

**MURIEL L. MINTZ  
FAMILY TRUST  
DOCUMENTS**

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# MULDER LAW GROUP, P.C.

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**THE ESTATE PLANNING DOCUMENTS  
CONTAINED HEREIN ARE SIGNED ORIGINALS  
OF VERY IMPORTANT LEGAL PAPERS.**

***IT IS RECOMMENDED THAT  
THESE ORIGINAL SIGNED DOCUMENTS  
BE KEPT IN A PROTECTED LOCATION.***

**A complete set of copies of these Estate Planning  
documents is located:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In addition to the aforementioned copies of our Estate Planning documents, the firm that assisted us in developing our estate plan holds another set of copies. They will be able to assist at the appropriate times and should be contacted immediately:

- **Before nursing home confinement; or**
- **Upon incapacitation; or After death**

The person to contact is: James C. Mulder

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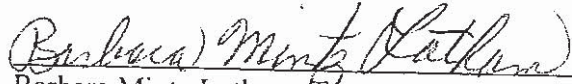
## Certification of Trust for the Muriel L. Mintz Family Trust

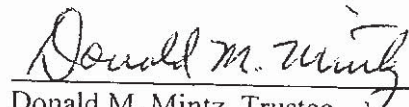
This Certification of Trust is signed by all the currently acting Trustees of the Muriel L. Mintz Family Trust dated October 28, 2015, who declare as follows:

1. The Settlor of the trust is Muriel L. Mintz. The trust is irrevocable and unamendable by the Settlor.
2. The Trustees of the trust are Barbara Mintz Latham and Donald M. Mintz.
3. The tax identification number of the trust is 47-7373284.
4. Title to assets held in the trust shall be titled as:  

Barbara Mintz Latham and Donald M. Mintz, Trustees of  
the Muriel L. Mintz Family Trust, dated October 28, 2015.
5. Any alternative description shall be effective to title assets in the name of the trust or to designate the trust as a beneficiary if the description includes the name of at least one initial or successor trustee, any reference indicating that property is being held in a fiduciary capacity, and the date of the trust.
6. The powers of the Trustee include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage and deal with real and personal property interests. The Trustee may buy, sell, trade, and otherwise deal in stocks, bonds, investments companies, mutual funds, common trust funds, commodities, options and other securities of any kind and in any amount, including short sales.
7. The terms of the trust provide that a third party may rely upon this Certification of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
8. The trust has not been amended or judicially reformed in any way that would cause the representations in this Certification of Trust to be incorrect.

October 28, 2015

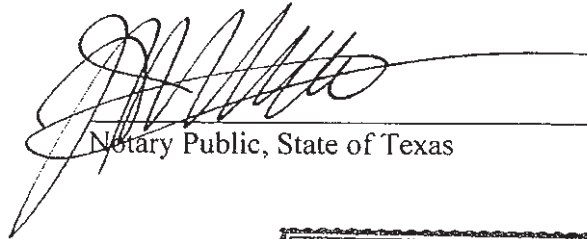
  
Barbara Mintz Latham, Trustee

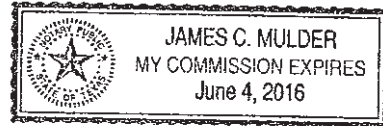
  
Donald M. Mintz, Trustee

STATE OF TEXAS  
COUNTY OF HARRIS

Before me, the undersigned, Notary Public, on this day personally appeared Barbara Mintz Latham and Donald M. Mintz, known to me to be the persons whose names are subscribed to the foregoing instrument and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and official seal this day, October 28, 2015.

  
\_\_\_\_\_  
Notary Public, State of Texas



**THE MURIEL L. MINTZ FAMILY TRUST**

**October 28, 2015**

**MULDER LAW GROUP, P.C.**

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# The Muriel L. Mintz Family Trust

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# The Muriel L. Mintz Family Trust

## Article One Establishing the Trust

The date of this Irrevocable Trust Agreement is October 28, 2015. The parties to the agreement are Muriel L. Mintz (the "Settlor"), and Barbara Mintz Latham and Donald M. Mintz, jointly (collectively, my "Trustee").

I intend that this agreement create a valid trust under the laws of Texas and under the laws of any state in which any trust created under this agreement is administered. The terms of this trust agreement prevail over any provision of Texas law, except those provisions that are mandatory and may not be waived.

I may not serve as Trustee of any trust created under this agreement at any time.

### Section 1.01 Identifying My Trust

My trust may be referred to as "Barbara Mintz Latham and Donald M. Mintz, Trustees of the Muriel L. Mintz Family Trust dated October 28, 2015."

For the purpose of transferring property to my trust, or identifying my trust in any beneficiary or pay-on-death designation, any description referring to my trust will be effective if it reasonably identifies my trust. Any description that contains the date of my trust, the name of at least one initial or successor Trustee and an indication that my Trustee is holding the trust property in a fiduciary capacity will be sufficient to reasonably identify my trust.

### Section 1.02 Reliance by Third Parties

From time to time, third parties may require documentation to verify the existence of this agreement, or particular provisions of it, such as the name or names of my Trustee or the powers held by my Trustee. To protect the confidentiality of this agreement, my Trustee may use an affidavit or a certification of trust that identifies my Trustee and sets forth the authority of my Trustee to transact business on behalf of my trust in lieu of providing a copy of this agreement. The affidavit or certification may include pertinent pages from this agreement, such as title or signature pages.

A third party may rely upon an affidavit or certification of trust that is signed by my Trustee with respect to the representations contained in the affidavit or certification of trust. A third party relying upon an affidavit or certification of trust shall be exonerated from any liability for actions the third party takes or fails to take in reliance upon the representations contained in the affidavit or certification of trust.

A third party dealing with my Trustee shall not be required to inquire into the terms of this agreement or the authority of my Trustee, or to see to the application of funds or other property received by my Trustee. The receipt from my Trustee for any money or property paid, transferred or delivered to my Trustee will be a sufficient discharge to the person or persons

paying, transferring or delivering the money or property from all liability in connection with its application. A written statement by my Trustee is conclusive evidence of my Trustee's authority. Third parties are not liable for any loss resulting from their reliance on a written statement by my Trustee asserting my Trustee's authority or seeking to effectuate a transfer of property to or from the trust.

### **Section 1.03 An Irrevocable Trust**

This Trust is irrevocable, and I cannot alter, amend, revoke, or terminate it in any way.

### **Section 1.04 Transfers to the Trust**

I transfer to my Trustee the property listed in Schedule A, attached to this agreement, to be held on the terms and conditions set forth in this instrument. I retain no right, title or interest in the income or principal of this trust or any other incident of ownership in any trust property.

By execution of this agreement, my Trustee accepts and agrees to hold the trust property described on Schedule A. All property, including life insurance policies, transferred to my trust after the date of this agreement must be acceptable to my Trustee. My Trustee may refuse to accept any property. My Trustee shall hold, administer and dispose of all trust property accepted by my Trustee for the benefit of my beneficiaries in accordance with the terms of this agreement.

### **Section 1.05 Statement of My Intent**

I am creating this trust with the intent that assets transferred to the trust be held for the benefit of my trust beneficiaries on the terms and conditions set forth in this agreement. In order to maximize the benefit to my trust beneficiaries, I give my Trustee broad discretion with respect to the management, distribution and investment of assets in my trust. My specific objectives in creating this trust include, but are not limited to:

Any gift made to the trust be treated as a completed gift for federal estate and gift tax purposes;

Any property contributed to the trust be treated as a gift of a present interest, if the property is subject to a beneficiary's right to withdraw as set forth in this agreement;

The assets of the trust estate, including life insurance proceeds, be excluded for federal estate tax purposes from my gross estate and the gross estates of my trust beneficiaries except to the extent that the grant or exercise of a power of appointment is treated as a general power of appointment; and

The assets in this trust not be subject to the claims of my creditors and any beneficiary's creditors.

All provisions of this agreement are to be construed to accomplish these objectives. Any beneficiary has the right at any time to release, renounce or disclaim any right, power or interest that might be construed or deemed to defeat these objectives.

## **Section 1.06 Grantor Trust Provisions**

I intend that I be taxed as owner of this trust for federal income tax purposes for those periods during which I or any other person holds one or more of the powers described in Sections 671-678 of the Internal Revenue Code. All provisions of this trust will be construed to carry out this intent. Notwithstanding any provision of this trust that may seem to be to the contrary, the following provisions apply in the administration of the trust.

### **(a) Power of Substitution**

During my lifetime, I reserve the right to reacquire any trust property by substituting other property of equivalent value. I may not reacquire any property that would cause me to have an incident of ownership, as defined in Section 2042 of the Internal Revenue Code, with respect to any insurance policy on my life held as part of the trust property. Furthermore, I may not exercise this power with respect to any stock treated as voting stock under Section 2036(b) of the Internal Revenue Code.

My Trustee has a fiduciary obligation to ensure my compliance with the terms of this power by satisfying itself that the properties acquired and substituted by me are in fact of equivalent value.

I may not exercise this power in any manner that shifts benefits among the beneficiaries. In consideration of this limitation, during any time I hold this power of substitution:

No provision in this agreement is to be construed in any manner that limits my Trustee's power to reinvest trust corpus for the benefit of the beneficiaries, and

My Trustee has a fiduciary duty to act impartially toward all trust beneficiaries.

It is my intention that the provisions of this subsection comply in all respects with Revenue Ruling 2008-22 as amplified by Revenue Ruling 2011-28, and that this subsection must be interpreted to ensure compliance with these rulings.

I may at any time, by written notice to my Trustee, release and relinquish this right.

### **(b) Nonfiduciary Capacity**

Except as otherwise specifically provided to the contrary in this Section, the powers described in this Section are exercisable solely in a nonfiduciary capacity without approval or consent of any person acting in a fiduciary capacity.

## **Article Two My Beneficiaries**

I have three children. They are:

Donald M. Mintz;  
Estelle Mintz Nelson; and  
Barbara Mintz Latham.

All references in this agreement to “my children” are references to these children.

References in this agreement to “my descendants” refer to my children and their descendants.

The “lifetime beneficiaries” of my trust are my children.

## **Article Three**

### **Trustee Succession Provisions**

#### **Section 3.01 Resignation of a Trustee**

A Trustee may resign by giving written notice to me. If I am incapacitated or deceased, a resigning Trustee shall give written notice to the Income Beneficiaries of the trust and to any other then-serving Trustee.

#### **Section 3.02 Trustee Succession**

This Section governs the removal and replacement of my Trustees.

##### **(a) Appointment of Successor Trustees**

Barbara Mintz Latham and Donald M. Mintz shall have the right to appoint a successor individual Trustee by an instrument in writing, such appointment to take effect upon the death, resignation or incapacity of the appointing Trustee. An appointment may be changed or revoked until it takes effect. If Barbara Mintz Latham and/or Donald M. Mintz have named a successor or successors to the appointing Trustee in this Agreement, the appointment of a successor under this paragraph shall take effect only if and when all Trustees that Barbara Mintz Latham and/or Donald M. Mintz have appointed fail to qualify or cease to act.

Except as expressly provided to the contrary elsewhere in this Agreement, Trustees shall be entitled to serve based on the following rules:

- First, each Trustee who is a party to this Agreement shall be entitled to serve;
- Second, a then-serving Co-Trustee effectively appointed by another Trustee shall be entitled to continue serving;
- Third, a successor Trustee effectively appointed by another shall be entitled to serve.

##### **(b) Power to Appoint Successor Trustees After Beneficiary of Separate Trust Becomes Sole Trustee**

The Primary Beneficiary of a separate trust created in this agreement, when serving as sole Trustee, shall have the power to appoint any person or entity to act as additional or successor Trustees of his or her trust upon such time, terms and conditions as such beneficiary shall specify in writing, and to change the order of priority in which all Trustees shall serve of his or her trust. Such appointment(s), terms and conditions and/or changes are to be evidenced by a written, signed and acknowledged document but require no other formality. Further, any Primary Beneficiary of a trust created in this agreement, after having served as sole Trustee and then resigned or otherwise ceased to serve as Trustee may reappoint himself or herself as sole Trustee at any time.

**(c) Removal of a Trustee**

A Trustee may be removed only for cause, which removal must be approved by a court of competent jurisdiction upon the petition of an interested party.

Except as provided in (a) and (b) above, after the Settlor's death, any beneficiary may remove a Trustee only for cause, which removal must be approved by a court of competent jurisdiction. The petition may only subject the trust to the jurisdiction of the court to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

The right to remove a Trustee under this subsection is not to be interpreted as a grant to the person holding that right any of the powers of that Trustee.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

**(d) Default of Designation**

If the office of Trustee of a trust created under this agreement is vacant and no designated Trustee is able and willing to act, the Primary Beneficiary of the trust may appoint an individual or corporate fiduciary as successor Trustee.

Any beneficiary may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy remaining unfilled after a period of 30 days. The petition may only subject the trust to the jurisdiction of the court to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

**Section 3.03 Notice of Removal and Appointment**

Notice of removal must be in writing and delivered to my Trustee being removed, along with any other then-serving Trustees. The notice of removal will be effective in accordance with its provisions.

Notice of appointment must also be in writing and delivered to my successor Trustee and any other then-serving Trustees. The appointment will become effective at the time of acceptance by my successor Trustee. A copy of the notice should be attached to this agreement.

**Section 3.04 Appointment of a Co-Trustee**

Any individual Trustee may appoint an individual or a corporate fiduciary as a Co-Trustee. That Co-Trustee will serve only as long as my Trustee who appointed my Co-Trustee (or, if my Co-Trustee was named by more than one Trustee acting together, by the last to serve of those Trustees) serves, and my Co-Trustee will not become a successor Trustee upon the death, resignation, or incapacity of my Trustee who appointed my Co-Trustee, unless so appointed under the terms of this agreement. Although my Co-Trustee may exercise all the powers of my appointing Trustee, the combined powers of my Co-Trustee and my appointing Trustee cannot exceed the powers of my appointing Trustee alone. My Trustee appointing a Co-Trustee may revoke the appointment at any time with or without cause.

### **Section 3.05 Corporate Fiduciaries**

Any corporate fiduciary serving under this agreement as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal and state law and that is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

Any corporate fiduciary must:

Have a combined capital and surplus of at least Ten Million Dollars; or

Maintain in force a policy of insurance with policy limits of not less than Ten Million Dollars covering the errors and omissions of my Trustee with a solvent insurance carrier licensed to do business in the state in which my Trustee has its corporate headquarters; or

Have at least One Hundred Million Dollars in assets under management.

### **Section 3.06 Incapacity of a Trustee**

If any individual Trustee becomes incapacitated, it will not be necessary for my incapacitated Trustee to resign as Trustee. A written declaration of incapacity by my Co-Trustee, if any, or, if none, by the party designated to succeed my incapacitated Trustee, if supported by a written opinion of incapacity by a physician who has examined my incapacitated Trustee, will terminate the trusteeship. If my Trustee designated in the written declaration refuses to sign the necessary medical releases needed to obtain the physician's written opinion of incapacity within 10 days of a request to do so, the trusteeship will be terminated.

The provisions of Section 10.05(c) of this agreement govern the determination of a Trustee's incapacity by a physician and my Trustee's obligations to submit to examination and provide necessary releases.

### **Section 3.07 Appointment of Special Trustee**

If for any reason the Trustee of any trust created under this agreement is unwilling or unable to act with respect to any trust property or any provision of this agreement, the Trustee shall appoint, in writing, a corporate fiduciary or an individual to serve as a Special Trustee as to such property or with respect to such provision. The Special Trustee appointed may be an Independent Trustee or Interested Trustee as the circumstances dictate.

A Special Trustee shall exercise all fiduciary powers granted by this agreement unless expressly limited elsewhere in this agreement or by the Trustee in the instrument appointing the Special Trustee. A Special Trustee may resign at any time by delivering written notice of resignation to the Trustee. Notice of resignation shall be effective in accordance with the terms of the notice.

### **Section 3.08 Rights and Obligations of Successor Trustees**

Each successor Trustee serving under this agreement, whether corporate or individual, will have all of the title, rights, powers and privileges granted to my initial Trustees named under this agreement. In addition, each successor Trustee is subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to my initial Trustees named under this agreement.

## **Article Four Administration During My Lifetime**

During my lifetime, my Trustee shall administer the trust as provided in this Article.

### **Section 4.01 Beneficiaries' Right to Withdraw Contributions**

Immediately following a contribution to the trust, each living lifetime beneficiary not excluded under Section 4.02 (referred to in this Article as a "demand right beneficiary") will have the absolute present right to withdraw the lesser of:

A proportionate share of the total amount of the contribution, determined by dividing the amount of the contribution by the number of demand right beneficiaries; or

The amount of the federal gift tax annual exclusion under Section 2503(b) of the Internal Revenue Code less the amount of prior annual exclusion gifts to the demand right beneficiary by the same donor during the same calendar year.

The withdrawal right will be subject to the limitations and qualifications as provided in subsequent provisions of this Article.

### **Section 4.02 Power to Limit or Exclude Beneficiaries' Withdrawal Rights**

Prior to or concurrent with the making of a contribution to the trust, a donor may, by a written instrument delivered to my Trustee, limit or exclude one or more lifetime beneficiaries from having withdrawal rights over all or any portion of the contribution or any future contribution or both. A donor may not, however, limit or alter any rights resulting from prior contributions.

### **Section 4.03 Exercise of Right to Withdraw by Lifetime Beneficiaries**

A beneficiary holding a withdrawal right may exercise that right by a written request delivered to my Trustee. If a demand right beneficiary is unable to exercise a right to withdraw because of minority or incapacity, the demand right beneficiary's parent or Legal Representative may exercise the right to withdraw. If there is no Legal Representative, my Trustee shall designate an appropriate adult individual who may exercise the demand right beneficiary's right to withdraw. Under no circumstances may a person who has contributed property to the trust or may I exercise any demand right beneficiary's right to withdraw.

Any property distributed to the Legal Representative of a minor or incapacitated demand right beneficiary or individual designated to make the withdrawal on behalf of the demand right beneficiary must be held for the use and benefit of the demand right beneficiary and may not be used by the person who exercised the withdrawal right on behalf of the demand right beneficiary to discharge that person's legal obligation of support. My Trustee may pay any money or property distributed to a minor pursuant to the exercise of a right to withdraw to a custodian for the minor under the Uniform Transfers to Minors Act or Uniform Gifts to Minors Act of any state.



#### **Section 4.04 Notice by My Trustee of the Right to Withdraw**

Following any contribution to the trust, my Trustee shall promptly notify each demand right beneficiary, or the person authorized to exercise the demand right beneficiary's right to withdraw, of the existence of the right to withdraw and the conditions under which the right may be exercised.

#### **Section 4.05 Lapse of Right to Withdraw**

Each demand right beneficiary's right to withdraw a contribution to the trust lapses 30 calendar days following the notice by my Trustee of the contribution to which it relates, whether or not the lapse occurs within the same calendar year in which the contribution was made. The amount of withdrawal rights held by a demand right beneficiary that lapses in any calendar year, however, must not exceed the maximum amount under Section 2514(e) of the Internal Revenue Code to which the lapse of the power to withdraw is not considered a release of the power to withdraw.

That portion of a withdrawal power held by a demand right beneficiary, the lapse of which would exceed this limitation, will continue to be exercisable, and lapses to the greatest extent possible within this limitation on February 1 of each year in which it remains exercisable.

A demand right beneficiary's vested withdrawal right will not terminate by reason of the demand right beneficiary's death. The personal representative of the demand right beneficiary's estate will have the right to exercise the vested withdrawal right on behalf of the demand right beneficiary's estate.

If the personal representative of a deceased demand right beneficiary's estate does not exercise the withdrawal right, my Trustee may distribute to that personal representative cash or other property in an amount equal to the deceased demand right beneficiary's unexpired vested withdrawal amount.

Following my death, a demand right beneficiary's right of withdrawal will continue against any subsequent trust shares established after my death as to which the demand right beneficiary is a beneficiary and to whom my Trustee may pay income or principal, until the withdrawal right is exercised or lapses in accordance with the terms of this Article.

#### **Section 4.06 Satisfaction of Demand Right by My Trustee**

My Trustee may satisfy a demand right beneficiary's exercise of a withdrawal right by distributing cash, other assets or fractional interests in other assets, as my Trustee may determine to be appropriate. Unless my Trustee has actual knowledge of other annual exclusion gifts prior to making distributions to satisfy a demand right beneficiary's exercise of the demand right, my Trustee may assume that no other gifts have been made to the demand right beneficiary.

My Trustee shall retain sufficient cash or other assets or a line of credit against which to borrow, or a combination thereof in order to satisfy the withdrawal rights that are then outstanding. I grant a line of credit to my Trustee to borrow from me, at the applicable federal rate, for a period of up to one day less than three years, such amounts as may be necessary to satisfy withdrawal rights that are exercised to the extent that other property is not available to satisfy the withdrawal rights.

#### **Section 4.07 Definition of Contribution**

For purposes of this Article, "contribution" means any cash or other assets transferred to my Trustee to be held as part of the trust funds in a manner that constitutes a completed gift for Federal gift tax purposes. The amount of a contribution is its Federal gift tax value.

#### **Section 4.08 Discharge of My Trustee Upon a Distribution**

The receipt of a distribution by a demand right beneficiary, or the demand right beneficiary's Legal Representative, to whom my Trustee makes a distribution in satisfaction of the exercise of a demand right is a sufficient discharge of my Trustee to the extent of the payment or distribution. My Trustee has no duty to see to the actual application of amounts paid or distributed for the benefit of the demand right beneficiary.

#### **Section 4.09 Distribution of Income and Principal**

During my lifetime, my Trustee shall retain all property held under this agreement in a single trust for the benefit of the lifetime beneficiaries. Subject to the limitation that my Trustee at all times retain sufficient property in the trust to satisfy a pending right to withdraw set forth in Section 4.06, my Trustee shall administer the trust as follows:

##### **(a) Distribution of Income and Principal**

My Trustee may distribute income or principal of the trust to the lifetime beneficiaries, as follows:

##### **(1) Distribution of Income and Principal to the Trust Beneficiaries**

My Independent Trustee may distribute any portion of trust property to or for the benefit of any lifetime beneficiary as my Independent Trustee determines advisable for any purpose. If there is no Independent Trustee, my Trustee may distribute as much of the trust property to or for the benefit of any lifetime beneficiary as my Trustee determines is necessary or advisable for the beneficiary's health, education, maintenance or support. In making distributions, my Trustee may distribute net income, principal, or both.

In determining the advisability or necessity of making distributions, my Trustee may consider other income or resources that are available to the beneficiaries outside of the trust and are known to my Trustee.

##### **(2) Unequal Distributions Authorized**

My Trustee may make distributions to or for the benefit of one or more trust beneficiaries to the complete exclusion of the other beneficiaries. My Trustee may make distributions to beneficiaries in equal or unequal amounts according to their respective needs.

Before making any distribution or allocation of income or principal to a beneficiary, my Trustee may require a refunding agreement or may withhold any portion of the distribution or allocation until final determination or release of any claim or lien against the beneficiary.

**(b) Allocation of Distributions to Lifetime Beneficiaries**

If any distribution is made to or for the benefit of a lifetime beneficiary, the amount of the distribution will be charged against the trust as a whole, and not against any individual benefit the beneficiary may ultimately receive. But if a distribution of principal is made to a lifetime beneficiary who holds a presently-exercisable power of withdrawal, the distribution will be deemed to be an exercise of the beneficiary's power to withdraw to the extent of the distribution. The beneficiary's remaining power to withdraw, if any, will be reduced by the amount of the distribution.

Any net income not distributed is to be accumulated and added to the principal of the trust.

**(c) No Discharge of a Legal Obligation**

Under no circumstances may my Trustee make any distribution to any beneficiary in a manner that would discharge any of my legal obligations.

**Section 4.10 Administration Upon My Death**

Upon my death, my Trustee shall administer the remaining trust property as provided in the Articles that follow.

## Article Five Administration of Remaining Trust Property

My Trustee shall administer the remaining trust property as provided in this Article.

### **Section 5.01 Division of Remaining Trust Property**

My Trustee shall divide the remaining trust property into the following shares, for each of the following beneficiaries:

Name	Relationship	Share
Donald M. Mintz	son	1/3
Estelle Mintz Nelson	daughter	1/3
Barbara Mintz Latham	daughter	1/3

My Trustee shall administer the share of each beneficiary as provided in the subsequent Sections of this Article.

### **Section 5.02 Distribution of the Share for Donald M. Mintz**

My Trustee shall administer Donald M. Mintz's share in trust under the provisions of this Section.

#### **(a) Distributions of Income and Principal**

The Trustee may distribute to Donald M. Mintz as much of the income and principal of his trust as the Trustee determines is necessary or advisable for his health, education, maintenance or support.

Any undistributed net income shall be accumulated and added to principal.

#### **(b) Distribution Upon the Death of Donald M. Mintz**

If Donald M. Mintz dies after the establishment of his trust, but before the complete distribution of his trust, the Trustee shall distribute the remaining trust property *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

#### **(c) Distribution if Donald M. Mintz is Deceased**

If Donald M. Mintz should die before the establishment of his trust, the Trustee shall distribute Donald M. Mintz's share *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

### **Section 5.03 Distribution of the Share for Estelle Mintz Nelson**

My Trustee shall administer Estelle Mintz Nelson's share in trust under the provisions of this Section.

**(a) Distributions of Income and Principal**

The Trustee may distribute to Estelle Mintz Nelson as much of the income and principal of her trust as the Trustee determines is necessary or advisable for her health, education, maintenance or support.

Any undistributed net income shall be accumulated and added to principal.

**(b) Distribution Upon the Death of Barbara Mintz Latham**

If Estelle Mintz Nelson dies after the establishment of her trust, but before the complete distribution of her trust, the Trustee shall distribute the remaining trust property *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

**(c) Distribution if Estelle Mintz Nelson is Deceased**

If Estelle Mintz Nelson should die before the establishment of her trust, the Trustee shall distribute Estelle Mintz Nelson's share *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

**Section 5.04 Distribution of the Share for Barbara Mintz Latham**

My Trustee shall administer Barbara Mintz Latham's share in trust under the provisions of this Section.

**(a) Distributions of Income and Principal**

The Trustee may distribute to Barbara Mintz Latham as much of the income and principal of her trust as the Trustee determines is necessary or advisable for her health, education, maintenance or support.

Any undistributed net income shall be accumulated and added to principal.

**(b) Distribution Upon the Death of Barbara Mintz Latham**

If Barbara Mintz Latham dies after the establishment of her trust, but before the complete distribution of her trust, the Trustee shall distribute the remaining trust property *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

**(c) Distribution if Barbara Mintz Latham is Deceased**

If Barbara Mintz Latham should die before the establishment of her trust, the Trustee shall distribute Barbara Mintz Latham's share *pro rata* to the trusts created for the other beneficiaries in this Article. If there are no other living beneficiaries the Trustee shall distribute the remaining trust property under the terms of Article Six.

**Article Six**  
**Remote Contingent Distribution**

If at any time no person or entity is qualified to receive final distribution of any part of my trust estate, this portion of my trust estate must be distributed to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Texas then in effect.

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## Article Seven

### Distributions to Underage and Incapacitated Beneficiaries

#### **Section 7.01 Supplemental Needs Trust**

If under any provision of this trust my Trustee is directed to distribute to or for the benefit of any beneficiary when that person is receiving or applying for needs-based government benefits, my Trustee shall retain and administer the trust property as follows:

##### **(a) Distributions for Supplemental Needs**

In its sole, absolute, and unreviewable discretion, my Trustee may distribute discretionary amounts of net income and principal for supplemental needs of the beneficiary not otherwise provided by governmental financial assistance and benefits, or by the providers of services.

*Supplemental needs* refers to the basic requirements for maintaining the good health, safety, and welfare when, in the discretion of my Trustee, these basic requirements are not being provided by any public agency, office, or department of any state or of the United States.

*Supplemental needs* will also include medical and dental expenses; annual independent checkups; clothing and equipment; programs of training, education, treatment, and rehabilitation; private residential care; transportation, including vehicle purchases; maintenance; insurance; and essential dietary needs. *Supplemental needs* may include spending money; additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and money to purchase appropriate gifts for relatives and friends.

My Trustee will have no obligation to expend trust assets for these needs. But if my Trustee, in its sole, absolute and unreviewable discretion, decides to expend trust assets, under no circumstances should any amounts be paid to or reimbursed to the federal government, any state, or any governmental agency for any purpose, including for the care, support, and maintenance of the beneficiary.

##### **(b) Objective to Promote Independence of the Beneficiary**

While actions are in my Trustee's sole, absolute, and unreviewable discretion, all parties to this trust should be mindful that my wish is that the beneficiary live as independently, productively, and happily as possible.

##### **(c) Trust Assets Not to be Considered Available Resource to the Beneficiary**

The purpose of the provisions of this Section 7.01 is to supplement any benefits received, or for which the beneficiary may be eligible, from various governmental assistance programs, and not to supplant any benefits of this kind. All actions of my Trustee shall be directed toward carrying out this intent, and my Trustee's discretion granted under this instrument to carry out this intent is sole, absolute, and unreviewable.

For purposes of determining the beneficiary's eligibility for any of these benefits, no part of the trust estate's principal or undistributed income will be considered available to the beneficiary for public benefit purposes. The beneficiary must not be considered to have access to the trust's principal or income, or to have ownership, right, authority, or power to convert any asset into cash for his or her own use.

My Trustee shall hold, administer, and distribute all property allocated to this trust for the exclusive benefit of the beneficiary during his or her lifetime. All distributions from this trust share are in the sole, absolute, and unreviewable discretion of my Trustee, and the beneficiary is legally restricted from demanding trust assets for his or her support and maintenance.

In the event my Trustee is requested to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or to petition a court or any other administrative agency for the release of trust principal or income for this purpose, my Trustee is authorized to deny this request and to take whatever administrative or judicial steps are necessary to continue the beneficiary's eligibility for benefits. This includes obtaining legal advice about the beneficiary's specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to the beneficiary for eligibility purposes. Any expenses incurred by my Trustee in this regard, including reasonable attorney fees, will be a proper charge to the trust estate.

**(d) Distribution Guidelines**

My Trustee shall be responsible for determining what discretionary distributions will be made from this trust, and may use a Care Manager in accordance with the provisions of this Section. My Trustee may distribute discretionary amounts of income and principal to or for the benefit of the beneficiary for those supplemental needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services. Any undistributed income will be added to principal. In making distributions, my Trustee must:

consider any other known income or resources of the beneficiary that are reasonably available;

consider all entitlement benefits from any government agency, including Social Security disability payments, Medicare, Medicaid (or any state Medicaid program equivalent), Supplemental Security Income (SSI), In-Home Support Service (IHSS), and any other supplemental purpose benefits for which the beneficiary is eligible;

consider resource and income limitations of any assistance program;

make expenditures so that the beneficiary's standard of living will be comfortable and enjoyable;

not be obligated or compelled to make specific payments;



not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by this governmental agency or reimbursement is required by the state; and

not be liable for any loss of benefits.

**(e) Use of Care Manager**

My Trustee shall have the option of utilizing the services of a Care Manager to advise on how best to provide for the beneficiary's needs. The primary objective of the Care Manager will be to assist my Trustee in carrying out the intentions of this trust to ensure that the beneficiary maintains a safe living situation, receives counseling services when appropriate, and lives as independently as possible.

A Care Manager must be a professional Licensed Clinical Social Worker, Professional Conservator, or care management agency with experience in the field of assessment of conditions similar to those of the beneficiary, and familiarity with the public benefits to which the beneficiary may be entitled.

**(f) Distribution Advisement**

If my Trustee uses a Care Manager, the Care Manager will advise my Trustee concerning discretionary distributions to be made from the trust that are helpful and appropriate for the beneficiary's needs, including payment for medical care, counseling services, and daily support.

**(g) Care Manager Account for Periodic Payments**

If my Trustee uses a Care Manager, the Care Manager may establish periodic payments for part or all of the payments authorized under this trust and maintain a separate bank account for disbursement by the Care Manager. Any account must be carried in the trust's name and must have the trust's federal tax identification number. At least monthly, the Care Manager shall provide information on receipts and disbursements from this account to my Trustee. This account must contain no more than an amount reasonably necessary for the beneficiary's needs for a period of 60 days.

My Trustee will not be held liable for any actions of the Care Manager, unless my Trustee has actual knowledge of and consented to the Care Manager's proposed actions before the actions were actually taken. The Care Manager must not make any distributions that may cause a reduction of public benefits unless my Trustee has consented to the distribution.

**(h) Annual Care Plan**

If my Trustee uses a Care Manager, the Care Manager shall provide a written care plan for purposes of evaluation of the beneficiary's medical and psychosocial status to my Trustee at least annually. The care plan must include recommendations concerning resources and services beneficial to the beneficiary.

**(i) Quarterly Assessments**

If my Trustee uses a Care Manager, the Care Manager shall visit the beneficiary at least quarterly to assess his or her physical and emotional needs, including the appropriateness of the present placement, attendant care, access to required resources, reliability for making and keeping medical appointments, and access to socialization activities.

**(j) Compensation of the Care Manager**

If my Trustee uses a Care Manager, the Care Manager will be entitled to fair and reasonable compensation for the services he or she provides. The compensation amount will be for the customary and prevailing charges for services of a similar nature during the same time and in the same geographic locale.

**(k) The Resignation of a Care Manager**

Any Care Manager may resign by giving 30 days' written notice to my Trustee.

**(l) Replacement of Care Manager**

My Trustee may terminate the Care Manager without cause and name a replacement. If a Care Manager cannot serve for any reason, my Trustee may name a replacement, who may begin to serve immediately. A successor Care Manager must also be a professional Licensed Clinical Social Worker, Professional Conservator, or care management agency with experience in the field of assessment of conditions similar to those of the beneficiary, and familiarity with the public benefits to which the beneficiary may be entitled.

**(m) No Seeking of Order to Distribute**

For purposes of determining the beneficiary's state Medicaid program equivalent eligibility, no part of the trust estate's principal or undistributed income may be considered available to the beneficiary. My Trustee shall deny any request by the beneficiary to:

release trust principal or income to or on behalf of the beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or

petition a court or any other administrative agency for the release of trust principal or income for this purpose.

In its sole, absolute, and unreviewable discretion, my Trustee may take necessary administrative or legal steps to protect the beneficiary's state Medicaid program equivalent eligibility. This includes obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to the beneficiary for purposes of determining state Medicaid program equivalent eligibility. Expenses for this action, including reasonable attorney fees, will be a proper charge to the trust estate.

**(n) Indemnification of Trustee When Acting in Good Faith**

My Trustee will be indemnified from the trust property for any loss or reduction of public benefits sustained by the beneficiary as a result of my Trustee exercising the authority granted to my Trustee under this Section in good faith.

**(o) Termination and Distribution of the Supplemental Needs Trust**

If my Trustee, in its sole, absolute, and unreviewable discretion, determines that the beneficiary is no longer dependent on others and is able to independently support himself or herself, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this Section 7.01 had not been effective.

If the other provisions of this trust do not provide for the remaining property's distribution or retention, then my Trustee shall distribute the remaining property to the beneficiary outright and free of trust.

*Independently support* is satisfied when the beneficiary has been gainfully employed for 33 months of the 36-month period immediately preceding the decision to terminate the trust share.

The terms *gainful employment* and *gainfully employed* mean the full-time employment that produces sufficient net income to enable the beneficiary to contribute not less than 100% of the funds (exclusive of other revenue sources) that are necessary to provide for the beneficiary's independent care, support, maintenance, and education. In its sole, absolute, and unreviewable discretion, my Trustee shall determine whether or not the beneficiary has satisfied the condition of gainful employment.

**(p) Distribution upon the Death of the Beneficiary**

Upon the beneficiary's death, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this Section 7.01 had not been effective. If the other provisions of this trust provide for the beneficiary's share to be held in trust, then those provisions will be interpreted as though the beneficiary died after the establishment of that trust.

If the other provisions of this trust do not provide for the distribution or retention of the remaining property, then the beneficiary will have the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities. But the beneficiary may not exercise this limited power of appointment to appoint to himself or herself, his or her estate, his or her creditors or the creditors of his or her estate.

I intend to create a limited power of appointment and not a general power of appointment as defined in Internal Revenue Code Section 2041.

If any part of the beneficiary's trust is not effectively appointed, my Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, my Trustee shall distribute the unappointed balance *per stirpes* to the then-living descendants of the beneficiary's

nearest lineal ancestor who was a descendant of mine or, if there is no then-living descendant, *per stirpes* to my descendants.

If I have no then-living descendants, my Trustee shall distribute the balance of the trust property as provided in Article Six.

### **Section 7.02 Underage and Incapacitated Beneficiaries**

If my Trustee is authorized or directed under any provision of this trust to distribute net income or principal to a person (1) who has not yet reached 21 years of age or (2) who is incapacitated as defined in Section 10.05(c) or (3) who in my Trustee's sole and absolute judgment is involved in substance abuse, or is financially irresponsible, or is mentally or emotionally unstable, or is otherwise not suited to receiving distributions at that time, my Trustee may make the distribution by any one or more of the methods described in Section 7.03. Alternatively, my Trustee may retain the trust property in a separate trust to be administered by my Trustee under Section 7.04.

My Trustee may request that any beneficiary submit to medical testing and provide medical or financial records to my Trustee, and my Trustee may consider the results of such investigation, together with the beneficiary's cooperation, in making this determination. Refusal to cooperate by a beneficiary may be considered by my Trustee to be the equivalent of failing a substance abuse test, or having a pattern of financial irresponsibility, or other similar failure to qualify for distribution of benefits.

I request that before making a distribution to a beneficiary, my Trustee consider, to the extent reasonable, the ability the beneficiary has demonstrated in managing prior distributions of trust property.

### **Section 7.03 Methods of Distribution**

My Trustee may distribute trust property for any beneficiary's benefit, subject to the provisions of Section 7.02 in any one or more of the following methods:

My Trustee may distribute trust property directly to the beneficiary.

My Trustee may distribute trust property to the beneficiary's guardian, conservator, parent, other family member, or any person who has assumed the responsibility of caring for the beneficiary.

My Trustee may distribute trust property to any person or entity, including my Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act or similar statute.

My Trustee may distribute trust property to other persons and entities for the beneficiary's use and benefit.

My Trustee may distribute trust property to an agent or attorney in fact authorized to act for the beneficiary under a valid durable power of attorney executed by the beneficiary before becoming incapacitated.

#### **Section 7.04 Retention in Trust**

My Trustee may retain and administer trust property in a separate trust for any beneficiary's benefit, subject to the provisions of Section 7.02 as follows.

##### **(a) Distribution of Net Income and Principal**

My Trustee, other than an Interested Trustee, may distribute to the beneficiary as much of the net income and principal of any trust created under this Section as my Trustee may determine advisable for any purpose. If there is no then-serving Trustee that is not an Interested Trustee, my Trustee shall distribute to the beneficiary as much of the net income and principal of the trust created under this Section as my Trustee determines is necessary or advisable for the beneficiary's health, education, maintenance or support. Any undistributed net income will be accumulated and added to principal.

##### **(b) Right of Withdrawal**

When the beneficiary whose trust is created under this Section either reaches 21 years of age or is no longer incapacitated, the beneficiary may withdraw all or any portion of the accumulated net income and principal from the trust.

##### **(c) Distribution upon the Death of the Beneficiary**

Subject to the terms of the next paragraph, the beneficiary whose trust is created under this Section may appoint all or any portion of the principal and undistributed net income remaining in the beneficiary's trust at the beneficiary's death among one or more persons or entities, and the creditors of the beneficiary's estate. The beneficiary has the exclusive right to exercise this general power of appointment.

The beneficiary may not exercise this power of appointment to appoint to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or creditors of the beneficiary's estate from the *limited share* of the beneficiary's trust. For purposes of this power of appointment, the *limited share* of the beneficiary's trust is that portion of the beneficiary's trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or that without the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at the beneficiary's death. If the generation-skipping tax does not then apply, the limited share will be the beneficiary's entire trust.

If any part of the beneficiary's trust is not effectively appointed, my Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, my Trustee shall distribute the unappointed balance *per stirpes* to the then-living descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine or, if there is no then-living descendant, *per stirpes* to my descendants.

If I have no then-living descendants, my Trustee shall distribute the balance of the trust property as provided in Article Six.

**Section 7.05 Application of Article**

Any decision made by my Trustee under this Article is final, controlling, and binding upon all beneficiaries subject to the provisions of this Article.

## **Article Eight Trust Administration**

### **Section 8.01 Distributions to Beneficiaries**

Whenever this trust authorizes or directs my Trustee to make a net income or principal distribution to a beneficiary, my Trustee may apply any property that otherwise could be distributed directly to the beneficiary for his or her benefit. My Trustee is not required to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this trust.

My Trustee may make cash distributions, in-kind distributions, or distributions partly in each, in proportions and at values determined by my Trustee. My Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that my Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

My Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

### **Section 8.02 Trust Decanting; Power to Appoint in Further Trust**

Whenever an Independent Trustee may distribute assets to or for the benefit of a beneficiary, my Trustee may appoint the property subject to my Trustee's power of distribution in trust for the benefit of one or more beneficiaries of any trust created under this instrument under the terms established by the Independent Trustee. Any trust established by the Independent Trustee and funded by the exercise of the power granted under this Section must meet these requirements:

- the trust must not reduce any fixed income, annuity, or unitrust right provided by this trust instrument to any beneficiary;
- the trust must provide for one or more of the beneficiaries of a trust created under this instrument; and
- the interests of remainder beneficiaries of the trust created under this instrument must not be accelerated under the terms of the new trust.

An Independent Trustee may not use the powers granted under this Section to extend the term of the new trust beyond the period of perpetuities provided under the governing law of this instrument.

Any trust created under this provision must not contain any provision that, if applicable, would cause the trust to fail to qualify for the marital deduction or charitable deduction, fail to qualify any gift to the trust for any gift, estate, or generation-skipping transfer annual exclusion, or disqualify the trust as a qualified subchapter S corporation shareholder.

If any beneficiary holds a presently exercisable right to withdraw property from this trust, that right may not be defeated by the exercise of the Independent Trustee's powers granted under this Section.

### **Section 8.03 Beneficiary's Status**

Until my Trustee receives notice of the incapacity, birth, marriage, death, or other event upon which a beneficiary's right to receive payments may depend, my Trustee will not be held liable for acting or not acting with respect to the event, or for disbursements made in good faith to persons whose interest may have been affected by the event. Unless otherwise provided in this trust, a parent or Legal Representative may act on behalf of a minor or incapacitated beneficiary.

My Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. My Trustee will have no independent duty to investigate the status of any beneficiary and will not incur any liability for not doing so.

### **Section 8.04 No Court Proceedings**

My Trustee shall administer this trust with efficiency, with attention to the provisions of this trust, and with freedom from judicial intervention. If my Trustee or another interested party institutes a legal proceeding, the court will acquire jurisdiction only to the extent necessary for that proceeding. Any proceeding to seek instructions or a court determination may only be initiated in the court with original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination is not to be construed as subjecting this trust to the court's continuing jurisdiction.

I request that any questions or disputes that arise during the administration of this trust be resolved by mediation and, if necessary, arbitration in accordance with the Uniform Arbitration Act. Each interested party involved in the dispute, including any Trustee involved, may select an arbiter and, if necessary to establish a majority decision, these arbiters may select an additional arbiter. The decision of a majority of the arbiters selected will control with respect to the matter.

### **Section 8.05 No Bond**

My Trustee is not required to furnish any bond for the faithful performance of the Trustee's duties unless required by a court of competent jurisdiction, and only if the court finds that a bond is needed to protect the beneficiaries' interests. No surety will be required on any bond required by any law or court rule, unless the court specifies its necessity.

### **Section 8.06 Exoneration of My Trustee**

No successor Trustee is obligated to examine the accounts, records, or actions of any previous Trustee. No successor Trustee may be held responsible for any act, omission, or forbearance by any previous Trustee.

Any Trustee may obtain written agreements from the beneficiaries or their Legal Representatives releasing and indemnifying the Trustee from any liability that may have arisen from the Trustee's acts, omissions, or forbearances. If acquired from all the trust's living beneficiaries or their Legal Representatives, any agreement is conclusive and binding on all parties, born or unborn, who may have or who may later acquire an interest in the trust.

My Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal, and may withhold distribution or allocation pending determination or release of a tax or other lien.



### **Section 8.07 Trustee Compensation**

An individual serving as Trustee is entitled to fair and reasonable compensation for the services provided as a fiduciary. A corporate fiduciary serving as Trustee will be compensated by agreement between an individual serving as Trustee and the corporate fiduciary. In the absence of an individual Trustee or an agreement, a corporate fiduciary will be compensated in accordance with the corporate fiduciary's current published fee schedule.

A Trustee may charge additional fees for services provided that are beyond the ordinary scope of duties, such as fees for legal services, tax return preparation, and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out the Trustee's duties under this trust.

### **Section 8.08 Employment of Professionals**

My Trustee may appoint, employ, and remove investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, advisors, agents, and employees to advise or assist in the performance of my Trustee's duties. My Trustee may act on the recommendations of the persons or entities employed, with or without independent investigation.

My Trustee may reasonably compensate an individual or entity employed to assist or advise my Trustee, regardless of any other relationship existing between the individual or entity and my Trustee.

My Trustee may compensate providers of contracted services at the usual rate out of the trust's income or principal, as my Trustee deems advisable. My Trustee may compensate an individual or entity employed to assist or advise my Trustee without diminishing the compensation the Trustee is entitled to under this trust. A Trustee who is a partner, stockholder, officer, director, or corporate affiliate in any entity employed to assist or advise my Trustee may still receive the Trustee's share of the compensation paid to the entity.

### **Section 8.09 Collection of Proceeds after the Death of an Insured**

After the death of an insured under any policy of life insurance forming a part of the trust principal, my Trustee shall make a reasonable effort to collect all amounts payable directly to my Trustee or the trust. My Trustee may exercise any of the settlement options available to my Trustee under the policy's terms. My Trustee will not be liable to any beneficiary for the settlement option ultimately selected.

My Trustee may refuse to enter into or maintain any proceeding, administrative or otherwise, with respect to any life insurance policy, until my Trustee has been satisfactorily indemnified against all expenses and liabilities that my Trustee believes may be involved in the proceeding.

My Trustee may compromise and adjust claims arising out of any insurance policy upon the terms and conditions as my Trustee determines prudent. My Trustee's decisions are conclusive on all persons.

### **Section 8.10 Insurance Carrier Protected in Dealing With The Trustee**

An insurance carrier may presume that my Trustee is properly exercising its powers as Trustee under this trust at all times. The insurance provider and its agents are not required to examine any of the provisions of this trust to determine if my Trustee has the power to act or is properly exercising its power, or to verify my Trustee's management of any proceeds paid to my Trustee.

My Trustee's receipt of the insurance proceeds will relieve the insurance carrier of any further liability with respect to payment of the proceeds.

### **Section 8.11 Determination of Principal and Income**

My Trustee shall determine how all Trustee fees, disbursements, receipts, and wasting assets will be credited, charged, and apportioned between principal and income in a fair, equitable, and practical manner.

My Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and the equalization of payments to or for the beneficiaries. My Trustee may select appropriate accounting periods for the trust property.

### **Section 8.12 Trust Accounting**

Except to the extent required by law, my Trustee is not required to file accountings in any jurisdiction. The annual accounting must include the receipts, expenditures, and distributions of income and principal and the assets on hand for the accounting period. A copy of the federal fiduciary tax return filed for a trust during the accounting will satisfy this reporting requirement.

In the absence of fraud or obvious error, assent by all Income Beneficiaries to a Trustee's accounting will make the matters disclosed in the accounting binding and conclusive upon all persons, including those living on this date and those born in the future who have or will have a vested or contingent interest in the trust property. In the case of an Income Beneficiary who is a minor or incapacitated, the beneficiary's natural guardian or Legal Representative may give the assent required under this Section.

A beneficiary may object to an accounting provided by my Trustee only by giving written notice to my Trustee within 60 days after my Trustee provides the accounting. Any beneficiary who does not submit a timely written objection is considered to assent to the accounting.

My Trustee must make the trust's financial records and documents available to beneficiaries at reasonable times and upon reasonable notice for inspection. My Trustee is not required to furnish any information regarding my trust to anyone other than a beneficiary. My Trustee may exclude any information my Trustee determines is not directly applicable to the beneficiary receiving the information.

In all events, a beneficiary's Legal Representative may receive any notices and take any action on behalf of the beneficiary as to an accounting. If any beneficiary's Legal Representative fails to object to any accounting in writing within 60 days after my Trustee provides the accounting, the beneficiary's Legal Representative will be considered to assent to the accounting.

### **Section 8.13 Action of Trustees and Delegation of Trustee Authority**

If two Trustees are eligible to act with respect to a given matter, they must agree unanimously for action to be taken unless the express terms of the Trustees' appointment provide otherwise. If more than two Trustees are eligible to act with respect to a given matter, the Trustees must agree by majority for action to be taken.

If my Trustees are unable to agree on a matter for which they have joint powers, I request that the matter be settled by mediation and then by arbitration, if necessary, in accordance with the Uniform Arbitration Act. Each of my Trustees may select an arbiter and these arbiters may select an additional arbiter, if necessary to establish a majority decision. The decision of a majority of the arbiters will control with respect to the matter.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee will be absolved from personal liability by registering the dissent or abstention in the trust records. After doing so, the dissenting Trustee must then act with my other Trustees in any way necessary or appropriate to effect the majority decision.

Notwithstanding the limitations set forth in this Section, unless a Trustee elects otherwise in a written instrument delivered to the other Trustees, if two or more Trustees are then serving, any one Trustee may sign any checks, agreements, or other documents on behalf of the trust with the same effect as if all Trustees had signed. Persons dealing with the signing Trustee in good faith may rely upon the signing Trustee's authority to act on behalf of the trust without inquiry as to the other Trustees' agreement.

Subject to the limitations set forth in Section 9.21, any Trustee may, by written instrument, delegate to any other Trustee the right to exercise any power, including a discretionary power, granted to my Trustee in this trust. During the time a delegation under this Section is in effect, the Trustee to whom the delegation is made may exercise the power to the same extent as if the delegating Trustee has personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice to the Trustee to whom the power was delegated.

### **Section 8.14 Trustee May Disclaim or Release Any Power**

Notwithstanding any provision of this trust to the contrary, any Trustee may relinquish any Trustee power in whole or in part, irrevocably or for any specified period of time, by a written instrument. The Trustee may relinquish a power personally or may relinquish the power for all subsequent Trustees.

### **Section 8.15 Trustee May Execute a Power of Attorney**

My Trustee may appoint any individual or entity to serve as my Trustee's agent under a power of attorney to transact any business on behalf of my trust or any other trust created under this trust.

### **Section 8.16 Additions to Separate Trusts**

If upon the termination of any trust created under this trust, a final distribution is to be made to a person who is the Primary Beneficiary of another trust established under this trust, and there is no specific indication whether the distribution is to be made in trust or outright, my Trustee shall

make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, the distribution will be treated as though it had been an original part of the second trust.

### **Section 8.17 Authority to Merge or Sever Trusts**

My Trustee may merge a trust created under this trust with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and have at least one Trustee in common. My Trustee may administer the merged trust under the provisions of the instrument governing the other trust, and this trust will no longer exist if it merges into another trust. Accordingly, in the event another trust is merged into this trust or a trust created under the provisions of this trust document, my Trustee may shorten the period during which this trust subsists to comply with Section 10.01, if necessary, to effect the merger. But if a merger does not appear feasible, my Trustee may consolidate the trusts' assets for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

My Trustee may sever any trust on a fractional basis into two or more separate and identical trusts, or may segregate a specific amount or asset from the trust property by allocating it to a separate account or trust. The separate trusts may be funded on a *non pro rata* basis, but the funding must be based on the assets' total fair market value on the funding date. After the segregation, income earned on a segregated amount or specific asset passes with the amount or asset segregated. My Trustee shall hold and administer each severed trust upon terms and conditions identical to those of the original trust.

Subject to the trust's terms, my Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the effective severance date; however, the effective severance date may be retroactive to a date before my Trustee exercises the power.

### **Section 8.18 Authority to Terminate Trusts**

My Independent Trustee may terminate any trust created under this trust at any time, if my Independent Trustee, in its sole and absolute discretion, determines that administering a trust created under this trust is no longer economical. Once distributed, my Trustee will have no further responsibility with respect to that trust property. My Trustee will distribute the trust property from a terminated trust in this order:

to the beneficiaries then entitled to mandatory distributions of the trust's net income, in the same proportions; and then

if none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of the trust's net income, in the amounts and shares my Independent Trustee determines.

**Section 8.19 Merger of Corporate Fiduciary**

If any corporate fiduciary acting as the Trustee under this trust is merged with or transfers substantially all of its trust assets to another corporation, or if a corporate fiduciary changes its name, the successor will automatically succeed to the trusteeship as if that successor had been originally named a Trustee. No document of acceptance of trusteeship will be required.

**Section 8.20 Funeral and Other Expenses of Beneficiary**

Upon the death of an Income Beneficiary, my Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts, or other expenses incurred due to the death of the beneficiary from trust property. This Section only applies to the extent the Income Beneficiary has not exercised any testamentary power of appointment granted to the beneficiary under this trust.

My Trustee may rely upon any request by the deceased beneficiary's Legal Representative or family members for payment without verifying the validity or the amounts and without being required to see to the application of the payment. My Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or court rule and without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary's estate.

## **Article Nine My Trustee's Powers**

### **Section 9.01 Introduction to Trustee's Powers**

Except as otherwise specifically provided in this trust, my Trustee may exercise the powers granted by this trust without prior approval from any court, including those powers set forth under the laws of the State of Texas or any other jurisdiction whose law applies to this trust. The powers set forth in the Texas Trust Code are specifically incorporated into this trust.

My Trustee shall exercise the Trustee powers in the manner my Trustee determines to be in the beneficiaries' best interests. My Trustee must not exercise any power inconsistent with the beneficiaries' right to the enjoyment of the trust property in accordance with the general principles of trust law.

My Trustee may have duties and responsibilities in addition to those described in this trust. I encourage any individual or corporate fiduciary serving as Trustee to obtain appropriate legal advice if my Trustee has any questions concerning the duties and responsibilities as Trustee.

### **Section 9.02 Execution of Documents by My Trustee**

My Trustee may execute and deliver any written instruments that my Trustee considers necessary to carry out any powers granted in this trust.

### **Section 9.03 Investment Powers in General**

My Trustee may invest in any type of investment that my Trustee determines is consistent with the investment goals of the trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account the overall investment portfolio of the trust.

Without limiting my Trustee's investment authority in any way, I request that my Trustee exercise reasonable care and skill in selecting and retaining trust investments. I also request that my Trustee take into account the following factors in choosing investments:

- the potential return from the investment, both in income and appreciation;
- the potential income tax consequences of the investment;
- the investment's potential for volatility; and
- the role the investment will play in the trust's portfolio.

I request that my Trustee also consider the possible effects of inflation or deflation, changes in global and US economic conditions, transaction expenses, and the trust's need for liquidity while arranging the trust's investment portfolio.

My Trustee may delegate his or her discretion to manage trust investments to any registered investment advisor or corporate fiduciary.

#### **Section 9.04 Banking Powers**

My Trustee may establish any type of bank account in any banking institutions that my Trustee chooses. If my Trustee makes frequent disbursements from an account, the account does not need to be interest bearing. My Trustee may authorize withdrawals from an account in any manner.

My Trustee may open accounts in the name of my Trustee, with or without disclosing fiduciary capacity, and may open accounts in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the account's fiduciary nature or refer to any trust or Trustee.

#### **Section 9.05 Business Powers**

If the trust owns or acquires an interest in a business entity, whether as a shareholder, partner, general partner, sole proprietor, member, participant in a joint venture, or otherwise, my Trustee may exercise the powers and authority provided for in this Section. The powers granted in this Section are in addition to all other powers granted to my Trustee in this trust.

##### **(a) No Duty to Diversify**

Notwithstanding any duty to diversify imposed by state law or any other provision of this trust, my Trustee may acquire or indefinitely retain any ownership interest in or indebtedness of any closely held or nonpublicly traded entity in which the trust, myself, my descendants, and the spouses of my descendants have an ownership interest (the *business interests*), and even though any business interest may constitute all or a substantial portion of the trust property. I specifically authorize my Trustee to invest or indefinitely retain all or any part of the trust property in these business interests, regardless of any resulting risk, lack of income, diversification, or marketability. I waive any applicable prudent investor rule, as well as the Trustee's standard of care and duty to diversify with respect to the acquisition or retention of these business interests.

I recognize that the value of a noncontrolling interest in a business entity may be less than the underlying value of the entity's net assets. Nevertheless, I authorize my Trustee to acquire or retain any noncontrolling business interests.

##### **(b) Specific Management Powers**

My Trustee has all power and authority necessary to manage and operate any business owned by the trust, whether directly or indirectly, including the express powers set forth in this Subsection. My Trustee may participate directly in the conduct of the business, by serving as a general partner of a limited partnership, a member, manager or managing member of a limited liability company, or a shareholder of a corporation, or may employ others to serve in that capacity.

My Trustee may participate in the management of the business and delegate management duties and powers to any employee, manager, partner, or associate of the business, without incurring any liability for the delegation. To the extent that the business interest held by the trust is not one that includes management powers (such as a minority stock interest, limited partnership interest, or a membership interest in a limited liability

company), my Trustee has no obligation to supervise the management of the underlying assets, and no liability for the actions of those who do manage the business.

My Trustee may enter into management trusts and nominee trusts in which my Trustee and the trust may serve as the exclusive manager or nominee of property or property interests on behalf of any limited partnership, limited liability company, or corporation.

My Trustee, individually, or if my Trustee is a corporate fiduciary, then an employee of my Trustee, may act as a director, general or limited partner, associate, or officer of the business.

My Trustee may participate with any other person or entity in the formation or continuation of a partnership either as a general or limited partner, or in any joint venture. My Trustee may exercise all the powers of management necessary and incidental to a membership in the partnership, limited partnership, or joint venture, including making charitable contributions.

My Trustee may reduce, expand, limit, or otherwise adjust the operation or policy of the business. My Trustee may subject the trust's principal and income to the risks of the business for any term or period, as my Trustee determines.

For any business in which the trust has an interest, my Trustee may advance money or other property, make loans (subordinated or otherwise) of cash or securities, and guarantee the loans of others made to the business. My Trustee may borrow money for the business, either alone or with other persons interested in the business, and may secure the loan or loans by a pledge or mortgage of any part of any trust property.

My Trustee may select and vote for directors, partners, associates, and officers of the business. My Trustee may enter into owners' agreements with a business in which the trust has an interest or with the other owners of the business.

My Trustee may execute agreements and amendments to agreements as may be necessary to the operation of the business, including stockholder agreements, partnership agreements, buy-sell agreements, and operating agreements for limited liability companies.

My Trustee may generally exercise any powers necessary for the continuation, management, sale, or dissolution of the business.

My Trustee may participate in the sale, reorganization, merger, consolidation, recapitalization, or liquidation of the business. My Trustee may sell or liquidate the business or business interest on terms my Trustee deems advisable and in the best interests of the trust and the beneficiaries. My Trustee may sell any business interest held by the trust to one or more of the beneficiaries of this trust or to any trust in which a majority of the beneficiaries are beneficiaries of this trust. My Trustee may make the sale in exchange for cash, a private annuity, an installment note, or any combination of those.

My Trustee may exercise all of the business powers granted in this trust even though my Trustee may be personally invested in or otherwise involved with the business.



**(c) Business Liabilities**

If any tort or contract liability arises in connection with the business, and if the trust is liable, my Trustee will first satisfy the liability from the assets of the business, and only then from other trust property as determined by my Trustee.

**(d) Trustee Compensation**

In addition to the compensation set forth in Section 8.07, my Trustee may receive additional reasonable compensation for services in connection with the operation of the business. My Trustee may receive this compensation directly from the business, the trust or both.

**(e) Conflicts of Interest**

My Trustee may exercise all of the powers granted in this trust even though my Trustee may be involved with or have a personal interest in the business.

**Section 9.06 Contract Powers**

My Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that my Trustee deems advisable. My Trustee may grant options of any duration for any sales, exchanges, or transfers of trust property.

My Trustee may enter into contracts, and may deliver deeds or other instruments, that my Trustee considers appropriate.

**Section 9.07 Common Investments**

For purposes of convenience with regard to the trust property's administration and investment, my Trustee may invest part or all of the trust property jointly with property of other trusts for which my Trustee is also serving as a Trustee. A corporate fiduciary acting as my Trustee may use common funds for investment. When trust property is managed and invested in this manner, my Trustee will maintain records that sufficiently identify this trust's portion of the jointly invested assets.

**Section 9.08 Environmental Powers**

My Trustee may inspect trust property to determine compliance with or to respond to any environmental law affecting the property. For purposes of this trust *environmental law* means any federal, state, or local law, rule, regulation, or ordinance protecting the environment or human health.

My Trustee may refuse to accept property if my Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to any Trustee.

My Trustee may use trust property to:

conduct environmental assessments, audits, or site monitoring;

take remedial action to contain, clean up, or remove any hazardous substance including a spill, discharge, or contamination;

institute, contest, or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance;

comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement, or cleanup of any hazardous substance; and

employ agents, consultants, and legal counsel to assist my Trustee in these actions.

My Trustee is not liable for any loss or reduction in value sustained by the trust as a result of my Trustee's decision to retain property on which hazardous materials or substances requiring remedial action are discovered, unless my Trustee contributed to that loss through willful misconduct or gross negligence.

My Trustee is not liable to any beneficiary or to any other party for any decrease in the value of property as a result of my Trustee's actions to comply with any environmental law, including any reporting requirement.

My Trustee may release, relinquish, or disclaim any power held by my Trustee that my Trustee determines may cause my Trustee to incur individual liability under any environmental law.

#### **Section 9.09 Loans and Borrowing Powers**

My Trustee may make loans to any person including a beneficiary, as well as an entity, trust, or estate, for any term or payable on demand, and secured or unsecured. But my Trustee may only make loans to me with adequate interest and security.

My Trustee may encumber any trust property by mortgages, pledges, or otherwise, and may negotiate, refinance, or enter into any mortgage or other secured or unsecured financial arrangement, whether as a mortgagee or mortgagor. The term may extend beyond the trust's termination and beyond the period required for an interest created under this trust to vest in order to be valid under the rule against perpetuities.

My Trustee may borrow money at interest rates and on other terms that my Trustee deems advisable from any person, institution, or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

My Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. My Trustee may accept deeds instead of foreclosing.

#### **Section 9.10 Nominee Powers**

My Trustee may hold real estate, securities, and any other property in the name of a nominee or in any other form, without disclosing the existence of any trust or fiduciary capacity.

#### **Section 9.11 Oil, Gas and Mineral Interests**

My Trustee may acquire, maintain, develop, and exploit, either alone or jointly with others, any oil, gas, coal, mineral, or other natural resource rights or interests.

My Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell, and exchange any of those rights and interests on terms and for a price that my Trustee deems advisable.

My Trustee may execute leases, pooling, unitization, and other types of agreements in connection with oil, gas, coal, mineral, and other natural resource rights and interests, even though the terms of those arrangements may extend beyond the trust's termination.

My Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it considers proper.

My Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the trust's principal and income.

### **Section 9.12 Payment of Property Taxes and Expenses**

Except as otherwise provided in this trust, my Trustee may pay any property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments will be a charge against the trust property and will be paid by my Trustee out of income. If the income is insufficient, then my Trustee may make any payments of property taxes or expenses out of the trust property's principal. My Trustee's determination with respect to this payment will be conclusive on the beneficiaries.

### **Section 9.13 Purchase of Assets from and Loans to My Probate Estate**

Upon my death, my Trustee may purchase at fair market value and retain in the form received any property that is a part of my probate or trust estate as an addition to the trust. In addition, my Trustee may make secured and unsecured loans to my probate or trust estate. My Trustee may not be held liable for any loss suffered by the trust because of the exercise of the powers granted in this Section.

My Trustee may not use any trust property for the benefit of my estate as defined in Code of Federal Regulations Title 26 Section 20.2042-1(b), unless the property is included in my gross estate for federal estate tax purposes.

### **Section 9.14 Qualified Tuition Programs**

My Trustee may purchase tuition credits or certificates or make contributions to an account in one or more qualified tuition programs as defined under Internal Revenue Code Section 529 on a beneficiary's behalf for the purpose of meeting the beneficiary's qualified higher education expenses. With respect to an interest in any qualified tuition program, my Trustee may act as contributor, administering the interest by actions including:

- designating and changing the designated beneficiary of the interest in the qualified tuition program;
- requesting both qualified and nonqualified withdrawals;
- selecting among investment options and reallocating funds among different investment options;

making rollovers to another qualified tuition program; and  
allocating any tax benefits or penalties to the beneficiaries of the trust.

Notwithstanding anything in this provision to the contrary, the designated beneficiary must always be a beneficiary of the trust from which the funds were distributed to establish the interest in the qualified tuition program. Investment in a qualified tuition program will not be considered a delegation of investment responsibility under any applicable statute or other law.

#### **Section 9.15 Real Estate Powers**

My Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve, and in general deal in and with real property in the manner and on the terms and conditions as my Trustee deems appropriate.

My Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements to, and abandon any real property.

My Trustee may manage real estate in any manner considered best, and may exercise all other real estate powers necessary to effect this purpose.

My Trustee may enter into contracts to sell real estate. My Trustee may enter into leases and grant options to lease trust property, even though the term of the agreement extends beyond the termination of any trusts established under this trust and beyond the period that is required for an interest created under this trust to vest in order to be valid under the rule against perpetuities. My Trustee may enter into any contracts, covenants, and warranty agreements that my Trustee deems appropriate.

#### **Section 9.16 Residences and Tangible Personal Property**

My Trustee may grant life estate to a beneficiary of a trust created herein in such real estate as it shall determine.

My Trustee may acquire, maintain, and invest in any residence for the beneficiaries' use and benefit, whether or not the residence is income producing and without regard to the proportion that the residence's value may bear to the trust property's total value, even if retaining the residence involves financial risks that Trustees would not ordinarily incur. My Trustee may pay or make arrangements for others to pay all carrying costs of any residence for the beneficiaries' use and benefit, including taxes, assessments, insurance, maintenance, and other related expenses.

My Trustee may acquire, maintain, and invest in articles of tangible personal property, whether or not the property produces income. My Trustee may pay for the repair and maintenance of the property.

My Trustee is not required to convert the property referred to in this Section to income-producing property, except as required by other provisions of this trust.

My Trustee may permit any Income Beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that my Trustee determines, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

My Trustee is not liable for any depreciation or loss resulting from any decision to retain or acquire any property as authorized by this Section.

### **Section 9.17 Retention and Abandonment of Trust Property**

My Trustee may retain any property constituting the trust at the time of its creation, at the time of my death, or as the result of the exercise of a stock option, without liability for depreciation or loss resulting from retention. My Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

My Trustee may hold property that is not income producing or is otherwise nonproductive if holding the property is in the best interests of the beneficiaries in the sole and absolute discretion of my Trustee. On the other hand, my Trustee will invest contributions of cash and cash equivalents as soon as reasonably practicable after the assets have been acquired by the trust.

My Trustee may retain a reasonable amount in cash or money market accounts to pay anticipated expenses and other costs, and to provide for anticipated distributions to or for the benefit of a beneficiary.

My Trustee may abandon any property that my Trustee considers of insignificant value.

### **Section 9.18 Securities, Brokerage and Margin Powers**

My Trustee may buy, sell, trade, and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, and other securities of any kind and in any amount, including short sales. My Trustee may write and purchase call or put options, and other derivative securities. My Trustee may maintain margin accounts with brokerage firms, and may pledge securities to secure loans and advances made to my Trustee or to or for a beneficiary's benefit.

My Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. My Trustee may have all securities registered in the name of the bank or trust company or in the name of the bank's nominee or trust company's nominee. My Trustee may appoint the bank or trust company as the agent or attorney in fact to collect, receive, receipt for, and disburse any income, and generally to perform the duties and services incident to a custodian of accounts.

My Trustee may employ a broker-dealer as a custodian for securities held by the trust, and may register the securities in the name of the broker-dealer or in the name of a nominee; words indicating that the securities are held in a fiduciary capacity are optional. My Trustee may hold securities in bearer or uncertificated form, and may use a central depository, clearing agency, or book-entry system, such as The Depository Trust Company, Euroclear, or the Federal Reserve Bank of New York.

My Trustee may participate in any reorganization, recapitalization, merger, or similar transaction. My Trustee may exercise or sell conversion or subscription rights for securities of all kinds and descriptions. My Trustee may give proxies or powers of attorney that may be

discretionary and with or without powers of substitution, and may vote or refrain from voting on any matter.

### **Section 9.19 Settlement Powers**

My Trustee may settle any claims and demands in favor of or against the trust by compromise, adjustment, arbitration, or other means. My Trustee may release or abandon any claim in favor of the trust.

### **Section 9.20 Subchapter S Corporation Stock Provisions**

During any period the trust is not treated as a grantor trust for tax purposes under Internal Revenue Code Section 671, this trust or any trust created under this trust may hold any S corporation stock held as a separate *Electing Small Business Trust*, or as a separate *Qualified Subchapter S Trust*, as provided in this Section.

For purposes of this Section, *S corporation stock* means all capital stock issued by a corporation (or other entity taxable as a corporation for federal income tax purposes) that is treated or is intended to be treated under Section 1361(a) as an *S corporation* for federal income tax purposes.

#### **(a) Electing Treatment as an Electing Small Business Trust**

If my Trustee elects under Internal Revenue Code Section 1361(e)(3) to qualify any portion of the trust as an *Electing Small Business Trust*, my Trustee shall:

apportion a reasonable share of the unallocated expenses of all trusts created under this trust to the Electing Small Business Trust under the applicable provisions of the Internal Revenue Code and Treasury Regulations; and

administer the trust as an Electing Small Business Trust, under Internal Revenue Code Section 1361(e).

#### **(b) Electing Treatment as a Qualified Subchapter S Trust**

If the current Income Beneficiary of the trust makes an election under Section 1361(d)(2) to qualify the trust as a Qualified Subchapter S Trust within the meaning of Section 1361(d)(3), my Trustee shall:

refer to the Qualified Subchapter S Trust using the same name as the trust to which the stock was originally allocated, plus the name of the current Income Beneficiary of the trust, followed by the letters QSST;

administer the Qualified Subchapter S Trust in accordance with the same provisions contained in the trust to which the Trustee allocated the S corporation stock, as long as the provisions of this Subsection control the trust administration to the extent that they are inconsistent with the provisions of the original trust; and

maintain the Qualified Subchapter S Trust as a separate trust held for the benefit of only one beneficiary as required in Section 1361(d)(3).

My Trustee shall recommend that the current Income Beneficiary of the trust make a timely election to cause federal tax treatment of the trust as a Qualified Subchapter S Trust.

**(1) Current Income Beneficiary**

The *current Income Beneficiary* of a Qualified Subchapter S Trust is the person who has a present right to receive income distributions from the trust to which the Trustee has allocated the S corporation stock. A Qualified Subchapter S Trust may have only one current Income Beneficiary.

If, under the terms of the trust, more than one person has a present right to receive income distributions from the trust originally holding the S corporation stock, my Trustee shall segregate the S corporation stock into separate Qualified Subchapter S Trusts for each of these people.

**(2) Distributions**

Until the earlier of the death of the current Income Beneficiary or the date on which the trust no longer holds any S corporation stock (the *QSST termination date*), my Trustee shall distribute at least annually all of the trust's *net income*, as defined in Internal Revenue Code Section 643(b) to the current Income Beneficiary.

The terms of the trust to which the S corporation stock was originally allocated govern distributions of principal from the Qualified Subchapter S Trust. But until the QSST termination date, my Trustee may distribute principal only to the current Income Beneficiary of the Qualified Subchapter S Trust and not to any other person or entity.

If the Qualified Subchapter S Trust terminates during the lifetime of the current Income Beneficiary, my Trustee shall distribute all assets of the Qualified Subchapter S Trust to the current Income Beneficiary outright and free of the trust.

**(3) Allocation of Income and Expenses**

My Trustee shall characterize receipts and expenses of any Qualified Subchapter S Trust in a manner consistent with Internal Revenue Code Section 643(b).

**(4) Trust Merger or Consolidation**

Notwithstanding any other provision of this trust that may seem to the contrary, my Trustee may not merge any Qualified Subchapter S Trust with another trust's assets if doing so would jeopardize the qualification of either trust as a Qualified Subchapter S Trust.

**(c) Governance of the Trusts**

The following additional provisions apply to any separate trust created under this Section.

**(1) Protection of S Corporation Status**

My Trustee must not administer a trust holding S corporation stock in a manner that would cause the termination of the S corporation status of the entity whose stock is held as part of the trust. Therefore, during any period that the trust holds S corporation stock, my Trustee must construe the terms and provisions of this

trust in a manner that is consistent with the trust qualifying as an Electing Small Business Trust or as a Qualified Subchapter S Trust. My Trustee must disregard any provision of this trust that cannot be so construed or applied.

**(2) Methods of Distribution**

My Trustee may not make distributions in a manner that would jeopardize the trust's qualification as an Electing Small Business Trust or as a Qualified Subchapter S Trust.

**(3) Disposition of S Corporation Stock**

If my Trustee believes the continuation of any trust would result in the termination of the S corporation status of any entity whose stock is held as a part of the trust property, my Trustee, other than an Interested Trustee, in addition to the power to sell or otherwise dispose of the stock, has the power to distribute the stock to the person who is then entitled to receive the income from the trust.

**Section 9.21 Limitation on My Trustee's Powers**

All powers granted to Trustees under this trust or by applicable law are limited as set forth in this Section, unless explicitly excluded by reference to this Section.

**(a) An Interested Trustee Limited to Ascertainable Standards**

An Interested Trustee may only make discretionary decisions when they pertain to a beneficiary's health, education, maintenance, or support as described under Internal Revenue Code Sections 2041 and 2514.

**(b) Interested Trustee Prohibited from Acting**

Whenever this trust specifically prohibits or limits an Interested Trustee from exercising discretion or performing an act, then any Interested Trustee serving as my Trustee is prohibited from participating in the exercise of that discretion or performance of that act. If there is no Trustee serving who is not an Interested Trustee, then a Special Trustee may be appointed under the provisions of Section 3.07 to exercise the discretion or perform the act.

**(c) Exclusive Powers of My Independent Trustee**

Whenever a power or discretion is granted exclusively to my Independent Trustee, then any Interested Trustee who is then serving as my Trustee is prohibited from participating in the exercise of the power or discretion. If there is no Independent Trustee then serving, then a Special Trustee may be appointed under the provisions of Section 3.07 to exercise the power or discretion that is exercisable only by my Independent Trustee.

**(d) No Distributions in Discharge of Certain Legal Obligations**

My Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of my Trustee, including the obligation of support.



If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove the Trustee, including that person's obligation of support.

**(e) Insurance Policy on the Life of My Trustee**

If the trust holds a policy that insures the life of a Trustee, that Trustee may not exercise any powers or rights with respect to the policy. Instead, a Co-Trustee or a Special Trustee must exercise the powers and rights with respect to the policy.

If any rule of law or court decision construes the ability of the insured Trustee to name a Special Trustee as an incident of ownership of the policy, then a majority of the then current Income Beneficiaries (excluding the insured Trustee if he or she is a beneficiary) will select the Special Trustee.

**(f) Insurance Policy on a Beneficiary's Life**

If the trust holds a policy that insures a beneficiary's life, the beneficiary, individually or as Trustee, may not exercise any power over the policy, its cash value, or its proceeds. This denial of power is intended to prevent an insured beneficiary from holding any power that would constitute an incident of ownership of the policy.

The limitations of this Subsection do not apply if, upon the beneficiary's death, the policy's proceeds would otherwise be included in the beneficiary's gross estate for federal estate tax purposes.

## Article Ten General Provisions

### Section 10.01 Maximum Term for Trusts

Notwithstanding any contrary provisions or unless terminated earlier under other provisions of this trust, each trust created under this trust document will terminate 21 years after the death of the last to die of the descendants of my paternal and maternal grandparents who are living at the time this agreement is signed.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of the trust's net income, in the same proportions. If no beneficiary is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of the trust's net income, in equal shares *per stirpes*.

### Section 10.02 Spendthrift Provision

No income or principal payable or to become payable under any trust created by this instrument shall be subject to anticipation or assignment, by a beneficiary, or to attachment by or to the interference or control of any creditor of any beneficiary, or to be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any beneficiary prior to its actual receipt by such beneficiary. Any attempted sale, conveyance, transfer, assignment, mortgage, pledge or encumbrance of the trust estate, or any part thereof, or any interest therein, by a beneficiary hereunder, prior to the actual distribution as herein provided, shall be absolutely and wholly void. Any beneficiary of a trust created hereunder may renounce his or her interest, in whole or in part, at any time. My Trustee shall not make any distributions whatsoever to a beneficiary in the event that such beneficiary is insolvent as defined in the Uniform Fraudulent Conveyance Act; or should a beneficiary have judgments, claims, suits, or be involved in any bankruptcy proceedings, then my Trustee shall not make any distributions whatsoever to the beneficiary during pendency thereof; or should any creditor or claimant of a beneficiary attempt or threaten to attach any right, title or interest that a beneficiary may have in any trust or in any income or principal distributions from any trust contained herein, then during the pendency thereof, a beneficiary so affected shall not be distributed any principal or income from any trust by my Trustee or any other person, party, or court. The Trusts created by this document are spendthrift trusts. No beneficiary or third party or any creditor of a beneficiary may force any distribution or payment from any trust created by this document.

This Section does not restrict a beneficiary's right to disclaim any interest or exercise of any power of appointment granted in this trust. In addition, this Section does not limit the ability of an Independent Trustee to appoint property in further trust for any beneficiary as provided in Section 8.02.

### Section 10.03 Contest Provision

If any person attempts to contest or oppose the validity of this trust or any amendment to this trust, or commences, continues, or prosecutes any legal proceedings to set this trust aside, then

that person will forfeit his or her share, cease to have any right or interest in the trust property, and will be considered to have predeceased me for purposes of this instrument.

#### **Section 10.04 Changing the Governing Law and Situs of Administration**

At any time, my Trustee may change the governing law of the trust; change the situs of the administration of the trust; and remove all or any part of the property from one jurisdiction to another. My Trustee may elect, by filing an instrument with the trust records, that the trust will then be construed, regulated, and governed by the new jurisdiction's laws. My Trustee may take action under this Section for any purpose my Trustee considers appropriate, including the minimization of any taxes in respect of the trust or any trust beneficiary.

If considered necessary or advisable by my Trustee, my Trustee may appoint an Independent Trustee to serve as Trustee in the new situs.

If necessary and if my Trustee does not appoint an Independent Trustee within 30 days of my Trustee's action to change the governing law or situs of the trust, the beneficiaries entitled to receive distributions of the trust's net income may appoint a corporate fiduciary in the new situs by majority consent. If a beneficiary is a minor or is incapacitated, the beneficiary's parent or Legal Representative may act on the beneficiary's behalf.

#### **Section 10.05 Definitions**

For purposes of this trust, the following terms have these meanings:

##### **(a) Education**

The term *education* is intended to be an ascertainable standard under Internal Revenue Code Sections 2041 and 2514 and includes:

enrollment at private elementary, junior, and senior high school, including boarding school;

undergraduate and graduate study in any field at a college or university;

specialized, vocational, or professional training or instruction at any institution, as well as private instruction; and

any other curriculum or activity that my Trustee considers useful for developing a beneficiary's abilities and interests including athletic training, musical instruction, theatrical training, the arts, and travel.

The term *education* also includes expenses such as tuition, room and board, fees, books, supplies, computers and other equipment, tutoring, transportation, and a reasonable allowance for living expenses.

##### **(b) Good Faith**

For the purposes of this trust, a Trustee has acted in good faith if:

an action or inaction is not a result of intentional wrongdoing;

the Trustee did not make the decision to act or not act with reckless indifference to the beneficiaries' interests; and

an action or inaction does not result in an improper personal benefit to the Trustee.

Further, all parties subject to the provisions of this trust will treat any action or inaction made in reliance on information, consent, or directions received from the Personal Representative of my estate as made in good faith for the purposes of this Section, except for cases of willful misconduct or malfeasance on the Trustee's part.

**(c) Incapacity**

Except as otherwise provided in this trust, a person is considered incapacitated in any of the following circumstances.

**(1) The Opinion of Two Licensed Physicians**

An individual is considered to be incapacitated whenever two licensed physicians give the opinion that the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age; illness; use of prescription medications, drugs, or other substances; or any other cause. If an individual whose capacity is in question refuses to provide necessary documentation or otherwise submit to examination by licensed physicians, that individual will be considered incapacitated.

An individual is considered restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

**(2) Court Determination**

An individual is considered incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent, or legally incapacitated.

**(3) Detention, Disappearance, or Absence**

An individual is considered to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of my Trustee, or by the affidavit of any beneficiary if no Trustee is then serving. The affidavit must describe the circumstances of the individual's disappearance, absence, or detention, and may be relied upon by any third party dealing in good faith with my Trustee.

**(d) Include, Includes, Including**

In this document, the words include, includes, and including mean include without limitation, includes without limitation and including without limitation, respectively. Include, includes, and including are words of illustration and enlargement, not words of limitation or exclusivity.

**(e) Income Beneficiary**

The term *Income Beneficiary* means any beneficiary who is then entitled to receive distributions of the trust's net income, whether mandatory or discretionary.

Unless otherwise provided in this trust, the phrase *majority of the Income Beneficiaries* means any combination of Income Beneficiaries who would receive more than 50% of the accrued net income if that income were distributed on the day of a vote. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income receive the imputed income in equal shares.

References to a *majority* refer to a majority of the entire trust collectively until my Trustee allocates property to separate trusts or trust shares. After my Trustee allocates property to separate trusts or trust shares, references to a *majority* refer to a majority of each separate trust or trust share.

**(f) Independent Trustee**

The term *Independent Trustee* means any Trustee who is not an Interested Trustee as defined in Subsection (h) and includes a Special Trustee appointed under the provisions of Section 3.07.

**(g) Instrument**

The term *this instrument* means this trust, and includes all trusts created under the terms of this trust.

**(h) Interested Trustee**

The term *Interested Trustee* means a Trustee who:

is a transferor or beneficiary;

is related or subordinate to a transferor or beneficiary;

can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor; or

can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.

For purposes of this Subsection, *transferor* means a person who transferred property to the trust, including a person whose disclaimer resulted in property passing to the trust. *Beneficiary* means a person who is or may become eligible to receive income or principal from the trust under the terms of the trust, even if this person has only a remote contingent remainder interest in the trust, but not if the person's only interest is as a potential appointee under a power of appointment. *Related or subordinate* is used as defined in Internal Revenue Code Section 672(c).

**(i) Internal Revenue Code and Treasury Regulations**

References to the *Internal Revenue Code* or to its provisions are to the Internal Revenue Code of 1986, as amended, and any corresponding Treasury Regulations. References to the *Treasury Regulations*, are to the Treasury Regulations under the Internal Revenue

Code in effect. If a particular provision of the Internal Revenue Code is renumbered or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is considered to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this trust. The same rule applies to references to the Treasury Regulations.

**(j) Legal Representative or Personal Representative**

As used in this trust document, the term *Legal Representative* or *Personal Representative* means a person's guardian, conservator, executor, administrator, Trustee, attorney in fact under a Durable Power of Attorney, or any other person or entity representing a person or the person's estate. In the case of a minor beneficiary, the beneficiary's parent or another adult with custody of the beneficiary, except for any transferor to a trust created under this instrument, will be considered the beneficiary's Legal Representative for purposes of this trust.

**(k) Primary Beneficiary**

The *Primary Beneficiary* of a trust created under this trust is that trust's oldest Income Beneficiary, unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

**(l) Shall and May**

Unless otherwise specifically provided in this trust or by the context in which used, I use the word *shall* in this trust to impose a duty, command, direct, or require, and the word *may* to allow or permit, but not require. In the context of my Trustee, when I use the word *shall* I intend to impose a fiduciary duty on my Trustee. When I use the word *may* I intend to empower my Trustee to act with the Trustee's sole and absolute discretion unless otherwise stated in this trust. When I use the words *may not* in reference to my Trustee, I specifically mean my Trustee *is not permitted to*.

**(m) Settlor**

*Settlor* has the same legal meaning as *Grantor*, *Trustor* or any other term referring to the maker of a trust.

**(n) Trust**

The terms *this trust*, *this document*, *instrument*, and *this trust document* refer to this trust and all trusts created under the terms of this trust.

**(o) Trustee**

The terms *my Trustee* and *Trustee* refer to the Initial Trustees named in Article One and to any successor, substitute, replacement, or additional person, corporation, or other entity that ever acts as the Trustee of any trust created under the terms of this trust. The term *Trustee* refers to singular or plural as the context may require.

**(p) Trust Property**

The term *trust property* means all property acquired from any source and held by a Trustee under this trust.

## **Section 10.06 General Provisions and Rules of Construction**

The following general provisions and rules of construction apply to this trust.

### **(a) Multiple Originals; Validity of Paper or Electronic Copies**

This trust may be executed in any number of counterparts, each of which will be considered an original.

Any person may rely on a paper or electronic copy of this trust that the Trustee certifies to be a true copy as if it were an original.

### **(b) Singular and Plural; Gender**

Unless the context requires otherwise, singular words may be construed as plural, and plural words may be construed as singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word *or*, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires.

### **(c) Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and Subsections used within this trust are included solely for the convenience of the reader. They have no significance in the interpretation or construction of this trust.

### **(d) Governing State Law**

This trust is governed, construed, and administered according to the laws of Texas, as amended except as to trust property required by law to be governed by the laws of another jurisdiction and unless the situs of administration is changed under Section 10.04.

### **(e) Notices**

Unless otherwise stated, any notice required under this trust will be in writing. The notice may be personally delivered with proof of delivery to the party requiring notice and will be effective on the date personally delivered. Notice may also be mailed, postage prepaid, by certified mail with return receipt requested to the last known address of the party requiring notice. Mailed notice is effective on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If the party requiring notice is a minor or incapacitated individual, notice will be given to the parent or Legal Representative.

### **(f) Severability**

The invalidity or unenforceability of any provision of this trust does not affect the validity or enforceability of any other provision of this trust. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this trust are to be interpreted as if the invalid provision had never been included.

I have executed this trust on October 28, 2015. This Irrevocable Trust Agreement is effective when signed by me, whether or not now signed by a Trustee.

Muriel Mintz  
Muriel L. Mintz, Settlor

Barbara Mintz Latham  
Barbara Mintz Latham, Trustee

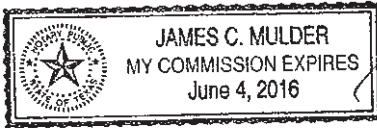
Donald M. Mintz  
Donald M. Mintz, Trustee



STATE OF TEXAS  
COUNTY OF HARRIS

Before me, the undersigned, Notary Public, on this day personally appeared Muriel L. Mintz, as Settlor, Barbara Mintz Latham, as Trustee, and Donald M. Mintz, as Trustee, known to me to be the persons whose names are subscribed to the foregoing instrument and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and official seal this day, October 28, 2015.



  
\_\_\_\_\_  
Notary Public, State of Texas

## Schedule A

Proceeds from sale of home located at 7950 N. Stadium Dr. Apt. 247, Houston, TX 77030

All cash from bank accounts other than IRA.

Muriel L. Mintz Family Trust

A - 1

Cause No. 462505

Harris County - County Probate Court No. 3

IN RE: § IN THE PROBATE COURT  
§  
§ NO. TWO (2) OF  
§  
THE MURIEL L. MINTZ FAMILY TRUST § HARRIS COUNTY, TEXAS

**ORIGINAL PETITION, APPLICATION FOR REMOVAL OF TRUSTEE, AND APPLICATION FOR INJUNCTIVE RELIEF**

1 Pers TRO by In  
11/28/17

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Donald M. Mintz (“Plaintiff”) to file this, his Original Petition, Application for Removal of Trustee, and Application for Injunctive Relief, and in support thereof would respectfully show the Court as follows:

**I. Discovery Level**

1. Plaintiff requests that discovery be conducted pursuant to Level 2 of the Texas Rules of Civil Procedure.

**II. Introduction and Parties**

2. This case involves the Muriel L. Mintz Family Trust (the “Trust”), established by a trust agreement on October 28, 2015, attached hereto as Exhibit “A.” The Trust was created by Muriel L. Mintz, who is the subject of a guardianship pending in this Court under Cause Number 456,059 (“Muriel”).

3. Plaintiff is Donald M. Mintz, Co-Trustee of the Trust, and individually as a beneficiary of the Trust. Plaintiff is also the son of Muriel Mintz.

4. Defendant is Barbara Latham (“Defendant”), individually, as purported Co-Trustee of the Trust, and as agent and attorney-in-fact for Muriel under a purported statutory durable power of attorney. Defendant is also a beneficiary of the Trust and Muriel’s daughter. Defendant may be

served through her attorneys of record, Erinn G. Brown, 4606 W. Walnut, Pearland, Texas 77581, and Candice Schwager, 1417 Ramada Dr., Houston, Texas 77062.

### **III. Background Facts**

5. On or about October 28, 2015, Muriel L. Mintz created the Muriel L. Mintz Family Trust.

6. Plaintiff and Defendant are the Co-Trustees of the Trust.

7. Muriel suffers from Major Neurocognitive Disorder, Unspecified, Moderate Severity, the previous name for this was Dementia Not Otherwise Specified. A guardianship proceeding (the "Guardianship") has been filed to appoint an independent third-party guardian of Muriel's person and estate under Cause No. 456,059; *In the Guardianship of Muriel Luba Mintz, an Incapacitated Person*; In the Probate Court No. Two (2) of Harris County, Texas.

8. Bank of America held account(s) explicitly in the name of the Trust.

9. Bank of America also holds an account in the name of Barbara Latham, individually, said account number ending in 7007.

10. The Application to appoint a guardian for Muriel was filed on March 8, 2017.

11. Between March 15, 2017 and September 12, 2017, Defendant transferred Trust assets from the Bank of America Account No. xxxx-xxxx-5966 to her personal account at Bank of America, xxxx-xxxx-7007 in the amount of \$92,398.96.

12. Defendant has added herself as the "Trustee" on the Trust accounts held through Bank of America, without consulting or seeking permission of the other Co-Trustee. She is using her supposed position to control the Trust assets to the exclusion of Plaintiff and the other beneficiaries.

13. Defendant is also acting as Muriel's agent pursuant to a purported statutory durable power of attorney. Using her position as Muriel's purported agent and/or as Trustee, upon information and belief, Defendant is transferring Trust accounts to herself. These changes have been made without Muriel's knowledge or approval (Muriel lacks the mental capacity to approve such actions) and are contrary to Muriel's wishes as evidenced by the terms of the Trust. *See Ex. A.*

#### **IV. Jurisdiction and Venue**

14. This Court has jurisdiction and venue pursuant to Tex. Prop. Code §§ 115.001 and 115.002; Tex. Est. Code §§ 32.006 and 33.002; and Tex. Civ. Prac. & Rem. Code § 15.002.

#### **V. Cause of Action**

15. Plaintiff incorporates by reference all preceding paragraphs.

16. To establish a claim for breach of fiduciary duty, a plaintiff must prove: (1) the existence of a fiduciary relationship; (2) the defendant's breach of the fiduciary duties accompanying the relationship; and (3) the breach of the duty either injured the plaintiff or benefited the defendant. *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App. –Dallas 2006, pet. denied).

17. A fiduciary relationship exists as a matter of law between a trustee and the beneficiary of a trust. *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1999). Defendant breached his fiduciary duties to Plaintiff in numerous ways, including (but not limited to):

- a. Failing to cooperate or consult with the other Co-Trustee; and
- b. Self-dealing by transferring Trust assets to herself.

18. Defendant's breaches of fiduciary duty have proximately caused injury to the Plaintiff by reducing the value of his interest (as well as the other beneficiaries' interest) in the

Trust. Defendant's breaches have also proximately caused injury to the Trust itself, which Plaintiff represents as Co-Trustee. Defendant has also improperly benefitted financially from her breaches of fiduciary duty.

19. For the foregoing reasons, Plaintiff requests that Defendant be held liable for her breaches of fiduciary duty; that Defendant be ordered to pay damages to Plaintiff; and that a constructive trust be imposed over all property misappropriated by Defendant.

**VI. Application for Removal of Trustee**

20. Plaintiff incorporates by reference all preceding paragraphs.

21. It would be in the best interest of the beneficiaries and the Trust for this Court to remove Defendant from her position as Co-Trustee of the Trust because she has "materially violated or attempted to violate the terms of the trust[s] and the violation or attempted violation result[ed] in a material financial loss to the trust[s]." Tex. Prop. Code § 113.082(1)." Defendant has failed to cooperate with his Co-Trustee, and transferred Trust assets to herself. Defendant should therefore be removed as Co-Trustee for these violations and attempted violations of Trust terms.

22. It would further be in the beneficiaries' best interest for this Court to remove Defendant from her position as Co-Trustee of the Trusts because of her breaches of fiduciary duty, described above and incorporated herein as if fully restated. "A trustee may be removed...if (4) the Court finds other cause for removal." Tex. Prop. Code § 113.082(4). The Court has discretion to determine whether a Trustee should be removed, thereby "insur[ing] that the grounds of removal are not expressly limited to those enumerated, but may include others that the trial court, in its discretion, deems proper." *Lee v. Lee*, 47 S.W.3d 767, 791 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

23. Moreover, Defendant's misconduct as Muriel's agent evidences her unsuitability to serve in a fiduciary role. It would be in the beneficiaries' best interest to remove Defendant as Co-Trustee based on her disloyalty to her principal under the power of attorney.

24. For the foregoing reasons, Plaintiff requests that this Court remove Defendant as Co-Trustee of the Trusts.

## **VII. Application for Ex Pare Temporary Restraining Order and Temporary Injunction**

25. Plaintiff incorporates by reference all preceding paragraphs.

26. Plaintiff requests this Court issue a temporary restraining order and thereafter a temporary injunction against Defendant and Bank of America, restraining them from the actions set forth below. *See* Tex. R. Civ. P. 680 *et seq.*

27. The facts alleged in this petition have been verified by the Verification of Donald M. Mintz, attached to this petition. Plaintiff is entitled to injunctive relief pursuant to the laws of the State of Texas and the principles of equity.

### **A. Entitlement to Injunctive Relief**

28. Plaintiff is entitled to injunctive relief against Defendant and Bank of America because: 1) Plaintiff has a valid cause of action against Defendant; 2) Plaintiff has a probable right to relief; and 3) probable, imminent, and irreparable harm will occur in the interim for which there is no adequate remedy at law.

29. ***Valid Cause of Action.*** As shown above, Defendant has engaged in wrongful conduct, giving rise to Plaintiff's cause of action for breach of fiduciary duty as well as the need to remove Defendant as Co-Trustee of the Trust. Therefore, Plaintiff has a valid cause of action which will support injunctive relief.

30. **Probable Right to Relief.** A party seeking injunctive relief must demonstrate a probable right to relief upon final trial. To demonstrate a probable right to relief, Plaintiff need only show a probable right to recovery; she “is not required to establish that [s]he will ultimately prevail in the suit.” *Liberty Mut. Ins. Co. v. Mustang Tractor & Equip. Co.*, 812 S.W.2d 663, 665 (Tex. App.—Houston [14th Dist.] 1991, no writ). Plaintiff is only required to “allege a cause of action and offer evidence that tends to support the right to recover on the merits...because the ultimate merits of the case are not before the trial court.” *Dallas Anesthesiology Associates, P.A. v. Texas Anesthesia Group, P.A.*, 190 S.W.3d 891, 896-97 (Tex. App.—Dallas 2006, no pet.) The only question before the Court at this time is whether Plaintiff is entitled to preserve the status quo pending trial on the merits, which is defined as “the last, actual, peaceable, non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (orig. proceeding) (internal citations omitted).

31. As stated above, Defendant has refused to cooperate with Plaintiff regarding the Trust, and transferred Trust assets to herself. Further investigation and discovery will likely reveal additional evidence of Defendant’s wrongdoing. Plaintiff will be able to meet his burden of proof to show Defendant’s breaches of fiduciary duty. Plaintiff will also be able to meet his burden of proof regarding Defendant’s removal as Co-Trustee. Therefore, the facts set forth herein establish a probable right to relief against Defendant.

32. **Probable, Imminent, and Irreparable Injury.** The following facts and arguments demonstrate that probable, imminent, and irreparable injury will occur unless a temporary restraining order, and upon hearing, a temporary injunction, are imposed:

- a. **Probable, Imminent Harm.** Temporary injunctive relief is proper when the harm sought to be prevented is imminent or immediate. *Crawford Energy, Inc. v.*



*Texas Indus., Inc.* 541 S.W.2d 463, 467 (Tex. Civ. App.—Dallas 1976, no writ). Without immediate restrictions on Defendant's acts and Bank of America's ability to change and/or transfer accounts according to Defendant's wishes, Defendant will be able to freely convert Trust assets. Defendant's past actions such as transferring assets to herself individually, demonstrate that she poses an ongoing danger to Trust assets.

- b. *Irreparable Injury*. The legal test for determining whether an injury will be irreparable is whether the injury is such that the injured party cannot be adequately compensated in damages, or is one for which damages cannot be measured by any pecuniary standard. Damages here cannot be measured because it is as of yet unknown—and unknowable—which assets Defendant has already converted, or will seek to convert. Moreover, it is unknown and unknowable what effect Defendant's refusal to cooperate with Plaintiff as Co-Trustees will have on the effective and profitable operation of the Trust. Furthermore, Defendant's acts are of a recurrent and continuous nature such that Plaintiff would otherwise be required to file successive actions. Finally, Defendant's removal as Co-Trustee is a remedy which is not measurable by, and cannot be substituted with, monetary damages.

For the foregoing reasons, Plaintiff has demonstrated that probable, imminent, and irreparable injury will occur if Defendant and Bank of America are not enjoined.

#### **B. Requests for Injunctive Relief**

33. *Parties and Actions to be Restrained*. Plaintiff requests that this Court grant a temporary restraining order, set a hearing on her application for temporary injunction within

fourteen (14) days after the entering of the temporary restraining order, and after said hearing issue a temporary injunction prohibiting:

- a. Defendant Barbara Latham, individually, as Co-Trustee of the Muriel L. Mintz Family Trust, and as agent and attorney-in-fact for Muriel L. Mintz, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds or other assets held in any account belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust.
- b. Defendant Barbara Latham, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds which were transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of \$92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007, and to hold any such funds or assets acquired by her pending the disposition of this case or future order of this Court; and
- c. Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from transferring, converting, removing, or disposing of any funds or assets

held in any accounts belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust.

- d. Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from transferring, converting, removing, or disposing of any funds or assets transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of \$92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007.

34. ***Bond.*** Plaintiff is willing to post a bond, if required by this Court.

35. ***Request for Temporary Restraining Order.*** For the foregoing reasons, Plaintiff requests that this Court impose a temporary restraining order as stated above to preserve the status quo and prevent the transfer, removal, or spending of funds held in Bank of America and/or other accounts and any further damage to the Trust.

36. ***Request for Temporary Injunction.*** For the foregoing reasons, Plaintiff further requests that this Court set his application for temporary injunction for hearing within fourteen (14) days of the entering of the temporary restraining order, and upon said hearing, issue a temporary injunction against Defendant and Bank of America to enjoin them in the manner stated above, pending the resolution of this and any other related, relevant lawsuit.

#### **VIII. Other Requests for Relief**

37. ***Interest.*** Plaintiff further requests that this Court award him any and all pre- and post-judgment interest to which he may be entitled.

38. *Attorney's Fees.* Plaintiff further requests that he be awarded attorney's fees and costs pursuant to the Texas Trust Code.

39. *Conditions Precedent.* All conditions precedent to Plaintiff's requests for relief have been met.

40. *Rule 193.7 Notice.* Defendant is hereby notified that Plaintiff intends to use all documents produced by Defendant in discovery at the trial of this cause, and therefore requests that Defendant assert any objections to the authenticity of any document produced by her within ten (10) days of its production. Tex. R. Civ. P. 193.7.

### **IX. Conclusion and Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Donald M. Mintz respectfully requests: 1) that this Court grant a temporary restraining order prohibiting the acts stated below, set a hearing on his application for temporary injunction within fourteen (14) days after the entering of the temporary restraining order, and after said hearing issue a temporary injunction prohibiting:

- a. Defendant Barbara Latham, individually, as Co-Trustee of the Muriel L. Mintz Family Trust, and as agent and attorney-in-fact for Muriel L. Mintz, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds or other assets held in any account belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust.

- b. Defendant Barbara Latham, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds which were transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of \$92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007, and to hold any such funds or assets acquired by her pending the disposition of this case or future order of this Court; and
- c. Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from transferring, converting, removing, or disposing of any funds or assets held in any accounts belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust.
- d. Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, from transferring, converting, removing, or disposing of any funds or assets transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of \$92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007;

2) that Defendant Barbara Latham be cited to appear and answer, and that upon final hearing Plaintiff have judgment against her as requested above; and 3) any and all other relief, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

**OSTROM MORRIS, PLLC**

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**Attorneys for Donald M. Mintz**

STATE OF TEXAS

§  
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COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Donald M. Mintz, known to me to be the person whose name is subscribed to the above and foregoing Application, and stated under oath and after being duly sworn, the following:

I am the Plaintiff and Applicant in the foregoing Original Petition, Application for Removal of Trustee, and Application for Injunctive Relief; that such instrument contains a correct and complete statement of the facts and matters to which it relates; and that the contents thereof are within my personal knowledge and are true, complete, and correct to the best of my personal knowledge.

Donald M. Mintz  
Donald M. Mintz

SWORN TO AND SUBSCRIBED BEFORE ME by Donald M. Mintz on this the 27th day of November, 2017.

(seal)



Kristi Irick  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS  
129010238  
Notary ID #:

COPY

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of November, 2017, a true and correct copy of the foregoing has been served on all the parties of record in this cause according to the Texas Rules of Civil Procedure by hand delivery, electronic mail, first class mail, certified mail return receipt requested or facsimile:

**VIA EMAIL:**

Erinn G. Brown  
4606 W. Walnut  
Pearland, TX 77581  
[erinn@ebrownlaw.net](mailto:erinn@ebrownlaw.net)

Teresa K. Pitre  
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Donald Mintz  
3519 Yupon St.  
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Candice Schwager  
1417 Ramada Dr.  
Houston, Texas 77062  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

  
\_\_\_\_\_  
Stacy L. Kelly



Cause No. \_\_\_\_\_

IN RE:

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IN THE PROBATE COURT

NO. TWO (2) OF

THE MURIEL L. MINTZ FAMILY TRUST

HARRIS COUNTY, TEXAS

**TEMPORARY RESTRAINING ORDER**

CAME ON TO BE HEARD this day the verified Application for Temporary Restraining Order filed by Plaintiff Donald M. Mintz (“Plaintiff”). After considering the Application, the facts of the case, and arguments of counsel, the Court finds that there is sufficient evidence:

1. That Plaintiff and the Muriel L. Mintz Family Trust (“Trust”) will suffer imminent irreparable harm unless injunctive relief is granted;
2. That Defendant Barbara Latham (“Defendant”) 1) refuses to cooperate with Plaintiff as Co-Trustees, proximately causing injury to Plaintiff and the Trust; and 2) has committed or will commit self-dealing by transferring Trust assets to herself;
3. That such injuries would be irreparable, and Plaintiff cannot be adequately compensated in damages, because 1) it is unknown and unknowable which assets Defendant has already converted or will seek to convert, which could result in numerous incalculable damages; 2) it is unknown and unknowable what effect Defendant’s refusal to cooperate with Plaintiff as Co-Trustees will have on the effective and profitable operation of the Trust, which could result in numerous incalculable damages; 3) Defendant’s acts are of a recurrent and continuous nature such that Plaintiff would otherwise be required to file successive actions; and 4) Defendant’s removal as Co-Trustee is a remedy which is not measurable by, and cannot be substituted with, monetary damages;

4. That the foregoing findings also demonstrate that unless this Court issues this Temporary Restraining Order immediately, and thereafter a temporary injunction, it is reasonably foreseeable that Defendant will attempt and perhaps succeed in dissipating and depleting substantial amounts of Trust assets to the detriment of Plaintiff and the Trust beneficiaries; and
5. That Bank of America holds and manages the known account(s) which would be subject to this Temporary Restraining Order, and should also be enjoined in order to preserve the status quo.

Based on the foregoing findings and according to the principles of justice and equity, it is therefore

ORDERED that Defendant Barbara Latham, individually, as Co-Trustee of the Muriel L. Mintz Family Trust, and as agent and attorney-in-fact for Muriel L. Mintz, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds or other assets held in any account belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust, and that any such funds or assets acquired by her from these accounts are held in trust pending the disposition of this case or future order of this Court. It is further,

ORDERED that Defendant Barbara Latham, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds which were transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically

funds in the amount of \$92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007, and to hold any such funds or assets acquired by her pending the disposition of this case or future order of this Court. It is further

ORDERED that Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from transferring, converting, removing, or disposing of any funds or assets held in any accounts belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust. It is further

ORDERED that Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from transferring, converting, removing, or disposing of any funds or assets transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of \$92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007. It is further

ORDERED that this Temporary Restraining Order shall not be effective unless and until Plaintiff executes and files with the clerk a bond, in conformity with the law, in the amount of \_\_\_\_\_ . It is further

ORDERED that the Clerk of this Court shall issue notice to Defendant Barbara Latham that the hearing on Plaintiff's Application for Temporary Injunction is set for the \_\_\_\_\_ day of December, 2017, at \_\_\_\_\_ a.m/p.m before the Hon. Judge Wood, Harris County Probate Court No. Two (2), 201 Caroline, 6<sup>th</sup> Floor, Houston, Texas 77002, the purpose of which shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a final trial on the merits. It is further

ORDERED that this Temporary Restraining Order expires on the \_\_\_\_\_ day of December, 2017, such date being within fourteen (14) days from the date of this Temporary Restraining Order.

SIGNED this 28<sup>th</sup> day of November, 2017, at \_\_\_\_\_ a.m/p.m.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED AS TO FORM:

**OSTROM MORRIS, PLLC**

By: *Stacy Kelly*

STACY L. KELLY

State Bar No.: 24010153

[stacy@ostrommorris.com](mailto:stacy@ostrommorris.com)

KENNETH A. SCOTT

(TBA #00791629)

[kscott@ostrommorris.com](mailto:kscott@ostrommorris.com)

6363 Woodway, Suite 300

Houston, Texas 77057

713.863.8891

713.863.1051 E-Fax

**Attorneys for Donald M. Mintz**



STAN STANART  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

SERVE INSTANTER  
WRIT FOR TEMPORARY RESTRAINING ORDER

The State of Texas { Docket No. 462505 Receipt No. PB-2017-91207 11-28 \$75  
County of Harris { In the Estate of: The Muriel L. Mintz Family Trust

To any Sheriff or Constable of any County in the State of Texas

Greetings:

Barbara Latham, by and through her Attorney of record Candice Schwager, 1417 Ramada Dr., Houston, Texas 77062.

Whereas, Donald M. Mintz, filed a Petition in the County Probate Court No. 2, of Harris County on November 27, 2017, in a suit numbered 462505 on the docket of said court, wherein Donald M. Mintz, is plaintiff, and Barbara Latham, is defendant, and wherein plaintiff alleges that (see attached) all of which is more fully shown by a true and correct copy of plaintiff's petition which is attached hereto: and upon presentation of said petition to her and consideration thereof the Honorable Mike Wood, Judge of said court, made the following order and fiat thereon: (see attached) and whereas, the said; Donald M. Mintz has executed and filed with the clerk of said court a bond, which has been approved in the sum of One Thousand dollars (\$1,000.00), payable and conditioned as required by law and the order of the Judge:

You are therefore commanded to desist and refrain from (see attached) until and pending the hearing of such petition upon plaintiff's Application for a Temporary Injunction, before the Judge of said court at 1:30 p.m., on December 12, 2017, in County Probate Court No. 2, at the Courthouse in the City of Houston, Harris County, Texas, when and where you will appear to show cause why injunction should not be granted upon such petition effective until Final Decree in such suit.

Herein fail not, but have you then and there before said court this Writ, with your return thereon, showing how you have executed the same.

Issued and given under my hand of said court, at Houston, Texas, on this the 28th day of November, 2017.

(Seal)

Stan Stanart, County Clerk  
County Probate Court No. 2  
201 Caroline, Room 800  
Harris County, Texas

Allen Hurley  
Deputy County Clerk

Attorney: Stacy L. Kelly  
6363 Woodway, Suite 300  
Houston TX 77057  
713-863-8891

P.O. Box 1525 • Houston, TX 77251-1525 • (713) 274-8585

www.cclerk.hctx.net

462505

Cause No. 456,059

IN RE:

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IN THE PROBATE COURT

NO. TWO (2) OF

THE MURIEL L. MINTZ FAMILY TRUST

HARRIS COUNTY, TEXAS

**TEMPORARY RESTRAINING ORDER**

CAME ON TO BE HEARD this day the verified Application for Temporary Restraining Order filed by Plaintiff Donald M. Mintz ("Plaintiff"). After considering the Application, the facts of the case, and arguments of counsel, the Court finds that there is sufficient evidence:

1. That Plaintiff and the Muriel L. Mintz Family Trust ("Trust") will suffer imminent irreparable harm unless injunctive relief is granted;
2. That Defendant Barbara Latham ("Defendant") 1) refuses to cooperate with Plaintiff as Co-Trustees, proximately causing injury to Plaintiff and the Trust; and 2) has committed or will commit self-dealing by transferring Trust assets to herself;
3. That such injuries would be irreparable, and Plaintiff cannot be adequately compensated in damages, because 1) it is unknown and unknowable which assets Defendant has already converted or will seek to convert, which could result in numerous incalculable damages; 2) it is unknown and unknowable what effect Defendant's refusal to cooperate with Plaintiff as Co-Trustees will have on the effective and profitable operation of the Trust, which could result in numerous incalculable damages; 3) Defendant's acts are of a recurrent and continuous nature such that Plaintiff would otherwise be required to file successive actions; and 4) Defendant's removal as Co-Trustee is a remedy which is not measurable by, and cannot be substituted with, monetary damages;

4. That the foregoing findings also demonstrate that unless this Court issues this Temporary Restraining Order immediately, and thereafter a temporary injunction, it is reasonably foreseeable that Defendant will attempt and perhaps succeed in dissipating and depleting substantial amounts of Trust assets to the detriment of Plaintiff and the Trust beneficiaries; and
5. That Bank of America holds and manages the known account(s) which would be subject to this Temporary Restraining Order, and should also be enjoined in order to preserve the status quo.

Based on the foregoing findings and according to the principles of justice and equity, it is therefore

ORDERED that Defendant Barbara Latham, individually, as Co-Trustee of the Muriel L. Mintz Family Trust, and as agent and attorney-in-fact for Muriel L. Mintz, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds or other assets held in any account belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust, and that any such funds or assets acquired by her from these accounts are held in trust pending the disposition of this case or future order of this Court. It is further,

ORDERED that Defendant Barbara Latham, or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from attempting to withdraw, conceal, spend, transfer, pledge, deposit, encumber, transfer, gift, or otherwise remove or dispose of any funds which were transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically

funds in the amount of \$92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007, and to hold any such funds or assets acquired by her pending the disposition of this case or future order of this Court. It is further

ORDERED that Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from transferring, converting, removing, or disposing of any funds or assets held in any accounts belonging to, at any time, Muriel L. Mintz, and/or the Muriel L. Mintz Family Trust. It is further

ORDERED that Bank of America or any person or entity purporting to be acting as an officer, agent, servant, employee, and/or acting in concert or participation with same, is hereby ENJOINED and PROHIBITED from transferring, converting, removing, or disposing of any funds or assets transferred to Barbara Latham between March 15, 2017 and September 12, 2017, specifically funds in the amount of \$92,398.96 which were at one point held by Bank of America in the name of Barbara Latham, Account number xxxx-xxxx-7007. It is further

ORDERED that this Temporary Restraining Order shall not be effective unless and until Plaintiff executes and files with the clerk a bond, in conformity with the law, in the amount of \$1,000.. It is further

ORDERED that the Clerk of this Court shall issue notice to Defendant Barbara Latham that the hearing on Plaintiff's Application for Temporary Injunction is set for the 12 day of December, 2017, at 1:30 a.m.(p.m) before the Hon. Judge Wood, Harris County Probate Court No. Two (2), 201 Caroline, 6<sup>th</sup> Floor, Houston, Texas 77002, the purpose of which shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a final trial on the merits. It is further



ORDERED that this Temporary Restraining Order expires on the 12 day of December, 2017, such date being within fourteen (14) days from the date of this Temporary Restraining Order.

SIGNED this 28<sup>th</sup> day of November, 2017, at 11:42 oa.m/p.m.

*Michelle Wood*

JUDGE PRESIDING

APPROVED AS TO FORM:

**OSTROM MORRIS, PLLC**

By: *Stacy Kelly*  
STACY L. KELLY  
State Bar No.: 24010153  
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713.863.8891  
713.863.1051 E-Fax

**Attorneys for Donald M. Mintz**

*Stan Stewart*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

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FILED