

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE
SUPPLEMENT 6 OFFENSE REPORT

PAGE 11

CASE NO. 13097087

DISPOSITION: CLEARED BY ARREST
DIVISION: DETECTIVE

911: IMPRINTS FOR OF
SIGNAL CODE: 53
ZONE: F52 GRID: CRIME CODE: * NON CRIME CODE: OF CODE: 260D 10/29/13 MONDAY
DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1210 A 1235 C 1333
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0
LOCATION: GOVERNMENT / PUBLIC BUILDING
NO. VICTIMS: 01 NO. ARRESTED: 1 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON 10/25/13 KIMBERLY MORAN TURNED HERSELF IN REFERENCE A CAPIAS ISSUED IN
THIS CASE. THIS CASE IS NOW CLEARED BY ARREST.
DETECTIVE RYAN W. MILLER #7704
10/29/13 @ 1505 HRS.
TRANS. VIA EMAIL/COPY/PASTE: 10/30/2013/MDR/#6405

Printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL

PALM BEACH COUNTY SHERIFF'S OFFICE
CENTRAL RECORDS
FSS EXEMPTIONS/CONFIDENTIAL

- 119.071(2)(c) Active criminal intelligence/active criminal investigative Information
- 119.071(5)(g)1 Biometric Identification Information (Fingerprints, palm prints, and footprints)
- 119.071(2)(e) Confession
- 119.071(2)(f) Confidential Informants
- 365.171(15) Identity of 911 caller or person requesting emergency service
- 316.066(5)(a) Crash reports are confidential for period of 60 days after the report is filed
- 119.071(2)(d) Surveillance techniques, procedures, and personnel; inventory of law enforcement resources, policies or plans pertaining to mobilization, deployment or tactical operations
- 119.071(2)(h)(1) Identity of victim of sexual battery, lewd and lascivious offense upon a person less than 16 years old, child abuse, sexual offense
- 119.071(2)(l) Assets of crime victim
- 985.04(1) Juvenile offender records
- 119.071(5)(a)(5) Social security numbers held by agency
- 119.0712(2) Personal information contained in a motor vehicle record
- 119.071(5)(b) Bank account #, debit, charge and credit card numbers held by an agency
- 119.071(2)(b) Criminal intelligence/investigative information from a non-Florida criminal justice agency
- 395.3025(7)(a) and/or 456.057(7)(a) Medical information
- 394.4615(7) Mental health information
- 943.053/943.0525 NCIC/FCIC/FBI and in-state FDLE/DOC
- 119.071(4)(c) Undercover personnel
- 119.07(4)(d) Extra fee if request is voluminous or requires extensive personnel, technology
- 119.071(4)(d)(1) Home address, telephone, soc. security #, photos of active/former LE personnel, spouses and children

Other:

Case No:12-121312

Tracking No.: n/a

Clerk Name/ID: Hall/9205

Date: 1/31/2013

Revised 03/04/2011

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312
DISPOSITION: ZULU
DIVISION: ROAD PATROL

POLICE SERVICE CALL * * *
SIGNAL CODE: 68 CRIME CODE: NON CRIME CODE: PS CODE: 9568 09/13/12 THURSDAY
ZONE: C21 GRID: DEPUTY I.D.: 8826 NAME: HAUGH VINCENT ASSIST: TIME D 1155 A 1211 C 1522
OCCURRED BETWEEN DATE: 09/12/12 , 0830 HOURS AND DATE: 09/13/12 , 0100 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 7020 LIONS HEAD LA APT. NO.:
CITY: BOCA RATON STATE: FL ZIP: 33496

NO. OFFENSES: 00 NO. OFFENDERS: 0K NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0
LOCATION: RESIDENCE - SINGLE FAMILY
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

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NAME LIST:
ROLE:

OTHER SIMON BERNSTEIN DOB: 12/02/1935
SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000
BUSINESS PHONE: 561 000-0000
OTHER TED BERNSTEIN DOB: 08/27/1959
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN
RESIDENTIAL ADDRESS: 12344 MELROSE WY BOCA RATON FL 33428 HOME PHONE: 561 213-2322
BUSINESS PHONE: 561 000-0000
OTHER ELLIOT I BERNSTEIN DOB: 09/30/1963
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434 HOME PHONE: 561 886-7627
BUSINESS PHONE: 561 000-0000
OTHER RACHEL WALKER DOB: 03/05/1984
SEX: F RACE: W HT: 508 WT: 130 HR: BLOND EYE: BLUE
RESIDENTIAL ADDRESS: 99 SE MIZNER BD BOCA RATON FL 33434 HOME PHONE: 561 000-0000
BUSINESS PHONE: 561 000-0000
OTHER MARITZ UCCIO DOB: 04/23/1966
SEX: F RACE: W HT: 502 WT: 120 HR: BROWN EYE: BROWN
RESIDENTIAL ADDRESS: 7020 LYONS HEAD LA BOCA RATON FL 33496 HOME PHONE: 561 305-2999
BUSINESS PHONE: 561 000-0000
OTHER LISA FRIEDSTEIN DOB: 03/15/1967
SEX: F RACE: W HT: 501 WT: 120 HR: BROWN EYE: BROWN
RESIDENTIAL ADDRESS: 2142 CHURCHHILL LA HIGHLAND IL 60035 HOME PHONE: 847 877-4633
BUSINESS PHONE: 561 000-0000
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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312
DISPOSITION: ZULU

ON 9/13/12 AT 1211 HOURS, I RESPONDED TO 7020 LYONS HEAD LANE, UNINCORPORATED BOCA RATON, FL., AND MET WITH TED BERNSTEIN AND HIS SISTER AND BROTHER, LISA FRIEDSTEIN AND ELLIOT BERNSTEIN, IN REFERENCE TO A POLICE ASSIST. TED ADVISED HIS FATHER, SIMON BERNSTEIN WAS TAKEN TO DELRAY COMMUNITY HOSPITAL AT 1000 HOURS ON 9/12/12 AND PASSED AWAY AT 0100 HOURS ON 9/13/12. HE EXPLAINED WHILE AT THE HOSPITAL HE WAS ADVISED BY SIMON'S CARETAKER, RACHEL WALKER THAT SIMON'S LIVE-IN GIRLFRIEND, MARITZA PUCCIO MIGHT HAVE PROVIDED SIMON WITH A LARGER THEN PRESCRIBED DOSE OF HIS MEDICATION AS WELL AS ONE OF HER PRESCRIBED SLEEPING PILLS, WHICH COULD OF CAUSED HIS DEATH. HE SAID HE VOICED HIS CONCERNS TO THE DOCTORS AT DELRAY COMMUNITY HOSPITAL BUT THEY ADVISED THERE DID NOT APPEAR TO BE ANY SUSPICIOUS CIRCUMSTANCES SURROUNDING SIMON'S DEATH AND THEY WOULD NOT BE CONDUCTING AN AUTOSPY. TED CONTACTED BOTH A PRIVATE COMPANY AND THE PALM BEACH COUNTY MEDICAL EXAMINER'S OFFICE REGARDING HAVING AN AUTOSPY CONDUCTED. BOTH ADVISED HE SHOULD CONTACT THE PALM BEACH COUNTY SHERIFF'S OFFICE.

AFTER SPEAKING WITH TED, I SPOKE WITH RACHEL. RACHEL STARTED BY TELLING ME THAT SIMON SUFFERED FROM SEVERAL AILMENTS TO INCLUDE, AND HE HAD APPROXIMATELY 2 YEARS AGO, WHICH WAS ONE OF SEVERAL SIMON WAS RECENTLY PLACED ON FOR THE WHICH SHE SAID EFFECTED HIS MENTAL FACULTIES. RACHEL ADVISED WHEN SHE ARRIVED AT SIMON'S HOUSE AT 0830 HOURS ON 9/12/12, SHE FOUND SIMON LYING ON THE COUCH IN THE LIVING ROOM. HE WAS AWAKE AND BREATHING BUT HE HAD A VERY LOW HEART BEAT AND WAS UNAWARE OF HIS SURROUNDINGS. RACHEL SAID SHORTLY AFTER HER ARRIVAL MARITZA RETURNED HOME. THEY HAD A BRIEF ARGUMENT OVER WHETHER OR NOT THEY SHOULD BRING SIMON TO THE HOSPITAL AS RACHEL SAYS MARITZA DID NOT BELIEVE HE NEEDED TO GO TO THE HOSPITAL AT THIS TIME. RACHEL SAID THAT SHE FINALLY TOLD MARITZA THAT SHE WAS GOING TO TAKE HIM TO THE HOSPITAL BY HERSELF. SHE SAID SHE LEFT THE HOUSE APPROXIMATELY 1000 HOURS FOR THE HOSPITAL. RACHEL WENT ONTO TELL ME THAT MARITZA PROVIDED SIMON WITH ONE OF HER PRESCRIBED SLEEPING PILLS ON THE NIGHT OF 9/8/12. SHE ALSO SAID SIMON WAS PRESCRIBED 100 PILLS ON 9/7/12 AND SHE BELIEVE THAT MARITZA WAS PROVIDING SIMON WITH LARGER THEN PRESCRIBED DOSES OF . RACHEL TOLD ME SHE BELIEVED THERE WERE ONLY 30 PILLS LEFT IN THE BOTTLE AT THE TIME OF SIMON'S DEATH. I LATER COUNTED THE BOTTLE OF . THERE WERE 90.5 PILLS IN THE

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312
DISPOSITION: ZULU

BOTTLE SHOWING THAT SIMON DID NOT TAKE MORE THAN PRESCRIBED.

IT SHOULD ALSO BE NOTED THAT I SPOKE WITH ELLIOT, WHO SAID HE WAS AT DINNER WITH SIMON AND MARITZA ON 9/8/12 AND OBSERVED HIS FATHER TELL MARITZA THAT HE WANTED ONE OF HER SLEEPING PILLS BECAUSE HE COULD NOT SLEEP. ELLIOT SAID THEY HAD A BRIEF ARGUMENT OVER THIS AS MARTIZA REFUSED TO ALLOW SIMON TO TAKE ONE OF HER PILLS INITIALLY. AT THIS TIME SGT. CASTELLI ARRIVED ON SCENE AND WAS ADVISED OF THE CASE.

HE MADE CONTACT WITH VCD AND THE MEDICAL EXAMINER'S OFFICE. HE WAS ADVISED TO HAVE ME CONTACT DELRAY COMMUNITY HOSPITAL TO PUT A HOLD ON SIMON'S BODY FOR [REDACTED] FROM THE MEDICAL EXAMINER'S OFFICE WHO WOULD CHECK ON THE SITUATION THE NEXT DAY. I WAS ALSO ADVISED TO EMAIL A COPY OF THE REPORT TO [REDACTED] WITH THE MEDICAL EXAMINER'S OFFICE. DELRAY COMMUNITY HOSPITAL WAS CONTACTED AND A HOLD WAS PLACED ON SIMON'S BODY AND [REDACTED] WAS EMAILED.

THIS REPORT IS FOR INFORMATION PURPOSES.

D/S HAUGH #8826
TRANS: 9/14/12 DG#4495
DICT: 9/13/12 @ 1700 HRS.

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03/03/14

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P A L M B E A C H C O U N T Y S H E R I F F ' S O F F I C E P A G E 1
O F F E N S E R E P O R T C A S E N O . 1 3 1 5 9 9 6 7

DISPOSITION: ZULU
DIVISION: ROAD PATROL

CIVIL MATTER CODE: 9566 DATE: 12/23/13 MONDAY
ZONE: C21 GRID: DEPUTY ID.: 5189 ASSIST: TIME D 1624 A 1632 C 1716
OCCURRED BETWEEN DATE: 01/01/10 , 0900 HOURS AND DATE: 12/23/13 , 1600 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 2753 NW 34 ST APT. NO.:
CITY: BOCA RATON STATE: FL ZIP: 33496
NO. OFFENSES: 00 NO. OFFENDERS: 00 NO. VEH. STOLEN: 0 NO. PREM. ENTERED: 0
LOCATION: RESIDENCE - SINGLE FAMILY
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

COMPLAINANT ELLIOT I BERNSTEIN DOB: 09/30/1963
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434
HOME PHONE: 561 886-7628
BUSINESS PHONE: 561 254-8588

OFFENSE INDICATOR: OFFENSE 1 VICTIM NUMBER: 1
VICTIM TYPE: ADULT
RESIDENCE TYPE: COUNTY RESIDENCE STATUS: FULL YEAR
EXTENT OF INJURY: NONE
INJURY TYPE(1): NOT APPLICABLE
INJURY TYPE(2): NOT APPLICABLE
VICTIM RELATION: UNDETERMINED

ON 12/23/13 THE VICTIM/COMPLAINANT CAME TO THE DISTRICT 7 OFFICE TO FURTHER REPORT A CRIME OF THEFT THAT HAS BEEN OCCURRING FOR A FEW YEARS. THE VICTIM MR. BERNSTEIN STATED THAT HIS FAMILY MEMBERS HAVE TAKEN THOUSANDS OF DOLLARS IN ASSETS, A VEHICLE, JEWELRY, CLOTHING, FURNITURE, AND MANY OTHER ITEMS. THE VICTIM ALSO STATED HE HAS AN ONGOING CASE WITH DET. RYAN MILLER OF THE PALM BEACH COUNTY SHERIFF'S OFFICE, THE CASE NUMBER IS 13-097087. THE VICTIM/COMPLAINANT ALSO GAVE ME A 3 PAGE WRITTEN ,DATED AND SIGNED STATEMENT THAT I WILL FORWARD VIA INTEROFFICE MAIL TO DET. MILLER. HE ALSO ADVISED HE WILL FURTHER CONTACT DET. MILLER REF THIS NEW CASE NUMBER WHICH HE WAS ADVISED TO GET THRU HIS ATTORNEY. IT SEEMS THIS MATTER HAS BEEN IN LITIGATION FOR SOME TIME AND WILL CONTINUE TO BE. I WILL ALSO FORWARD TO DET. MILLER THE LIST OF SUSEPTS WHICH ALSO WAS QUIT LONG, ALL FAMILY MEMBERS. I ADVISED THE VICTIM I WOULD FORWARD ALL THIS INFO TO DET. RYAN MILLER.

D/S RAINERI 5189. 12/23/13 AT 1735 HRS
TRANS: PAP 7123. 12/27/13

6903

03/03/14

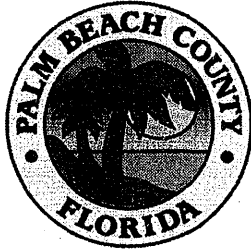
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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2
SUPPLEMENT 1 OFFENSE REPORT CASE NO. 13159967

DISPOSITION: ZULU
DIVISION: DETECTIVE

CIVIL MATTER CODE: 9566 DATE: 01/07/14 MONDAY
ZONE: C21 GRID: DEPUTY ID.: 7704 ASSIST: TIME D 1624 A 1632 C 1716
OCCURRED BETWEEN DATE: 01/01/10 , 0900 HOURS AND DATE: 12/23/13 , 1600 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 2753 NW 34 ST APT. NO.:
CITY: BOCA RATON STATE: FL ZIP: 33496
NO. OFFENSES: 00 NO. OFFENDERS: 00 NO. VEH. STOLEN: 0 NO. PREM. ENTERED: 0
LOCATION: RESIDENCE - SINGLE FAMILY
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

I RECEIVED AN INTER-OFFICE PACKET FROM D/S RAINERI REFERENCE THIS CASE.
I HAVE NOT BEEN ASSIGNED THE FOLLOW-UP IN REGARDS TO THIS CASE AND IT HAS NO
BEARING ON 13-097087 WHICH I INVESTIGATED. THE PACKET WAS SENT BACK TO D/S
RAINERI. I ALSO INFORMED BERNSTEIN THAT I WAS NOT ASSIGNED THIS CASE AND HE
WOULD NEED TO FOLLOW UP WITH D/S RAINERI OR DISTRICT 7.
DETECTIVE RYAN W. MILLER #7704
01/07/14 @ 1010 HRS.
TRANS. VIA EMAIL/COPY/PASTE: 01/08/2014/MDR/#6405



OFFICE OF THE DISTRICT MEDICAL EXAMINER
DISTRICT 15 – STATE OF FLORIDA
PALM BEACH COUNTY
3126 GUN CLUB ROAD
WEST PALM BEACH, FLORIDA 33406-3005
(561) 688-4575
(561) 688-4592 FAX

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

DATE OF DEATH: September 13, 2012

AGE: 76

SEX: M

RACE: W

DATE OF AUTOPSY: September 14, 2012 / 11:00 a.m.

AUTOPSY FINDINGS:

1. Acute subendocardial myocardial infarct.
2. Status post coronary artery bypass grafting, remote.
3. Severe calcific coronary atherosclerosis.
4. Focal myocardial fibrosis.
5. Bronchopneumonia.
6. Severe aortic atherosclerosis.
7. Fibrous pericarditis.
8. Calcific aortic valve annulus.
9. Nephrosclerosis.
10. Cirrhosis with chronic hepatitis.
11. Old splenic infarct.
12. Pleural effusions.
13. Sternum fracture.
14. Anterior rib fractures.
15. Osteoporosis.
16. Status post appendectomy, remote.
17. Status post cholecystectomy, remote.

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

CAUSE OF DEATH: Myocardial infarct due to severe coronary atherosclerosis

CONTRIBUTORY CAUSE OF DEATH: Bronchopneumonia, cirrhosis

MANNER OF DEATH: Natural

OPINION: Simon Bernstein, a 76-year-old man, died from a heart attack due to blockage of the arteries that feed his heart. He also had pneumonia and cirrhosis. His blood hydrocodone concentration was therapeutic. There was no overdose. He did not have meningitis.



Michael D. Bell, M.D.
District Medical Examiner

Date Signed: November 8, 2012

MDB:df

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

EXTERNAL EXAMINATION:

The body is that of a 5 foot 7 inch, 191 pound, overweight, white man who appears the reported age of 76 years. His body mass index is 29.9.

The body is well preserved and cold. Mild rigor mortis is detected in the extremities. Purple livor mortis is on his back.

The decedent is normocephalic without apparent injury to the face or scalp. The decedent has short, gray-brown hair. He has brown irides with no conjunctival petechiae. There is slight chemosis. The corneas are clear. The sclerae are nonicteric. No facial, nasal or mandibular fractures are palpated. The nasal septum is intact. No froth or fluid escapes from the nose or mouth. The teeth are natural and in good repair. There is no trauma of the lips, gums or frenulum.

The neck is symmetrical and has no trauma or injury. There is no palpable crepitus or hypermobility. No neck masses are observed.

The thorax is symmetric. The abdomen is protuberant with small ecchymoses on the abdomen. The external genitalia and anus are unremarkable. The decedent is circumcised.

The arms are symmetrical and normally developed. The arms have no needle tracks. The fingernails are short. The legs are symmetrical, and there is slight pedal edema. The back shows a symmetrical external contour and the spine is straight. The back has no trauma. The skin shows no rashes.

IDENTIFICATION:

No tattoos are on the body. A vertical 9 inch scar is in the midline of the chest. A vertical 10 inch scar is on the right abdomen. A transverse 3 inch scar is in the left groin. Three vertical scars run along the inside of the left leg, and they are 3 inches, 4 inches, and 18 inches, respectively.

The decedent is unclothed.

EVIDENCE OF MEDICAL INTERVENTION:

Two hospital blood tubes accompany the body, and they are dated 9/12/2012. The decedent has multiple needle punctures on the right and left antecubital fossa, lower arms and right hand, and all of them are surrounded by small ecchymoses. An identification band is on his right wrist.

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

INTERNAL EXAMINATION:

BODY CAVITIES:

The sternum is fractured. Anterior ribs 2 through 6 are fractured bilaterally. There is a small amount of extravasated blood surrounding the fracture sites. There is extravasated blood in the anterior mediastinal soft tissues. The bones are osteoporotic, and the soft tissue is friable. There are no fractures of the clavicles, vertebral column or pelvis. The right and left pleural cavities each contain an estimated 200 to 300 milliliters of clear, straw-colored fluid. There is no blood within the peritoneal cavity. The pericardial cavity is obliterated by fibrous adhesions. The pericardial sac and diaphragm are intact. There are no fibrous or fibrinous adhesions involving the intestines. No aromatic or unusual odors are detected inside the body. The intravascular blood is liquid and clotted.

HEAD AND CENTRAL NERVOUS SYSTEM:

The scalp has no edema. The subgaleal tissues have no contusions or injuries. The temporal muscles have no contusions. The skull is intact and has no fractures. No epidural or subdural hematomas are present. The dura mater is intact and has no discoloration.

The 1400 gram brain has thin, transparent leptomeninges with no subarachnoid blood or exudate seen. The leptomeninges are not congested or hyperemic. The cerebral and cerebellar gyri and sulci are of normal size and configuration and have no edema or swelling. No cingulate, uncinata or cerebellar tonsil herniation is present. No contusions or defects are on the surface of the brain. The olfactory bulbs and rest of the cranial nerves are intact. The vertebral, basilar and cerebral arteries, including the arterial circle of Willis, have a moderate amount of atherosclerosis.

The cerebral hemispheres have a thin, gray, cortical ribbon with no slit-like or punctate hemorrhages. The subjacent white matter, including the centrum ovale and corpus callosum, has no discoloration, hematomas or masses. The lateral ventricles are enlarged but have normal configuration and contain no blood. The third ventricle is enlarged. The caudate and lenticular nuclei are unremarkable, as is the thalamus. The mammillary bodies have no discoloration or hemorrhage. The hippocampal gyri are symmetric and have no sclerosis. The occipital lobes are normal. The midbrain, pons and medulla oblongata are unremarkable. The folia cerebelli are neither atrophic nor swollen. The cerebellar white matter and deep midline nuclei are normal. The fourth ventricle and cerebral aqueduct are of normal size and contain no tumor, blood or exudate.

NECK:

The oropharynx is light red-yellow with no trauma or injuries. The epiglottis is light red-yellow and leaf-like, and there is a small amount of aryepiglottic edema. No food or foreign objects obstruct the oropharynx, larynx, trachea or bronchi. The hyoid bone and thyroid cartilages are intact. The anterior cervical neck strap muscles and soft tissues have no contusions or injuries. The prevertebral muscles, fascia and soft tissues have no contusions. The anterior cervical vertebral column is intact. The thyroid gland has its normal anatomic size and location. The thyroid gland is slightly nodular. The cervical lymph nodes are not enlarged.

CARDIOVASCULAR:

The 650 gram heart is covered by easily broken fibrous adhesions. No petechiae or contusions are on the epicardial surface. There is an increased amount of epicardial fat. The heart is right coronary artery dominant. The native coronary arteries arise normally from the aortic root, and their ostia are patent. The native coronary arteries have severe calcific coronary atherosclerosis. A stent is in the native right coronary artery. A clot is in this stent. The native left anterior descending coronary artery has 90-95% intraluminal narrowing by atherosclerosis. The native left circumflex coronary artery has 95% intraluminal narrowing by atherosclerosis. A left thoracic artery graft inserts in the left anterior descending coronary artery. This graft is patent. Two saphenous vein grafts arise from the ascending aorta. One inserts into the posterior descending coronary artery and the other into the left marginal coronary artery. The former saphenous vein graft is occluded at its ostium. The saphenous vein graft to the left marginal coronary artery is narrowed to a pinpoint at its ostium. A stent is in the proximal graft and beyond the stent distally the lumen is narrowed to a pinpoint again.

The free left ventricular wall, ventricular septum, and right ventricular wall are 1.8, 2.0, and 0.3 centimeters thick, respectively. The atria and right ventricles are dilated. The left ventricle chamber is 4 centimeters in diameter. The myocardium is red-brown and firm, with focal scarring in the posterior and lateral left ventricle walls. The scars are up to 1 centimeter in greatest dimension. The endocardium is smooth and transparent with a 1 centimeter area of endocardial thickening in the right ventricle. There is no endocardial hemorrhage or mural thrombosis.

The tricuspid, pulmonic, mitral and aortic valve circumferences are 12.9, 9.0, 11.0, and 7.0 centimeters, respectively. The valves have no ballooning, deformities or vegetations. The commissures are normal. The chordae tendineae are neither ruptured nor thickened. There is moderate calcification of the aortic valve annulus. The rest of the valves and annuli have no calcification.

The aorta has no trauma or injuries. The aorta has severe calcific and ulcerative atherosclerosis. There is no aortic dissection or aneurysm formation.

RESPIRATORY:

The right and left lungs weigh 1180 and 910 grams, respectively. The lungs are normally inflated and occupy most of the pleural cavities. Both lungs have smooth, glistening, transparent pleural surfaces, except for fibrous adhesions involving the posterior lateral left upper lobe. No anthracotic pigment is on the pleural surfaces. No depressions, nodules or bullae are seen. The lungs are light brown anteriorly and dark red posteriorly. The parenchyma has focal nodular areas of consolidation in the posterior segments of the lower lobes. The parenchyma exudes red fluid. No tumor, abscesses, granulomas or pulmonary thromboemboli are seen. The bronchial tree contains red fluid. The pulmonary arteries are normal. The hilar lymph nodes are normal.

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

HEPATOBIILIARY SYSTEM:

The 1990 gram liver has an intact nodular capsule, and its normal parenchyma is replaced by 2 to 4 millimeter in diameter brown, cirrhotic nodules. No infarcts, granulomas or tumors are seen. The gallbladder is surgically absent.

HEMOLYMPHATIC SYSTEM:

The 340 gram spleen has a smooth, intact capsule with no trauma or injury. A 4 x 1 centimeter shrunken, yellow infarct is present. No granulomas or tumors are seen within the otherwise red-purple, firm parenchyma. Gray-white follicles are not identified.

ENDOCRINE SYSTEM:

The pancreas is pale brown, lobular and soft with no fat necrosis, extravasated blood, tumor or fibrosis. The adrenal glands are thin and have yellow cortices and gray-white medullae. No hemorrhage or tumor is seen in the adrenal glands.

GASTROINTESTINAL SYSTEM:

The esophagus is lined by a smooth, gray-white mucosa with no ulcers, tumors or esophageal varices. The stomach is intact and contains 150 milliliters of red fluid. No aromatic or unusual odors are detected. No pills, capsules or granular material are seen. No blood is in the stomach. The gastric mucosa is red-brown with normal rugae and no ulcers, polyps or tumors. The duodenum has no ulcers. The small and large bowel has no perforation, obstruction or infarction. No mass or tumor is seen in the gastrointestinal tract. The appendix is not identified.

UROGENITAL SYSTEM:

The right and left kidneys weigh 200 and 190 grams, respectively. Both kidneys are enlarged and have scarred, pitted and granular, red-brown surfaces. There is no trauma or injury to the kidneys. The cortices are reduced in thickness to 4 millimeters, and there is an indistinct corticomedullary junction. There are no infarcts, granulomas or tumor. There is no hydronephrosis or renal calculi. There is an increased amount of peripelvic fat. The ureters and bladder are normal. The bladder is intact but contains no urine.

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

DATE: October 18, 2012

NUMBER OF SLIDES: 8

MICROSCOPIC EXAMINATION

HEART: Myocyte disarray and focal myocardial fibrosis. Myocyte hypertrophy. Acute subendocardial infarction with scant neutrophil infiltration.

LEFT CORONARY ARTERY: 90-95% intraluminal narrowing by atherosclerosis.

LEFT ANTERIOR DESCENDING CORONARY ARTERY: 90-95% intraluminal narrowing by atherosclerosis.

LUNGS: Bronchopneumonia. Rare fat emboli in pulmonary arteries.

LIVER: Cirrhosis with chronic hepatitis.

KIDNEY: Arteriosclerosis.

SPLEEN: Old infarct.

LYMPH NODE: Unremarkable.



Michael D. Bell, M.D.
District Medical Examiner

Date Signed: 10/29/12

MDB:df

Patient: BERNSTEIN, SIMON
Client Patient ID: 15-12-913
Physician: BELL, MICHAEL

Age: 76 **Sex:** M
Account#: 7230586
Client: DIST 15 MEDICAL EXAMINER

TOXICOLOGY

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
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VOLATILE PANEL - VOLP 98245

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 1035

ETHANOL	NONE DETECTED	g/dL	0.020
ACETONE	NONE DETECTED	mg/dL	7.5
METHANOL	NONE DETECTED	mg/dL	15.0
ISOPROPANOL	NONE DETECTED	mg/dL	15.0

Analysis by Gas Chromatography (GC) Headspace Injection

BLOOD DRUG SCREEN - BDSME 98216

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

GC/MS

Quantity Not Sufficient

LC/MS/MS

HYDROCODONE, ZOLPIDEM, ACETAMINOPHEN, CAFFEINE, CAFFEINE METABOLITE

BLOOD IMMUNOASSAY SCREEN

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

AMPHETAMINES	NEGATIVE	mg/L	0.100
BARBITURATES	NEGATIVE	mg/L	0.100
BENZODIAZEPINES	NEGATIVE	mg/L	0.050
BUPRENORPHINE	NEGATIVE	mg/L	0.001
CANNABINOIDS	NEGATIVE	mg/L	0.050
COCAINE METABOLITE	NEGATIVE	mg/L	0.100
FENTANYL	NEGATIVE	mg/L	0.001
METHADONE	NEGATIVE	mg/L	0.050
OPIATES	POSITIVE	mg/L	0.050
SALICYLATES	NEGATIVE	mg/L	50.0

Patient: BERNSTEIN, SIMON
Client Patient ID: 15-12-913
Physician: BELL, MICHAEL

Age: 76 **Sex:** M
Account#: 7230586
Client: DIST 15 MEDICAL EXAMINER

TOXICOLOGY

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
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TRICYCLICS	NEGATIVE	mg/L	0.100
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ACETAMINOPHEN - ACMP 98203

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

ACETAMINOPHEN	16.3	mg/L	10
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Therapeutic range:
10.0 - 20.0 mg/L

Analysis by Enzyme Immunoassay.

FREE OPIATES PANEL - OPPF 98182

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

CODEINE	NONE DETECTED	mg/L	0.025
MORPHINE	NONE DETECTED	mg/L	0.025
HYDROCODONE	0.094	mg/L	0.025
6-MONOACETYLMORPHINE	NONE DETECTED	mg/L	0.005
HYDROMORPHONE	NONE DETECTED	mg/L	0.025
OXYCODONE	NONE DETECTED	mg/L	0.025
OXYMORPHONE	NONE DETECTED	mg/L	0.025

Analysis by GC/MS

ZOLPIDEM - ZONMS 98621

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

ZOLPIDEM	NONE DETECTED	ng/mL	4.0
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Plasma concentrations following single oral 5 mg and 10 mg immediate release doses range from 29 - 110 ng/mL (mean, 59 ng/mL) and 58 - 270 ng/mL (mean, 120 ng/mL), respectively, occurring at a mean time of 1.6 hours. Peak plasma concentrations following a single oral 12.5 mg extended release dose ranged from 69 - 190 ng/mL (mean = 130 ng/mL) occurring at a mean time of 1.5 hrs.

The ratio of whole blood concentration to serum or plasma concentration is unknown for this analyte.



Wuesthoff Reference Laboratory

6800 Spyglass Court
Melbourne, Florida 32940
Julie Bell, M.D., Laboratory Director

Patient: **BERNSTEIN, SIMON**
Client Patient ID: **15-12-913**
Physician: **BELL, MICHAEL**

Age: **76** Sex: **M**
Account#: **7230586**
Client: **DIST 15 MEDICAL EXAMINER**

TOXICOLOGY

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
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Testing performed by NMS Labs, 3701 Welsh Rd, Willow Grove, PA 19090-2910

Specimens were intact upon receipt. Chain of custody, specimen security and integrity has been maintained. Testing has been performed as requested

Reviewed by: *Susan Rade* Date: 10-23-12

FINAL REPORT - THIS COMPLETES REPORTING ON THIS CASE

TOXICOLOGY_REPORT

BERNSTEIN, SIMON



Wuesthoff Reference Laboratory

6800 Spyglass Court
Melbourne, Florida 32940
Julie Bell, M.D., Laboratory Director

Patient: **BERNSTEIN, SIMON**
Client Patient ID: **15-12-913**
Physician: **BELL, MICHAEL**

Age: **113** Sex: **M**
Account#: **VX39518**
Client: **DIST 15 MEDICAL EXAMINER**

TOXICOLOGY

Specimen Collected :02/11/2014

Lab Order No: 381300564

Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
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COMMENTS: Test performed on postmortem specimen. The validity of the test, clinical significance, and criteria for interpretation have not been established for this sample type. Normal ranges may not apply.

METALS/METALLOIDS PANEL 3 - M3NMS

SPECIMEN TYPE

BLOOD

CHROMIUM	NONE DETECTED	mcg/L	2.0
reporting limit, reporting limit is 1.0			

Normally:
Less than 2 mcg/L.

CADMIUM	8.5	mcg/L	1.0
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Normally:
Less than 5 mcg/L

Refer to the OSHA website for workplace information. Various states require that Blood Cadmium levels above certain cutoffs must be reported to the state in which the patient resides.

Please contact NMS Labs if you need assistance in supplying your state with the required information.

ZPP	130	mcg/dL	2.0
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OSHA occupational threshold:
100 mcg/dL blood at hematocrit of 42.

LEAD	NONE DETECTED	mcg/dL	1.1
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Reporting limit, reporting limit is 0.50

Reported geometric mean blood lead concentration for US population (both adults and children) is less than 3 mcg/dL (taking into account the 95% CI).

The following are the reported age-based 50th and 95th percentiles (with 95% CI)*:

Age 1 - 5 years:

50th Percentile: 1.50 mcg/dL (1.40 - 1.70)

95th Percentile: 5.80 mcg/dL (4.70 - 6.90)

Age 6 - 11 years:

50th Percentile: 1.10 mcg/dL (1.00 - 1.30)

95th Percentile: 3.70 mcg/dL (3.00 - 4.70)



Wuesthoff Reference Laboratory

6800 Spyglass Court
Melbourne, Florida 32940
Julie Bell, M.D., Laboratory Director

Patient: BERNSTEIN, SIMON
Client Patient ID: 15-12-913
Physician: BELL, MICHAEL

Age: 113 Sex: M
Account#: VX39518
Client: DIST 15 MEDICAL EXAMINER

TOXICOLOGY

Specimen Collected :02/11/2014

Lab Order No: 381300564

Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
-----------	--------	-------	-------------------------

Age 12 - 19 years:

50th Percentile: 0.80 mcg/dL (0.800 - 0.900)

95th Percentile: 2.70 mcg/dL (2.30 - 2.90)

Age 20 years and above:

50th Percentile: 1.60 mcg/dL (1.50 - 1.60)

95th Percentile: 4.60 mcg/dL (4.20 - 4.90)

*National Health and Nutrition Examination Survey, 2001-2002 data; Third National Report on Human Exposure to Environmental Chemicals, Department of Health and Human Services, Centers for Disease Control and Prevention.

It is reported that blood levels in the range of 5 - 9 mcg/dL have been associated with adverse health effects in children aged 6 years and younger. Additionally, the following guidelines are offered by US Centers for Disease Control and Prevention, especially in respect to children:

10 - 14 mcg/dL is moderately high and may require re-screening.

20 - 44 mcg/dL is high and may require immediate medical attention.

45 - 69 mcg/dL requires urgent attention.

Greater than 70 mcg/dL is a medical emergency.

Refer to OSHA's website for workplace information. Various states require that blood lead concentrations above certain mandated cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

ARSENIC	18	mcg/L	11
reporting limit, reporting limit is 5.0			

Normally: Less than 10 mcg/L.

Seafood consumption within 2 to 3 days before specimen collection can markedly increase total Arsenic levels.

Various states require that levels above certain cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

MERCURY	4.1	mcg/L	3.0
Normally: Less than 10 mcg/L.			



Wuesthoff Reference Laboratory

6800 Spyglass Court
Melbourne, Florida 32940
Julie Bell, M.D., Laboratory Director

Patient: **BERNSTEIN, SIMON**
Client Patient ID: **15-12-913**
Physician: **BELL, MICHAEL**

Age: **113** Sex: **M**
Account#: **VX39518**
Client: **DIST 15 MEDICAL EXAMINER**

TOXICOLOGY

Specimen Collected :02/11/2014

Lab Order No: 381300564

Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
-----------	--------	-------	-------------------------

Various States require that Blood Mercury levels above certain cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

Specimens were intact upon receipt. Chain of custody, specimen security and integrity has been maintained. Testing has been performed as requested

Reviewed by: *Susan Rade* Date: 3-10-14

FINAL REPORT - THIS COMPLETES REPORTING ON THIS CASE

TOXICOLOGY_REPORT

BERNSTEIN, SIMON

Form: MM Single RLIT

Page 3 of 3

Printed: 03/10/14 15:14

BATES NO. EIB 003183
02/27/2017

From: [Eliot Ivan Bernstein](#)
To: "Michael Bell"
Cc: [Caroline Prochotska Rogers Esq. \(caroline@cprogers.com\)](#); [Michele M. Mulrooney ~ Partner @ Venable LLP \(mmulrooney@Venable.com\)](#); [Andrew R. Dietz @ Rock It Cargo USA](#); [Marc R. Garber Esq. \(marcrgarber@gmail.com\)](#); [Marc R. Garber Esq. @ Flaster Greenberg P.C. \(marc.garber@flastergreenberg.com\)](#); [Marc R. Garber Esq. @ Flaster Greenberg P.C. \(marcrgarber@verizon.net\)](#)
Bcc: [Undisclosed List: Eliot I. Bernstein, Inventor ~ Iviewit Technologies, Inc.; Patrick "Pat" Hanley \(cpsvm@yahoo.com\)](#); [Pat Handley \(svm231@aol.com\)](#); [""tourcandy@gmail.com" \(tourcandy@gmail.com\)""](#)
Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein Autopsy
Date: Friday, January 10, 2014 3:45:00 PM

Hello Dr. Bell,

Thank you for your reply and continued efforts on my behalf and I would like to clarify a few statements in your email below. First, I did not ever tell the police I was worried about my father getting too much of his medication or that he was being poisoned. These claims came from my brother Theodore and my father's assistant Rachel Walker who believed he was murdered by his companion and so stated to the police and the hospital the day my father died on September 13, 2012. In fact, I stated that I did not believe my father was being poisoned by either over medication or other poisons by his companion Maritza Puccio as evidenced in the Police Report. I reviewed the drug toxicology you provided and agree with your assessment of that. As for what poisons may have been used when the, alleged by others, switching of pills with pills of an unknown substance took place and I agree with you that it could have been anything and which is why I requested the Police take all of his medications into evidence but they did not. I am not sure what a heavy metal screen is and what it tests for or what other poison screening tests are available, could you please clarify this for me? Further, did you review the records of my father in the 8 weeks prior to his hospitalization, which may also have significant information and may further provide evidence of possible poisoning, as he was suddenly and unexpectedly suffering during that time from a wide range of symptoms in those weeks and he was taken to several of his doctors to evaluate who were all perplexed and this led to brain scans at the hospital just days before his death. Did you get a chance to review the report on the brain scan done? I am not sure but it appears prudent in ruling out foul play that these records be reviewed from all of his doctors during that time for information that could reveal what, if any, poisons were used based on the symptoms he was suffering and the battery of tests run on him concerning all these problems. I am not represented by an attorney in this matter as there appears at this stage of inquiry no need to spend money on one and so please continue to deal directly with me as Simon's son via email or feel free to call me at my contact info below.

I pray you had a wonderful holiday season with your family and again thank you for your time, effort and consideration of these matters,

Eliot I. Bernstein
Inventor
Iviewit Holdings, Inc. – DL
2753 N.W. 34th St.
Boca Raton, Florida 33434-3459
(561) 245.8588 (o)
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<http://www.iviewit.tv>

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From: Michael Bell [<mailto:mbell@pbccgov.org>]
Sent: Friday, January 10, 2014 1:21 PM
To: Eliot Ivan Bernstein
Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein

The autopsy was done at the Palm Beach ME office.

All drugs are "poisons" when given in sufficient doses. You initially told police you were worried about your father getting too much of his medications. The toxicology clearly shows that did not happen. There are thousands of drugs(poisons) and therefore it is impossible to test for all of them. If you think you know what was given, then please share that information. I will do a heavy metal screen which will take several weeks.

I have reviewed all the records of your father's hospitalization. My opinion is unchanged.

All further communication should be through your attorney who can call me at 561-688-4575.

From: Eliot Ivan Bernstein [<mailto:iviewit@iviewit.tv>]
Sent: Monday, January 06, 2014 12:23 PM
To: Michael Bell
Cc: Caroline Prochotska Rogers Esq.; Michele M. Mulrooney ~ Partner @ Venable LLP; Andrew R. Dietz @ Rock It Cargo USA; Marc R. Garber Esq.; Marc R. Garber, Esquire @ Flaster Greenberg P.C.; Marc R. Garber Esq. @ Flaster Greenberg P.C.
Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

I have not heard back on my email to you below. Can you please provide me a timeframe for your getting back to me? Please also include information regarding if the poison screening was done when the autopsy was conducted, not just a drug screening, as evidence exists that contact was made with the hospital on the night my father died that he may have been poisoned and similar claims were made to the Palm Beach County Sheriff the day he died. The remainder of the questions in my email still need to be addressed and as I am currently in ongoing civil and criminal complaints regarding my father, a prompt reply with an ETA would be greatly appreciated.

Thank you,
Eliot Bernstein

From: Eliot Bernstein [<mailto:iviewit@gmail.com>]
Sent: Monday, November 11, 2013 6:23 AM
To: Michael D. Bell, M.D. ~ Medical Examiner @ Office of the District Medical Examiner - District 15 - State of Florida (mbell@pbcgov.org)
Cc: Caroline Prochotska Rogers Esq. (caroline@cprogers.com); Michele M. Mulrooney ~ Partner @ Venable LLP (mmulrooney@Venable.com); Andrew R. Dietz @ Rock It Cargo USA; Marc R. Garber Esq. (marcgarber@gmail.com); Marc R. Garber, Esquire @ Flaster Greenberg P.C.; Marc R. Garber Esq. @ Flaster Greenberg P.C. (marcgarber@verizon.net)
Subject: FW: CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

Thank you for your prompt reply to my inquiry. A few more questions arose after reviewing your report. First I would like to state that there has been an arrest made in my parents' estates of the Notary Public Kimberly Moran who acted on behalf of the law firm Tescher & Spallina in forging and fraudulently creating documents for my father, after he was deceased. I have alleged to the court that these documents were part of a conspiratorial effort by primarily my brother and his friends Donald Tescher and Robert Spallina to seize control of Simon's estate post mortem and change the beneficiaries using post mortem documents. It should also be noted that in a September 13, 2013 hearing before Judge Martin H. Colin in the Del Ray Beach courthouse, it was found that the estate of my mother was closed by my father months after he was deceased, as if he were alive at the time and thus perpetrating a fraud on the court, which prompted Judge Colin to state twice that he should read Robert Spallina, Esq., Donald Tescher, Esq., Mark Manceri, Esq. and my brother Theodore Bernstein their Miranda rights for the crimes he identified at the hearing that they committed. That after Simon was deceased these fraudulent and forged documents that gave

fiduciary control to Tescher, Spallina and Ted then provided the way for far more serious felony crimes to be committed. The Palm Beach County Sheriff has made an arrest of Moran thus far and that report is filed as case # 13097087.

With that said, after reviewing your report I noted that you received my father's body, the day after he died on September 14, 2013. The reason I ask if this is correct, is that we were informed after my father died that his body had been taken to Miami to have an autopsy performed, which delayed the burial by several days as we waited for the autopsy to be performed. The autopsy was alleged by my brother, Spallina and others to be being conducted in Miami and after reviewing your report it was clear that you indicate the body never was transported to Miami. Therefore, please verify the information regarding the transportation of the body after the hospital to your offices with any/all stops in between.

I requested in my original letter to you if a poison screening had been completed, your letter stated a toxicology report was run but it appears to be a drug only test, not a poison screening. The reason this is now important is that immediately following my father's death as noted in your report materials, a claim was made to Palm Beach County Sheriff by Rachel Walker and Theodore Bernstein primarily that my father was murdered by his girlfriend, Maritza Puccio, via either overdosing or poisoning. Walker claimed that Maritza was switching pills in containers and may have been switching the pills with other substances and other substances may have been given to him, which may have included poisons or other drugs. I also note that after the officer interviewing Walker counted out the pills he was on and everything seemed in order, Walker claimed that the pain medication was not the only drug that may have been tampered with and that other substances may have been given to Simon in the weeks leading up to his death.

I do not doubt your conclusion that my father died of a heart attack but there can be many substances, including poisons that can induce a heart failure, I am trying to assess if the poison screening might have unearthed any substances in addition to the drug screen run by your agency. I am confused by some of your claims as to what occurred at the hospital that day as they contradict in part what we were told by the doctors who handled my father that day, including the following;

1. You claimed that evidence of a heart attack was found in the reports on admission to the hospital but that turned out to be wholly disproved by the end of the day.
2. Initially in the morning when we first took my father into the hospital, the first doctor attending him thought he was having a heart attack due to his prior history, despite my father claiming that he was not having a heart attack and that he knew what a heart attack felt like and he was not having one and thought he was fine, stating he was just confused and in pain from other ailments he was having.
3. Later in the afternoon the initial doctor claimed that he did not find any signs of a heart attack after running a battery of tests and called in an infectious disease doctor to evaluate and run tests, as he thought something else was going on other than heart related as he was having several other readings regarding other major organs that were highly abnormal.
4. We were assured by the cardiologist in charge of my father's care in the evening, before he let us go home that Simon's heart was fine and that NO markers were found indicating a heart attack. Instead he claimed he had "West Nile Virus" or some other virus of an unknown origin or that something else was wrong entirely, as many of his other levels he tested were off the charts, indicating something else was going on. He stated Simon would be fine, he was stable and they would begin testing in the morning.

5. We were called back to the hospital several hours later early the next morning. When I arrived my father's girlfriend Maritza had been ejected from the ICU where she was staying with Simon overnight as someone had informed the hospital that Simon might be poisoned and they had shut his room off visitors until security could arrive. When I arrived at ICU they would not at first let me in until security could escort me to my father where he was being resuscitated for a second time.

Finally, my father began developing a series of ailments several weeks prior to his death that had me and others running him to a variety of doctors to be tested for a variety of ailments, including a brain scan a few weeks prior to his death. That brain scan was run by the same cardiologist who treated my dad at the hospital the day he died and his symptoms prior to that day included strange screaming pains in his head, delusions, hallucinations and more. I wondered if you had reviewed any of his prior doctor reports in the two months leading up to his death, as we never determined the exact cause of what was making him melt down over the last weeks of life in such bizarre fashion. In fact, the cardiologist at the hospital the day he died was confused how his charts appeared fine when he did the brain scan only a few days earlier and stated he could not believe it was the same man when he got the reports at the hospital that day. Did you get a chance to review all the reports from the hospital that day and all the test results run or did you just review the admission report? If you reviewed all of the records and reports what were the other problems and tests run and what were the results. These results were of concern to the doctors that day and I wonder if any of those other problems could come from poisoning. If you ran a poison screening please provide me with the results as you did with the drug toxicology. Please feel to write back to me as I do not answer my phone much and am far easier to reach via email. I look forward to hearing from you soon. Thank you again in advance for your continued time, effort and consideration of these matters. Eliot

From: Michael Bell <mbell@pbcgov.org>
Date: November 7, 2013 at 11:17:02 AM EST
To: Eliot Ivan Bernstein <iviewit@iviewit.tv>
Cc: "Caroline Prochotska Rogers Esq." <caroline@cprogers.com>
Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein

Hi Mr Bernstein,

I tried to call your cell phone, but it would not accept anymore messages because it was full.

Your father died of a heart attack that was evident at autopsy and in the hospital records (he had elevated cardiac enzymes on admission).

He did NOT have West Nile virus. This disease causes a meningoencephalitis. This was NOT present at autopsy. I have attached the additional microscopic examination report as I did not see it in the pdf you sent me.

We did a toxicology screen which showed therapeutic concentrations of acetaminophen and hydrocodone. Zolpiden was detected but the level was too low to be measured. The toxicology testing can detect hundreds of different drugs.

If you have any other questions, please call me at 561-688-4575.

From: Eliot Ivan Bernstein [<mailto:iviewit@iviewit.tv>]
Sent: Saturday, November 02, 2013 7:02 PM
To: Michael Bell
Cc: Caroline Prochotska Rogers Esq.
Subject: CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

I write to you after review of your attached autopsy report on my father that raises some questions regarding the cause of death that I hope you can help answer. On September 12, 2013 when we brought my father into the hospital the first diagnoses we received in the morning was that he had a mild heart attack. After testing an infectious disease doctor was brought in who claimed it could be instead some sort of virus as it was not looking like a heart attack. Later that evening while in intensive care, a doctor came and told my family that he did not have a heart attack and that his heart was fine and instead they thought my dad had West Nile Virus or some other exotic virus and that we could go home. The doctor claimed he was stable, we could go home and they would begin testing the next day. In fact, the doctor asked me if it was I who brought my father in for a brain procedure several weeks earlier and stated that when he reviewed the file to compare to his earlier records he was stunned to see the results and stated that Simon had perfect test results just days earlier for the brain procedure and now he was off the chart on several levels. The doctor stated his problems definitely were not due to his heart as he found no markers of heart attack or other heart complications. Several hours later, I was called to the emergency room where they were attempting to resuscitate my dad but to no avail and he passed.

I was informed when he passed that they were going to do a test for West Nile Virus and other similar infectious diseases and I was wondering if these tests were also performed post mortem to rule all those causes out. Finally, I was wondering if a poison screening had been done and if one can now be done if requested.

Thank you for your time, effort and consideration in the handling of this matter.

Eliot I. Bernstein
Inventor
Iviewit Holdings, Inc. – DL
2753 N.W. 34th St.
Boca Raton, Florida 33434-3459
(561) 245.8588 (o)
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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

Case No. 502014CP003698XXXXSB

Eliot Ivan Bernstein, Individually;
Eliot Bernstein in his capacity as
Natural Guardian of his
minor children, Joshua, Jacob and Daniel;
and as beneficiary of the alleged Shirley
Bernstein Trust dated May 20, 2008, as
amended and Eliot Bernstein as Trustee of the
Eliot Bernstein Family Trust dated May 20,
2008,

Honorable Martin Colin

Jury Trial Requested

Counter Plaintiff,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;
Robert L. Spallina, Esq., Personally;
Robert L. Spallina, Esq., Professionally;
Donald R. Tescher, Esq., Personally;
Donald R. Tescher, Esq., Professionally;
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;
Theodore Stuart Bernstein, Individually;
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;
Theodore Bernstein as Personal Representative of the Shirley Estate;
Lisa Sue Friedstein, Individually;
Jill Marla Iantoni, Individually;
Pamela Beth Simon, Individually;
Mark Manceri, Esq., Personally;
Mark Manceri, Esq., Professionally;
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;
Alan B. Rose, Esq. – Personally;
Alan B. Rose, Esq. – Professionally;
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;
John J. Pankauski, Esq. – Personally;
John J. Pankauski, Esq. – Professionally;
Kimberly Francis Moran – Personally;
Kimberly Francis Moran – Professionally;
Lindsay Baxley aka Lindsay Giles – Personally;
Lindsay Baxley aka Lindsay Giles – Professionally;

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

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“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;
Simon Bernstein Trust Agreement Dated May 20th 2008;
Shirley Bernstein Trust Agreement Dated May 20th 2008;
The Estate of Simon Bernstein;
The Estate of Shirley Bernstein;
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
John and Jane Doe’s (1-5000),

Counter Defendants,

_____/

Judge Martin Colin, Personally;
Judge Martin Colin, Professionally;
Judge David French, personally;
Judge David French, professionally;

Material and Fact Witnesses who may
become Defendants in any amended
complaint.

_____/

**PETITION TO REMOVE TED BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SHIRLEY BERNSTEIN
IRREVOCABLE TRUST**

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COMES NOW, PRO SE¹, Eliot Ivan Bernstein (“Eliot”) as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children of the alleged “Shirley Bernstein Trust dated May 20, 2008, as amended” (“Shirley Trust”) (see Exhibit A3) and as Trustee of the “Eliot Bernstein Family Trust dated 5/20/2008” (see Exhibit A4) and hereby files this “PETITION TO REMOVE TED BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SHIRLEY BERNSTEIN IRREVOCABLE TRUST” and in support thereof states, on information and belief, as follows:

I. Eliot has standing to seek removal.

The provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stats. (2014) govern the issue of who has standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

*(1) The settlor, a cotrustee, or a **beneficiary** may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative. (emphasis added)*

§736.0103, Fla. Stat. (2014), defines a "beneficiary":

*(4) "Beneficiary" means a person who has **a present or future beneficial interest in a trust, vested or contingent**, or who holds a power of appointment over trust property in a capacity other than that of trustee. (emphasis added)*

II. This Court has the Authority Under Florida Law to Remove TED as Trustee of the Revocable Trust.

¹ Pleadings in this case are being filed by Plaintiff In Propria Persona, PRO SE, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Set 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991).¹ In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)²“The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

Under Florida law, this Court has broad authority to affect trust administration². Under §736.0201, Fla. Stat. (2014), the Court has the following power:

736.0201. Role of court in trust proceedings

* * * *

- (4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:
- (a) Determine the validity of all or part of a trust;
 - (b) **Appoint or remove a trustee;**
 - (c) Review trustees' fees;
 - (d) Review and settle interim or final accounts;
 - (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;
 - (f) Obtain a declaration of rights;
 - (g) Determine any other matters involving trustees and beneficiaries.
(emphasis added)

III. Legal Standard for Removal of Trustee.

When removal of a trustee is at issue, the following statutory provisions of §736.0706, Fla. Stat. (2014) are to be considered:

736.0706. Removal of trustee

* * * * *

- (2) **The court may remove a trustee if:**
- (a) **The trustee has committed a serious breach of trust;**
 - (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
 - (c) **Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;** or
 - (d) **There has been a substantial change of circumstances** or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

² Eliot has filed a pleading with the Court to Remove Theodore on the Court's own motion based on a host of reasons that disqualify Theodore at this time, including Prima Facie evidence in the Court's possession already. The filing was docketed August 28, 2014 and titled "AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN" and being all Pro Se, is hereby included by reference in entirety with all exhibits herein.

TED's removal is warranted by Subsections (2) (a), (c) and/or (d). Additionally, §736.0802, Fla. Stat. (2014) describes the primary duty of a trustee:

736.0802. Duty of loyalty

- (1) As between a trustee and the beneficiaries, a trustee shall administer the trust **solely** in interests of the beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided ins. 736.1016 a ... transaction ... which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction ... (emphasis added)

See Aiello v. Hyland, 793 So. 2d 1150, 1152 (Fla. 4th DCA 2001) (removal of trustee was required where trustee had a conflict of interest with interests of the trust; the conflict of interest made the trustee unable to properly carry out his duty of loyalty to the trust). Therefore, the only remedy is removal and a non-conflicted independent trustee appointed.

IV. Theodore Stuart Bernstein Should Be Removed as Trustee of the alleged Irrevocable Trust of Shirley Bernstein (see Exhibit A3 – 2008 Alleged Shirley Trust) by the Terms of the Trust and also due to Conflict of Interests, Adverse Interests, Breaches of Fiduciary Duties and more.

A. Theodore Bernstein is Not Eligible to Serve as a Successor Trustee under the very terms of the alleged Irrevocable Trust, which means he is "unfit" under §736.0706(2)(c).

1. Ted Bernstein is "PREDECEASED" for all purposes of dispositions of the Shirley Trust.

The language of the Shirley Trust states clearly and unambiguously,

ARTICLE III - GENERAL

E. **Definitions.** In this Agreement,

- 1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant

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loses his or her status as such through adoption by another person.
Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me,
provided, however, *if* my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants **all** predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.
(emphasis added)

The definition of Disposition from NOLO Legal Dictionary, “(2) The act of transferring care, possession, or ownership to another, such as by deed or will.” Thus, for purposes of the dispositions made under the 2008 Shirley Trust, Ted is definitely dead and thus cannot serve as Successor Trustee, despite the ALLEGED Shirley Trust ALLEGEDLY naming him.

Further, there has been admission from Robert Spallina, Esq. (“SPALLINA”) to Palm Beach County Sheriff Investigators³ that he fraudulently altered a Shirley Trust document already to attempt to include Ted’s lineal descendants back into the Shirley Trust illegally. Spallina was also acting as Ted’s attorney at the time in his alleged role of Successor Trustee in the alleged Shirley Trust.

That Tescher & Spallina, PA have also been found to have closed Shirley’s Estate with a dead Personal Representative, Simon, as part of a larger fraud on the Court in efforts to change beneficiaries of the Shirley Estate and Shirley Trusts.

That Tescher & Spallina, PA have also been found to have posited in the Court Record fraudulently notarized and forged documents for six parties, including a document for Simon forged and notarized Post Mortem.

Originals of the Shirley Trust have been suppressed and denied from the beneficiaries for over two years despite repeated requests to inspect and further it appears that Schedules,

³ Palm Beach County Sheriff Reports at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf)

Memorandums, Addendums and Codicils are all missing, making it impossible to determine the Trust Res, in violation of Probate Rules and Statutes.

That it is alleged that TESCHER and SPALLINA have further fraudulently altered the Shirley Trust document to name TED as a Successor Trustee in the Shirley Trust after Simon, despite the absolute conflict with the language in the Shirley Trust that considers TED predeceased and thereby unqualified to act as a Successor Trustee as he is dead legally for the purposes of the document. It should be noted by the Court, that in a deposition taken of TESCHER, he states that Simon and Shirley did mirrored trust documents in 2008. The 2008 Simon Trust (see Exhibit A) however was suppressed and denied and not given to the beneficiaries with his alleged 2012 Amended and Restated Trust after his death and was not turned over by TESCHER and SPALLINA, until they were removed from the proceedings for their involvement in fraud and more and whereby this Court issued an Order for them to turn over all their records and properties to the newly elected Curator, Benjamin Brown, Esq. in 2014.

When noting the successorship in Simon's 2008 Trust that is alleged to mirror Shirley's, Simon had chosen William Stansbury, currently the largest Creditor⁴ in the Simon Estate as the successor trustee after Shirley, NOT TED. It would seem logical that both Simon and Shirley had chosen Stansbury for his outstanding character and integrity in place of their eldest son TED, as they had both considered TED predeceased and an unfit businessman having just recovered from bankruptcy and not possessing a college degree as part of their decision. There is also evidence that

⁴ Stansbury is a creditor due to a lawsuit that primarily has TED as the perpetrator of multiple torts against Stansbury amounting to over \$2,000,000.00. It also has been alleged in the Simon Estate case before the Court that Simon was unaware until several weeks before his death (at around the same time he is alleged to have amended his 2008 Trust, which was about 48 days or so before his death) that TED may have misappropriated millions of dollars from Stansbury and that he too was being sued. Ted hired counsel Greenberg Traurig to represent him in the matter, Simon did not have counsel and died before he could be represented properly in the matter. Greenberg Traurig later resigned as Counsel to Ted and Alan B. Rose, Esq. replaced them.

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Simon was going to make Stansbury the CEO of LIC Holdings, Inc., a company he and TED owned, as he did not find TED fit to run that company either in the event he passed.

Initially, the Bernstein family members were told by SPALLINA and TESCHER that TED was the Successor PR and Trustee of Shirley's Estate and Trusts because Florida law stated the oldest child was the Successor. Then after Eliot confirmed with others that this was untrue, they later claimed that they had found in the trust that TED was named, which appears to be yet another fraudulent document submitted to the beneficiaries and interested parties and this Court in these matters. That Eliot awaits inspection of the original trust and will be turning that over to investigators as well.

Despite if the document named TED to be successor, it contradicts the terms of the trust that specifically consider him predeceased. Where there are several ongoing frauds and frauds on the Court, all under investigation and all benefiting TED and his minion of Attorneys at Law (four out of five have resigned as TED's counsel already for irreconcilable differences and two already removed for their involvement in FRAUD). There are numerous other reasons that TED is not qualified, nor was he ever, to be a Successor Trustee or be a fiduciary in ANY capacity in the Estates and Trusts of both Simon and Shirley, as further defined herein.

That it is alleged that TED, with the aid of TESCHER and SPALLINA, have used a series of fraudulent documents to seize illegally Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then once control was obtained, used the documents and their control to begin looting the estates and trusts through a variety of felony criminal misconduct.

That the alleged 2012 Simon Will and Simon's Amended & Restated Trust have been found by Governor Rick Scott's Notary Public Division to have been improperly notarized so as not to be able to determine if Simon was present at the signing. The only two witnesses to the document are Robert Spallina, Esq. and Kimberly Moran who have both admitted to fraudulently altering

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documents in the Simon and Shirley Estates and Trusts. Further, the documents are constructed improperly as SPALLINA, who becomes PR and TRUSTEE for Simon in the documents that he created, also witnesses the documents, which directly benefit him and his partner TESCHER as they control the Estate and Trust through their roles as, Co-Personal Representatives, Co-Trustees and SPALLINA additionally as counsel to the Co-Personal Representatives and Co-Trustees. Once SPALLINA gains control with these documents, he begins an unaccounted billing of the Estates and Trusts and where once Eliot had the Sheriff's investigating their frauds, a legal frenzy of billings arose from their attempts to defend against Eliot's actions and tell lies upon lies in the hearings before this Court, only later to confess of involvement in advancing the frauds, a confession which appears heavily perjured and full of other admitted criminal acts and comes only after Sheriff's came knocking on their door and arrests were made of their Legal Assistant and Notary Public, Kimberly Moran who admitted to forging and fraudulently notarizing documents in these matters and more. These documents suffer other construct issues that have been pled to the Court in unheard motions and petitions currently before the Court in the Estate and Trust lawsuits involving Simon and Shirley.

That TED was directly involved in taking improper and illegal distributions from the Shirley Trust that benefited his family, against allegedly the advice of his Counsel Spallina (as reported by Spallina to Palm Beach County Sheriff Investigators) and based on the fraudulent documents Spallina created to include his family back into the Shirley Trust. TED has advanced this fraudulent scheme, converted funds improperly, breached his alleged fiducial responsibilities repeatedly to deny beneficiaries access to information regarding the Shirley Trust, including but not limited to, failing to produce any accountings in violation of Probate Rules and Statutes, failing to give notice and documentation of his successorship to beneficiaries and in fact suppressing and denying required disclosure in violation of Probate and Trust Rules and Statutes and more. That TED's involvement

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in advancing the frauds and failure to act as fiduciary according to Probate and Trust Rules and Statutes are all cause for his immediate removal in ALL fiducial capacities.

The remainder of the Petition is borrowed from the Petition to Remove TED as Successor Trustee in the Simon Estate recently filed and set for hearing on September 24, 2014 for good and just causes. These same issues are applicable in evaluating his lack of character and fitness to serve as a fiduciary in the Shirley Trust that make his removal necessary and mandatory by this Court, as well as for removal from any other fiducial claims TED asserts in the Estates and Trusts of Simon and Shirley Bernstein. There is also a motion for Your Honor to remove Theodore on your own motion under Fla Stat. 736.

V. IN RE THE SIMON BERNSTEIN TRUST - Theodore Stuart Bernstein Should Be Removed as Trustee of the alleged Revocable Trust by the Terms of the Trust and his Conflict of Interest.

A. Theodore Bernstein is Not Eligible to Serve as a Successor Trustee under the very terms of the alleged Revocable Trust, which means he is "unfit" under §736.0706(2)(c).

2. Ted Bernstein is a "related party" and therefore not eligible to serve.

The previous co-trustees of the alleged Revocable Trust were Donald Tescher, Esq. ("TESCHER") and Robert Spallina, Esq. ("SPALLINA") by virtue of the Successor Trustee provision set forth in Article IV, Section C of the alleged Revocable Trust. A copy of the alleged Trust⁵ is attached hereto as Exhibit "A." By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, TESCHER and SPALLINA, resigned as co-trustees of Simon's Revocable Trust, co-personal representatives/executors to the Estate of Simon, SPALLINA resigned as counsel to TED as alleged Trustee (for irreconcilable differences) in the Shirley Trust and as

⁵ This alleged Revocable Trust of Simon's has been found to have improper notarization affixed by the Governor Rick Scott's Notary Public Division. The two witnesses to the document have already confessed to fraudulent alteration of other documents in the Shirley Bernstein and Simon Bernstein Estates and Trusts, including admitted forgery and fraudulent notarizations.

counsel to TED as Personal Representative of the Shirley Estate and both resigned in all other fiducial and legal capacities they were acting in for any Bernstein family related matters. Upon resignation TESCHER stating, "If the majority of the Bemstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity." TESCHER made the appointment of TED after claiming he learned that his law firm and SPALLINA had fraudulently altered a Shirley trust document to change beneficiaries illegally and then make illegal distributions under a fraudulent scheme. The alleged successorship was done without sending notice to beneficiaries that they had done this transfer and the document transferring notarized by the already convicted Felon for fraudulent notarizations, Kimberly Moran. TED accepted the alleged successorship without sending notice to beneficiaries and neither TESCHER, SPALLINA or TED provided an accounting of the trust upon the transfer, all in violation of Probate and Trust Rules and Statutes. A copy of the resignation letter is attached hereto as Exhibit "B."

If TED has become successor trustee of the Revocable Trust, he should be removed. He is ineligible under the very terms of the Revocable Trust to serve as successor trustee. Article IV, Section C.(3) (Page 16) of the Revocable Trust states:

C. Appointment of Successor Trustee

3. . . . A successor Trustee appointed under this subparagraph shall **not** be a Related or Subordinate Party of the trust. (**emphasis added**)

Under Article III, Subsection E(7), A "Related or Subordinate Party" is defined in the Trust as follows:

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

The "Code" is defined as "the Internal Revenue Code of 1986 ... "

A "Related or subordinate party" under the Code means any nonadverse party who is " ... (2) any one of the following: The Grantor's father, mother, issue, brother or sister ... "

TED is the son, or an "issue" of the Grantor, SIMON BERNSTEIN, and a related party (father) to alleged beneficiaries, TED's sons, SIMON's grandsons. Therefore, TED is ineligible as a Related or Subordinate Party and is therefore again unfit to serve as a successor trustee under §736.0706(2)(c).

3. Ted Bernstein was specifically disqualified to be a Successor Trustee by the terms of the Trust.

Another provision of the Trust also disqualifies TED.

Article III E (I) states:

Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me ... " (**emphasis added**)

The prior Simon revocable trust done in 2008 that was alleged to be amended by Simon 48 days prior to his sudden and unexpected death reads from Article III E (I),

E. **Definitions.** In this Agreement,

I. **Children. Lineal Descendants.** The terms "child," "children" and "lineal descendants mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person.

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Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder. **(emphasis added)**

Therefore, by the very language of the Trust and the prior pre alleged 2008 Simon Trust done with Shirley in 2008⁶ (see Exhibit A2), Ted Bernstein, in either scenario is wholly disinherited, predeceased and disqualified by these provisions to serve as a Successor Trustee as TED is considered DEAD for all purposes of the disposition and distributions of the trust. This is Prima Facie evidence for this Court to act on its own motion and instantly remove TED to protect the interests of the beneficiaries and others from an unqualified and possibly fraudulent successorship.

SPALLINA and TESCHER allegedly appointed TED as they parted in disgrace despite this language that disqualifies him, the language **that they wrote**. This transfer fraudulent transfer of fiduciary power and trusteeship was to retain the illegal Dominion and Control of the Estates and Trusts that TED, TESCHER and SPALLINA gained through the fraudulent documents, a criminal succession of trusteeship. TED, should have been removed with TESCHER and SPALLINA with his counsel Alan B. Rose, as they are centrally involved in the fraudulent schemes and illegal distributions made and TED and his minion of attorneys at law have benefited the most from the crimes committed by his former counsel TESCHER and SPALLINA. TESCHER and SPALLINA are also TED's close personal friends and business associates and TED brought them in to the Bernstein family. This illegal transfer assured TESCHER and SPALLINA a successor that

⁶ The original Simon Trust done in 2008 with Shirley was not turned over to beneficiaries until TESCHER and SPALLINA were ordered by the Court to turn over their records upon their removal in 2014 to the Curator Benjamin Brown, Esq.

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would continue to aid and abet their crimes and attempt to cover them up in the Court and prevent the beneficiaries access to the estate and trust information. This continuation of breaches is alleged to be exactly what is taking place since TED has claimed these fiduciary roles, in what appears yet another Fraud on this Court by now the unfit and unqualified alleged successor TED and his last remaining lawyer Rose, after four have already abandoned him. In Shirley's Estate this Court appointed TED as PR after reopening the Estate due to TESCHER, SPALLINA and others frauds. TED, since the time of appointment in October 2013, has failed to provide, a full copy of the Shirley Will and Trusts with all Schedules and Addendums (as required by statute to account for the Trust Corpus/Trust Res) and has provided no statutorily required accountings. These intentional violations of Probate and Trust Rules and Statutes by TED since your honor found him fit in October 2013, and again this is a serious enough breach of fiduciary duties for this Court to instantly remove Theodore on its own motion as unfit, unqualified and for egregious breaches of fiduciary duties in failure to accountant.

B. Ted Bernstein, as Trustee of the Revocable Trust, has a Conflict of Interest with the Estate of Simon Bernstein.

At the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust")⁷ as beneficiary.

Shortly after SIMON's death in 2012, Robert Spallina, one of the, resigning Co-Personal Representatives of the Estate of Simon Bemstein, resigning Co-Trustees of Simon's Revocable Trust, resigning counsel to the Co-Personal Representatives and Co-Trustees TESCHER and SPALLINA, resigning counsel to TED as Personal Representative of the Shirley Estate and resigning

⁷ The Court should note that in TESCHER and SPALLINA's production documents Ordered by this Court to be turned over to the appointed Curator, Benjamin Brown, Esq., turned up a 2000 insurance trust done by Proskauer Rose, LLP. This Proskauer insurance trust specifically mentioned the insurance policy as part of the trust corpus. This trust was discovered with correspondences indicating that it was intentionally secreted from this Court, a US Federal Court and the true and proper beneficiaries with intent and scienter and replaced with a scheme to use a "lost" and "missing" 1995 Insurance Trust that no executed copies exist for or have been produced. See Exhibit F.

counsel to TED as alleged Trustee in the Shirley Irrevocable Trusts, submitted a claim form to Heritage Union Life on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 that he signed as "Trustee", for the benefit of the grown children of Simon Bernstein. SPALLINA did not tender the 2000 Proskauer Trust in his possession, instead intentionally secreting that. SPALLINA submitted this death benefit claim despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (See Exhibit "C" attached.) Under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON's death, the insurance proceeds would be payable to the personal representative of the Estate. They would then after satisfying possibly any Creditors flow into a pour over trust for either Eliot, Lisa and Jill or the ten grandchildren of Simon, which will be determined by this Court in the future due to the frauds committed in the dispositive documents. In no scenario would TED or PAMELA receive any proceeds if they flowed into the Estate and thus have conflicting interests with their children that they allege to be beneficiaries of Simon's Estate and Trusts and other beneficiaries.

Because no executed insurance trust instrument was produced, Heritage refused to pay the life insurance proceeds to anyone without a court order and so DENIED the claim⁸. To this date, almost two years later, no executed trust instrument has been tendered in the Federal Illinois Insurance Litigation. That Ted Bernstein acting as "Trustee" on behalf of the legally nonexistent Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the

⁸ The Court should note that SPALLINA filed the claim acting as the trustee of the lost trust that he claims never to have seen or possessed and attempted to have the monies converted and comingled with his law firm Tescher & Spallina P.A. account.

The Court should further note that when the Illinois Life Insurance Litigation was filed shortly after SPALLINA's claim was denied, TED filed the lawsuit as trustee to the lost trust that he too claims never to have seen or possessed an executed copy of, replacing SPALLINA.

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"Life Insurance Litigation") for Breach of Contract for Heritage's failure to pay the claim to the legally nonexistent trust. The case has since been removed to the United States District Court for the Northern District of Illinois in Chicago under the tutelage of the Honorable Amy St. Eve.

The Estate of Simon Bernstein filed a Motion to Intervene in the Life Insurance Litigation to assert the Estate's interest in the life insurance proceeds. The Plaintiffs, including TED acting as "Trustee", after SPALLINA initially filed the death benefit claim as the "Trustee" of the legally nonexistent trust, filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum") (*See*, Exhibit "D," attached).

The opening paragraph of the Opposition Memorandum states as follows:

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by **TED BERNSTEIN, as Trustee**, (collectively referred to as "BERNSTEIN TRUST"), **TED BERNSTEIN, individually, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN**, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein's Motion to Intervene as follows: **(emphasis added)**

TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (**other than Eliot**) have taken the position that they are the beneficiaries of the legally nonexistent lost or missing Insurance Trust. Despite the opposition of TED BERNSTEIN to the Intervention, the court has granted the Estate's Motion to Intervene. TED is now an opposing party of record to the Estate's interest in the Life Insurance litigation.

TED, individually and as the alleged trustee of the alleged Insurance Trust, has placed his personal interests above the interests of the Revocable Trust beneficiaries, who are allegedly the grandchildren of SIMON or may be Eliot, Jill and Lisa, through TED's open, notorious and public opposition to the Estate's intervention in the Life Insurance Litigation. This creates an inherent conflict of interest for TED. TED, as successor trustee of the Revocable Trust, owes a duty of loyalty

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under §736.0706(1), Fla. Stat. (2014) to the trust beneficiaries, to administer the trust solely in their interest. The Estate and trust beneficiaries are alleged to be the grandchildren of Simon Bernstein, although Eliot has challenged these documents done days before Simon's death validity, especially in light of already proven, admitted and alleged crimes committed in Shirley and Simon's Estate and Trusts. The crimes, include but are not limited to,

- i. six admitted instances of forgery (including Post Mortem for Simon),
- ii. a proven felony conviction rendered for an admitted six fraudulent notarizations (including Post Mortem for Simon),
- iii. an admitted fraudulent alteration of a Shirley's Trust document by SPALLINA,
- iv. Fraud on the Court through fraudulent and false instruments posited in the Court by Officers of the Court and Tescher & Spallina, PA law firm, acting on behalf of a DEAD Personal Representative to close the Estate of Shirley, and,
- v. the Governor Rick Scott's Notary Public Division's findings of improper notarizations on Simon's alleged 2012 Will and Amended and Restated Simon Bernstein Trust done 48 days before his death. The legally invalid notarizations leave it unknown if Simon was present on the day of signing the documents and the only witnesses to alleged signing of the document have already admitted to fraud, SPALLINA and MORAN.

This means TED must support, or at the least not obstruct, the efforts of the Estate to attempt to recover an additional alleged \$1.7 million in life insurance benefits⁹. If so recovered, this would dramatically increase the Estate assets that Eliot and/or his children will receive (when the Court determines the beneficiaries due to the residue effects of the crimes that attempted to change beneficiaries in the Estates and Trusts of Shirley and Simon that have caused intentional

⁹ The Court should also note that NO parties in the Insurance Litigation, including the life insurance carriers involved to date have produced a bona fide copy of the executed insurance policy for the Breach of Contract lawsuit that is based upon it and thus no terms, including the beneficiaries and the face are known at this time, making this yet another "Rabbit Hole" of apparent malfeasances.

interferences and delays with expectancies. By opposing intervention by the Estate TED's actions exposed the estate/trust assets to liability. The need to have this Court Order intervention was due to the fact that TED'S counsel and the prior Co-Personal Representatives/Executors and Co-Trustees Robert Spallina, Esq. and Donald Tescher, Esq. to the Estate, failed to file any intervener action on behalf of the Estate and in fact aided and abetted TED'S efforts to convert the asset of the Estate to TED by SPALLINA'S filing the alleged Fraudulent Insurance Claim to benefit his client TED. SPALLINA actually acted as the "Trustee" of the lost insurance trust that he claims never to have seen or possessed and also fraudulently acted as the "Trustee" of the primary beneficiary "LaSalle National Trust NA" at his business address, as evidenced in Exhibit C. When the carrier DENIED SPALLINA's claim, TED filed the Insurance Litigation as the Trustee of the lost trust and not SPALLINA. However, both TED and SPALLINA have made statements that they have never seen or possessed this missing trust and yet both claim to be "Trustee" for various of their fraudulent attempts to collect the proceeds outside the Estate.

Thanks to, this Court, William Stansbury (who has financed the counsel for the beneficiaries and his interests as a Creditor), Peter Feaman, Esq., Benjamin Brown, Esq. and others, the Estate is now represented by counsel. Once the disgraced TESCHER and SPALLINA were removed from these matters, the Estate was able by Order of the Court to retain counsel to intervene in the Federal action on behalf of the Estate of Simon in efforts to protect the beneficiaries. The Federal court has now allowed that intervention on behalf of the Estate of Simon and the Estate is represented for the first time in almost two years. More importantly, TED'S efforts in the Life Insurance Litigation are designed to keep the alleged \$1.7 million out of the estate and trust and to redirect the money to him and his siblings (excluding Eliot).

As a consequence of the foregoing, TED is in breach of his fiduciary duty to the beneficiaries of the Revocable Trust by opposing efforts to make the Estate more solvent, which in tum exposes

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the Trust to increased liability, and warrants his removal under §736.0706(2)(a). Ted's continued interference is an attempt to redirect estate assets to himself personally and would further damage the estate beneficiaries. In addition, Ted's interference with his minion of Attorneys at Law has caused un-necessary and costly legal fees of an unknown amount since no accountings for legal fees have been submitted to this Court or the beneficiaries.

Additionally, this inherent and irreparable conflict of interest is a breach of his duty of loyalty and warrants removal under *Aiello, supra*, 793 So. 2d at 1152. *See also Brigham v. Brigham*, 119 So. 3d 374, 386 (Fla. 3d DCA 2009); *McCormick v. Cox*, 118 So. 3d 980, 987-88 (Fla. 3d DCA 2013) (removal of trustee was warranted where trustee had a conflict of interest and breach his fiduciary duties; trial court properly exercised its authority to remove trustee).

C. Misconduct in the Shirley Bernstein Estate and Trust

There are serious proven and admitted felony crimes and further allegations of fraud, forgery and fraudulently altered trust documents in the Shirley Bernstein Estate and Shirley Bernstein trust, where Ted Bernstein is the Personal Representative of the Estate and the alleged Successor Trustee of Shirley's trust. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away. The signatures were admitted to be FORGED for six parties, including Simon Post Mortem and Eliot. TESCHER and SPALLINA's Legal Assistant and Notary Public, Kimberly Francis Moran, confessed to Palm Beach County Sheriff Investigators that she fraudulently notarized and forged documents and since has been arrested and convicted of Felony misconduct. That these documents and others were then posited with the Court by TESCHER and SPALLINA through their law firm Tescher & Spallina P.A. on behalf of Simon acting as the PR/Executor while DEAD. Yes, Simon was DEAD yet acting as PR/Executor and where TESCHER and SPALLINA failed to notify the Court of his death and elect a successor to properly and legally close Shirley's Estate, instead using Simon to close the Estate four months after he had passed. This

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was done as part of a larger fraud in efforts to change beneficiaries of Shirley`s irrevocable trust`s beneficiary class, committed through a series of Frauds on the Court that used Simon when he was dead, to appear living at the closing of Shirley`s Estate. No successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead.

This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court stated it had enough Prima Facie evidence of felony criminal misconduct and Fraud on the Court by the potential parties involved in advancing these frauds, TED and SPALLINA, that Your Honor stated they should be read their Miranda Rights, twice. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "E.")

Evidence and admissions of further felony misconduct have since been obtained regarding new acts recently uncovered and there are many new crimes being alleged after receiving new and damning evidence from the former disgraced fiduciaries and attorneys at law, TESCHER and SPALLINA, when they resigned and turned over their records and properties to the successor curator, Benjamin Brown, Esq. Brown then turned the information over finally to beneficiaries as part of their records and there appears to be a plethora of new crimes uncovered.

Further, the attorney, SPALLINA for TED BERNSTEIN as Personal Representative of the Estate of Shirley Bernstein has admitted to altering provisions of the Shirley Bernstein Trust to Palm Beach County Sheriff Investigators¹⁰, which had the effect of benefitting TED BERNSTEIN`s family primarily and directly in efforts to fraudulently and knowingly convert assets to TED`s family. That TED advanced the fraudulent beneficiary scheme to change Shirley`s beneficiaries of her irrevocable beneficiary class with TESCHER and SPALLINA. Statements made by SPALLINA to Palm Beach

¹⁰ Palm Beach County Sheriff Reports can be found at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf) , fully incorporated by reference herein.

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Sheriff Investigators reveal that TED took distributions against the advice of his counsel, again making him wholly unfit to continue as a fiduciary in these matters.

TED also claimed to Palm Beach Sheriff Investigators that he had not read all of Shirley's trust documents that he was acting as fiduciary under, see the attached PBSO report.

Ted Bernstein's involvement with his former counsel TESCHER and SPALLINA¹¹ in such activity involving the Estate and Trust of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust or any other fiducial capacities in the Estates and Trusts of Simon and Shirley.

That in addition to the instant pleading, the following already filed pleadings, in particular to the motions and petitions to remove TED, are hereby be incorporated in entirety with all Exhibits by reference herein, as additional facts and Prima Facie Evidence for the Court to consider in the removal of TED in all fiducial roles in the Estates and Trusts of Simon and Shirley Bernstein;

i. Docket #244 - Simon Estate (see Exhibit G)

MOT - MOTION
Filing Date: 28-AUG-2014
Filing Party: BERNSTEIN, ELIOT IVAN
Docket Text: (AMENDED) FOR REMOVAL OF PERSONAL REPRESENTATIVE AND TRUSTEE OF THE ESTATES AND TRUST OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE UNEXECUTED ORDER ATTACHED EFILED

ii. Docket #215 - Simon Estate (see Exhibit H)

PET - PETITION
Filing Date: 29-JUL-2014
Filing Party: STANSBURY, WILLJAM E

¹¹ The Court should note that TED's current counsel, Alan B. Rose, Esq. was also involved in knowingly advancing the fraudulent beneficiary scheme with TESCHER, SPALLINA and TED and continues to advance such fraudulent scheme through continued toxic pleadings with this Court in efforts to now have the Court change Shirley trust documents, four years Post Mortem, in efforts to have the Court, through Fraud on the Court, change the beneficiaries of Shirley's Irrevocable Beneficiary Class to fit the crimes already committed by TED and his siblings, other than Eliot, when they knowingly took distributions to knowingly improper parties to mainly benefit TED and his sister Pamela Simon who were both disinherited and considered predeceased by both Simon and Shirley, for good and just cause and perhaps this Court is starting to see in part why their parents did not want them involved in the Estates and Trusts in any way, shape or form, as stated, "for all purposes."

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Docket Text: PETITION TO REMOVE TED BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST

iii. Docket #188 - Simon Estate (see Exhibit I)

188 RESP - RESPONSE TO:

Filing Date: 27-JUN-2014

Filing Party: STANSBURY, WILLIAM E

Docket Text: RESPONSE IN OPPOSITION TO THE APPOINTMENT OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT F/B

iv. Docket #126 - Simon Estate (see Exhibit J)

126 NOF - NOTICE OF FILING

Filing Date: 22-MAY-2014

Filing Party: William Stansbury

Docket Text: JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING F/B WILLIAM E. STANSBURY, CREDITOR OF THE E/O SIMON BERNSTEIN E-FILED

v. Docket # - Simon Estate (see Exhibit K)

97 PET PETITION

Filing Date: 07-APR-2014

Filing Party: Eliot Bernstein

Docket Text: PETITION FOR CONSTRUCTION OF TESTAMENTARY TRUST, FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING BY ELIOT IVAN BERNSTEIN

WHEREFORE, Eliot Ivan Bernstein requests that THEODORE "TED" STUART BERNSTEIN, the alleged apparent successor trustee of the Shirley Bernstein Trust, be removed, that the court appoint a Successor Trustee with no apparent conflicts of interest, and that the Court require the filing of a Trust Accounting, whereby TED and the former removed fiduciaries, TESCHER and SPALLINA, have failed to file or tender to beneficiaries any accounting in the Estate of Shirley and

the Shirley trusts for four years and the Simon trust for two years¹².

Dated, Friday, September 12, 2014.

Eliot Bernstein, Pro Se, Individually and as
Legal Guardian on behalf of his minor three
children.

X

CERTIFICATE OF SERVICE

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the
foregoing has been furnished by email to all parties on the following Service List, Friday,
September 12, 2014.

Eliot Bernstein, Pro Se, Individually and as
Legal Guardian on behalf of his minor three
children

X

SERVICE LIST

¹² The Court should note that NO COMPLETE TRUSTS OR WILLS HAVE EVER BEEN PROVIDED to beneficiaries with all of the Schedules and Addendums attached to show what the Corpus of each entity is and the only accounting tendered in these matters was for Simon's Estate. The accounting provided was upon the Court's Order for TESCHER and SPALLINA to file a Final Accounting upon their termination. That accounting has been challenged by ALL parties, including, the Curator Benjamin Brown, Esq., the new Personal Representative of the Simon Estate, Brian O'Connell, Esq. and Eliot, for gross violations of statutory accounting rules and regulations and more.

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<p>RESPONDENT PERSONALLY, PROFESSIONALLY, AS A GUARDIAN AND TRUSTEE FOR MINOR/ADULT CHILDREN, AS AN ALLEGED TRUSTEE AND ALLEGED PERSONAL REPRESENTATIVE</p> <p>Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com and arose@mrachek-law.com mhandler@mrachek-law.com cklein@mrachek-law.com lmrachek@mrachek-law.com rfitzgerald@mrachek-law.com skonopka@mrachek-law.com dthomas@mrachek-law.com gweiss@mrachek-law.com jbaker@mrachek-law.com mhandler@mrachek-law.com lchristian@mrachek-law.com telarke@mrachek-law.com gdavies@mrachek-law.com pgillman@mrachek-law.com dkelly@mrachek-law.com cklein@mrachek-law.com lwilliamson@mrachek-law.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Robert L. Spallina, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com</p>
<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>COUNSEL FOR LIMITED APPEARANCE representing Mr. Tescher in connection with his Petition for Designation and Discharge as Co-Personal Representative of the Estate of Simon L. Bernstein, deceased.</p> <p>Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 ijb@ijblegal.com martin@kolawyers.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and FORMER WITHDRAWN COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES, NO NOTICES OF APPEARANCES</p> <p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Donald Tescher, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 dtescher@tescherspallina.com dtescher@tescherspallina.com</p>

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			ddustin@tescherspallina.com kmoran@tescherspallina.com
RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com	COUNSEL TO CREDITOR WILLIAM STANSBURY Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 pfeaman@feamanlaw.com service@feamanlaw.com mkoskey@feamanlaw.com	COURT APPROVED CURATOR TO REPLACE THE REMOVED FORMER PERSONAL REPRESENTATIVES/CO-TRUSTEES/COUNSEL TO THEMSELVES AS FIDUCIARIES TESCHER AND SPALLINA Benjamin Brown, Esq., Thornton B Henry, Esq., and Peter Matwiczkyk Matwiczkyk & Brown, LLP 625 No. Flagler Drive Suite 401 West Palm Beach, FL 33401 bbrown@matbrolaw.com attomeys@matbrolaw.com bhenry@matbrolaw.com pmatwiczkyk@matbrolaw.com	COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN William M. Pearson, Esq. P.O. Box 1076 Miami, FL 33149 wpearsonlaw@bellsouth.net
RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 bill@palmettobaylaw.com eservice@palmettobaylaw.com mmealy@gcprobatelaw.com	RESPONDENT - ADULT CHILD Alexandra Bernstein 3000 Washington Blvd, Apt 424 Arlington, VA, 22201 alb07c@gmail.com	RESPONDENT ARRESTED AND CONVICTED OF FRAUD AND ADMITTED TO FORGERY OF SIX SIGNATURES, INCLUDING POST MORTEM FOR SIMON/HAS HAD NOTARY PUBLIC LICENSE REVOKED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION. *See notes Kimberly Moran kmoran@tescherspallina.com

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<p>RESPONDENT – ADULT CHILD</p> <p>Eric Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 ebenstein@lifeinsuranceconcepts.com edb07@fsu.edu edb07fsu@gmail.com</p>	<p>RESPONDENT – INITIALLY MINOR CHILD AND NOW ADULT CHILD</p> <p>Michael Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 mchl_bernstein@yahoo.com</p>		<p>COUNSEL TO ALEXANDRA, ERIC AND MICHAEL BERNSTEIN AND MOLLY SIMON</p> <p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com</p>
<p>RESPONDENT – ADULT STEPSON TO THEODORE</p> <p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 matt189@aol.com</p>	<p>RESPONDENT'S MINOR CHILDREN OF PETITIONER Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>RESPONDENT – MINOR CHILD</p> <p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	
<p>RESPONDENT/REPRIMANDED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION FOR FAILING TO NOTARIZE AN ALLEGED 2012 WILL AND TRUST OF SIMON AND SIGNING NOTARY UNDER FALSE NAME</p> <p>Lindsay Baxley aka Lindsay Giles lindsay@lifeinsuranceconcepts.com</p>	<p>RESPONDENT MINOR CHILDREN</p> <p>Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>	<p>RESPONDENT – MINOR CHILD INITIALLY NOW ADULT CHILD</p> <p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 molly.simon1203@gmail.com</p>	

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EXHIBIT A

**2012 ALLEGED AMENDED AND RESTATED TRUST OF SIMON L.
BERNSTEIN**



EXHIBIT

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE
Friday, September 12, 2014

BATES NO. EIB 003217
02/27/2017

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.

EXHIBIT A

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES
TESCHER & SPALLINA, P.A.

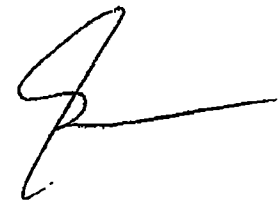
C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-3-

LAW OFFICES
TESCHER & SPALLINA, P.A.

BATES NO. EIB 003221
02/27/2017

A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to



such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph LA hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.



4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

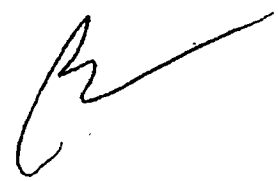
e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.



11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C., subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or



entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual



and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons



designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

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1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. **Subchapter S Stock.** Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Handwritten signature of Simon L. Bernstein]

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 27 day of July, 2012:

[Handwritten signature of Robert L. Spallina]
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARRLAND, FL 33076

[Handwritten signature of Kimberly Moran]
Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

[Handwritten signature of Lindsay Baxley]
Signature - Notary Public - State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

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EXHIBIT A2

2008 ALLEGED TRUST OF SIMON BERNSTEIN

EXHIBIT
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE
Friday, September 12, 2014

BATES NO. EIB 003243
02/27/2017

SIMON L. BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20th day of May, 2008, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for her Welfare. Any income not so paid shall be added to principal.

C. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

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(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

Notwithstanding the foregoing, prior to the funding of the Family Trust and the Marital Trust under this Subparagraph II.B., or only the Family Trust if my spouse does not survive me, the Trustees of this Trust



or the Personal Representatives of my estate as the case may be, shall finalize the sale of my shares in LIC HOLDINGS, INC., a Florida corporation or its successor in interest ("**LIC HOLDINGS**"), owned by me or this Trust at the time of my death, pursuant to that certain buy-sell agreement entered into by and between my son, TED S. BERNSTEIN, and me. Upon the sale of such shares, the Trustee shall fund the trust(s) provided for hereunder.

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

C. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

D. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by me as grantor on even date herewith (the "**Family Trusts**" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts



for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

E. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

F. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

G. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.



H. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

I. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

J. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.



C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to



the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.



2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SHIRLEY BERNSTEIN ("**SHIRLEY**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.



8. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.



H. **Presumption of Survivorship.** If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. **Governing Law.** This Agreement is governed by the law of the State of Florida.

J. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. **Mandatory Notice Required by Florida Law.** The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. **Release of Medical Information.**

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or



at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.



2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and



personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;



b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under



a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such



allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SHIRLEY and WILLIAM E. STANSBURY ("**BILL**"), or either of them alone if the other is unable to serve, shall serve as successor co-Trustees or Trustee as the case may be. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a



trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SHIRLEY shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SHIRLEY shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25).

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two



witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from



the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without



liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

1. **Family Trust.** I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. **Marital Trust.** I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. **Misc.** I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available. Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such



distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.



2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.



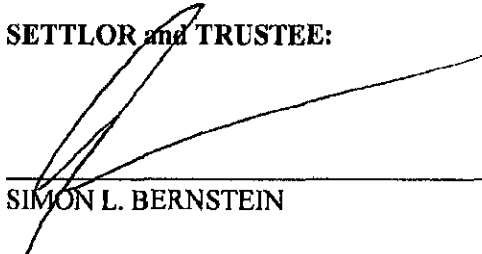
G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

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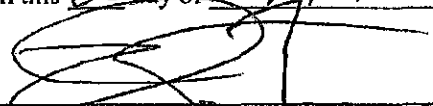


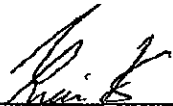
IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:


SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

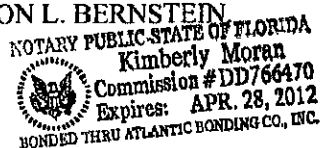

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

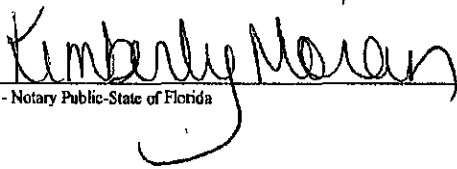

Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVE
DEERBERRY BEACH, FL 33446

STATE OF FLORIDA
COUNTY OF PALM BEACH

SS.

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN




Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

FAWPDATA\dr\Demarcin, Shirley & Simon\2008 Estate Planning\Simon L. Bernstein Trust Agreement.wpd [05/15/24 19:08]

ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SIMON L. BERNSTEIN, Settlor and Trustee

WILL OF
SIMON L. BERNSTEIN

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

CONFORMED COPY

WILL OF

SIMON L. BERNSTEIN

The original of this Will is being held in the safe deposit box of the law firm of Tescher & Spallina, P.A.

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SHIRLEY BERNSTEIN ("**SHIRLEY**"). My children are TED S. BERNSTEIN ("**TED**"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SHIRLEY, if SHIRLEY survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if SHIRLEY does not survive me, I give this property to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SHIRLEY nor any child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. RESIDENCES

I give to SHIRLEY, if SHIRLEY survives me, my entire interest in any real property used by us as a permanent or seasonal residence, subject to any mortgage or other lien. If SHIRLEY does not survive me, such interest shall pass with the residue of my estate.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate to the Trustee then serving under my revocable Trust Agreement dated today, as may be amended and restated from time to time (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

LAST WILL
OF SIMON L. BERNSTEIN

TESCHER & SPALLINA, P.A.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint SHIRLEY and WILLIAM E. STANSBURY, or either of them alone if the other is unable to serve, as my Personal Representative (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on

the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and

define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Articles I and II of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs.

5. Reimbursement for Debts and Expenses. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. Expenses of Handling Tangible Personal Property. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. Dealing with Estate. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good

faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

[remainder of page intentionally left blank]

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 20 day of May, 2008.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 20 day of May, 2008.

/s/ Robert L. Spallina residing at 7387 Wisteria Ave
[Witness Signature] [Witness Address]

Parkland, FL 33076
[Witness Address]

/s/ Diana Banks residing at 23415 Boca Trace Dr
[Witness Signature] [Witness Address]

Boca Raton, FL 33433
[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN, Testator

We, Robert Spallina and Diana Banks, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

/s/ Robert L. Spallina
Witness

/s/ Diana Banks
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (state type of identification) as identification, and Diana Banks, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 20 day of May, 2008.

Kimberly Moran
Commission # DD766470
Expires: APR. 28 2012

/s/ Kimberly Moran
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

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LAST WILL
OF SIMON L. BERNSTEIN

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN
IRREVOCABLE TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

IRREVOCABLE TRUST AGREEMENT

THIS AGREEMENT, made this 20 day of May, 2008, between SIMON L. BERNSTEIN, of Palm Beach County, Florida hereafter called "Trustor," and WILMINGTON TRUST COMPANY, a Delaware corporation, hereafter called "Trustee," WITNESSETH:

WHEREAS, Trustor desires to establish a trust of the property described in the attached "Schedule A" and other property which may be added from time to time, all of which is hereafter called the "trust fund;" and

WHEREAS, Trustee accepts such trust and agrees to administer it in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, Trustor hereby gives Trustee the property described in "Schedule A," in trust, for the following purposes:

SECTION 1: DISTRIBUTION.

A. During Trustor's Lifetime. During Trustor's lifetime, Trustee may, from time to time and subject to Subsection D of this Section 1, distribute all, some, or none, of the net income and principal to Trustor and Trustor's wife, SHIRLEY BERNSTEIN, as Trustee deems appropriate. Trustee shall take into account other sources of funds available to them. Trustee shall accumulate any net income not so distributed and add it to principal, to be disposed of as a part of it.

B. On Trustor's Death. On Trustor's death, Trustee shall distribute the trust fund to such person or persons, other than Trustor, Trustor's creditors, Trustor's estate, and the creditors of Trustor's estate, in such manner and amounts, and on such terms, whether in trust or otherwise, as Trustor effectively appoints by specific reference hereto in his Will. However, Trustor may, from time to time, release this special power of appointment, in whole or in part, by a written instrument delivered to Trustee during his lifetime. On Trustor's death, Trustee shall distribute the remaining assets of this Trust to the then serving Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 13, 2008, as may be amended and restated from time to time, to be held and administered as provided thereunder.

C. Contingent Gift. If at any time Trustee holds any portion of the principal of any trust not disposed of effectively under the previous provisions, then at such time Trustee shall distribute such principal, free from trust, to such then living person or persons as are then determined to be Trustor's distributees by the application of the intestacy laws of the State of Delaware governing the distribution of intestate personal property then in effect, as though Trustor had died at that particular time, intestate, a resident of the State of Delaware and owning such property then so distributable.

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D. Distribution Adviser. Trustee shall exercise its discretionary power to distribute income and/or principal to Trustor's wife pursuant to Subsection A of this Section 1 only with the written consent of the distribution adviser who shall be Trustor, so long as he is willing and able to act in such capacity. If at any time there is no distribution adviser, or if such adviser fails to express in writing to Trustee consent or disapproval as to the exercise of any discretionary power within fifteen (15) calendar days after Trustee has sent a written request for such consent to such adviser's last known address by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), Trustee may act in the matter as it deems appropriate. The distribution adviser shall act in a fiduciary capacity and conform to the purposes of this agreement. Such adviser shall have no duty to inquire into or see to the performance by Trustee of its duties under this agreement. The distribution adviser shall receive no compensation and shall not be reimbursed for expenses incurred while acting as such adviser.

SECTION 2: MERGER WITH SIMILAR TRUSTS.

If at any time a trust is set aside for any person or persons under the terms of this agreement which is substantially the same as any other trust established for that person or persons by Trustor or Trustor's wife, Trustee may, in its sole discretion, merge the trust created hereunder with the other trust for such person or persons, and the two trusts shall thereafter be held, administered, and distributed as one.

SECTION 3: ALTERNATIVE METHODS OF DISTRIBUTION.

Trustee may take any reasonable steps to disburse funds to or for a beneficiary, including: (i) distribution, either by hand or mail, to the beneficiary or the guardian of the person or property (whether the guardian is formally appointed or a natural guardian), (ii) distribution to a custodian for the beneficiary under the Uniform Transfers to Minors Act (or similar statute) of any state, (iii) deposit to the account of the beneficiary in any federally insured depository, or (iv) direct application for the benefit of the beneficiary.

SECTION 4: SPENDTHRIFT PROVISION.

No beneficiary (including Trustor) may alienate or in any other manner, whether voluntary or involuntary, assign, transfer, pledge, or mortgage his or her interest in any trust hereunder, and no one (including a spouse or former spouse) may attach or otherwise reach any interest of any beneficiary hereunder to satisfy a claim against that beneficiary, whether the claim is legal or equitable in origin. The provisions of this Section shall not limit or otherwise affect any power of appointment conferred upon a beneficiary or the right of a beneficiary to disclaim or release any interest created hereunder. This Section constitutes a restriction on the transfer of Trustor's beneficial interest in the trust fund that is enforceable under applicable non-bankruptcy laws within the meaning of Section 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any other similar or successor statute.

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SECTION 5: PAYMENT OF DEATH TAXES, DEBTS, AND EXPENSES OF ADMINISTRATION.

On the death of the Trustor, Trustee shall, unless otherwise directed by the beneficiary's Will or Revocable Trust Agreement, distribute to the Personal Representative of the beneficiary's estate an amount equal to the sum of all additional transfer taxes and costs of administration payable by such Personal Representative as a result of the inclusion of the trust in the Trustor's estate. Certification of such Personal Representative as to the amount of such additional taxes and costs will be determinative for all purposes. Trustee shall make such distributions directly to the appropriate payee, if so directed by such Personal Representative.

SECTION 6: TRUSTEE'S POWERS.

In addition to those powers granted by law, Trustee is specifically authorized and empowered, in its sole discretion, but subject to the provisions of Section 7:

A. To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property held hereunder, for such price and upon such terms and credits as it deems proper.

B. To invest in any kind of property, real, personal, or mixed, regardless of the laws governing investments by fiduciaries, without any duty to diversify investments.

C. Unless otherwise directed by the investment adviser named in Section 7 hereof, to execute securities transactions, without necessity of providing written confirmation thereof to such adviser at the time of settlement, and to execute securities transactions through any brokerage service, whether discount or full service, including Wilmington Brokerage Services at its normal rates of compensation, without diminution of compensation otherwise payable to Trustee, even if Wilmington Trust Company is serving as Trustee.

D. To vote directly or by proxy at any election or stockholders' meeting any shares of stock, excluding stock of Wilmington Trust Corporation.

E. To participate in any plan or proceeding, including any voting trust plan for liquidating, protecting, or enforcing any interest in any property, or for reorganizing, consolidating, merging, or adjusting the finances of any corporation issuing any such interest; to accept in lieu thereof any new or substituted stocks, bonds, notes, or securities, whether of the same or a different kind or class, or with different priorities, rights, or privileges; to pay any assessment or any expense incident thereto; and to do any other act or thing that it deems necessary or advisable in connection therewith.

F. To deposit, or arrange for the deposit of, securities at Depository Trust Company (DTC) and/or at any other securities depository or clearing corporation.

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G. To make any division or distribution in cash or in kind, or partly in cash and partly in kind; and to elect to recognize taxable gain or loss resulting from a distribution. Trustee may consider the income tax basis of the property then available for division or distribution, as well as the circumstances of the beneficiaries, and need not make division or distribution on a pro rata, asset-by-asset basis. Trustee shall not adjust the interest of any beneficiary as a result of any action taken or forborne under the provisions of this Subsection G.

H. To make loans, against adequate collateral, to any person including the Personal Representative of the estate of Trustor or any beneficiary and/or to purchase any property at its then fair market value from any person including such Personal Representative.

I. To borrow money from any person or corporation, including Trustee, and to pledge or mortgage as security any real or personal property.

J. To litigate, submit to arbitration, compromise, or settle any claim in favor of or against any trust hereunder, and to execute all agreements, deeds, and releases necessary or proper in connection therewith.

K. To retain attorneys-at-law, accountants, investment counsel, agents, and other advisers without diminution of compensation otherwise payable to Trustee.

L. To pay the taxes and expenses of maintaining, repairing, improving, and insuring any real property held hereunder.

M. To receipt for the proceeds of any life insurance made payable to Trustee, to institute any suit or proceedings, and to take any action necessary to collect such proceeds. However, Trustee need not institute any suit or proceeding unless its expenses, including counsel fees and costs, are available in the trust fund or are advanced or guaranteed in an amount and in a manner reasonably satisfactory to it.

N. To renounce, in whole or in part, any property or interest in property which may become payable to any trust hereunder, except to the extent that the distribution of such property resulting from such renunciation is fundamentally inconsistent with the provisions of this agreement.

O. To divide any trust hereunder into separate trusts if the purposes for which the trust was created are better served thereby.

P. To consider gains from the sale of capital assets in the trust to be part of a mandatory or discretionary distribution of principal to a beneficiary.

SECTION 7: INVESTMENT ADVISER.

Trustee shall exercise the powers hereinbefore granted to it in Subsections A, B,

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D, E, H and I of Section 6 with respect to each trust hereunder only with the written consent or on the written direction of the investment adviser of such trust, provided that: (i) Trustee shall sell any Wilmington Trust Corporation stock held by it hereunder unless specifically directed to do otherwise by such adviser; (ii) the purchase, sale, and voting of Wilmington Trust Corporation stock shall be solely on the direction of the investment adviser; (iii) Trustee shall manage and invest the otherwise uninvested cash in each such trust in its sole discretion; (iv) the investment adviser may at any time, or from time to time, delegate to Trustee the authority to exercise in its sole discretion the power to buy or sell any property (or, having delegated the authority to do so, revoke such authority); and (v) if at any time during the continuance of any such trust there shall be no investment adviser of such trust, or if the investment adviser of such trust shall fail to communicate in writing to Trustee his or her consent, disapproval, or direction as to the exercise of any of the aforesaid powers for which exercise the consent or direction of such adviser shall be necessary, within twenty (20) days after Trustee shall have sent to such adviser, by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), at his or her last known address, a written request for such consent or direction (notwithstanding that Trustee shall be under no obligation to request any such direction), then Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust. The investment adviser hereunder shall be Trustor and Trustor's wife, in the order named, while willing and able to act in such capacity. Initially, Trustee shall exercise such powers on the direction of the investment adviser, but the investment adviser may establish from time to time whether the Trustee shall exercise such powers with the consent or on the direction of such adviser. To qualify, any person appointed investment adviser of a trust hereunder shall deliver a written instrument to Trustee indicating acceptance and agreement that all powers conferred upon such adviser will be exercised in a fiduciary capacity for the exclusive interest of the beneficiaries. The investment adviser need not inquire into the Trustee's performance of its duties and shall not be held liable for any loss whatsoever to any trust hereunder, unless it results from actions taken in bad faith. The investment adviser shall serve without compensation, but the investment adviser (other than Trustor) may be reimbursed for out-of-pocket expenses, including investment counsel fees.

SECTION 8: ADDITIONS TO THE TRUST FUND.

With the consent of Trustee, any person may add property to any trust hereunder, and such property shall thereafter be held by Trustee as a part thereof.

SECTION 9: IRREVOCABILITY.

This trust shall be irrevocable and not subject to amendment by Trustor or any other person. However, Trustee is authorized to modify or amend the provisions of this agreement to ensure that this agreement is a qualified disposition under the Act. Trustee may rely upon the advice of counsel in taking any action pursuant to the authority given to Trustee, and Trustee shall be without liability therefor.

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SECTION 10: PAYMENT OF INCOME.

Except where otherwise provided, the payment of the net income of any trust hereunder shall be made at such times as are convenient to the beneficiary and agreed to by Trustee.

SECTION 11: NON-ACCRUAL OF INCOME.

Notwithstanding any statute or rule of law to the contrary, any income accrued or on hand and not actually distributed to a beneficiary upon the termination of his or her interest shall be treated as though it had, in fact, accrued thereafter. Any income accrued upon shares of stock or interest-bearing property when delivered to Trustee shall be treated as though such income had, in fact, accrued after such delivery.

SECTION 12: THIRD PARTIES NOT OBLIGED TO FOLLOW FUNDS.

No person or corporation dealing with Trustee shall be obliged to see to the application of money paid or property delivered to Trustee, to inquire into the propriety of Trustee's exercising its powers, or to determine the existence of any fact upon which Trustee's power to perform any act hereunder may be conditioned.

SECTION 13: TRUSTEE'S COMPENSATION.

Trustee shall receive compensation for its services hereunder from time to time in accordance with the current rates then charged by it for trusts of similar size and character. If Trustee renders any extraordinary services, it may receive additional compensation therefor.

SECTION 14: RESIGNATION AND REMOVAL OF TRUSTEE.

At any time during the remainder of Trustor's life, Trustee may resign by written notice delivered to Trustor, and WILLIAM E. STANSBURY may remove Trustee by written notice delivered to it. In either case, WILLIAM E. STANSBURY may appoint another bank or trust company that is described in Section 3570(9) of the Act, as successor Trustee by written notice delivered to Trustee. During Trustor's lifetime, Trustee shall be deemed to have resigned on the date on which: (i) it ceases to be a Trustee described in Section 3570(9) of the Act; or (ii) a court takes any action whereby such court declines to apply Delaware law in determining the validity, construction, or administration of any trust hereunder or of the effect of the spendthrift provision hereunder in any action brought against trustee. Unless objections are filed as provided below, Trustee shall, within ninety (90) days after it resigns or is removed, deliver any assets held hereunder to the successor Trustee. If WILLIAM E. STANSBURY does not appoint such a successor Trustee, Trustee may petition the appropriate court to appoint such a successor Trustee. Upon resignation or removal, Trustee shall deliver a statement of its activities to the

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date of such resignation or removal for which it has not reported to the person to whom Trustee was directed to give notice of resignation or who was authorized to remove Trustee. Such person shall have sixty (60) days from receipt of such statement to file with Trustee any objections to its actions as Trustee. If no such objections are filed, Trustee shall be without any further liability or responsibility to any past, present, or future beneficiaries. No successor Trustee shall be required to examine into the acts of its predecessor Trustee, and each successor Trustee shall have responsibility only with respect to the property actually delivered to it by its predecessor Trustee.

SECTION 15: SIMULTANEOUS DEATH.

If Trustor and Trustor's wife die under circumstances where the order of deaths cannot be determined, and if any of the principal is includable in Trustor's estate for transfer tax purposes, then for the purposes of this agreement with respect to such principal, Trustor's wife shall be deemed to have survived Trustor and died immediately thereafter.

SECTION 16: TRUST SITUS.

This agreement creates a Delaware trust, and all matters pertaining to the validity, construction, and application of this agreement or to the administration of the trusts created by it shall be governed by Delaware law.

SECTION 17: DEFINITIONS.

A. "Trustor's wife" refers to SHIRLEY BERNSTEIN.

B. "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after the date of this agreement. A reference to a specific section of the Code refers not only to that section but also to any corresponding provision of any federal tax statute enacted after the date of this agreement, as in effect on the date of application.

C. "Transfer taxes" means all applicable federal estate taxes (except additional estate taxes imposed under Section 2032A of the IRC), state estate or inheritance taxes, and generation-skipping transfer taxes imposed on any "direct skip" (as defined in Chapter 13 of the Code) other than a direct skip from a trust or resulting from a disclaimer, and any interest and penalties thereon. The term does not include federal or state gift taxes, generation-skipping transfer taxes imposed on a "taxable termination," a "taxable distribution," or a "direct skip" from a trust or resulting from a disclaimer, income taxes, real estate transfer taxes, or any tax or duty imposed by a foreign country or political subdivision thereof. In addition, the term does not include any tax imposed by Section 2056A of the Code or any corresponding provision of applicable state law.

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D. "Act" means the Delaware Qualified Dispositions in Trust Act (12 Delaware Code Section 3570, et seq.), as amended, or any corresponding Delaware statute enacted after the date of this agreement. A reference to a specific section of the Act refers not only to that section but also to any corresponding provision of any Delaware statute enacted after the date of this agreement, as in effect on the date of application.

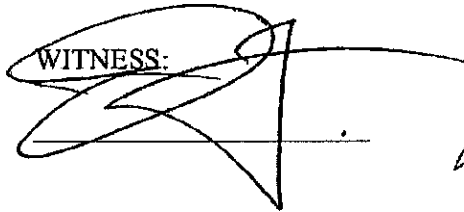
E. Use of any gender in this agreement includes the masculine, feminine and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

F. "Personal Representative" means the executor or administrator of a decedent's estate and shall include all persons serving in such capacity from time to time.

G. Use of the verb "shall" in this agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.


H. Captions, headings and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

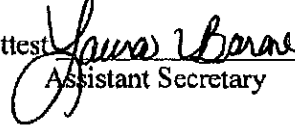
IN WITNESS WHEREOF, SIMON L. BERNSTEIN, Trustor, has set his Hand and Seal the 20th day of May, 2008, and WILMINGTON TRUST COMPANY, Trustee, has caused this agreement to be signed in its name by one of its ^{Asst} Vice Presidents and its corporate seal to be affixed by one of its Assistant Secretaries, the 20th day of May, 2008, all done in duplicate as of the date of execution by Trustor, which date shall be the effective date of this instrument. (N.A.N.)

WITNESS: 

 (SEAL)
SIMON L. BERNSTEIN, Trustor

WILMINGTON TRUST COMPANY, Trustee

By: 
Asst. Vice President

Attest: 
Assistant Secretary

TESCHER & SPALLINA, P.A.

STATE OF FLORIDA)
) SS.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 20th day of May, 2008, by SIMON L. BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

Kimberly Moran
Notary Public

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this 2nd day of June, 2008, by Nicole A. McClelland, ^{Asst.} Vice President of Wilmington Trust Company, a Delaware corporation, on behalf of the corporation.

Laura D. Barone
Notary Public

LAURA D. BARONE
Notary Public - State of Delaware
My Comm. Expires April 3, 2012

“SCHEDULE A”

Consisting of One Page

of

SIMON L. BERNSTEIN

Irrevocable Trust Agreement

Dated May 20, 2008

Between

SIMON L. BERNSTEIN

and

WILMINGTON TRUST COMPANY

* * *

CASH in the amount of One Dollar (\$1.00)

* * *

TESCHER & ¹¹SPALLINA, P.A.

EXHIBIT A3

2008 ALLEGED TRUST OF SHIRLEY BERNSTEIN



EXHIBIT
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE
Friday, September 12, 2014

BATES NO. EIB 003293
02/27/2017

SHIRLEY BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SHIRLEY BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20 day of MAY, 2008, and is between SHIRLEY BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN, of Palm Beach County, and SHIRLEY BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for his Welfare. Any income not so paid shall be added to principal.

C. **Gifts.** If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SHIRLEY BERNSTEIN
TRUST AGREEMENT

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(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Specific Cash Devise. The Trustee shall set aside in a separate trust the sum of Two Hundred Thousand (\$200,000.00) Dollars for MATTHEW LOGAN, and said separate trust shall be administered as provided in Subparagraph II.F below. If MATTHEW LOGAN does not survive me this devise shall lapse.

C. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

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2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

D. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse as grantor on even date herewith (the "*Family Trusts*" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

G. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

H. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

I. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be

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liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

J. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

K. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.



1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate



takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

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2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SIMON L. BERNSTEIN ("**SIMON**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.

Beneficiary Related to Subordinate Party. A "Related or Subordinate Party" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "spouse" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

at any time revokes an authorization within its term; the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

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2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under

a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR PALM BEACH
COUNTY, FLORIDA

Case No. 502015CP001162XXXXSB
Judge Martin Colin

ELIOT BERNSTEIN, individually;
ELIOT BERNSTEIN as a beneficiary of the
2008 SIMON L. BERNSTEIN TRUST
AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND
RESTATED TRUST AGREEMENT dated
July 25, 2012 and as Legal Guardian of
JOSHUA BERNSTEIN, JACOB BERNSTEIN,
and DANIEL BERNSTEIN,

Plaintiffs,

v.

THEODORE STUART BERNSTEIN, as Successor
Trustee of the 2008 SIMON L. BERNSTEIN
TRUST AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND RESTATED
TRUST AGREEMENT dated July 25, 2012;
ALEXANDRA BERNSTEIN;
ERIC BERNSTEIN;
MICHAEL BERNSTEIN;
MOLLY SIMON;
JILL MARLA IANTONI;
MAX FRIEDSTEIN;
LISA SUE FRIEDSTEIN,

Defendants.

**AMENDED COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN
AS SUCCESSOR TRUSTEE**

COMES NOW, Eliot Ivan Bernstein ("Eliot" or "Plaintiff"), beneficiary of the 2008
SIMON L. BERNSTEIN TRUST AGREEMENT and Eliot Bernstein as Legal Guardian of his
three minor children under the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20,
2008, as amended and restated in the SIMON L. BERNSTEIN AMENDED AND RESTATED



TRUST AGREEMENT dated July 25, 2012 (the “2012 Simon Trust or “Trust(s)””), and pursuant to §736.0706, Fla. Stat. (2013), files this Amended Complaint To Remove Theodore Stuart Bernstein (“Ted”) As Successor Trustee, and in support states as follows:

1. Plaintiff Eliot Ivan Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is a beneficiary of the 2008 Simon Trust.

2. Plaintiff Eliot Ivan Bernstein is legal guardian of his three minor children, Joshua Bernstein, Jacob Bernstein and Daniel Bernstein, beneficiaries under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

3. Plaintiff has standing to seek removal in his capacity as Legal Guardian for his minor children who are beneficiaries of the 2012 Simon Trust.

4. Defendant, Theodore Stuart Bernstein is currently serving as the Successor Trustee of the Trusts and is a resident of Palm Beach County.

5. Alexandra Bernstein, who is over the age of 18, resides in Virginia and is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

6. Eric Bernstein, who is over the age of 18, resides in Palm Beach County Florida and is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

7. Michael Bernstein, who is over the age of 18, resides in Palm Beach County Florida and is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

8. Molly Simon, who is over the age of 18, resides in Arizona is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.



9. Jill Marla Iantoni is the parent and natural guardian of minor beneficiary Julia Iantoni under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

10. Max Friedstein who is over the age of 18, resides in New York and is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

11. Lisa Friedstein is the parent and natural guardian of minor beneficiary Carley Friedstein under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

12.

Legal Standard for Removal of Trustee

13. When removal of a trustee is at issue, §736.0706, Fla. Stat. (2014) governs:

736.0706. Removal of trustee

(2) The court may remove a trustee if:

- (a) The trustee has committed a serious breach of trust;**
- (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;**
- (c) Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or**
- (d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.**

14. TED's removal is warranted by Subsections (2) (a), (c) and/or (d) of §736.0706, Fla. Stat. (2014).

15. The previous Co-Trustees of the 2012 Simon Trust were DONALD R. TESCHER, ESQ. and ROBERT L. SPALLINA, ESQ. (Teschler & Spallina) by virtue of the Successor Trustee



provision set forth in Article IV, Section C of the 2012 Simon Trust. A copy of the 2012 Amended and Restated Trust is attached hereto as Exhibit "A."

16. By a letter dated January 14, 2014 addressed to the five children of Simon Bernstein, as opposed to the beneficiaries of the 2012 Simon Trust, TESCHER and SPALLINA resigned as,

- i. Co-Trustees of Simon's 2012 trust,
- ii. Co-Personal Representatives/Executors to the Simon Estate,
- iii. Counsel to themselves as Co-Trustees and Co-Personal Representatives of Simon's Estate and trusts,
- iv. Counsel to TED as alleged Trustee of the Shirley Trust,
- v. Counsel to TED as Personal Representative of the Shirley Estate,
- vi. Counsel to TED as Alleged Trustee of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated 1995,
- vii. Alleged Trustee of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated 1995, and,
- viii. Counsel in all other fiducial and legal capacities they were acting in for any Bernstein family related matters.

A copy of the letter is attached hereto as Exhibit "B."

17. Upon their resignation, TESCHER stated, "If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity."

COUNT I

TED BERNSTEIN IS NOT ELIGIBLE TO SERVE AS SUCCESSOR TRUSTEE AS THE LANGUAGE OF THE TRUST DISQUALIFIES HIM TO SERVE AS SUCH

18. Article IV, Section C.(3) (Page 16) of the 2012 Simon Trust states:

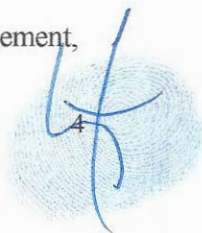
C. Appointment of Successor Trustee

3. . . . A successor Trustee appointed under this subparagraph shall **not** be a Related or Subordinate Party of the trust. (**emphasis added**)

19. Under Article III, Subsection E (7), A "Related or Subordinate Party" is defined in the Trust as follows:

ARTICLE III. GENERAL

E. Definitions. In this Agreement,



7. Related or Subordinate Party. A "Related or Subordinate Party" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

The "Code" is defined as "the Internal Revenue Code of 1986 ... "

A "Related or subordinate party" under the Code means any nonadverse party who is " ... (2) any one of the following: The Grantor's father, mother, issue, brother or sister ... "

20. TED is the son, or an "issue" of the Grantor, SIMON BERNSTEIN, and a related party (father) to some of the beneficiaries. Therefore, TED is ineligible as a "Related or Subordinate Party" to serve as a Successor Trustee under §736.0706(2)(c).

21. Further, TED is specifically disqualified to be a Successor Trustee by the terms of the 2012 Simon Trust in another provision of the Trust that also disqualifies TED. Article III E (1) states:

Notwithstanding the foregoing, **for all purposes of this Trust and the dispositions made hereunder**, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me...” (**emphasis added**)

22. Therefore, by the very language of the Trust, TED, in any scenario, is wholly disinherited, considered legally predeceased and further disqualified by the provision of the Trust to serve as a Successor Trustee.

COUNT II

TED BERNSTEIN, AS SUCCESSOR TRUSTEE, HAS FAILED TO FOLLOW FLORIDA STATUTE 736.0813 AND 736.08135 BY BREACHING HIS DUTY TO INFORM AND ACCOUNT

23. The duty of a trustee to account has been codified in Florida Statute §736.0813:

736.0813 Duty to inform and account.—

The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.



(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to accountings under this section.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee. (emphasis supplied)

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

24. TED has provided NO accountings for the 2012 Simon Trust.

25. The duty to account is so fundamental to the law of trusts that this duty cannot be diminished by the trust itself. The trust instrument may provide that a trustee need not account or only account informally to a beneficiary, but according to the Florida Trust Code, any such limiting provisions are ineffectual and cannot relieve the trustee of his or her duty to account fully to a qualified beneficiary. See: Florida Statute §736.0105(2)(s).

A. FAILURE TO ACCOUNT IN THE SIMON TRUST

26. Ted, currently acting as successor trustee in 2012 Simon Trust has provided NO accountings despite repeated requests by beneficiaries and despite changes in fiduciaries, when TED's former counsel and fiduciaries for the 2012 Simon Trust, TESCHER and SPALLINA resigned.



27. Between TED and his former counsel there has been NO accounting for over two years in violation of probate and trust rules and statutes.

COUNT III

TED BERNSTEIN, AS TRUSTEE, HAS FAILED TO KEEP ACCURATE RECORDS AND COMMITTED WASTE OF TRUST AND ESTATE ASSETS

28. TED as successor trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust.

29. The Florida Trust Code explicitly states that a trustee shall keep clear, distinct and accurate records of the administration of the trust.

736.0810 Record keeping and identification of trust property.

(1) A trustee shall keep clear, distinct, and accurate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection

(4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(5) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

30. TED does not possess the original signed and executed 2012 Simon Trust under which he alleges to operate as Successor Trustee.

31. At this time no original signed and legally executed originals exist of the 2012 Simon Trust.

32. The 2012 Simon Trust was also used to seize control of Trust assets.

33. Once control was gained by TED he began to loot Trusts through a series of fraudulent acts and he began recklessly billing outrageous and unaccounted for legal and

fiduciary fees, while simultaneously concealing, altering and destroying records and precluding beneficiaries from any financial information or access to the dispositive documents.

34. Legal and fiduciary fees have run rampant, with often 6-7 attorneys attending hearings.

35. Real estate was sold at fire sale prices and distributions were made to knowingly improper parties by TED and other accounts were discovered being used post mortem at Legacy Bank and others. Bank accounts and investment accounts are unaccounted for.

36. A trustee who, after being requested to do so, refuses to provide a beneficiary with relevant information about the assets of the trust, refuses to account for how the trust is being administered, and who refuses to provide an accounting when required, has breached his fiduciary duty owing to the beneficiaries and should be removed.

COUNT IV

TED BERNSTEIN SHOULD BE REMOVED AS SUCCESSOR TRUSTEE BASED ON CONFLICT OF INTEREST

A. ILLINOIS INSURANCE LITIGATION CONFLICT OF INTEREST

37. At the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust) as beneficiary.

38. Shortly after SIMON's death in 2012 a claim form was filed to Heritage Union Life on behalf of the nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.

39. This was done for the benefit of the grown children of Simon Bernstein (excluding Eliot), including TED, who as set forth above, was considered predeceased under the Simon's estate and Trust plans.

A handwritten signature in blue ink, appearing to be 'TS', is written over the number '8'. The signature is somewhat stylized and overlaps the number.

40. Under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON'S death, the insurance proceeds are payable to the Estate of Simon and then per the terms of Simon's Last Will and Testament, would pour over into Trust.

41. After the claim was denied by Heritage, TED somehow replaced a prior Trustee as the alleged "Trustee" of the lost trust and he filed an Illinois circuit court breach of contract lawsuit against Heritage. The suit was transferred to federal court in the United States District Court for the Northern District of Illinois in Chicago.

42. The Estate of Simon Bernstein filed a Motion to Intervene in the Illinois life insurance litigation to assert the Estate's interest in the life insurance proceeds. The Curator, Ben Brown, retained counsel with the approval of this Court.

43. The Plaintiffs in the Life Insurance Litigation, include TED acting as "Trustee" of the nonexistent 1995 trust and TED, individually. They filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum").

44. The opening paragraph of the Opposition Memorandum states as follows:

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by **TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN... (emphasis added)**

45. As Plaintiff, TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (other than Eliot) have taken the position that they are the beneficiaries of the nonexistent Insurance Trust and not their children.



46. Despite the opposition of TED BERNSTEIN to the Intervention, the federal court granted the Estate's Motion to Intervene.

47. TED is now an opposing party of record to the Estate's claim in the Illinois life insurance litigation.

48. TED, individually and as the alleged trustee of the nonexistent 1995 Insurance Trust, has placed his personal interests above the interests of the 2012 Simon Trust beneficiaries, the grandchildren of SIMON, including his own children.

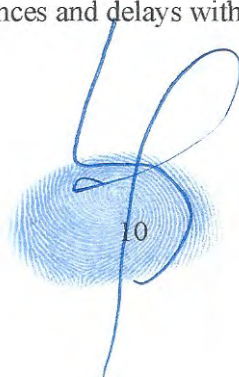
49. Through TED's opposition to the Estate's intervention in the Illinois life insurance litigation, and that he is a party plaintiff in that litigation, an inherent conflict of interest is present where TED is blocking the interests of his children and other beneficiaries of the Trust while simultaneously acting as Trustee of the Trust.

50. TED, as Successor Trustee of the 2012 Simon trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the trust beneficiaries to administer the trust solely in their interests. His actions in the Illinois Insurance Litigation have violated that duty.

51. TED, acting as a fiduciary to the Trust, must support, or at the least not obstruct, the efforts of the Estate and 2012 Simon Trust to recover an additional \$1.7 million in life insurance benefits. However, TED benefits directly from his obstruction and therefore has an obvious conflict of interest.

52. If the insurance proceeds are recovered for the Estate, this would dramatically increase the Estate assets that Estate and Trust beneficiaries receive.

53. This attempt to redirect the insurance proceeds by TED through a lost insurance trust scheme has caused intentional interferences and delays with expectancies to the Trust beneficiaries.



10

54. TED attempted to block the grandchildren, including minor children, from their interests being represented by counsel in the Illinois insurance litigation, leaving the grandchildren's interests wholly unprotected while trying to secure the benefits for himself.

55. TED'S efforts in the Life Insurance Litigation are designed to keep the approximately \$1.7 million out of the estate and trust and to redirect the money to him and his siblings (excluding Plaintiff).

56. As a consequence of the foregoing conflict of interest, TED is in breach of his fiduciary duty to the beneficiaries of the 2012 Simon Trust by opposing efforts to make the Estate and Simon Trusts more solvent, which in turn exposes the Estate and Simon Trusts to increased liability. This warrants his removal under §736.0706(2)(a).

57. TED's continued interference is an attempt to redirect estate assets to him personally and would further damage the trust beneficiaries as Ted's interference has caused unnecessary and costly legal fees to the Estate and Trust beneficiaries.

B. TED'S CONFLICT OF INTEREST WITH BENEFICIARIES

i. TED'S ADVERSE INTEREST WITH ELIOT

58. TED and his counsel have adverse interests to Eliot and in fact are hostile towards Eliot and his minor children, due to the fact that Eliot is the one who has uncovered their wrongdoings exposed them to potential criminal prosecution.

59. TED and his attorneys have conspired to use a strategy of force and aggression on Eliot, which was discovered in an email TED sent to Eliot describing their tactics and then later TED attested to their intent on the record before the Court.



**ii. TED'S CONFLICT OF INTEREST HAS CAUSED HARM TO
MINOR CHILDREN BENEFICIARIES**

60. The Palm Beach County Circuit Court, Probate Division, ordered that tuition for Saint Andrews school, including past due balances, be paid for Plaintiffs' three minor children for the 2014-2015 school year.

61. TED intentionally failed to make the Court-ordered payment, resulting in all three children being removed from school and forcing them to attend new schools, causing damages to the minor children both short term and long term, emotionally and scholastically.

62. Because of the conflicts of interests with the beneficiaries, TED has failed to maintain a duty of impartiality owed to the beneficiaries and should therefore be removed.

63. TED as Personal Representative of the Estate of Shirley Bernstein has knowledge that Shirley Bernstein's Trust was altered, which had the effect of benefitting TED'S family over others.

64. No successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead, yet TED acted as Personal Representative in multiple transactions during that time in order to begin selling assets of the estate and trusts of Shirley.

65. Statements made by SPALLINA to Palm Beach Sheriff investigators reveal that TED took distributions against the advice of his counsel, again making him wholly unfit to continue as a fiduciary in these matters.

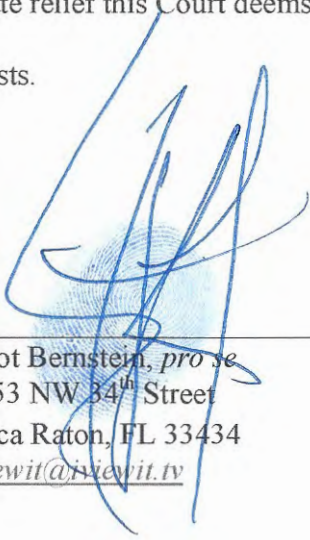
66. TED also claimed to Palm Beach Sheriff investigators that he had not read all of the trust documents that he was acting as fiduciary under, again making him wholly unfit to continue as a fiduciary in these matters.



WHEREFORE, Plaintiff requests that this Court,

1. Remove TED as the alleged successor trustee of the Simon Trust,
2. Appoint a successor trustee with no conflicts of interests or affiliation with any of the former fiduciaries or attorneys at law involved in the prior frauds in any way,
3. Require the filing of a Trust Accounting as required by law.
4. Award damages for failure to account or for improper accounting, including the removal of the trustee, reducing or denying compensation to the trustee, and requiring the trustee to repay money to the trust or by restoring property to the trust by other means.
5. Appoint a special fiduciary to take possession of the trust property and administer the trust;
6. Subject to §736.1016, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; any other appropriate relief this Court deems just and proper, including an award of attorney's fees and costs.

Dated: Monday, April 27, 2015



Eliot Bernstein, *pro se*
2753 NW 34th Street
Boca Raton, FL 33434
iviewit@iviewit.tv

CERTIFICATE OF SERVICE


I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Monday, April 27, 2015.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children.

X



SERVICE LIST

<p>Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 arose@pm-law.com and arose@mrachek-law.com</p>	<p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com</p>	<p>Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>
<p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>		

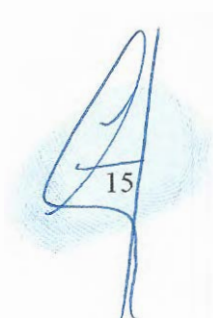


EXHIBIT A

**SIMON L. BERNSTEIN TRUST AGREEMENT DATED MAY 20, 2008, AS
AMENDED AND RESTATED IN THE SIMON L. BERNSTEIN AMENDED
AND RESTATED TRUST AGREEMENT DATED JULY 25, 2012**

SIMON L. BERNSTEIN
TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20th day of MAY, 2008, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for her Welfare. Any income not so paid shall be added to principal.

C. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SIMON L. BERNSTEIN
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.



(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

Notwithstanding the foregoing, prior to the funding of the Family Trust and the Marital Trust under this Subparagraph II.B., or only the Family Trust if my spouse does not survive me, the Trustees of this Trust

or the Personal Representatives of my estate as the case may be, shall finalize the sale of my shares in LIC HOLDINGS, INC., a Florida corporation or its successor in interest ("**LIC HOLDINGS**"), owned by me or this Trust at the time of my death, pursuant to that certain buy-sell agreement entered into by and between my son, TED S. BERNSTEIN, and me. Upon the sale of such shares, the Trustee shall fund the trust(s) provided for hereunder.

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

C. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

D. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by me as grantor on even date herewith (the "**Family Trusts**" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts



for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

E. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

F. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

G. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.



H. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

I. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

J. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.



C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to



the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.



2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SHIRLEY BERNSTEIN ("**SHIRLEY**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.



8. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.



H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or



at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and



personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to



exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under



a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employé or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance, on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such



allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SHIRLEY and WILLIAM E. STANSBURY ("**BILL**"), or either of them alone if the other is unable to serve, shall serve as successor co-Trustees or Trustee as the case may be. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a



trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SHIRLEY shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SHIRLEY shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25).

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two



witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.I, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from



the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without



liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

1. **Family Trust.** I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. **Marital Trust.** I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. **Misc.** I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available. Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such



distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. **Gift Transfers Made From Trust During My Lifetime.** I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. **Death Costs.** If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.



G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Signature]
SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

[Signature]
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

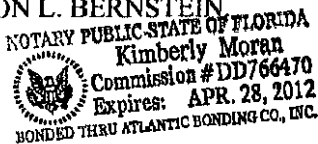
[Signature]
Print Name: TRACI KEATSH
Address: 16068 GLENCREST AVE
DEERBERRY BEACH, FL 33446

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN.



[Signature]
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

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SIMON L. BERNSTEIN
TRUST AGREEMENT

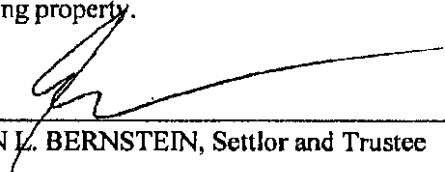
TESCHER & SPALLINA, P.A.

ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SIMON L. BERNSTEIN, Settlor and Trustee

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

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TESCHER & SPALLINA, P.A.

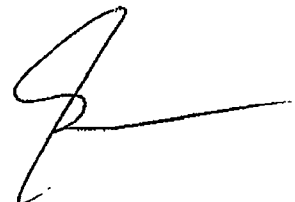
C. **Upon My Death.** Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. **Disposition of Tangible Personal Property.** If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. **Disposition of Trust Upon My Death.** Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. **Trusts for Beneficiaries.** The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

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LAW OFFICES
TESCHER & SPALLINA, P.A.

BATES NO. EIB 003359
02/27/2017

A. **Disability**. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions**. The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse**.

1. **In General**. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing**. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment**. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph I.A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any



decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.



4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole



proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust

hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual



and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons



designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:



1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Handwritten Signature]

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Handwritten Signature]
Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA
COUNTY OF PALM BEACH

SS.

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

[Handwritten Signature]
Signature - Notary Public - State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]
NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

SHIRLEY BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SHIRLEY BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20 day of MAY, 2008, and is between SHIRLEY BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN, of Palm Beach County, and SHIRLEY BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for his Welfare. Any income not so paid shall be added to principal.

C. **Gifts.** If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SHIRLEY BERNSTEIN
TRUST AGREEMENT

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TESCHER & SPALLINA, P.A.

(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Specific Cash Devise. The Trustee shall set aside in a separate trust the sum of Two Hundred Thousand (\$200,000.00) Dollars for MATTHEW LOGAN, and said separate trust shall be administered as provided in Subparagraph II.F below. If MATTHEW LOGAN does not survive me this devise shall lapse.

C. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

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2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

D. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse as grantor on even date herewith (the "*Family Trusts*" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

G. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

H. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

I. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be

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liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

J. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

K. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.



1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate



takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

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2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SIMON L. BERNSTEIN ("**SIMON**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.

8. ~~Beneficiary~~ Related or Subordinate Party. A "Related or Subordinate Party" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "spouse" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

at any time revokes an authorization within its term; the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

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2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

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personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under

a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such

allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SIMON and TED, one at a time and successively in that order, shall serve as successor Trustee. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

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2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25) years.

e. Trustee of Separate Trust for MATTHEW LOGAN. In regard to a separate trust held MATTHEW LOGAN, his mother, DEBORAH BERNSTEIN ("**DEBORAH**"), shall serve as Trustee until MATTHEW attains age 25 years, at which time he shall serve as a co-Trustee with DEBORAH of such separate trust.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

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b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee: Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

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J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.



ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts

1. Family Trust. I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. Marital Trust. I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. Misc. I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

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Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to

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a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

SHIRLEY BERNSTEIN
TRUST AGREEMENT

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TESCHER & SPALLINA, P.A.

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5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the property disposed of pursuant to the prior paragraphs captioned "Disposition of Tangible Personal Property", "Specific Cash Devise" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II, B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise

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manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

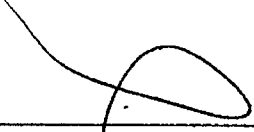
G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

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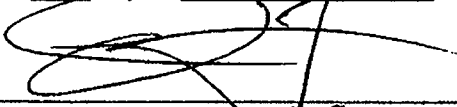
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IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:


SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:


Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076


Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVENUE
DELRAY BEACH, FL 33446

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.
[Seal with Commission Expiration Date]


Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

F:\WPDATA\Wrt\Bernstein, Shirley & Simon\2008 Estate Planning\Shirley Bernstein Trust Agreement wpd [05 15 11 19 08]

SHIRLEY BERNSTEIN
TRUST AGREEMENT

ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SHIRLEY BERNSTEIN, Settlor and Trustee

**FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT**

This First Amendment is dated this 18 day of Nov, 2008, and is between SHIRLEY BERNSTEIN of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN of Palm Beach County, Florida as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SHIRLEY BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke the said Trust Agreement, in whole or in part.

NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

1. I hereby delete Paragraph B. of Article II. in its entirety.
2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

“Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN (“*TED*”) and PAMELA B. SIMON (“*PAM*”), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder.”

3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

=====

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:



SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:



Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076



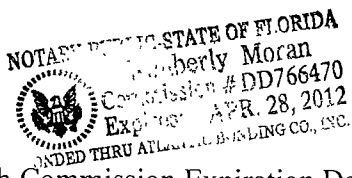
Print Name: Rachel Walker
Address: 100 Plaza Real South
apt 308
Boca Raton, FL 33432

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18 day of November, 2008, by SHIRLEY BERNSTEIN.



[Seal with Commission Expiration Date]



Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

N:\WPDATA\drt\Bernstein, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement wpd [11 09 26 18 08]

EXHIBIT B

DONALD R. TESCHER, ESQ. LETTER DATED JANUARY 14, 2014

LAW OFFICES
TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

TEL: 561-997-7008
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WWW.TESCHERSPALLINA.COM

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

January 14, 2014

VIA U.S. MAIL AND EMAIL

Ted S. Bernstein
880 Berkeley Street
Boca Raton, FL 33487

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Lisa S. Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Pamela B. Simon
950 North Michigan Ave.
Suite 2603
Chicago, IL 60606

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

Re: Estates and Trusts of Shirley Bernstein and Simon Bernstein

Dear Ladies and Gentlemen:

It has been brought to my attention that a document was prepared in our office that altered the disposition of the Shirley Bernstein Trust subsequent to Simon Bernstein's death. Information provided to me appears to indicate that there were two versions of the First Amendment to the Shirley Bernstein Trust Agreement, both executed on November 18, 2008. Under one version the children of Pam Simon and Ted Bernstein would not be permissible appointees of Simon Bernstein's exercise of the power of appointment while under the second version that restriction was removed. As you all know, Simon Bernstein's dispositive plan, expressed to all of you during his lifetime on a conference call, was to distribute the Estate to all ten of his grandchildren. That was the basis upon which the administration was moving forward.

Under the Shirley Bernstein Trust, there is a definition of children and lineal descendants. That definition excluded Pam Simon, Ted Bernstein and their respective children from inheriting. The document also contained a special Power of Appointment for Simon wherein he could appoint the assets of the Trust for Shirley's lineal descendants. Based upon the definition of children and lineal descendants, the Power of Appointment could not be exercised in favor of Pam Simon, Ted Bernstein or their respective children, although we believe it was Simon Bernstein's wish to provide equally for all of his grandchildren.

On November 18, 2008, it does appear from the information that I have reviewed that Shirley Bernstein executed a First Amendment to her trust agreement. The document as executed appears to make only one relatively minor modification to her trust disposition by eliminating a specific gift to Ted

Bernstein Family
January 14, 2014
Page 2

Bernstein's stepson. In January of 2013 a First Amendment to the Shirley Bernstein Trust Agreement was provided to Christine Yates, Esq. who, at that time, was representing Eliot Bernstein. The document provided contained a paragraph number 2 which modified the definitional language in Shirley's document so as to permit, by deleting the words "and their respective lineal descendants" from the definition, an exercise of the power of appointment by Simon Bernstein over the Shirley Bernstein Trust to pass equally to all ten grandchildren rather than only six of the grandchildren.

By virtue of The Florida Bar Rules of Professional Conduct, I am duty bound to provide this information to you. Obviously, as a result of the issues and ramifications raised by the allegations, my firm must resign from further representation in all matters relating to the Estates and Trusts of Simon Bernstein and Shirley Bernstein. Furthermore, it is my intent, and I assume also the intent of Robert Spallina, to tender our resignations as personal representatives of the Simon Bernstein Estate and as trustees of the Simon Bernstein Trust. If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity. With regard to the Simon Bernstein Estate, the appointment of the successor would require a court proceeding.

I am obviously upset and distraught over this chain of events and will do all that I reasonably can to correct and minimize any damages to the Bernstein family. As I believe you know, to date there has only been a modest funding of some, but not all, of the continuing trusts for the grandchildren emanating from Shirley's Trust assets.

Very truly yours,



DONALD R. TESCHER

DRT/km

cc: Alan Rose, Esq.

LAW OFFICES
TESCHER & SPALLINA, P.A.

BATES NO. EIB 003414
02/27/2017

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION IH
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE
OF SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008
AS AMENDED

Plaintiff

v.

ALEXANDRA BERNSTEIN; ET AL.

Defendants

ORDER DENYING ELIOT BERNSTEIN'S MOTION FOR NEW TRIAL

THIS MATTER came before the Court, in chambers, upon Eliot Bernstein's Motion for New Trial (Docket entry #113) filed with the Clerk of Court December 31, 2015. Upon review, it is hereby

ORDERED and ADJUDGED as follows:

Eliot Bernstein's Motion for New Trial is hereby **DENIED**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 7th day of January, 2016.



The image shows a blue ink signature of John L. Phillips over a faint, semi-transparent watermark of the Florida Judicial Circuit seal and text. The watermark includes the words 'THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA' and 'ADMINISTRATIVE OFFICE OF THE COURT'.

JOHN L. PHILLIPS
Circuit Judge

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008,
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

MOTION FOR NEW TRIAL

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

_____ /

Other Applicable Related Cases this Motion for Stay, Injunction and New Trial Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
Case # 502014CP003698XXXXSB – Shirley Trust Construction
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
OLD CASE # 502014CA014637XXXXMB

_____ /

MOTION FOR NEW TRIAL

COMES NOW ELIOT BERNSTEIN BEING DULY SWORN WHO MAKES THIS AFFIDAVIT AND
MOTION IN SUPPORT OF A NEW TRIAL AND VACATING AND DECLARING LEGALLY VOID AND A
NULLITY THE TRIAL JUDGEMENT ORDER OF JUDGE PHILLIPS DATED DEC. 16, 2015 AS FOLLOWS:

1. THIS IS A MOTION FOR A NEW TRIAL UNDER FLORIDA RULES OF CIVIL PROCEDURE 1.530 FOR AN ALLEGED “TRIAL” HELD ON DEC. 15, 2015 IN THE NORTH BRANCH OF PALM BEACH COUNTY BEFORE JUDGE JOHN L. PHILLIPS ALLEGEDLY A VALIDITY TRIAL ON CERTAIN WILLS AND TRUST INSTRUMENTS IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN.
2. THIS MOTION IS TIMELY.

3. A NEW TRIAL WILL SERVE THE BEST INTERESTS OF JUSTICE WHILE DENIAL OF A NEW TRIAL WILL GREATLY PREJUDICE ELIOT I. BERNSTEIN AND HIS MINOR CHILDREN AS WELL AS THE ESTATES OF SIMON AND SHIRLEY BERNSTEIN AND THE TRUTH SEEKING PROCESS.
4. FOR ALL THE REASONS SET FORTH HEREIN AND FOR OTHER PENDING MOTIONS THE TRIAL AND THE JUDGMENT/ORDER AFTER TRIAL ALLEGEDLY ISSUED DEC. 16, 2015 MUST BE VACATED AND DECLARED A LEGAL NULLITY. SEE EXHIBIT 1 -, ATTACHED JUDGEMENT/ORDER OF DEC. 16, 2015.
5. IT IS NOTED FOR PURPOSES OF THIS MOTION THAT PETITIONER ELIOT I. BERNSTEIN WHO HAS BEEN DECLARED LEGALLY INDIGENT HAS BEEN FURTHER PREJUDICED AND HARMED BY BEING DENIED AND DELAYED ACCESS TO ACTUAL COURT EVIDENCE EXHIBITS AND TRANSCRIPTS OF PROCEEDINGS WHICH WOULD FURTHER AID THE FILING OF THIS MOTION AND THAT ELIOT I. BERNSTEIN RESERVES ALL RIGHTS TO AMEND THIS MOTION AS ALLOWED BY LAW AND FILE PROPER MOTIONS UPON RECEIPT OF ACTUAL TRIAL EXHIBITS, EVIDENCE AND TRANSCRIPTS AND UPON ANY OTHER BASIS UNDER LAW.

JUDGE JOHN L. PHILLIPS USED THE MACHINERY OF THE COURTS TO CONTINUE FRAUD IN THE PROCEEDINGS ON DEC. 15, 2015, FURTHER AIDING AND ABETTING ONGOING CRIMES AND ANY SUCH JUDGEMENT / ORDER MUST BE VACATED, STAYED AND DECLARED A LEGAL NULLITY

6. JUDGE JOHN L. PHILLIPS SITTING IN THE NORTH BRANCH OF PALM BEACH COUNTY HAD ACTUAL KNOWLEDGE THAT HE WAS ACTING OUTSIDE AND BEYOND HIS JURISDICTION BY EVEN CONDUCTING THE TRIAL ON DEC. 15, 2015 SINCE JUDGE PHILLIPS KNEW AND KNOWS THAT A LEGALLY SUFFICIENT MOTION FOR HIS MANDATORY DISQUALIFICATION HAD BEEN FILED BY PETITIONER ELIOT BERNSTEIN ON DECEMBER 04, 2015 AND THAT JUDGE PHILLIPS HAD TO MANDATORILY

DISQUALIFY UNDER LAW AND ACT NO FURTHER IN THE CASE(S). SEE, MANDATORY DISQUALIFICATION OF JUDGE PHILLIPS¹.

7. AS SET OUT IN THE LEGALLY SUFFICIENT MOTION FOR MANDATORY DISQUALIFICATION OF JUDGE JOHN L. PHILLIPS, JUDGE PHILLIPS HAS AND HAD ACTUAL KNOWLEDGE AS OF SEPT. 15, 2015 AT A CASE MANAGEMENT CONFERENCE THAT THE CASE WAS NOTICED FOR CONFERENCE IN THE ESTATE OF SIMON BERNSTEIN BEING FILED BY THE CURRENT PR IN THE ESTATE OF SIMON BERNSTEIN ATTORNEYS BRIAN O'CONNELL AND JOY FOGLIETTA OF THE CIKLIN LUBITZ MARTENS & O'CONNELL LAW FIRM. SEE EXHIBIT 2 - NOTICE FOR CASE MANAGEMENT CONFERENCE.
8. EVEN AS A MARGINALLY AND MINIMALLY COMPETENT JUDGE, JUDGE JOHN L. PHILLIPS HAD ACTUAL KNOWLEDGE AS OF SEPT. 15, 2015 THAT FLORIDA RULES OF CIVIL PROCEDURE 1.200: PRETRIAL PROCEDURE (A) CASE MANAGEMENT CONFERENCE PROVIDES IN PART: "THE MATTER TO BE CONSIDERED SHALL BE SPECIFIED IN THE ORDER OR NOTICE SETTING THE CONFERENCE".
9. AS THE TRANSCRIPT OF SEPT. 15, 2015² PROVIDES AND DEMONSTRATES, ELIOT I. BERNSTEIN ATTEMPTED TO CLARIFY THE CASE THAT WAS BEING HEARD ON THIS DATE BUT JUDGE PHILLIPS CONTINUALLY DENIED ELIOT BERNSTEIN A DUE PROCESS FAIR OPPORTUNITY TO BE HEARD IN A MEANINGFUL MANNER AT THE MEANINGFUL TIME DEMONSTRATING IMPERMISSIBLE BIAS AND PREJUDICE AGAINST ELIOT BERNSTEIN WHICH FURTHER MANDATED JUDGE PHILLIP'S DISQUALIFICATION RENDERING THE HOLDING OF ANY SUCH TRIAL ON DEC. 15, 2015 VOID AND A LEGAL NULLITY.

¹ December 04, 2015 Disqualification of Judge Phillips
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

² September 15, 2015 Hearing Transcript
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20Simon%20Bernstein.pdf>

10. IN FACT A CLOSE AND CAREFUL REVIEW OF THE TRANSCRIPT OF THE CASE MANAGEMENT CONFERENCE BY ANY DETACHED, NEUTRAL PARTY AND/OR INVESTIGATIVE AUTHORITY WILL SHOW THE CLASSIC TEXTBOOK MODUS OPERANDI OF A JUDGE USING THE MACHINERY OF THE COURTS TO COMMIT AND FURTHER FRAUD AND CRIME AND KNOWING INTENTIONAL CONSTITUTIONAL VIOLATIONS THROUGH THE COURTS THEMSELVES.
11. IN ONE BREATH IN THIS COMPLEX CASE WHICH HAS A TOTAL OF 6-7 SEPARATE CASE NUMBERS FOR RELATED CASES, JUDGE JOHN PHILLIPS WOULD HAVE THE WORLD BELIEVE **BY HIS OWN WORDS** THAT HE IS ‘STUPID’ AND “NOT SMART” ALTHOUGH HE KNOWS HOW TO OCTOPUS WRANGLE, YET EACH AND EVERY TIME THAT ELIOT I. BERNSTEIN ATTEMPTED TO EXERCISE HIS CONSTITUTIONAL DUE PROCESS RIGHT AND OPPORTUNITY TO BE HEARD. BY REVIEWING THE TOTALITY OF THE TRANSCRIPT A DETACHED NEUTRAL INDEPENDENT REVIEWER CAN SEE THAT JUDGE JOHN L. PHILLIPS RUSHES TO CUT ELIOT BERNSTEIN OFF AND SHUT HIM DOWN KNOWINGLY AND INTENTIONALLY DENYING HIS DUE PROCESS OPPORTUNITY TO BE HEARD.
12. HOWEVER, AN INDEPENDENT, NEUTRAL, CONSTITUTIONALLY PROPER JUDGE WOULD SIMPLY SAY: THIS IS NOT RIGHT. THIS IS NOT RATIONALE? IF JUDGE PHILLIPS ACTUALLY DIDN’T KNOW WHAT WAS GOING ON IN THE CASE AND IS NOT THAT SMART AND IS STUPID BY HIS OWN WORDS, WHY DOES HE ONLY LET TED BERNSTEIN’S ATTORNEY ALAN ROSE SPEAK VOLUMES AT LENGTH WITHOUT INTERRUPTION AND YET CUT OFF ELIOT BERNSTEIN AT EACH STEP OF THE CONFERENCE WHEN A NEUTRAL DETACHED PROPER JUDGE TRYING TO BECOME BOTH EDUCATED AND GIVE EACH PARTY A FAIR AND PROPER OPPORTUNITY TO BE HEARD WOULD ALLOW ELIOT BERNSTEIN AND EACH PARTY FAIR OPPORTUNITY TO STATE THE FACTS AND LAW AND POSITION DURING THE CONFERENCE. THE TRANSCRIPTS CLEARLY SHOW OTHERWISE AND JUDGE PHILLIPS HAD TO BE DISQUALIFIED.

13. IT IS NOTED AGAIN FOR THE RECORD THAT WHEN JUDGE PHILLIPS IS PERMITTING TED BERNSTEIN'S ATTORNEY ALAN ROSE TO SPEAK VOLUMES REPEATEDLY AT LENGTH AT THE CONFERENCE ON SEPT. 15, 2015 IT WAS ATTORNEY ALAN ROSE WHO FILED A "LAST MINUTE" / "AFTER HOURS" MEMO WITH THE COURT ON THE "EVE OF THE CONFERENCE" AND FOR SOME REASON THIS APPEARS TO BE THE ONLY PART OF THE CASE JUDGE PHILLIPS IS FAMILIAR WITH DESPITE HAVING BEEN FILED AFTER HOURS THE NIGHT BEFORE.
14. FOR EXAMPLE, WHEN ELIOT BERNSTEIN BEGINS TO ANSWER WHY MORE THAN A DAY IS NEEDED FOR TRIAL HE BEGINS A DISCUSSION ABOUT WHY THE TRIAL SHOULD TAKE SEVERAL DAYS AND BEING A COMPLICATED CASE AND TED BERNSTEIN'S VALIDITY AS TRUSTEE AND THE CASE INVOLVING FRAUD YET JUDGE PHILLIPS SHUTS THIS DOWN, PRE-DETERMINES AND PREJUDGES THE MATTER. SEE, PAGES 23, STARTING AT LINES 23 AND PAGE 24, SEPT. 15, 2015 TRANSCRIPT ALREADY EXHIBITED HEREIN.
15. YET THE CASE IS COMPLEX, INVOLVES 6-7 DIFFERENT CASE NUMBERS, IS INTER-RELATED TO FEDERAL LITIGATION INVOLVING THE ESTATE OF SIMON BERNSTEIN BEING HEARD IN ILLINOIS, A DIFFERENT STATE AND HAS MULTIPLE OUTSTANDING MOTIONS AND PLEADINGS IN THE SEVERAL CASES PENDING AT THE TIME JUDGE PHILLIPS HOLDS THE CASE MANAGEMENT CONFERENCE ON SEPT. 15, 2015.
16. JUDGE PHILLIPS ACTUALLY KNOWS AND SHOULD HAVE KNOWN AS OF SEPT. 15, 2015 THAT THE ISSUE OF TED BERNSTEIN ACTING AS A VALID TRUSTEE TO EVEN HEAR AND DETERMINE A VALIDITY TRIAL ON THE INVOLVED INSTRUMENTS IS CRITICAL TO THE INTEGRITY OF PROCEEDINGS SINCE ACTUAL FRAUDED DOCUMENTS BY TED BERNSTEIN AS ALLEGED FIDUCIARY ALONG WITH HIS OWN ATTORNEYS TESCHER AND SPALLINA AND A PARALEGAL ACTING AND WORKING FOR TESCHER AND SPALLINA HAD ALREADY BEEN EXPOSED IN JUDGE COLIN'S COURT AND YET THE ATTORNEYS

INVOLVED WITH THE FRAUD TESCHER AND SPALLINA WERE STILL HOLDING ONTO ORIGINAL DOCUMENTS NEARLY TWO YEARS LATER WITHOUT TED BERNSTEIN AS ALLEGED “TRUSTEE” OR THE COURT OR THE PALM BEACH SHERIFF’S DEPARTMENT SEIZING AND IMPOUNDING THE DOCUMENTS FROM TESCHER AND SPALLINA FOR FORENSIC EXAMINATION.

17. IT IS ABSOLUTELY CLEAR AND UNDENIABLE THAT JUDGE PHILLIPS HAD ACTUAL KNOWLEDGE OF AT LEAST SOME OF THIS BACKGROUND AS OF SEPT. 15, 2015 SINCE AT THE PRIOR STATUS CONFERENCE IN JULY OF 2015 IT IS BROUGHT UP ON THE RECORD FIRST BY ELIOT BERNSTEIN AND THEN BY JUDGE PHILLIPS HIMSELF AT THE CLOSE OF THE STATUS CONFERENCE THAT ELIOT BERNSTEIN’S OBJECTIONS TO THE CASE EVEN MOVING FORWARD WOULD BE HEARD AT THE NEXT CONFERENCE SINCE A PETITION FOR ALL WRITS WAS PENDING AT THE FLORIDA SUPREME COURT SPECIFICALLY SEEKING MANDAMUS AND PROHIBITION AGAINST THE PRIOR JUDGE MARTIN COLIN AS A NECESSARY AND MATERIAL FACT WITNESS TO THE FRAUDS IN THE COURT AND SEEKING THE VOIDING OF ALL HIS ORDERS.

18. YET DESPITE JUDGE PHILLIPS HAVING STATED ON THE RECORD AT THE STATUS CONFERENCE IN JULY 2015 THAT THE OBJECTIONS TO THE CASE MOVING FORWARD BASED ON THE ALL WRITS PETITION BY ELIOT BERNSTEIN WOULD BE HEARD AT THE NEXT CONFERENCE, IT IS ABSOLUTELY UNDENIABLY CLEAR THAT JUDGE PHILLIPS PREJUDICED THE ENTIRE CASE AND PRE-JUDGED THE CASE AT LEAST BY SEPT. 15, 2015 AS HE COMPLETELY AND WHOLLY DENIES ELIOT BERNSTEIN AN OPPORTUNITY TO BE HEARD ON THE WRIT DESPITE THE FACT THAT JUDGE COLIN HIMSELF IS A NECESSARY MATERIAL FACT WITNESS WHICH DIRECTLY RELATED TO JUDGE PHILLIPS QUESTION OF HOW LONG A TRIAL WOULD TAKE SINCE JUDGE COLIN WOULD ALSO HAVE TO BE A WITNESS YET JUDGE PHILLIPS SHUTS THIS ALL DOWN IN BIASED, PREJUDGING PREJUDICIAL MANNER CREATING

REASONABLE FEAR THAT A FAIR TRIAL WOULD NOT BE HELD WHICH MEANS JUDGE PHILLIPS HAD TO DISQUALIFY BEFORE THE TRIAL EVEN BEGAN.

19. AS SET OUT IN THE LEGALLY SUFFICIENT DISQUALIFICATION MOTIONS AGAINST JUDGE PHILLIPS, JUDGE PHILLIPS FURTHER PREJUDICED AND BIASED THE PROCEEDINGS ON SEPT. 15, 2015 BY NOT ONLY NOT PERMITTING ELIOT BERNSTEIN TO BE HEARD ON THE WRITS AND JUDGE COLIN AS A NECESSARY AND MATERIAL FACT WITNESS BUT FURTHER BY DECLARING ACTUAL “LOVE” FOR JUDGE COLIN AND FURTHER STATING HE WOULD MAKE NO FINDING THAT ANYTHING WAS DONE WRONG BY COLIN. SEE, TRANSCRIPTS AND DISQUALIFICATION MOTIONS.
20. MORE EGREGIOUS, HOWEVER, IS THE FACT THAT MOST EVERY ONE OF THESE ISSUES WHOLLY DISREGARDED INTENTIONALLY BY JUDGE PHILLIPS USING THE MACHINERY OF THE COURTS TO FURTHER FRAUD UNDER THE DISGUISE OF BEING A STUPID, NOT SMART OCTOPUS WRANGLER BY HIS OWN WORDS WERE PREVIOUSLY FILED IN THE COURT OF JUDGE COLIN AND THUS WERE IN THE CASE FILES THAT JUDGE PHILLIPS SHOULD HAVE BEEN REVIEWING IN ADDITION TO ALAN ROSE’S LAST MINUTE AFTER HOURS MEMO OF SEPT. 14, 2015.
21. FOR EXAMPLE, A MAY 6, 2013 EMERGENCY MOTION TO JUDGE COLIN EXPOSING THE FRAUDS IN THE COURT BY TESCHER SPALLINA KIMBERLY MORAN AND TED BERNSTEIN IS BUT ONE MOTION NEVER FULLY HEARD TO THIS DAY AND NOT HEARD OR ALLOWED TO BE PRESENTED BY JUDGE PHILLIPS ON SEPT. 15, 2015 EVEN THOUGH THE ISSUES IN SUCH MOTION ESPECIALLY THE FRAUD SHOULD HAVE BEEN GUIDING THE CASE MANAGEMENT AND CERTAINLY ANY TRIAL.
22. THUS FROM A RATIONALE BASIS PERSPECTIVE FROM A NEUTRAL DETACHED CONSTITUTIONALLY PROPER REVIEWER, IF JUDGE PHILLIPS WAS NOT AWARE OF THE SERIOUSNESS AND COMPLEXITY OF THESE PLEADINGS AND MOTIONS, THEN THERE IS NO WAY AS A NEUTRAL JUDGE HE WOULD SIMPLY SHUT DOWN ELIOT BERNSTEIN EACH TIME HE SPOKE WITHOUT PERMITTING A FAIR OPPORTUNITY TO

BE HEARD AS JUDGE PHILLIPS WOULD HAVE SOUGHT TO BECOME KNOWLEDGEABLE AND EDUCATED ON THE CASE BUT INSTEAD THE CLEAR EVIDENCE SHOWS HE PREJUDGED THE CASE AND PREJUDGED THE TRIAL ITSELF AS OF SEPT. 15, 2015 PARTICULARLY BY LIMITING THE TRIAL TO ONE DAY AND ANY SUCH TRIAL JUDGEMENT ORDER MUST NOW BE VACATED AS A NULLITY AND FRAUD.

23. JUST UNDER RULE 1.200 THE TRIAL JUDGMENT ORDER SHOULD BE VACATED AND DECLARED A LEGAL NULLITY AS JUDGE PHILLIPS HAS ACTUAL KNOWLEDGE AND KNOWS THE TRIAL WAS SET IN THE SHIRLEY BERNSTEIN CASE WHICH WAS NOT NOTICED TO BE HEARD ON SEPT. 15, 2015 AND THUS THIS RULE WAS KNOWINGLY VIOLATED BY JUDGE PHILLIPS IN WHAT IS A PRE-DETERMINED PRE-JUDGE PLAN TO FURTHER AID AND ABET ONGOING FRAUD AND COVER FRAUD UP HOPING ELIOT BERNSTEIN WILL SIMPLY CAVE FROM THE WAR OF FRAUDULENT ATTRITION.

24. HAD JUDGE PHILLIPS MARGINALLY AND COMPETENTLY REVIEWED ANY OF THE PRIOR PLEADINGS AND THE TRANSCRIPT HE WOULD HAVE SEEN THAT TED BERNSTEIN WAS IN FACT KNOWINGLY INVOLVED IN THE FRAUD AND INTERTWINED WITH TESCHER SPALLINA AND JUDGE COLIN BY THE APPEARANCE ON SEPT. 13, 2013 WHEN THE FRAUD IS FINALLY ADDRESSED IN A VERY MINIMAL PARTIAL DEFICIENT MANNER BY JUDGE COLIN ON THE RECORD AND YET TED BERNSTEIN STANDS SILENT BEFORE JUDGE COLIN WHEN AN APRIL 9, 2012 DOCUMENT IS REFERENCED WHICH WAS CLEARLY FRAUDED BY SPALLINA AND FILED IN JUDGE COLIN'S COURT AFTER SIMON BERNSTEIN'S DEATH, BY SIMON AS IF HE WAS ALIVE AND YET TED BERNSTEIN HAD TO KNOW THIS WAS FRAUD AS IT REFERRED TO WAIVERS HE ALLEGEDLY SIGNED BUT TED BERNSTEIN KNEW THE WAIVERS HAD NOT BEEN SIGNED YET AND INSTEAD STOOD SILENT BEFORE COLIN.

25. MORE EGREGIOUSLY ON THIS DATE SEPT. 13, 2013 WHICH IS WHY JUDGE COLIN HAS TO BE A MATERIAL FACT WITNESS NECESSARY FOR INTEGRITY AND TRUTH AND THUS A NEW TRIAL GRANTED WHERE HE IS A WITNESS IS THAT TED BERNSTEIN ANNOUNCES HE IS THERE WITH SPALLIN

AS THE TRUSTEE / PR OF THE SHIRLEY BERNSTEIN ESTATE AND YET JUDGE COLIN KNOWS THIS IS THE ESTATE HE HIMSELF AS JUDGE CLOSED ILLEGALLY IN JAN. 2013 ON FRAUDED DOCUMENTS BY TESCHER SPALLINA AND MORAN FILED BY SIMON WHILE DECEASED AND YET JUDGE COLIN NEVER ASKS TED BERNSTEIN WHEN HE BECAME TRUSTEE OR PR AND IF HE WAS WHY HE SIMPLY DIDN'T MOVE TO CLOSE THE ESTATE HIMSELF AND INSTEAD HAS PERMITTED HIS ATTORNEYS TESCHER SPALLINA TO CLOSE HIS MOTHER'S ESTATE FRAUDULENTLY USING HIS DECEASED FATHER TO DO SO, ALL LEADING TO JUDGE COLIN BEING FORCED TO REOPEN SHIRLEY BERNSTEIN'S ESTATE DUE TO THE FRAUDULENT CLOSURE BY TED AS FIDUCIARY, ALONG WITH HIS RETAINED COUNSEL TESCHER AND SPALLINA.

26. AS JUDGE PHILLIPS CLEARLY SHOULD HAVE DISCERNED FROM THE RECORD, INSTEAD OF JUDGE COLIN ASKING ANY OF THESE QUESTIONS OF TED BERNSTEIN IN SEPT. 2013, HE CONTINUES TO ALLOW THE FRAUDULENTLY ACTING ATTORNEYS TESCHER SPALLINA TO CONTINUE TO ACT FOR MANY MORE MONTHS UNTIL JAN. OF 2014 AND THEN GIVES FURTHER TIME FOR THE TESCHER SPALLINA FIRM TO "PREP" THEIR FILES BY GIVING THEM MONTHS TO TURN FILES OVER WHEN IN FACT ALL FILES SHOULD HAVE BEEN IMPOUNDED AS OF THE MAY 2013 EMERGENCY MOTION FILING WHICH IS WHAT ANY PROPER COURT WOULD BE DOING AT THIS TIME AND CERTAINLY AFTER THE SEPTEMBER 13, 2013 HEARING WHERE TED, TESCHER, SPALLINA AND OTHERS WERE INFORMED BY JUDGE COLIN THAT HE HAD ENOUGH EVIDENCE AT THAT TIME TO READ THEM ALL THEIR MIRANDA RIGHTS FOR TWO SEPARATE AND DISTINCT FRAUDS ON THE COURT HE DISCOVERED THAT DAY.

27. THIS IS NOT JUST AN AVERAGE FRAUD AND FRAUD ON THE COURT CASE AND JUDGE PHILLIPS HAD ACTUAL KNOWLEDGE OF THIS WHEN HE ILLEGALLY SCHEDULED THE TRIAL IN THE CASE THAT WAS NOT NOTICED FOR THE CONFERENCE ON SEPT. 15, 2015.

28. THIS IS A CASE THAT BEGAN IN PART IN SEPT. 2012 WITH TED BERNSTEIN ALLEGING POSSIBLE MURDER OF HIS FATHER SIMON BERNSTEIN AND HOSPITAL PERSONNEL BLOCKING PETITIONER OUT OF THE ICU PRIOR TO HIS PASSING WHERE IT WAS ALLEGED MY FATHER SIMON BERNSTEIN HAD BEEN POISONED AND WHERE TED BERNSTEIN GOES ON TO CLAIM HE HAS LAWYERS TO DEAL WITH THE SHERIFF'S AND AUTHORITIES AND IS ASKING FOR AN AUTOPSY AND THE BODY OF SIMON BERNSTEIN IS CLAIMED TO BE IN MIAMI, FL WHILE I DISCOVERED ALL OF SIMON BERNSTEIN'S COMPUTER FILES WERE "WIPE CLEAN" ON THE NIGHT OF HIS PASSING.

29. THIS THEN TURNS INTO A SCENARIO WHERE TED BERNSTEIN'S ATTORNEYS TESCHER AND SPALLINA ARE NOT TURNING OVER DOCUMENTS FOR MONTHS AND IN SOME CASES YEARS ONLY TO COME TO FIND OUT THAT TESCHER AND SPALLINA USED FRAUDULENT DOCUMENTS IN THE CASE TO CLOSE SHIRLEY BERNSTEIN'S ESTATE BEFORE JUDGE COLIN USING SIMON AS IF HE WAS ALIVE WHEN TED BERNSTEIN IS LATER PURPORTING TO BE THE FIDUCIARY OF THE CLOSED ESTATE OF HIS MOTHER TO LATER FIND OUT NOT ONLY WERE FRAUDULENT DOCUMENTS USED BUT KIMBERLY MORAN WHO WAS CONSPICUOUSLY ABSENT FROM THE VALIDITY TRIAL AND SHOULD HAVE BEEN A NECESSARY WITNESS DEMANDED TO ATTEND BY JUDGE PHILLIPS LATER ADMITS TO ACTUALLY FORGING SOME OF THE DOCUMENTS BY PLACING FALSE SIGNATURES ON DOCUMENTS AFTER TRACING PRIOR SIGNATURES AND THUS JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN FORENSIC EXPERTS WERE NECESSARY FOR THE TRIAL AND TED BERNSTEIN AS TRUSTEE SHOULD HAVE ARRANGED FOR THIS YET TED BERNSTEIN WAS NOT A PROPER TRUSTEE BY THE LANGUAGE OF THE DOCUMENTS AND IS INVOLVED IN THE FRAUDS THEMSELVES AND THUS SHOULD HAVE BEEN REMOVED WITH ALL PARTIES WHO WERE INVOLVED IN THE MULTIPLE FRAUDS ON THE COURT AND BENEFICIARIES.

30. YET AS JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN, THERE ARE MISSING TRUSTS AND ORIGINAL DOCUMENTS FROM THE ILLINOIS FEDERAL LITIGATION, AND THEN “OTHER” ORIGINALS IN THE OPPENHEIMER AND SHIRLEY CASES MAGICALLY POPPING UP IN THE POSSESSION OF TED’S ATTORNEY ALAN ROSE YEARS LATER WHICH IS WHY ALAN ROSE HAD TO BE DISQUALIFIED NOW AS A NECESSARY MATERIAL FACT WITNESS FOR TRIAL (ALAN ROSE IS ALSO ALREADY A SERVED COUNTER DEFENDANT IN THE COUNTER COMPLAINT FILED IN THE SHIRLEY TRUST CASE) AND SHOULD HAVE BEEN A WITNESS FOR TRIAL BUT ONLY AFTER PROPER PRE-TRIAL PROCEDURES IN THIS COMPLEX LITIGATION WHERE DEPOSITIONS AND DISCOVERY WERE COMPLETED PROPERLY BEFORE TRIAL.

31. JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN THAT THE “OTHER” “ORIGINALS” WERE RELEVANT BOTH FROM CHAIN OF CUSTODY OF THE EVIDENCE BUT ALSO FOR COMPARISON PURPOSES THAT ANY EXPERT WOULD WISH TO REVIEW WHEN BLATANT IRREGULARITIES ARE CLEAR TO THE NAKED HUMAN EYE OF THE ORDINARY PERSON AND THUS JUDGE PHILLIPS KNEW WHEN HE WAS ILLEGALLY SCHEDULING THIS TRIAL FOR ONE DAY ONLY IN A CASE NOT NOTICED FOR THE CONFERENCE THAT HE HAD IN FACT ENTIRELY PRE-DETERMINED AND PRE-JUDGED THE ACTUAL TRIAL ITSELF AND IN FACT IS FOUND “DOODLING” DURING THE TRIAL WHILE THE ONLY WITNESS TO VERIFY AND VALIDATE DOCUMENTS IS ROBERT SPALLINA WHO WAS PLED GUILTY OF INSIDER TRADING AND BREACH OF FIDUCIARY DUTIES IN AN ALLEGED UNRELATED CASE BY THE US SECURITIES AND EXCHANGE COMMISSION IN THE MONTHS PRIOR TO TRIAL AND WHO HAD ADMITTED TO ALTERING THE SHIRLEY TRUST TO THE PALM BEACH SHERIFF’S AND EVEN ADMITTED AT TRIAL TO USING THE MAILS TO MAIL THE FRAUDULENT SHIRLEY TRUST DOCUMENT THAT HE CREATED AND YET ELIOT BERNSTEIN WAS LEFT AS A PRO SE LITIGANT WHO SHOULD HAVE HAD TRUST FUNDS TO FUND COUNSEL FOR HIMSELF AND MINOR CHILDREN BUT INSTEAD LEFT WITHOUT

AN ATTORNEY WHERE EVEN THE PR OF THE SIMON BERNSTEIN ESTATE BRIAN O'CONNELL AND JOY FOGLIETTA ABANDONED THEIR INVOLVEMENT IN THE TRIAL LAST MINUTE AND DID NOT APPEAR DESPITE HAVING RAISED DEFENSES THAT TED BERNSTEIN IS NOT A VALID TRUSTEE AND BEING FURTHER INTERTWINED WITH ALAN ROSE AS NECESSARY WITNESSES IN THE CUSTODY POSSESSION AND CONTROL OF OPERATIVE ORIGINAL DOCUMENTS AND OTHER RECORDS.

32. JUDGE PHILLIPS ACTUALLY KNEW THAT HE TOOK NO STEPS TO FOLLOW THE PRE-TRIAL RULES OF 1.200 AND DENIED DUE PROCESS BY NOT PERMITTING ELIOT BERNSTEIN TO BE HEARD ON OUTSTANDING DISCOVERY, NEED FOR DEPOSITIONS, NEED FOR EXPERT WITNESSES AND OTHER WITNESSES TO THE OPERATIVE DOCUMENTS THEMSELVES LIKE TRACI KRATISH AND THE OTHER WITNESSES TO THE ALLEGED EXECUTION OF THESE DOCUMENTS WHICH CLEARLY WOULD HAVE TAKEN THE TRIAL PAST ONE DAY AS THERE WAS NOT EVEN SUFFICIENT TIME FOR THE BARE MINIMUM WITNESSES CALLED AND THAT DOES NOT EVEN CONTEMPLATE THAT THE ESTATE OF SIMON BERNSTEIN SHOULD HAVE HAD UNCONFLICTED COUNSEL AND REPRESENTATION AT THE TRIAL BUT INSTEAD WAS UNREPRESENTED.

33. TRACI KRATISH HAD ALREADY GIVEN STATEMENTS TO THE PALM BEACH COUNTY SHERIFF'S WHICH CONTRADICTS ONE OF THE OPPENHEIMER DOCUMENTS MAGICALLY FOUND BY TED BERNSTEIN'S COUNSEL ALAN ROSE WHO MUST BE DISQUALIFIED AS A NECESSARY WITNESS AND THUS JUDGE PHILLIPS KNEW ONE DAY WOULD NEVER SUFFICE FOR THESE TWO ADDITIONAL WITNESSES AND SHOULD HAVE ALLOWED OTHER TIME FOR MORE WITNESSES SUCH AS THOSE SHOWING THE GOVERNOR'S OFFICE HAD FOUND SIMON BERNSTEIN'S WILL IMPROPERLY EXECUTED AND OTHERS SUCH AS WILLIAM STANSBURY WHO WAS FAMILIAR WITH SHIRLEY AND SIMON BERNSTEIN.

34. JUDGE PHILLIPS KNEW AND SHOULD HAVE KNOWN THE MISSING DISCOVERY AND BUSINESS RECORDS NOT PRODUCED WERE RELEVANT TO CLAIMS OF UNDUE INFLUENCE AGAINST SIMON

BERNSTEIN AND THE OVERALL PICTURE OF THE ALLEGED ESTATE PLANNING BY TESCHER AND SPALLINA AND AGAIN JUDGE PHILLIPS KNEW IT WAS IMPROPER TO FIRST SCHEDULE THIS TRIAL IN THIS MANNER AND THEN PROCEED TO HOLD SUCH TRIAL UNDER THESE CIRCUMSTANCES INCLUDING THAT HE WAS ACTING BEYOND AND OUTSIDE HIS AUTHORITY AND IN THE CLEAR ABSENCE OF JURISDICTION BEING SOMEONE WHO MANDATORILY HAD TO BE DISQUALIFIED BEFORE THE TRIAL COMMENCED.

35. JUDGE PHILLIPS KNEW HE WAS ACTING PREJUDICIALLY AND IMPROPER FURTHER FOR ALL THE REASONS SET FORTH IN THE NEW LEGALLY SUFFICIENT MOTION TO DISQUALIFY POST TRIAL WHICH IS INCORPORATED BY REFERENCE AND ATTACHED HERETO. SEE, DISQUALIFICATION POST TRIAL³.

36. JUDGE PHILLIPS FURTHER KNOWS IT WAS IMPROPER TO DENY A CONTINUANCE FOR ATTORNEY CANDICE SCHWAGER TO BE ADMITTED PRO HAC VICE TO REPRESENT THE INTERESTS OF MY MINOR CHILDREN AND MY INTERESTS TO THE EXTENT NOT CONFLICTED AND THAT ATTORNEY SCHWAGER SOUGHT A VOLUNTARY CONTINUANCE FROM ALAN ROSE WHO SHOULD BE DISQUALIFIED AS A NECESSARY AND MATERIAL FACT WITNESS IN ANY EVENT AND JUDGE PHILLIPS FURTHER ACTUALLY KNOWS HE INTENTIONALLY MISSTATED THE LAW TO MYSELF AS A PRO SE PARTY ON THE DAY OF THE ILLEGALLY SCHEDULED TRIAL OF DEC. 15, 2015 BY DECLARING MY MOTION FOR CONTINUANCE TO HAVE COUNSEL SCHWAGER ADMITTED PRO HAC VICE AS UNTIMELY WHEN THE LAW ALLOWS FOR THE MOTION TO EVEN BE MADE ORALLY AT TRIAL AND INSTEAD WAS FILED WITH THE COURT IN WRITING BEFORE THE ILLEGAL TRIAL COMMENCED.

37. JUDGE PHILLIPS FURTHER KNOWS UNDER THE CIRCUMSTANCES AND THE COMPLEXITY OF THE CASE AND THE EXISTENCE OF OTHER ‘ORIGINALS’ AND PROVEN FRAUD ON DOCUMENTS DEPOSITED INTO

³ December 28, 2015 - 2nd Disqualification Motion Judge Phillips
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

THE COURT INCLUDING ACTUAL FORGERY OF SIGNATURES ON THE DOCUMENTS AND THE NEED FOR FORENSIC EXAMINATION THAT THE TESTIMONY OF A BARE WITNESS BEING ONE WHO ADMITTED TO COMMITTING FRAUD UPON THE COURT AND FURTHER VALIDATING THE SIGNATURE OF THE NOTARY WHO ALSO ADMITTED TO FRAUD IN THIS ACTUAL CASE WAS LEGALLY INSUFFICIENT AS A WHOLE TO DETERMINE OR DECLARE THE VALIDITY OF ANY OF THE DOCUMENTS AND INSTRUMENTS HEREIN.

38. JUDGE PHILLIPS FURTHER KNOWS THAT DURING THE TRIAL HE DENIED ELIOT BERNSTEIN PROPER TIME TO INSPECT ANY OF THE EVIDENCE AND EXHIBITS BEING OFFERED AND TO OBJECT THERETO AND WHILE "DOODLING" DURING THE SPALLINA TESTIMONY SOUGHT TO LATER REMOVE CANDICE BERNSTEIN WHO HAD BEEN SERVED IN THE CASE AND WAS ASSISTING ME PRO SE DURING THE TRIAL AS MY WIFE AND LEGAL GUARDIAN OF OUR THREE MINOR CHILDREN AND FURTHER DENIED AN OPPORTUNITY TO EVEN REVIEW THE IMPROPER PROPOSED ORDER HANDED TO JUDGE PHILLIPS AT THE CLOSING OF THE TRIAL BY ALAN ROSE WHO SHOULD HAVE BEEN AND SHOULD BE DISQUALIFIED AS A NECESSARY AND MATERIAL FACT WITNESS.

39. FOR ALL THE REASONS HEREIN THE TRIAL ORDER AND JUDGMENT OF DEC. 16, 2015 MUST BE VACATED AND DECLARED VOID AND A LEGAL NULLITY WHILE JUDGE PHILLIPS MUST MANDATORILY DISQUALIFY AND THE CASE RESET FOR FRAUD AND EVIDENCE AND DOCUMENTS IMPOUNDED FOR PROPER AUTHORITIES TO INVESTIGATE AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

WHEREFORE, IT IS RESPECTFULLY PRAYED FOR AN ORDER DECLARING THE TRIAL JUDGEMENT AND ORDER INVALID AND VOID AS A LEGAL NULLITY, VACATING SUCH ORDER AND JUDGE PHILLIPS DISQUALIFYING HIMSELF FROM FURTHER PROCEEDINGS HEREIN AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

Dated: December 31, 2015

/s/Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 31st day of December, 2015.

By: /s/ Eliot Ivan Bernstein

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EXHIBIT 1 - ATTACHED JUDGEMENT/ORDER OF DEC. 16, 2015

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

Defendants.

FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's
ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II dated September 24,
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P2 AT TRIAL*) *JB*
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) *JB*
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) *JB*
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *EX. P5 AT TRIAL*), *and* *JB*
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) *JB*

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~ *The evidence shows*

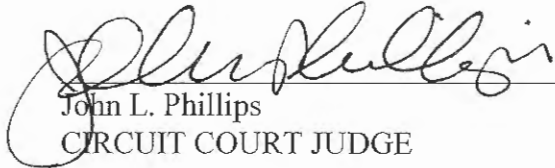
JW
JW
JW
JW
JW
JW

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.


John L. Phillips
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

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and Eliot and Candice Bernstein,
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