tax.** "GST tax" means generation-skipping transfer tax.

(b) **GST Exempt.** A trust is "GST exempt" if the trust will have an inclusion ratio of zero for federal GST tax purposes as of the date property is transferred to the trust with respect to the transferor of that property. In creating, funding and administering a GST exempt trust the trustee shall comply with

applicable federal tax rules so that the inclusion ratio of the trust with respect to each transferor will be zero for federal GST tax purposes. I expect that each exempt trust will be GST exempt, and in the absence of actual knowledge to the contrary, the trustee may administer the trusts in accordance with that expectation without liability to any person.

## **Article 12 Interpretive Provisions and Definitions**

12.01 **Governing Law.** Except as otherwise provided, California law governs the interpretation and validity of the provisions of this instrument and all questions relating to the management, administration, investment, distribution and duration of the trusts under this instrument; except that the trustee from time to time, by signed instrument delivered to each trustee and to each current beneficiary, may elect to have the laws of another state (the “new state”) govern issues other than interpretation, validity and duration if, at the time of electing, at least one of the following conditions exists: (a) a trustee resides or has its principal place of business in the new state; (b) a current beneficiary resides in the new state; (c) all or a significant portion of the trust property is located in the new state; or (d) an agent for management of all or a significant portion of the trust property is located in the new state.

12.02 **Certification of Incompetency.** Any person acting or named to act as an officeholder or required to be legally competent to act (the “acting person”) shall be considered to have ceased or failed to act or to be legally incompetent to act (a) when a physician whom the acting person has consulted within the prior three years has certified as to that consultation and also as to the lack of the physical or mental capacity of the acting person to manage his or her financial affairs, or (b) when (1) the remover (treating the acting person as then deceased for purposes of determining the identity of the remover) certifies in a signed instrument delivered to the trustee and the acting person that the

remover knows of no physician described in (a) above who has been authorized to disclose information regarding the physical or mental capacity of the acting person, (2) the acting person has not provided the remover with authority to receive such information within 10 days of the remover's certification under (1) above, and (3) the remover further certifies in good faith after that 10 day period as to the lack of the physical or mental capacity of the acting person to manage his or her financial affairs, based on whatever evidence the remover then has regarding the acting person's capacity.

12.03 **Beneficiary Survival.** In determining whether a person is living for purposes of exercising a power of appointment or withdrawal or being paid income or principal, or receiving a distribution of trust property on my death or the death of my wife: (a) any person other than my wife who survives me for less than 90 days shall be treated as dying before me; and (b) if my wife survives me, any person who survives my wife for less than 90 days shall be treated as dying before my wife. A person shall be deemed to be living at a designated point in time if such person then is *in utero* and is born alive.

12.04 **Descent and Adoption.** The words "child," "children," "descendant," "descendants" and other terms indicative of descent with respect to an individual shall be interpreted in accordance with the following provisions of this paragraph:

(a) **Adoptions.** A person legally adopted before age 18 shall be considered a child of his or her adopting parent or parents. A person adopted after age 18 shall not be considered a child of his or her adopting parent or parents.

(b) **Assumptions Based on Marriage.** Except as otherwise provided in this Descent and Adoption paragraph:

(1) **Children Born During Marriage.** A person born to parents who were married to each other at any time during the child's gestation shall be considered the child of both parents unless a parent (A) proves that he or she did not contribute to that child's DNA and (B) states in his or her will or in a signed instrument delivered to the trustee that the child shall not be treated as his or her child.

(2) **Children Born Outside Marriage.** A person born to parents who were not married to each other at any time during the child's gestation shall be considered the child of (A) the woman who gave birth to the child, and (B) the man from whom the child inherited a portion of his or her DNA, but only if the man (i) marries the woman who gave birth to the child, (ii) states in his will or in a signed instrument delivered to the trustee that the child shall be treated as his child or (iii) functioned as a parent of the child. A man's payment of support for a child, without more, shall not be sufficient to consider him the child's parent pursuant to this subparagraph.

(c) **Advanced Reproductive Technology.** A person who is born as a result of advanced reproductive technology shall be considered the child of the parent or parents who requested the advanced reproductive technology with the intent of conceiving a child to raise as his or her own, whether or not the child inherited DNA from the requesting parent or parents.

(d) **Posthumous Gestation.** A person who inherits the DNA of a parent who was deceased before such person's gestation shall be considered the child of the deceased parent if (1) the deceased parent evidenced his or her intention in writing to permit his or her spouse to use such parent's genetic material to produce a child to raise as such spouse's own, and (2) that person is born within two years after the death of the deceased parent or within three years after the birth of another person who is considered the child of the deceased parent for purposes of this instrument.

(e) **Rules Regarding Ancestors.** An individual who is considered a child of his or her parent for purposes of this instrument also shall be a descendant of all ancestors of such parent.

(f) **Rules Regarding Termination of Rights.** Despite any other provision of this instrument, a child whose parent consented to the termination of his or her rights as a parent shall not be considered such parent's child, unless and until such rights are reinstated.

12.05 **Trust Identification.** A trust may be identified in this instrument by any word included in its name. For example, the Exempt Marital Trust may be identified as an exempt trust or as a marital trust, and the Nonexempt Family Trust may be identified as a nonexempt trust or as a family trust.

12.06 **Trust Creation.** A trust shall be considered as created as of the event causing the trust to become entitled to property rather than any later funding date. The

trustee of a trust under this instrument may distribute property that otherwise would pass to a different trust or to an estate (the “recipient trust”) directly to a beneficiary of the recipient trust to the extent so directed by the fiduciary of the recipient trust.

12.07 **Articles, Paragraphs and Subparagraphs.** This instrument consists of text divided into articles that are identified by number (for example Article 2), paragraphs that are identified by the article number followed by a period and the paragraph number expressed in two digits (for example 2.01) and subparagraphs that are identified by a letter or number in parentheses (for example (a) or (1)). A reference to a division of this instrument includes all of its subdivisions (for example a reference to a paragraph includes the paragraph and all of its subparagraphs).

12.08 **Titles.** Articles and paragraphs may be referred to by their titles, but the titles shall have no other legal effect.

12.09 **Gender and Number.** Where appropriate, words indicating gender are deemed to include the masculine, feminine and neuter, and words indicating number are deemed to include the singular and plural.

12.10 **Definitions.** Unless otherwise provided in this instrument:

(a) **Advanced Reproductive Technology.** “Advanced reproductive technology” means a medical procedure in which the fertilization of a human egg is assisted through artificial means using sperm and/or egg(s) from an identified or anonymous donor and includes, but is not limited to, intrauterine insemination, in vitro fertilization and surrogacy.

(b) **Charitable Organization.** “Charitable organization” means only an organization which at the time contemplated for an actual distribution to it is described in all of Code Sections 170(c), 2055(a) and 2522(a).

(c) **Current Beneficiaries.** “Current beneficiaries” of a trust means the person or persons to whom the income or principal of that trust may be paid at the time their identity is to be determined; except that during my life I shall be considered the only current beneficiary.

(d) **Executor.** “Executor” of an individual’s probate estate means the executor, administrator, administrator with the will annexed, personal representative or other court appointed fiduciary of that individual’s domiciliary probate estate (or if none, that individual’s ancillary probate estate) from time to time acting.

(e) **Marriage.** Two people have entered into a “marriage” and are “married” if they are living together, ignoring any absences for reasons other than marital discord, and (1) they are legally married in any jurisdiction or (2) the relationship is registered as a domestic partnership or has similar legal status under the laws of any jurisdiction, regardless of whether such marriage or registration would be recognized by other jurisdictions or by the United States government; provided, however, that an individual shall not be treated as married if such individual or his or her spouse has filed an action seeking as its relief a legal separation, an annulment, or a dissolution or termination of the marriage, domestic partnership or other similar relationship.

(f) **Inflation Factor.** The “inflation factor” is a fraction. The numerator of the fraction shall be the cost of living index as of January 1 of the year of the contemplated payment based on the Consumers Price Index – All Urban Consumers, Los Angeles–Riverside–Orange County, All Items (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor (the “Index”). The denominator shall be the corresponding Index number as of January 1, 2015. The resulting amount shall be rounded to the nearest \$100. For example, if the contemplated distribution is \$10,000 and will occur in 2023, the Index number is 150 as of January 1, 2015 and the Index number is 200 as of January 1, 2023, the amount to be distributed is \$13,300 ( $\$10,000 \times (200/150)$ ), rounded to the nearest \$100).

(g) **Officeholder.** “Officeholder” means any person who acts under this instrument as trustee, appointer or remover or in some other office.

(h) **Per Stirpes.** Whenever the trustee is directed to distribute trust property or to divide and allocate trust property “per stirpes” to or among the descendants of a person living at a particular time, the trust property to be distributed or allocated shall be divided into as many equal shares as are necessary to distribute or allocate (1) one share to each then living child of such person and (2) to provide one share collectively for the then living descendants of each child of such person who then is deceased leaving one or more descendants then living. Each share so provided for the descendants of a deceased child of such person shall be distributed or divided and allocated in the same manner among such descendants.

(i) **Personal Effects.** “Personal effects” means tangible personal property normally for personal use, such as works of art, jewelry, pictures, books, papers, collections, house and office furniture and furnishings, automobiles, clothing, articles of household, office or personal use or ornament, silverware and

other personal items such as private club membership and frequent flier mileage.

(j) **Primary Beneficiary.** The person for whom a trust held under this instrument is named is the “primary beneficiary” of that trust.

(k) **Spouse.** “Spouse” of a person means the individual to whom the person is married at the time the individual’s identity is to be determined, or if that person is deceased at that time, the individual to whom such person was married at the person’s death, whether or not that individual has entered into another marriage.

(l) **Subordinate Party.** “Subordinate party” as to a person means any individual or entity that would be a related or subordinate party within the meaning of Code Section 672(c) assuming that the grantor for purposes of that section was that person.

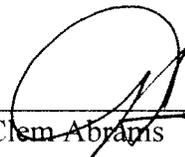
(m) **Trust Company.** “Trust company” means a corporate trustee or other business organization authorized by law to act as trustee.

(n) **Value.** “Value” without further qualification means fair market value.

(o) **Will.** The “will” of an individual includes any codicils to that will.

\* \* \*

I, individually and also as trustee, have signed and have placed an executed original of this amending instrument with the trust records on 4.03, 2015.

  
Clem Abrams

This instrument was prepared by:

Michael J. Rosen-Prinz  
of the law firm of  
McDermott Will & Emery LLP  
2049 Century Park East, Suite 3800  
Los Angeles, CA 90067-3218

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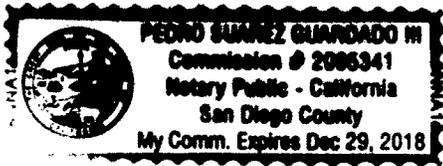
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

On 04/03, 2015, before me, Pedro Suarez Guardado III  
a Notary Public, personally appeared CLEM ABRAMS, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.



[SEAL]

[Signature]  
Signature

# **Exhibit C**

## FIRST AMENDMENT TO AGREEMENT OF TRUST

To: Clem Abrams, as trustee of the Clem Abrams Trust Agreement Dated 1991, dated May 21, 1991 as restated on April 3, 2015.

**FIRST:** I hereby delete subparagraph 6.01(a) of Article 6 of the above declaration of trust, as restated, in its entirety and replace it with the following provisions:

“(a) **Generally.** When I cease to act as trustee, Crisara Brett Abrams and Clinton Karcher Abrams shall be co-trustees. If either Crisara Brett Abrams or Clinton Karcher Abrams fails to act as trustee, the other person shall be sole trustee. If both Crisara Brett Abrams and Clinton Karcher Abrams fail or cease to act as trustee, my wife shall be trustee. If my wife fails or ceases to act as trustee, William Reager shall be trustee.”

**SECOND:** I hereby delete paragraph 7.03 of Article 7 of the above declaration of trust, as restated, in its entirety and replace it with the following provisions:

“7.03 **Wishes Regarding Retention and Management of Property.** It is my wish, without imposing any legal obligation, that the trustee not encumber or sell any interests in Scripps Corporate Park, a California general partnership, included in the trust property. It is my further wish that while either or both of my children are serving as trustee, that they hire third-party asset managers or financial advisors to oversee the investment of trust property.

**THIRD:** I reaffirm and readopt the remaining provisions of said declaration of trust, as restated.

\* \* \*

I, individually and also as trustee, have signed and have placed an executed

