

**LAST WILL AND TESTAMENT  
OF  
JOHN DOE**

**I, JOHN DOE, (also known as JACK DOE), currently residing at 123 Oak Street, Anytown, Texas 65432, a resident of and domiciled in the County of Placeville and State of Texas, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.**

**ITEM ONE**

**I give and bequeath all of my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, to my wife, JANE DOE, if she shall survive me, or if she shall fail to survive me, then to those of my children who shall survive me, in substantially equal shares, to be divided among them as my executor shall determine, which determination shall be conclusive and binding upon all persons interested in my estate.**

**ITEM TWO**

**If my wife survives me, I give to my Trustee the largest amount that can pass free of federal and state estate taxes by reason of the unified credit, the state death tax credit, the estate tax exclusion amount, and any other estate tax credits or deductions allowed by the Internal Revenue Code. I direct my Trustee to hold, administer and distribute the trust as follows:**

**A. Until termination pursuant to Paragraph D, my Trustee shall pay to or for the benefit of my wife, in quarterly or more frequent installments, all of the net income of the trust.**

**B. Subject to the provisions set forth hereinafter in Paragraph B of ITEM SEVEN, my Trustee may also pay to or apply for the benefit of my wife and/or my children, such portions of the principal of the trust as my Trustee deems advisable.**

**C. In addition to the above provisions, during the month of December of any calendar year, my wife shall have the power to direct my Trustee to pay to her out of the trust's principal in each year, an amount not in excess of the greater of five thousand dollars (\$5,000) or five percent (5%) of the aggregate value of the trust principal as determined at the end of each taxable year of the trust. This power is non-cumulative and can be exercised only by an instrument in writing signed by my wife during the month of December and delivered that month to my Trustee in any calendar year of withdrawal.**

**D. Upon the death of my wife, the remaining trust assets shall be distributed to my issue, in equal shares, per stirpes.**

### **ITEM THREE**

**All the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wheresoever situated, which I shall own or become entitled to at the time of my death, or to which my estate shall become entitled to at the time of my death, I give, devise and bequeath as follows:**

**A. If my wife survives me, I give, devise and bequeath my residuary estate to my trustee hereinafter named, as Trustee, to be held and administered for the following uses and purposes:**

**A.1) In establishing and administering the trust fund created hereunder, the Executor and Trustee shall be vested with all of the powers and authority hereinafter set out; provided, however, that the Executor and Trustee shall have no power or authority which would disqualify an otherwise qualifying trust for the marital deduction.**

**A.2) The Trustee shall pay the entire net income in quarterly or more frequent installments to my wife, JANE DOE, or apply it for her benefit, so long as she shall live. If non-income producing property is held, my wife shall have the right to direct that such property be exchanged for income-producing property.**

**A.3) In addition to the above provisions, during the month of December of any calendar year, my wife shall have the power to direct my Trustee to pay to her out of the trust's principal in each year, an amount not in excess of the greater of five thousand dollars (\$5,000) or five percent (5%) of the aggregate value of the trust principal as determined at the end of each taxable year of the trust. This power is non-cumulative and can be exercised only by an instrument in writing signed by my wife during the month of December and delivered that month to my Trustee in any calendar year of withdrawal.**

**A.4) In addition, the Trustee may pay to my wife such amounts (including some or all) of the corpus of the trust property held for her benefit as may from time to time be deemed required to enable my wife to maintain substantially the standard of living to which my wife was accustomed at the time of my death, and in making such payments the Trustee may, but need not, take into account other financial resources available to her.**

**A.5) My Executor shall have the right to elect to qualify or not to qualify all or any fractional or percentile share of this trust for the marital deduction. Generally, I anticipate that my Executor will elect to minimize the estate tax payable by my estate. However, I would expect that some consideration be given to the estate tax payable by my wife's estate upon her death, especially if she should die prior to the time the election is made. Upon distribution of my residuary estate to the Trustee, my Executor shall certify to the Trustee the fraction of the trust which has qualified for the marital deduction. The Trustee shall divide the trust into a marital deduction share and a non-marital deduction share based upon such fraction. I direct that any invasions of corpus shall be distributed from the marital deduction share before any such invasions are distributed from the non-marital deduction share. I exonerate my Executor from any liability for such election and direct that no beneficiary or other person shall have any claim against my Executor or**

my estate by reason of the exercise of my Executor's judgment in this respect.

A.6) On the death of my wife, the Trustee shall be authorized to withhold distribution of an amount of property sufficient to cover any liability that may be imposed on the Trustee for estate or other taxes until such liability is finally determined and paid.

A.7) At the death of my wife, any accumulated and accrued income shall be paid to my wife's estate, and all of the remaining trust assets shall be distributed to my issue, in equal shares, per stirpes.

B. If my said wife survives me, but she or her legal representative makes a qualified disclaimer (as defined in Section 2518 of the Internal Revenue Code, as amended) on some or all of the bequest set forth in Paragraph A of this ITEM, then the amount so disclaimed shall be added to the Credit Shelter trust created pursuant to ITEM TWO above, to be held, administered and distributed by my Trustee in accordance with the provisions of said trust. This provision shall be applicable even if the disclaimer would result in federal or state estate tax. Generally, I anticipate that my wife or her legal representative will wish to minimize the estate tax payable at my death. However, I would expect that some consideration be given to the estate tax payable by her estate upon her death.

C. If my said wife does not survive me, I give, devise and bequeath all of my remaining residuary to my issue, in equal shares, per stirpes.

D. If my said wife and I die under such circumstances that the order of our deaths cannot be established by proof, I direct that my said wife shall be deemed to have survived me, and all the provisions of this Will shall take effect as though my said wife had survived me.

#### **ITEM FIVE**

If any of my Estate principal or income, or any Trust principal or income,

shall vest in absolute ownership in a minor, my Executor and/or Trustee shall have the authority, in their discretion, and without court authorization, to:

A. Hold and manage the property and defer payment or distribution of all or a part of the property to that minor until that minor reaches the age of twenty-one (21) years. My fiduciaries, in administering this property, shall have all of the authority granted to fiduciaries under New York State law, and under the various provisions of this Will.

B. Distribute part or all of the minor's property to a custodian for the minor under the Uniform Gifts To Minors Act or the Uniform Transfers To Minors Act of the jurisdiction where the minor resides.

C. Select a custodian for the minor under the Uniform Gifts To Minors Act or under the Uniform Transfers To Minors Act of the jurisdiction where the minor resides without court order. My Executors may select any fiduciary named in this Will as such custodian without conflict of interest.

D. Distribute or pay part or all of the minor's property to the minor's legal guardian, to the adult person or persons with whom the minor resides, to the minor personally, to the trustee of any trust created for the sole benefit of the minor, or to the administrator or executor of the minor's estate.

E. Apply part or all of the minor's property for the minor's health, education, support (in his/her accustomed manner of living) or maintenance costs. My fiduciaries shall account in the same manner as trustees and shall not be required to render or file annual accountings to a court or governmental agency with respect to the properties so held and administered for the minor.

#### **ITEM SIX**

**I hereby nominate, constitute and appoint as Executrix of this my Last Will**

and Testament, my wife, JANE DOE, and I direct that she shall serve without bond. If, for any reason, she is unable or unwilling to serve or to continue to serve, then I hereby nominate, constitute and appoint my two oldest available children who are willing and able to serve, as successor Co-Executors, and I direct that they shall serve without bond. If, for any reason, either of them is unable or unwilling to serve or to continue to serve, then my next oldest available child who is willing and able to serve, shall serve as successor Co-Executor. If only one of my children is willing and able to serve or to continue to serve, then he or she shall serve as sole Executor, and he or she shall serve without bond.

#### **ITEM SEVEN**

**A.** Subject to the provisions set forth hereinafter in Paragraph B of this ITEM, I hereby nominate, constitute and appoint my wife, JANE DOE, as Trustee of the Credit Shelter Trust created pursuant to ITEM TWO of this Will. If, for any reason, she is unable or unwilling to serve or to continue to serve, then I hereby nominate, constitute and appoint my two oldest available children who are willing and able to serve, as successor Co-Trustees, and I direct that they shall serve without bond. If, for any reason, either of them is unable or unwilling to serve or to continue to serve, then my next oldest available child who is willing and able to serve, shall serve as successor Co-Trustee. If only one of my children is willing and able to serve or to continue to serve, then he or she shall serve as sole Trustee, and he or she shall serve without bond.

**B.** Notwithstanding the above Trustee designation provisions, in the event that Trust assets from the trust principal that are in excess of the greater of \$5,000 or 5% of the aggregate value of the Trust principal, are, in any calendar year, to be paid to or expended for the benefit of any beneficiary (in accordance with the provisions of ITEM TWO, Paragraph B), my wife shall not participate in any such distribution or in the decision to make such distribution. In such event, only my successor Trustee shall participate in the decision to make such distribution. My wife, may, however, in her capacity as beneficiary and Trustee, participate in the distribution of Trust income to herself (in accordance with the provisions of ITEM TWO, Paragraph A), and in the distribution of Trust principal to herself

that is not in excess of the greater of \$5,000 or 5% of the aggregate value of the Trust principal (in accordance with the provisions of ITEM TWO, Paragraph C). However, in no event shall my wife, acting in her capacity as beneficiary or Trustee, possess any power or authority, if the possession of such power or authority would be deemed to be a General Power of Appointment under Sections 2041 and 2514 of the Internal Revenue Code.

#### **ITEM EIGHT**

Whenever the word "Executor" and/or the word "Trustee", or any modifying or substituted pronoun therefor are used in this my Will, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor and/or Trustee named herein and to any successor or substitute Executor and/or Trustee acting hereunder, and such successor or substitute Executor and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Executor and/or Trustee originally named herein.

#### **ITEM NINE**

I confer upon my executors and upon any trustee serving under this will all powers granted to fiduciaries under the laws of the state of Texas whether my estate is administered in the state of Texas or elsewhere.

In addition to the powers granted by law, I authorize my executors or other legal representatives of my estate and any trustee serving under this will:

A. To accept additions to my estate or to any trust under my will from any source.

B. To acquire the remaining undivided interest in property of my estate or trust in which my executor or trustee, in fiduciary capacity, holds an undivided interest.

C. To invest and reinvest the assets of my estate or any trusts created under this will in securities or in real or personal property, whether within or outside of Texas or the United States, without the need for diversification as to kind or amount and without being limited to investments authorized by law for fiduciaries. More specifically, but not by way of limitation, I authorize and empower such executors or trustee to invest in discretionary common trust funds, mutual funds, investment trusts, unsecured obligations, stocks, bonds, and real estate.

**D. To effect and keep in force fire, rent, title, liability, casualty or other insurance to protect the property of the estate or trust and to protect the fiduciary.**

**E. With respect to any property, real or personal, or any estate therein owned by my estate or trust, except where such property or any estate therein is specifically disposed of:**

- 1. To take possession of, collect the rents from and manage the same.**
- 2. To sell the same at public or private sale, and upon such terms and conditions, including credit, as to my fiduciary shall seem advisable.**
- 3. To lease, mortgage, partition, or subdivide the same, even where the terms of such lease or mortgage shall extend beyond the administration of my estate or the term of any trust.**
- 4. To abandon property which does not have sufficient economic value, in my executors' or my trustee's judgment, to make it worth protecting.**
- 5. To repair or improve the same.**

**F. With respect to any mortgage held by the estate or trust, to continue the same upon and after maturity, with or without renewal extension, upon such terms as the fiduciary deems advisable, or to foreclose, as an incident to collection of any bond or note, any mortgage securing such bond or note, and to purchase the mortgaged property or acquire the property by deed from the mortgagor in lieu of foreclosure.**

**G. To employ any bank or trust company incorporated in the state of my domicile, any national bank located in the state of my domicile or any private banker duly authorized to engage in business in the state of my domicile as custodian of any stock or other securities held as fiduciary, and the cost thereof, except in the case of a corporate fiduciary, shall be a charge upon the estate or trust.**

**H. To contest, compromise or otherwise settle any claim in favor of the estate, trust or fiduciary or in favor of third persons and against the estate, trust or fiduciary, or to submit the same to arbitration, without judicial approval.**

**I. To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instruments necessary or appropriate for the administration of the estate or trust.**

**J. In the case of a trustee, to hold the property of two or more trusts or parts**



of such trusts created by the same instrument as an undivided whole without separation as between such trusts or parts, provided that such separate trusts or parts shall have undivided interests and provided further that no such holding shall defer the vesting of any estate in possession or otherwise.

**K. To pay all reasonable and proper expenses of administration from the property of the estate or trust, including the reasonable expense of obtaining and continuing the fiduciary's bond and any reasonable counsel fees which the fiduciary may incur.**

**L. To employ and remunerate agents to perform necessary services for the estate or for any trust created thereunder such as, but not limited to: accountants, attorneys, investment advisors, actuaries, appraisers and custodians.**

**M. To borrow in the name of my estate or trusts from themselves or others and secure such loans by mortgage, note, or pledge, at prevailing rates of interest.**

**N. With regard to any business enterprise which I may own or possess an interest in at the time of my death, whether incorporated, unincorporated, or operated as a sole proprietorship or partnership:**

**1. To retain all or any portion of the business and continue to operate the same for so long as my executors or trustee shall deem advisable;**

**2. To sell all or any portion of the business, at such time and on such terms and conditions(including credit), as my executors and trustee shall deem advisable, to any person, including a person interested in my estate or a fiduciary serving hereunder.**

**3. To control, direct or manage the business; vote any corporate shares; select, hire and compensate, or discharge employees, directors and officers of the business; recapitalize or reorganize the business; invest additional sums of money in the business; participate in or consent to any merger, consolidation, dissolution or liquidation of the business;**

**4. I exonerate my executors and my trustee from liability for any loss resulting from the retention and/or operation of any business enterprise unless such loss shall result from the executors' or trustee's gross negligence or willful misconduct.**

**O. To claim administrative expenses of my estate either as income tax deductions or as estate tax deductions, in my executors' sole discretion, without regard to whether such expenses are payable from income or principal, and without the necessity of making adjustments or reimbursements between principal and income or among the property interests of the various beneficiaries of my estate. I exonerate my executors from**

any liability arising from the claim of a beneficiary of my estate whose entitlement under the terms of my will has been diminished by my executors' elections.

P. To execute, file and deliver proofs of claim or receipts required to collect all policies of life insurance on my life which name my estate as beneficiary; elect any optional modes of settlement available under such policies; receive, administer and distribute the proceeds of such policies in accordance with the dispositive provisions of this will. The receipt of my executors shall constitute full acquittance to any insurance company for policy proceeds paid.

Q. To terminate and distribute outright to the income beneficiaries thereof the assets of any trust which, in the opinion of my trustee, has become so small that it is uneconomic and not in the best interests of the trust beneficiary or beneficiaries to continue.

R. To allocate, in their sole and absolute discretion, any amount of the exemption from generation skipping taxes allowed under Internal Revenue Code, Section 2631(a), to property of which I am the transferor, including property transferred during my lifetime to which no allocation has previously been made, without the necessity of making adjustment or reimbursement to any person or trust as a result of such allocation.

S. To combine trusts having substantially identical terms and with the same beneficiary or beneficiaries, whether created under the terms of my Will or my spouse's, to be administered and distributed as a single trust.

T. To join with my surviving spouse or the executors of my will in the execution and filing of:

1. a joint income tax return for any period prior to my death for which I have not filed a return and to agree as to the apportionment of any joint tax liability.

2. a gift tax return on gifts made by my surviving spouse and to consent to treat such gifts as being made one-half (½) by me, for any period prior to my death.

#### **ITEM TEN**

A. I authorize my fiduciary (i.e., executor and/or trustee) to employ and rely on advice given by investment counsel, to delegate discretionary authority to investment counsel and to pay investment counsel reasonable compensation for services rendered. My fiduciary may, but need not, favor retention of assets originally owned by me. My fiduciary shall not be under any duty to diversify investments, regardless of any principal of law requiring diversification. My fiduciary may also retain and acquire property that does not produce income, as well as investments that are risky or speculative, so long as prudent

procedures are followed in selecting and retaining the investments and the investments constitute a prudent percentage of the trust or estate.

**B. I direct that any fiduciary may enter into transactions on behalf of my estate or trust in which that fiduciary is personally interested, so long as the terms of such transaction are fair to my estate or trust. For example, my fiduciary may purchase property from my estate or trust without court approval.**

**C. If I have set forth guidelines for my fiduciary in exercising discretion concerning distributions of income or principal, I intend those guidelines to be merely suggestive and not to create an enforceable standard whereby a distribution could be criticized or compelled. This paragraph shall not, however, apply to any standards framed in terms of health, education, support (including support in an accustomed manner of living) or maintenance as I intend those words to create an ascertainable standard for federal tax purposes when applied to a trustee's power or a power held individually, although even in those cases I want the holder of the power to have as much discretion as is consistent with that intent.**

**D. Any fiduciary may resign at any time without court approval and whether or not a successor has been appointed. In the event that a successor fiduciary has not been designated in my Will, any fiduciary shall have the right to appoint, by an instrument in writing, a successor fiduciary, such appointment to take effect upon the death, resignation or incapacity of the appointing fiduciary. If the office of executor or trustee is vacant, and no successor takes over pursuant to any other provision of this Will, a successor fiduciary may be appointed by a majority of my adult descendants then living and competent.**

**E. No fiduciary shall be required to give bond or other security in any jurisdiction, and if despite this exoneration a bond is nevertheless required, no sureties shall be required.**

**F. To the greatest extent permitted by law, no interest of any beneficiary of this Will, or of any trust created under this Will, shall be subject to the beneficiary's liabilities or creditor claims or to assignment or to anticipation.**

**G. No fiduciary (i.e., executor and/or trustee) shall be required to file any accounting with any public official. My fiduciaries must, however, maintain accurate records concerning my estate and/or any trust created under this Will. Each year my fiduciary shall furnish an annual accounting of the estate's and/or trust's financial condition to each adult beneficiary of the estate and/or trust income, and to the parent or legal guardian of any minor beneficiary of the estate and/or trust income. This required accounting may be satisfied by furnishing a copy of the estate's and/or trust's federal income tax return, if one was required.**

**H. If any provision of this instrument should be invalid or unenforceable, the remaining provisions shall continue to be fully effective.**

**I. Notwithstanding any contrary provision of this Will, the maximum duration of any trust created hereunder shall comply with the requirements of the applicable Rule Against Perpetuities and/or any similar statute. In accordance with those requirements, the principal of any trust created hereunder shall vest absolutely in interest not later than twenty-one years after the death of the last survivor of a group of certain individuals alive at my death; that group consisting of my surviving spouse and any descendent of mine who is alive on the date of my death. Immediately prior to the expiration of twenty-one years after the death of the last survivor of the above group, the principal of each trust that has not previously vested shall become payable to the person or persons then entitled to the income therefrom.**

#### **ITEM ELEVEN**

**If it becomes necessary for a representative of my estate to qualify in any jurisdiction other than the State of my domicile at the time of my death, then to the extent that I may legally do so, I hereby nominate, constitute and appoint my Executor named in this Will as my representative in such jurisdiction and direct that such Executor shall serve without bond. If for any reason my Executor is unable or unwilling to serve as such representative or cannot qualify as such representative then I hereby appoint my Executor named herein to designate (to the extent that it may legally do so) a person or a corporation to serve as my representative and request that such person or corporation shall serve without bond. Any representative named as provided herein (to the extent that it may legally do so) shall have in such jurisdiction all the powers and duties conferred or imposed on my Executor by the provisions of this Will.**

**IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_.**

\_\_\_\_\_(L.S.)

**WITNESSES:**

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**SIGNED, PUBLISHED, AND DECLARED** by the above named Testator, **JOHN DOE** (also known as **JACK DOE**), as and for his Last Will and Testament, in our presence and hearing, and we, thereupon, at his request, in his presence, and in the presence of each other, subscribed our names as witnesses thereto this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ residing at \_\_\_\_\_

\_\_\_\_\_ residing at \_\_\_\_\_