

INTER-OFFICE MEMORANDUM

*Ford  
Estate Planning*

May 1, 2010

Senior Partner  
Somelawfirm, L.L.P.

Re: Mr. & Mrs. Daniel &  
Cathleen Green

Today I met with the Greens to discuss the formation of an estate plan. During our meeting I learned the following:

Daniel Green is 58 years old. He has been employed as a meat cutter for most of his adult life. He has no known health issues.

Cathleen Green is 55 years old. She used to be a self-employed real estate agent but gave that business up to become a homemaker. She has no known health issues.

The Greens have been happily married for 17 years. They are both life-long residents of Massachusetts.

The Greens have two children, both from their present marriage.

Steven, their son, is 29 years old, is gainfully employed and is presently working on attaining his masters degree in finance. He married his wife Olga seven years ago. Olga is 28 years old. Neither Steven nor Olga have any children. They also live in Massachusetts, in an apartment in Somerville. They have one young child, Matthew, age 4.

Becky, the Green's daughter, is 21 years old. She did not finish high school and has lived apart from her parents since age 17 but remains on good terms with her parents. Becky has worked at various jobs during her life but has not been able to keep any job for very long because she has recurring substance abuse problems. Becky has does not yet have any children.

The Green's assets are as follows:

Assets:	<u>Dan</u>	<u>Cathy</u>	<u>Joint</u>	<u>Total</u>	<u>Memo (cost)</u>
The Family Residence (MA)			430,000	430,000	55,000
Cash & Checking Accounts			5,000	5,000	
Savings Account 1			50,000	50,000	
Savings Account 2		225,000		225,000	
Investment Portfolio			2,750,000	2,750,000	1,900,000
401K	196,000			196,000	
Automobiles	32,000	18,000		50,000	
Liabilities:					
Charge Accounts			-7,100	-7,100	
Net Assets:	<u>228,000</u>	<u>243,000</u>	<u>3,227,900</u>	<u>3,698,900</u>	

The Greens have four main goals for their estate plan:

- 1) Minimization of any applicable taxes
- 2) To provide for the surviving spouse
- 3) To provide for their children and their childrens' families (if any) after the passing of the surviving spouse
- 4) To maintain control over the majority of their assets while they live

The Green's are particularly concerned about their daughter Becky and what may happen if she has a ready supply of liquid assets.

The Green's do not anticipate any major changes in their financial situation. They are open to any estate plan that accomplishes their goals. Accordingly, I will be drafting an estate plan based upon these premises for your review.

**INTER-OFFICE MEMORANDUM**

May 11, 2010

Senior Partner

Somelawfirm, L.L.P.

Re: Draft Revocable Trust for

Mr. & Mrs. Daniel & Cathleen Green

I have attached the revocable trust instrument that I have drafted for the Greens. The attached trust is for Daniel but Cathleen's should mirror Daniel's in all relevant aspects.

I drafted the trust according to the information I collected from the Greens during my meeting with them last on May 1st, the details of which I communicated to you then but have enclosed here again for reference and convenience purposes.

As you may recall, the Greens have four primary goals that they wished their estate plan to accomplish.

- 1) Minimization of any applicable taxes
- 2) To provide for the surviving spouse
- 3) To provide for their children and their childrens' families (if any) after the passing of the surviving spouse
- 4) To maintain control over the majority of their assets while they live

I will discuss each of those goals in turn and how the trust will aid in accomplishing it.

#### Minimization of Taxes

The first order of duty involves equalization of the assets of each of the Greens. Fortunately, Catherine's savings account is close in value to that of Daniel's pension. Assuming similar appreciation, it is not expected that they will become too disparate in value as to cause a planning issue at least until Daniel begins to take required distributions at age 70. The investment account is the only real issue then. That account should be divided into two separate accounts, one for each of them (they should probably also be invested similarly if possible so that their values stay equal). Assuming that is done and all these accounts are placed in the trusts, the crux of the tax planning can effectively take place.

In order to minimize the potential impact for taxes the trust must be structured to take advantage of

available federal and state exemptions from estate tax. At the present time there is no federal estate tax whatsoever until Congress either acts to put a new estate tax structure into place or the 2001 law comes back into play in 2011. Should the estate tax be reinstated at old levels the relevant federal tax exemption will be one million dollars, equaling the Massachusetts exemption. Should that occur some of the provisions included in the trust return become somewhat superfluous but it is doubtful that Congress will sit on their hands.

What is more likely is that Congress will put an exemption in place that will exceed the million dollar amount and we will effectively be returned to the planning tactics employed prior to 2010. The provisions in the drafted trust are meant to take such an overall exemption structure into account and to maximize both the federal and state estate tax exemptions. This will be accomplished by the creation of three sub-trusts from the residual trust estate

- 1) The Credit Shelter Trust
- 2) The State Credit Share Marital Trust (State QTIP Trust)
- 3) The Residual Marital Trust

The Credit Shelter Trust will be funded first according to a pecuniary formula as described In Article IV. That amount is equal to the maximum amount that may pass both federal and estate tax free. That amount is presently calculated to be one million dollars. That amount is assumed to remain unchanged unless Massachusetts indicates some inclination towards increasing the available exemption which is less likely than not considering current state finance issues. However, if the state exemption should increase, the Credit Shelter Trust is expected to move in lock step with it based upon the assumption that the federal exemption amount will equal or exceed the state applicable amount.

After removal of the Credit Shelter trust amount, the residual trust will again be divided to create the State Credit Share Marital Trust. The amount to be funded into this trust is also determined by a pecuniary formula and will be equal to the difference between the available federal exemption and the available state exemption. As noted earlier, no one knows at present how the federal estate tax will change in the coming year but all signs at present indicate that the federal exemption will be somewhere between three and five million dollars. Assuming a three million dollar figure, the State Credit Share Marital Trust would be funded with two million dollars, that being the difference between the federal and state exemptions. The function of the State Credit Marital Share Trust is pivotal to the maximization of tax savings. The mechanics involved are to elect a QTIP election for state tax purposes on this Trust while not exercising the same election for federal tax purposes. If done properly the amount in the trust will count towards the federal tax exemption thus maximizing the federal deduction when added to the amount previously utilized and set aside by the Credit Shelter Trust. Further, state estate tax on the amount in the trust is delayed until the death of the surviving spouse. A warning relative to the State Credit Share Marital Trust must be mentioned at this stage. For the trust to operate as planned and defer taxes until the death of the surviving spouse, it must follow what are called the QTIP rules under IRC 2056(b)(5). If the rules are not followed the amount will be included for state tax purposes in the estate of the first to die, thereby accelerating the state estate tax. The rules mandate the following restrictions on the trust:

- 1) All income of the trust must be paid at least annually to the spouse during her lifetime
- 2) Distributions of principal may only be made in favor of the surviving spouse and must be determinable by an ascertainable standard. Further, those distributions may only be made for purposes of the spouse's health, education, support or maintenance (the meanings of which are defined in Article XII of the trust).
- 3) The spouse may not have a general power of appointment over any of the trust assets. What

this means is that they can not make an appointment of principle to themselves, their creditors, their estate or the creditors of their estate. They can however be given a testamentary power to appoint any or all of the remaining trust assets upon their death to any party not listed as prohibited in the prior sentence.

4) The surviving spouse or may not be the trustee of the trust

What this all means in practice is that the surviving spouse may retain a life estate in the amount in the State Credit Share Marital Trust and the power to decide who gets whatever remains in the trust exists upon their death. While limiting in some ways, it appears the Greens will have sufficient funds in the Residual Marital Trust for flexibility purposes to accommodate any additional needs of the surviving spouse beyond what would fall into the categories allowed for distributions from the State Credit Share Marital Trust.

The Residual Marital Trust will hold the remainder of the residual trust and is not subject to any limitations on access by the surviving spouse. The amount in that trust represents what could not be transferred federal or state estate tax free by non-marital transfer. Whatever amount remains in this trust or otherwise owned by the surviving spouse upon their death will be included in their estate (along with, for state estate tax purposes, the remainder of the State Credit Share Marital Trust).

As indicated in the trust at Article IV (A)(3), the State Credit Share Marital Trust should only be invaded by the surviving spouse should the Residual Marital Trust be exhausted (along with their own assets that may exceed then current exemptions). The reason for this is simple. The remainder of the State Credit Share Trust will pass (according to the surviving spouse's power of appointment) federal

estate tax free. Therefore, any other available funds that may not otherwise pass free of federal estate taxes should be utilized before taking distributions from the State Credit Share Marital Trust.

Obviously, any funds in the Credit Shelter Trust should be used as a final solution as they will otherwise pass both federal and estate tax free. Further, these funds may pass directly to grandchildren or further descendants of the grantor free of GST tax so long as the total distributions of that kind do not exceed annual gift amounts (or the GST exclusion limit should either of the Greens decide to set aside part of the credit shelter trust aside upon its creation for the sole benefit of a family member more than one generation below themselves (assuming there is a living parent).

#### Providing for the Surviving Spouse

As indicated in the prior section, the trusts established from the estate of the first to die, along with the surviving spouse's own assets should be adequate to meet any needs or desires of the surviving spouse. Further, if not drawn upon, the amounts in trust are protected from most creditors or claimants of the surviving spouse (the mandatory distributions of income are not protected) or other beneficiaries.

#### Providing for Descendants After the Passing of the Surviving Spouse

As noted above, the trusts allow for flexibility as to the disposition of trust assets beyond the share of



the surviving spouse. By default if no testamentary gifts are made, the estate of the last to die will be divided amongst the descendants per stirpes (by the stock), with Rebecca (or her descendants) getting half and Steven (or his descendants) getting the other absent some holdback on either share (as described in the next section). It should be noted here that the amounts to the children, or their descendants should they predecease the last parent to die, are to be placed in spendthrift trusts for each primary beneficiary. This is done as a protective measure as we can not now know what situation the beneficiary may be when they otherwise would be able to make principal demands upon their beneficial share. While this may in a way seem unlikely to be unnecessary, the practical implications of any negative impact can easily be mitigated so long as the trustee appointed (and any later trustees) understand that this is purely precautionary in nature and that so long as no beneficial share seems in danger of undesired loss or improvidence, it may be paid out to the beneficiary without other reservation.

Also, as mentioned, are the further protections of the holdback provisions listed in Article 5(E). These are again meant to keep the trust assets in the family while at the same time protecting a beneficiary from some other problems they may be undergoing. The Greens have expressed concern particularly for their daughter in this regard. This holdback provisions serves to guide an uninformed trustee of additional considerations that should be made before distributions occur.

### Retained Control During Their Lifetimes

The Revocable Trust allows for almost unlimited control of assets during the lifetime of the settlor. Also, as mentioned, testamentary disposition of the State Marital Share is allowed by the surviving

spouse. The surviving spouse may also be trustee of the Credit Share Trust (but as mentioned should not make distributions to themselves unless absolutely necessary). This allows quite a bit of control over all of the Greens' assets during their lifetimes.

As with most trusts of this nature there are various other provisions not described here and most of which are common amongst most trusts. The focus of this memo has been to detail the particular concerns of the Greens but equal consideration has been given to all the other Articles within the trust and should be reviewed by the Greens for their understanding and agreement.

If you have any question concerning the above detailed provisions or any others please feel free to ask.

Sincerely,

621204-59

## DANIEL A. GREEN REVOCABLE TRUST

This Trust Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between DANIEL A. GREEN, now residing in Methuen, Massachusetts, as Grantor, and DANIEL A. GREEN and CATHLEEN A. GREEN, now residing in Methuen, Massachusetts, as Trustees.

### WITNESSETH:

I hereby transfer, assign and convey to the Trustees the property described in Schedule "A" attached hereto, receipt of which the Trustees hereby acknowledge. The Trustees agree to hold said property, together with any additions thereto (hereinafter called the "trust estate"), in trust, for the purposes and subject to the terms and conditions of this Agreement. I or any other person may at any time transfer to the trust estate by beneficiary designation, assignment and delivery, or by gift, devise, bequest, appointment or otherwise, any additional property acceptable to the Trustees. This trust shall be known as the "DANIEL A. GREEN REVOCABLE TRUST", and shall be administered as follows:

#### Article I.

##### Grantor Retained Powers

I reserve the right to alter, amend or revoke this Agreement, and the estates and interests hereby created, in whole or in part, by any duly acknowledged written instrument delivered to the Trustees; provided, however, that the duties and obligations of the Trustees hereunder shall not be increased without their written consent. This right is personal to me and may not be exercised by any person acting on my behalf in a fiduciary capacity.

#### Article II.

##### Trust during My Lifetime.

The Trustees shall hold and dispose of the trust estate for my benefit and shall pay to me or for my benefit so much or all of the net income and principal of the trust as I may from time to time request. If, in the opinion of the Trustees (other than me), or the named successor Trustee, if there is no other Trustee then acting, I am incapacitated, the Trustees may distribute to me or to my spouse so much or all of the net income and principal of the trust as the Trustees consider advisable to provide adequately for the education, maintenance in health and reasonable comfort, and support in accustomed manner of living of my spouse and me. The Trustees shall accumulate and add to principal at least annually any net income not so paid.

Without limiting the generality of the foregoing, if, in the opinion of the Trustees (other than me), or the named successor Trustee, if there is no other Trustee then acting, I am incapacitated, the Independent Trustee is specifically authorized to distribute to me or to my agent acting pursuant to a durable power of attorney executed by me such amounts as I or my agent specifically requests, in

writing, to begin or continue any gift-giving program established by me. The power to make distribution to my agent shall be limited in scope and manner to permit the agent to make gifts in the manner expressly set forth in the durable power of attorney executed by me in favor of such agent.

### Article III.

#### Disposition upon Death of Grantor.

Upon my death, the Trustees shall dispose of the remainder of the trust estate as follows:

(A) Payment of Expenses, Debts and Taxes.

1. Payment to or for Executor. The Trustees shall pay to or on behalf of the Executor of my estate or other personal representative ("the Executor"), out of the principal of the trust estate such amount or amounts as the Executor requests in writing for my funeral expenses, the expenses of administering my estate, any preresiduary gifts under my Will and any death taxes that are required by my Will to be paid as an administration expense. If an Executor is appointed to administer my estate, the Trustees may rely conclusively upon the written certification of the Executor as to the amount or amounts to be paid pursuant to this section.
2. Direct Payment. If no Executor is appointed to administer my estate, the Trustees shall pay, out of the trust estate as an administration expense, my funeral expenses, the expenses of administering my estate, and any death taxes, other than any generation-skipping transfer tax, imposed upon or with respect to property that passes (i) under this Agreement, (ii) from or under any retirement plan that passes to or in trust for the benefit of my spouse and/or my descendants at my death, or (iii) otherwise for which the federal estate tax marital deduction is allowed in my estate.
3. Proration, Apportionment and Recovery. Any debts, death taxes or expenses that are directed to be paid out of the trust estate shall be paid without proration or apportionment against any beneficiary under this Agreement and without any statutory rights to recover any amounts so paid (including any such right under section 2207A of the Code or any corresponding state statute). All other death taxes not directed to be paid out of the trust estate as an administration expense pursuant to this section shall be prorated and apportioned in the manner provided by law with all applicable rights of recovery.
4. Debts. All property directed to be distributed pursuant to the terms of this Article (other than property disposed of as part of the Residuary Trust Estate) shall be distributed subject to any lien, mortgage or other debt secured by such property. Otherwise, the Trustees in their sole discretion may (but shall not be obligated to) pay out of the trust estate any and all of my enforceable debts that are due and payable; provided, however, that no such debts shall be paid out of assets that are exempt from creditors' claims.
5. Charitable Pledges. The Trustees may, but are not required to, satisfy any outstanding pledge made by me in favor of any charitable organization.
6. Prohibited Use of Property. Notwithstanding any other provision of this section, the

Trustees shall not use the proceeds of any qualified retirement plan or any property that is exempt from state or federal death taxes that is held by or added to the trust estate by reason of my death to pay any debts, death taxes or expenses of administration pursuant to this section. The Trustees shall not contribute funds to my estate or make any payment directly or indirectly if such contribution or payment would subject to death taxes property that otherwise would not be subject to such taxes.

(B) Tangible Personal Property. The Trustees shall distribute all of the tangible personal property held or received by the Trustees at the time of my death, other than any single item of tangible personal property having a fair market value on the date of my death in excess of one hundred thousand dollars (\$100,000), which items shall be disposed of as part of the Residuary Trust Estate, as follows:

1. Distributions. Such property shall be distributed to my wife, if my wife survives me. If my wife does not survive me, such property shall be divided among my children who survive me, in such manner as they may agree. If my children cannot reach an agreement with respect to the disposition of such property within ninety (90) days after my death, or if any such child is then a minor or otherwise under a legal disability, then such property shall be divided by the Trustees in as nearly equal shares as practical.

2. Claims, Costs and Instructions. Each beneficiary of tangible personal property under this section shall be entitled to any claims in my favor existing at my death with respect to the property distributed to such beneficiary, and, to the extent practical, shall be entitled to any insurance policies relating to such tangible personal property. Any costs of distribution of any tangible personal property, including, without limitation, storage, insurance, packing and delivery, shall be paid out of my general estate as an administrative expense. It is my request, without creating any legal obligation, that my Executors and family give due consideration to any separate instructions left by me for their guidance with respect to dividing and disposing of my tangible personal property.

(C) Disposition of Residuary Trust Estate. The balance of the trust estate not otherwise disposed of by the preceding provisions of this Agreement (the "Residuary Trust Estate") shall be disposed of pursuant to Article IV of this Agreement.

#### Article IV.

##### Disposition of Residuary Trust Estate.

The property to be disposed of pursuant to this Article shall be disposed of as follows:

(A) Credit Shelter Share. If my wife survives me, the Trustees shall set aside the largest fractional share of the Residuary Trust Estate that may pass free of both federal estate tax and any state death tax imposed by reason of my death, which share shall be determined and disposed of as follows:

1. Determination of Share. For purposes of this section, the largest fractional share of the Residuary Trust Estate that may pass free of federal estate tax imposed by reason of my death (the "federal credit share") shall be determined based only on the credit against estate taxes provided by section 2010 of the Code. It shall be calculated by using the

final determinations in the federal estate tax proceeding for my estate. The largest fractional share of the Residuary Trust Estate that will pass free of any state death tax imposed by reason of my death (the "state credit share") shall be determined by using the final determinations in each applicable state death tax proceeding for my estate. The term "state death tax" shall not include any generation-skipping transfer tax imposed by any state. In calculating either the federal credit share or the state credit share, each shall be calculated by deducting the amount of any such credit (including any credit for gift tax purposes) used by me during lifetime and by the amount of any such credit applied against property passing pursuant to any prior provision of this Agreement, and assuming that the balance of the Residuary Trust Estate qualifies for any marital deduction or exemption allowed by section 2056 of the Code or by any similar provision of any such state, regardless of whether all or any portion of it does in fact so qualify. There shall be allocated to the share to be disposed of under this section any property that would not qualify for the federal estate tax marital deduction or any applicable state death tax marital deduction or exemption if allocated to the Residuary Marital Share.

2. Distributions. The Trustees shall hold such share in a separate trust hereunder (called the "Credit Shelter Trust") and may distribute so much or all of the net income and principal thereof to such one or more members of the class of individuals consisting of my wife and those of my descendants who are living from time to time during the term of the trust, in such shares and proportions, without requirement of equality, as the Trustees consider advisable to provide for the education, maintenance in health and reasonable comfort, and support in accustomed manner of living of any one or more of such individuals. In addition, the Independent Trustee may distribute so much or all of the net income and principal thereof to such one or more members of said class, in such shares and proportions, without requirement of equality, as the Independent Trustee considers advisable in its sole, absolute and uncontrolled discretion for any purposes whatsoever. The Trustees shall accumulate and add to principal at least annually any net income not so paid.

3. Limitation on Distributions. It is my request, without creating any legal obligation, that notwithstanding the foregoing no discretionary payment should be made from the principal of this trust to my wife unless and until all of the principal of the Marital Trust under section (B) of this Article has been completely paid out. The Trustees shall give first consideration to the needs of my wife before making distributions of income or principal to other eligible beneficiaries.

4. Termination of Trust. Upon the death of my wife, the Trustees shall distribute any remaining principal of the trust to or for the benefit of such individuals or organizations, upon such terms and conditions, including in further trust, as my wife shall direct and appoint in a written, inter vivos instrument delivered to the Trustees, or by a Will (dated subsequent to the last such inter vivos instrument) expressly referring to and exercising this power; provided, however, that this power shall be exercisable only in favor of a descendant of mine, if any such descendant is living, and, in any event, shall not be exercisable to any extent for the benefit of my wife, my wife's estate, or the creditors of either. Any such property not effectively appointed shall be disposed of pursuant to Article V, if the inclusion ratio of such trust is equal to zero, or pursuant to Article VI, if the inclusion ratio of such trust is greater than zero.

(B) Residuary Marital Share. If my wife survives me, the Trustees shall hold the balance of the

Residuary Trust Estate in a separate trust hereunder (called the "Marital Trust") to be disposed of as follows:

1. Distributions. The Trustees shall pay or apply all of the net income thereof to or for the benefit of my wife at least annually. The Trustee also may pay or apply so much or all of the principal thereof as the Trustees consider advisable to provide for the maintenance in health and reasonable comfort, and support in accustomed manner of living of my wife. In addition, the Independent Trustee may distribute so much or all of the principal thereof to my wife as the Independent Trustee considers advisable in its sole, absolute and uncontrolled discretion for any purposes whatsoever.
2. Termination of Trust. Upon the death of my wife, the Trustees shall distribute any remaining principal of the trust to or for the benefit of such individuals or organizations, upon such terms and conditions, as my wife shall direct and appoint in a written, inter vivos instrument delivered to the Trustees, or by a Will (dated subsequent to the last such inter vivos instrument) expressly referring to and exercising this power; provided, however, that this power shall be exercisable only in favor of a descendant of mine, if any such descendant is living, and, in any event, shall not be exercisable to any extent for the benefit of my wife, my wife's estate, or the creditors of either. Any such property not effectively so appointed shall be disposed of pursuant to Article VI, if the inclusion ratio of such trust is greater than zero, or pursuant to Article V if the inclusion ratio of such trust is equal to zero.
3. Retirement Plan Assets. If the Marital Trust is named as the beneficiary of a retirement plan (the "retirement plan"), the Trustees shall withdraw during the calendar year from the retirement plan an amount equal to the greatest of: (i) the minimum required distribution for the calendar year; (ii) the income generated or deemed to be generated by the assets in the retirement plan for the year; and (iii) the portion of the retirement plan that is treated as trust income for such year under the state law applicable to the administration of such trust. The Trustee shall distribute to my spouse, as income, an amount that is no less than the greater of (i) the income generated or deemed to be generated by the assets in the retirement plan for the year, or (ii) the portion of the retirement plan that is treated as trust income for such year under the state law applicable to the administration of such trust. Any portion of the minimum required distribution for the calendar year in excess of the amount required to be distributed pursuant to the prior sentence may be accumulated and added to principal in the discretion of the Trustee. No expenses chargeable to principal under applicable state law shall be charged against the income earned by the retirement plan and withdrawn by the Trustees.
4. Qualification for Marital Deduction. If my Executor shall elect to qualify part or all of the property passing under this section for the state or federal estate tax marital deduction in my estate, no property shall be allocated to the Marital Trust that does not qualify for such marital deduction and, to the extent possible, no property shall be allocated to the Marital Trust as to which a foreign death tax credit is available. In addition, if my Executor shall elect to qualify part or all of the property passing under this section for the state or federal estate tax marital deduction in my estate, my spouse may, by written instrument, direct the Trustee to make any property held by the Marital Trust (including any property held in a retirement plan) productive of income within a reasonable time. This right is exclusive to my spouse and may not be exercised by any

other person or entity. Whether or not my Executor shall make such election, I intend to take advantage of the state and federal estate tax marital deductions, and all provisions of this Agreement shall be construed and all powers and discretion hereby conferred shall be exercised accordingly, anything in this Agreement to the contrary notwithstanding.

5. Division of Marital Trust for State Tax Purposes. If the value of the federal credit share (as determined pursuant to section A.1 of this Article) is greater than the Credit Shelter Share determined pursuant to section A of this Article, the Trustees may divide the Residuary Marital Share into two separate shares, the "State Marital Share" and the "Marital Share." The State Marital Share shall be a fraction of the Residuary Marital Share, the numerator of which is equal to my unused federal credit share and the denominator of which shall equal the Residuary Marital Share, and shall be held in a separate trust hereunder known as the "State Marital Trust." The Marital Share shall be that fraction of the Residuary Marital Share remaining after setting apart the State Marital Share, and shall be held in a separate trust known as the "Marital Trust." Both the State Marital Trust and the Marital Trust shall be administered in the same manner as provided in this section B. It is my intention by this provision to establish a separate marital trust equal to the difference between the federal credit share and the state credit share. It is my expectation that my fiduciaries will elect to qualify the State Marital Trust for the marital deduction available pursuant to state law, and will not elect to qualify such trust for the federal estate tax marital deduction in my estate, thereby allowing the State Marital Trust to qualify for the unified credit against estate tax as provided in section 2010 of the Code. If my estate is subject to death taxes in more than one state, the Trustees may establish as many separate marital trusts (on a fractional share basis) as are necessary to maximize the exemptions from state death taxes and may identify each such marital trust by the name of the state for which the trust is established in order to qualify for the marital deduction in such state.

6. Disclaimer. If any portion of the Residuary Marital Share is disclaimed by my spouse or by the Trustees, such disclaimed property shall be disposed of pursuant to section (A) of this Article.

(C) Provisions for Descendants. If my wife does not survive me, the Residuary Trust Estate shall be disposed of via the Descendant Trusts as described in Article V.

## Article V.

### Descendant Trusts

Any property directed to be disposed of pursuant to this Article shall be divided into separate shares, per stirpes, with respect to my then living descendants, and such shares shall be disposed of as follows:

(A) Distributions of Trust Property. The Trustees shall hold the share of each such descendant (hereafter, the "Primary Beneficiary") in a separate trust hereunder. The Trustees may distribute so much or all of the net income and principal of each trust to such one or more members of the



class of individuals consisting of the Primary Beneficiary and his or her descendants who are living from time to time during the term of the trust, in such shares and proportions, without requirement of equality, as the Trustees consider advisable to provide for the education, medical care, health needs and support needs of any one or more of such individuals. The Trustees shall accumulate and add to principal at least annually any net income not so paid.

(B) Priority of Distributions. Under ordinary circumstances, the Trustee shall give priority to the meeting the education, medical care and health needs of my grandchildren and then shall give secondary consideration to the education, medical care and health needs of my children and great-grandchildren and more remote descendants. Distributions for the support of any beneficiary shall be made only after giving due consideration to the adequacy of the trust funds to satisfy the priorities for education, medical care and health needs as stated above.

(C) Limited Power of Appointment. Upon the death of the Primary Beneficiary, the Trustees shall distribute any remaining principal of the trust to or for the benefit of such individuals or organizations, upon such terms and conditions, including in further trust, as the Primary Beneficiary shall direct and appoint in a written, inter vivos instrument delivered to the Trustees, or by a Will (dated subsequent to the last such inter vivos instrument) expressly referring to and exercising this power; provided, however, that this power shall be exercisable only in favor of a descendant of mine, if any such descendant is living, and, in any event, shall not be exercisable to any extent for the benefit of the Primary Beneficiary, his or her estate, or the creditors of either.

(D) Disabled Beneficiary. If, under the terms of this trust or any trust created by this trust, any distribution is to be made outright to a beneficiary who (a) is incapacitated (as defined in Article 12, section M, such determination being made solely by the Trustee) or (b) has not yet attained the age of twenty-five (25) years, in either case hereinafter referred to as the "disabled person," and if no other trust is then existing for such disabled person's primary benefit, then such distribution shall continue to be held in trust, unless otherwise required by the provisions of Article XI, section G (the Rule Against Perpetuities Savings Clause).

1. During the term of any such trust, Trustee shall distribute to or apply for the benefit of such disabled person as much of the net income and principal as Trustee, in its discretion, deems appropriate, after taking into consideration, to the extent Trustee deems appropriate, any income or other resources of said person outside the trust and known to Trustee including any sources of public assistance, in which case any distributions paid under this provision are intended to supplement but not supplant any such public assistance. Any net income not so distributed shall be accumulated and added to principal.

2. Trustee shall distribute the principal and any accrued and undistributed income to such disabled person when the disabled person attains the age of twenty-five (25) years and is not incapacitated. If such disabled person dies before such conditions for termination and distribution are met, the principal and all accrued and undistributed income shall be distributed to Section (C) of this Article.

(E) Restrictions on Distributions. Notwithstanding any other provision of this trust, for any distribution to a beneficiary under the terms of this trust or any trust created by this trust, Trustee is not permitted to make such distribution unless Trustee determines that no holdback condition exists. The existence of a holdback condition shall only affect those rights or interests

described by the preceding sentence. The following are "holdback conditions":

(I) The beneficiary is involved in divorce or legal separation proceedings

(II) The beneficiary is involved has litigation or a judgment pending against him or her that threatens a significant portion of any otherwise available distribution. Said litigation to be considered shall include alimony/palimony or similar support obligations but not child support unless litigation challenges paternity.

(III) The beneficiary is experiencing serious problems with alcohol or other drug usage.

The determination of whether a holdback condition exists shall be made solely by Trustee. When Trustee determines that a holdback condition no longer exists, Trustee shall make all previously withheld distributions. The good faith determination of Trustee as to whether or not a holdback condition exists shall be conclusive upon all affected persons.

(F) Disposition of Remaining Trust Property. Any remaining trust principal not effectively appointed by the Primary Beneficiary shall be divided into separate shares, per stirpes, in respect of the then living descendants of the following individuals, in the order named: (i) the Primary Beneficiary, if any, or, if none; (ii) the nearest ancestor of the Primary Beneficiary who also is a descendant of mine, if any, or if none; (iii) me, or, if none, such property shall be disposed of pursuant to the Article entitled Family Disaster. Any share thereby determined shall be added to the trust, if any, of which such descendant is a Primary Beneficiary under this Article, or, if none, shall be held by the Trustees in a separate trust for such descendant pursuant to this Article.

## Article VI.

### Family Disaster.

If at any time there shall be no person eligible to take in accordance with the provisions of the foregoing sections of this Article, the Trustees shall divide all the property then remaining in trust into two equal shares and shall distribute such shares, free of all trusts, to those persons, other than creditors, who would be entitled to receive the same and in the proportions to which they would be so entitled had the Grantor, for the purposes of one such share, and the Grantor's wife, for the purposes of the other such share, died at such time, intestate, unmarried, domiciled in Massachusetts, and owning the property comprising such share. In the event any share under this Article would otherwise escheat to the state, any such amount shall be given to a recognized charity of the Trustee's choosing, with great preference given to any charities I have made inter vivos or testamentary gifts to.

## Article VII.

### Spendthrift Provision.

One of my primary purposes in establishing the trusts hereunder is to protect the trust estate from claims of the beneficiaries' creditors and to protect the assets from the improvidence of any beneficiary. Accordingly, the income and principal of any trust hereunder shall be used only

for the personal benefit of the designated beneficiaries of the trust, and no distributions or expenditures of trust assets shall be made except to or for the benefit of such beneficiary. To the maximum extent permitted by law, a beneficiary's interest in the income and principal of this trust shall not be subject to voluntary or involuntary transfer. Without in any way limiting the generality of the foregoing: (i) no beneficiary shall have any right to anticipate, transfer or encumber any part of any interest in the trust estate; (ii) no beneficiary's interest shall be liable for such beneficiary's debts or obligations (including alimony) or be subject to attachment, levy, or other legal process; and (iii) each beneficiary's interest in the trust estate shall constitute the separate property of the beneficiary and shall be free from any right, title, interest, or control of the beneficiary's spouse.

## Article VIII.

### Termination of Trusts.

Anything in this Agreement to the contrary notwithstanding, the Independent Trustee is authorized to terminate any trust under this Agreement if the Independent Trustee determines, in its sole, absolute and uncontrolled discretion, that it is not economical or otherwise in the best interests of the beneficiaries of such trust to keep such trust in existence. In making the determination of whether to terminate any trust hereunder, the Independent Trustee shall give primary consideration to the interests of the current eligible beneficiaries of such trust. Upon the termination of any trust pursuant to this Article, the Independent Trustee shall distribute any remaining income and principal of such trust to any one or more of the current eligible income beneficiaries of the terminating trust as the Independent Trustee, in its sole, absolute and uncontrolled discretion considers advisable; provided, however, that the Independent Trustee may, in its sole, absolute and uncontrolled discretion, elect to distribute the remaining trust property, other than the property in a marital trust, to a separate trust for the benefit of any one or more of the current eligible income beneficiaries of the terminating trust upon whatever terms and conditions the Independent Trustee deems advisable. The decision of the Independent Trustee to terminate or not to terminate any trust hereunder shall be binding and conclusive upon all persons interested in such trust, and, to the extent permitted by law, is not subject to review by any court or administrative tribunal. The determination of whether it is economical to maintain a trust shall be made without regard to any statutory provision with respect to the termination of "small" trusts. In addition, upon the termination of any trust, whether or not such termination occurs as a result of this Article, the Trustees may, in their sole discretion, distribute property directly from the terminating trust to the remainder beneficiary or beneficiaries of the succeeding trust, without first establishing the interposing trust, if the terms of the succeeding trust would require immediate distribution to the remainder beneficiary or beneficiaries.

## Article IX.

### Trustees Provisions.

The following provisions shall apply with respect to the appointment and service of the Trustees:

(A) Appointment of Trustee. KEITH RICHARDS, ESQ, of Methuen, Massachusetts, shall

become a Trustee, to act together with any other then acting Trustee, upon the first to occur of: (i) my death, (ii) appointment by me, or (iii) a complete vacancy in the office of Trustee, including by reason of the incapacity of all of the then-acting Trustees. If KEITH RICHARDS, ESQ, fails to qualify or ceases to act as Trustee, GEORGE W. BUSH, of Lawrence, Massachusetts, is appointed as a Trustee, to act together with any other then-acting Trustee.

(B) Appointment of Additional and Successor Trustees. I may at any time and for any reason remove and replace any Trustee and may name additional or successor Trustees, without regard to any additional or successor Trustee(s) otherwise named herein. After my death or if I am incapacitated, any Trustee then acting (including the Independent Trustee) is authorized to appoint an additional Trustee or Trustees or a successor Trustee or a succession of successor Trustees to act in the event of any vacancy in his or her office not otherwise provided for hereinabove. If, in the event of any vacancy in the office of Trustee or the office of the Independent Trustee, no successor has been named herein or appointed as hereinabove provided, then the following individuals (or groups) who are willing and able to act, in the order listed, may appoint one or more successor Trustees or an Independent Trustees, as the case may be, of such trust: (i) my spouse, if living and not then incapacitated; (ii) the Primary Beneficiary of such trust, if any, and if not then incapacitated; (iii) a majority of the other eligible income beneficiaries of such trust who are not then incapacitated; or (iv) a majority of my then-living adult children who are not then incapacitated.

(C) Removal and Replacement by Spouse. After my death, or if I become incapacitated, then my spouse (if not then incapacitated) shall have the right to remove any Trustee of any trust hereunder and to appoint one or more successor Trustees (other than my spouse) without regard to the appointment of any successor otherwise named hereunder; provided, however, that the successor Trustee so appointed shall be (i) a corporation or other entity authorized under the laws of the United States or of any state to administer trusts, (ii) a certified public accountant with expertise in trusts and estate matters, or (iii) an attorney specializing in trusts and estate matters; and further provided, however, that the successor Trustee so appointed would not be a related or subordinate party subservient to the wishes of my spouse.

(D) Removal and Replacement by Primary Beneficiary. The Primary Beneficiary of any trust established under Article V of this Agreement who has attained the age of twenty-one (21) years and who is not incapacitated shall have the right to remove any Trustee of such trust and to appoint one or more successor Trustees (other than himself or herself) without regard to the appointment of any successor otherwise named hereunder; provided, however, that the successor Trustee so appointed shall be (i) a corporation or other entity authorized under the laws of the United States or of any state to administer trusts, (ii) a certified public accountant with expertise in trusts and estate matters, or (iii) an attorney specializing in trusts and estate matters; and further provided, however, that the successor Trustee so appointed would not be a related or subordinate party subservient to the wishes of the Primary Beneficiary.

(E) Resignation. Any Trustee may resign at any time without the approval of any court by giving written notice of resignation to me (if I am living and not then incapacitated), to each co-Trustee, and to each Trustee to be appointed; provided, however, that if no co-Trustee is then acting, such resignation shall become effective only upon the qualification of a successor fiduciary. If a Trustee is deemed to be incapacitated, such Trustee shall be deemed to have resigned as of the date of the determination.

(F) Procedure for Resignation, Appointment and Removal. The appointment, revocation of

appointment or removal of a Trustee shall be made by delivery of a written, acknowledged instrument to the then-acting Trustees and any Trustee to be appointed. Any appointment of a Trustee may be conditioned to commence or cease upon a future event and may be revoked or modified by the individuals or entity entitled to make such appointment at any time prior to the occurrence of such event. Unless otherwise expressly provided, any power to appoint a Trustee shall permit appointment of an individual or a corporation or other entity authorized under the laws of the United States or of any state to administer trusts as Trustee, and shall be exercisable by the legal representative of any disabled person holding such power (including the parent acting as natural guardian of any minor beneficiary).

(G) Bond. No bond or other security shall be required of any Trustee at any time acting for any purpose or in any jurisdiction.

(H) Exoneration of Trustee. Any individual, who is either related to me (whether by blood or by marriage) or specifically named by me or my spouse, who is serving as a Trustee shall not be liable for any mistake or error of judgment, or for any action taken or omitted, either by the Trustee or by any agent or attorney employed by the Trustee, or for any loss or depreciation in the value of the trust, except in the case of willful misconduct. No Trustee has a duty to examine the transactions of any prior Trustee, and each Trustee is responsible only for those assets that actually are delivered to the Trustee.

## Article X.

### Trustee Powers.

Without limiting any other powers granted by this Agreement or authorized by the statutory laws of the situs of the trust, the Trustees shall have the following powers and discretions, which shall extend to all principal and income held hereunder in any capacity or for any purpose (including accumulated income) until the final and outright distribution thereof, and which the Trustees may exercise with sole and absolute discretion, without application to or approval by any court:

(A) To retain, acquire or sell any variety of real or personal property (including any discretionary common trust fund of any corporate fiduciary acting under this document, mutual funds, covered or uncovered stock options, insurance policies on my life and investments in foreign securities), without regard to diversification and without being limited to the investments authorized for trust funds;

(B) To enter into agreements for the sale, merger, reorganization, dissolution or consolidation of any corporation or properties;

(C) To manage, improve, repair, sell, mortgage, lease (including the power to lease for oil and gas), pledge, convey, option or exchange any property and take back purchase money mortgages thereon;

(D) To open, close, maintain, draw checks on or otherwise withdraw funds from, and make deposits to bank accounts of any kind;

(E) To maintain custody or brokerage accounts (including margin accounts) and to register securities in the name of a nominee;

(F) To exercise stock options;

- (G) To vote and give proxies to vote shares of stock;
- (H) To make joint investments in property, real or personal; to enter into and act as a general or limited partner in general or limited partnerships; to establish corporations (including limited liability companies) of any kind; and to transfer assets to any such joint ventures, partnerships or corporations;
- (I) To make distributions in cash or in kind, or partly in each, and, in the discretion of such fiduciaries, to allocate particular assets or portions thereof to any one or more beneficiaries, without any duty to distribute any asset pro rata among beneficiaries, and to do so without regard to the income tax basis of specific property allocated to any beneficiary, provided that such property shall be valued for purposes of distribution at its value on the date of distribution;
- (J) To compromise and settle claims (including those relating to taxes);
- (K) To borrow funds from any person or corporation (including a Trustee hereunder) and to pledge or mortgage trust assets to secure such loans;
- (L) To extend, renew or renegotiate loans or guarantees;
- (M) To lend money to or for the benefit of any person beneficially interested hereunder (including a Guardian);
- (N) To employ attorneys, accountants, investment counsel, custodians, brokers and other agents to assist in the administration of estate or trust property and to delegate ministerial powers (including the granting of a power of attorney and the power to be a signer on any estate or trust financial accounts) to such persons;
- (O) To divide any trust hereunder into separate trusts based on the fair market value of the trust assets at the time of the division;
- (P) To administer multiple trusts established under this document *in solido*; and
- (Q) To exercise in good faith and with reasonable care all other investment and administrative powers and discretions of an absolute owner that lawfully may be conferred upon a fiduciary.

## Article XI.

### Administrative Provisions.

The following additional provisions shall apply to all trusts created hereunder:

- (A) Survival and Anti-lapse. In case I and any other beneficiary under this Agreement shall die in such circumstances that the order of our deaths cannot be established by proof, it shall be conclusively deemed that such beneficiary predeceased me, except for my spouse who in such case shall be deemed to survive me solely for purposes of the Article of this Agreement that provides for the disposition of my Residuary Estate upon my death, in order for the marital deduction to be available with respect to the property passing under such Article. In case any income beneficiary and any remainderman of any trust under this Agreement shall die in such circumstances that the order of their deaths cannot be established by proof, it shall be conclusively deemed that such income beneficiary survived such remainderman. If any

disposition under this Agreement is contingent upon the survival of a beneficiary and the beneficiary does not satisfy the condition of survival, and if there is no substitute taker designated who satisfies the conditions for taking, such disposition shall lapse. The provisions of any anti-lapse statute in any jurisdiction shall not apply to preserve any disposition to or for the benefit of any individual who is not identified as a substitute taker hereunder.

(B) Additional Provisions for Payment of Income and Principal. The following provisions shall apply with respect to the payment of income or principal from each trust hereunder:

1. Income shall be paid at least annually unless accumulation of income is authorized, or some shorter period is expressly provided.

2. Unless otherwise expressly provided, upon the occurrence of any event causing termination of any trust, any accrued and collected, but undistributed income shall be added to principal.

3. Whenever provision is made for distribution of principal or income to any person, the same may instead be applied for the benefit of such person. Application of principal or income for the benefit of a person under any legal disability may be made by payment to or application for the use of such person directly, or in the discretion of the Trustees by payment to such person's parent, spouse, custodian under any gifts or transfers to minors act, guardian, committee or conservator, in whatever jurisdiction appointed, or any one with whom such person resides, and the receipt of the one to whom any such distribution is made shall be a full discharge from accountability to such person. The decision of the Trustees as to the purpose, time and amount of any payment of income or principal shall be binding and conclusive upon all beneficiaries of this Agreement.

4. Notwithstanding any other provision of this Agreement or applicable law to the contrary, after my death, or if I am incapacitated, any Trustee who is not an Independent Trustee shall not participate in any discretionary decision regarding the accumulation, payment, distribution, application or allocation of income or principal, or the termination of a trust (a "discretionary decision") unless the discretionary decision is limited by an ascertainable standard as defined in section 2041(b) of the Code and the Regulations thereunder. Furthermore, no Trustee shall have incidents of ownership in or any power, authority or discretion of any kind with respect to any insurance policy on the life of such Trustee comprising a part of the trust. All such powers, authorities, discretions and incidents of ownership shall rest exclusively in the discretion of the other Trustees.

(C) Additions to and Combination of Trusts. If, upon the termination of any trust, any property is set aside in respect of a person for whom another trust is then held hereunder, then such property shall instead be added to the principal of such other trust and administered and disposed of as an integral part thereof. The Independent Trustees may, in their sole, absolute and uncontrolled discretion, combine any trust under this Agreement with any other substantially identical trust established by either or both of my spouse and me. A marital trust shall not be combined with another trust. A trust may be deemed to be substantially identical to a trust hereunder notwithstanding that the perpetuities vesting period of such other trust may be shorter or longer than the trust hereunder, and the Independent Trustee may combine such trusts, provided that the trust thereby surviving shall take the shorter perpetuities period.

(D) Governing Law and Situs. The validity, construction and administration of this document

and any trust hereunder shall be governed by the laws of Massachusetts. The Trustees, at any time and for any reason, may transfer the place of administration and assets of any trust to any jurisdiction. It is my expectation and intention that no court approval will be required for such a transfer. However, the Trustees may seek court approval of such transfer if necessary, and I expect the court to approve the transfer as such is consistent with my intent. The Independent Trustees may change the governing law to any jurisdiction at any time and for any reason, provided that a change in the place of administration shall not result in a change in the governing law unless specifically directed by the Independent Trustees. The Independent Trustees may make technical amendments to this document to make any transferred trust valid and effective under the laws of the transferee jurisdiction.

(E) Residential Real Estate. The Trustees are authorized to hold residential real property as part of any trust created under this Agreement and may permit the income beneficiary or eligible income beneficiaries of such trust to reside there permanently or on an intermittent basis rent free during the trust term. If my spouse is an eligible income beneficiary of such trust, my spouse shall have the exclusive right to reside rent-free in such residential property and may at any time direct that such residential property be sold. In the event of sale, all or any part of the proceeds of such sale may (at the election of my spouse, if an eligible income beneficiary of such trust), be applied to the acquisition of other real property, which, together with any such proceeds not so applied, shall be held in such trust upon the same terms and conditions.

(F) Legal Obligations. The trust estate hereunder shall remain available to satisfy any of my legal obligations during my lifetime. Except with respect to the foregoing, no provision of this Agreement shall be construed as relieving any person of his or her legal obligations, including the obligation to support any beneficiary hereunder. No part of the income or principal of any trust hereunder and no exercise of a power of appointment granted herein shall be used to satisfy any such legal obligations.

(G) Rule against Perpetuities. Each trust hereunder shall terminate upon the expiration of twenty-one (21) years following the death of the survivor of me, my spouse and those of my descendants who are living on the date of my death. At the expiration of such perpetuities vesting period, the Trustees shall pay any remaining income and principal of such trust to the Primary Beneficiary, or, if none, to the then living descendants, per stirpes, of the Primary Beneficiary, or, if none, to my then living descendants, per stirpes, who are eligible income beneficiaries of the trust.

(H) Distributions to Minors. If, upon the termination of any trust, any property vests absolutely and free of trust in a minor, and is not otherwise directed to be retained in further trust for such minor under any other provision of this Agreement, then the Trustees may distribute the same to any custodian for such minor under any gifts or transfers to minors act, or, in the alternative, may retain and manage the same during such minority, without bond and with all powers and discretion granted to the Trustees by this Agreement or by law, and apply the income and principal for the health, education, support or maintenance of such minor, accumulating any income not so applied, until such minor reaches the age of majority (pursuant to the laws of the jurisdiction where the beneficiary is domiciled) or until the prior death of such minor. At such time, any remaining principal and accumulated income shall be paid to such minor or to his or her estate. The Trustees may designate as custodian any person, including any one of the Trustees, who is qualified to act in such capacity.

(I) Tax Elections. The Trustees and/or the Executor of my estate, in their sole discretion and



without the order or approval of any court, are authorized to make or not make any election, allocation or other discretionary decision permitted under the provisions of any tax law in effect from time to time, and to make or not make equitable adjustments of the interests of beneficiaries in light of such decisions; provided, however, that such fiduciaries shall make any adjustment necessary to avoid reducing any marital deduction under any tax law. No beneficiary shall have any rights against any such fiduciary by reason of any such decisions or adjustments. Except with respect to any trust under this document in which my spouse is the sole income beneficiary, the Trustees may also allocate property (or the right to receive property) which is subject to estate tax and federal income tax as income in respect of a decedent to principal, to income, or in part to each.

(J) Trust Accountings. The Trustees may, in their sole discretion, settle any account at any time by agreement or judicially. Any agreement made with those beneficiaries under no legal disability who at the time are currently entitled to the income or presumptively entitled to the principal shall bind all individuals, whether or not then in being or of legal capacity, then or thereafter entitled to the income or principal, and shall release and discharge the Trustees for the acts and proceedings embraced in the account as effectively as a judicial settlement, notwithstanding the circumstance that any Trustee may also be a party to such agreement in a separate capacity, either individually or as a fiduciary of another estate or trust. The Trustees may provide to me, or my guardian or conservator if I am incapacitated, or, after my death, to each eligible income beneficiary and presumptive remainderman (or the parent or legal representative of any such individual who is a minor or is incapacitated), statements of trust transactions at such time and in such form as the Trustees consider advisable. If all such individuals either give written approval of the statement or fail to notify the Trustees in writing of any objection within thirty (30) days of the mailing of the statement to such individuals, the statement shall be final, binding and conclusive on all individuals interested in the trust, regardless of whether such statements would qualify as an accounting pursuant to local law.

(K) Virtual Representation. Where a party to any judicial proceeding or agreement (whether or not related to the accounts of my Trustees) has the same interest as a person under a disability (including by reason of minority), or where a beneficiary may not yet be born or ascertained, it shall not be necessary to serve the person under a disability, or to make such person a party to the agreement, nor shall it be necessary to appoint a guardian *ad litem*, or similar fiduciary, to represent the interests of any such disabled, unborn or unascertained beneficiary.

(L) Disclaimers. Any person (or his or her attorney-in-fact or legal representative, including the executor, administrator, conservator or other personal representative of his or her estate) may irrevocably disclaim, renounce or release, in whole or in part, any interest, benefit, right, privilege or power granted to such person or entity under this Agreement, without approval of any court. With regard to any interest in property passing to any trust under this Agreement (including a beneficial interest in a trust) or any fiduciary power under this Agreement, the Trustees may irrevocably disclaim, renounce or release, in whole or in part, any such interest, benefit, right, privilege or power, without the approval of any court. A disclaimer shall be in writing, signed by the disclaimant in the presence of two disinterested witnesses and duly acknowledged before a Notary Public (or other proper official for taking acknowledgments) and shall comply with any other applicable requirements of local, state and federal law regarding the formalities of execution and delivery.

(M) Powers of Appointment. Any power of appointment created under this document may be exercised only by an express reference to the power which includes my name, a general

reference to this Agreement and reference to the applicable provisions of this Agreement. A person exercising a power of appointment may appoint trust funds outright or in further trust. Except to the extent otherwise expressly provided in this Agreement, the choice of terms, Trustee and jurisdiction of any appointive trust shall be entirely within the discretion of the person exercising the power of appointment. Notwithstanding any other provision of this Agreement to the contrary, no power of appointment shall be exercisable by a beneficiary over any property or its proceeds added to a trust by means of a disclaimer by such beneficiary.

(N) Investment Advisors. The Trustees may employ investment advisors; consult with such advisors on any matters relating to the retention, sale, purchase, investment, or reinvestment of securities or other property; delegate to such investment advisors the Trustees' investment authority; and pay such investment advisors reasonable compensation for its services. Such compensation shall be in addition to the regular compensation of the Trustees. The Trustees may act upon or refrain from acting upon the advice of such investment advisors in whole or in part. To the extent the Trustees follow the advice of such advisors or rely upon such investment advisor's exercise of delegated investment authority, the Trustees shall not be liable for any action taken or omitted, except in the case of willful misconduct.

(O) Delegation among Trustees. Any Trustee may delegate to any co-Trustee, for any period of time, any power or discretion that such co-Trustee is willing to accept. Such delegation shall be in writing, signed by the delegating Trustee and accepted by the Trustee to whom such delegation is made. Any person dealing with the Trustee may rely, without further inquiry, upon the statement of any Trustee as to any such Trustee's authority to act on behalf of any other Trustee.

(P) Fiduciary Compensation. Each Trustee acting hereunder shall be entitled to reasonable compensation for its services. Compensation shall be deemed reasonable if it is computed and paid in accordance with the schedule of rates (including minimum fees and additional compensation for special investments, closely held business interests and certain other services) published by the Trustee from time to time and in effect at the time the compensation is paid. If any individual acting as Trustee does not regularly publish a schedule of rates, then compensation to such Trustee shall be deemed reasonable if it is computed and paid in accordance with the average schedule of rates published by banks or trust companies for serving as professional Trustees in the community where the Trustee resides. Such compensation paid to a Trustee shall be deemed reasonable even if it is more or less than the statutory compensation for such services in effect from time to time under any applicable law.

(Q) Use of Trust Funds by Estate. Upon my death, the Trustees may, in their discretion, purchase property from my estate, make loans to my estate, guarantee the obligations of my estate and pledge trust property as security therefore upon whatever terms and in whatever manner and with whatever security the Trustees consider advisable.

## Article XII.

### Definition of Terms.

As used in this Agreement, the following terms shall have the following meanings, unless otherwise expressly provided:

(A) Identification of Spouse. I am married to CATHERINE A. GREEN, referred to herein as "my wife" or "my spouse." Any such reference shall be a reference only to CATHERINE A. GREEN and shall not include any person to whom I was or may be married at any other time. If CATHERINE A. GREEN and I are legally divorced, then for all purposes under this Agreement (including the appointment as a Trustee) CATHERINE A. GREEN, and any relative of hers who is not also a descendant of mine, shall be deemed to have died on the date the decree of divorce is issued.

(B) Identification of Children. My children are STEVEN S. GREEN and REBECCA D. GREEN.

(C) Definition of Children and Descendant. The terms "child," "children," "descendant" and "descendants," or any similar term, with respect to any person shall include such person's present biological children and descendants, as well as any children or other descendants born after the date of this Agreement. In addition, such term shall include any child or descendant legally adopted by such person, before or after the date of this Agreement; provided such child or descendant was adopted prior to attaining age eighteen (18).

(D) Definition of Education. The term "education," as used herein, shall include education at any level, including, but not limited to, preschool, elementary school, intermediate school, secondary school, college, graduate, post-graduate and professional training of any kind. It shall include, but is not necessarily limited to, the costs of tuition, fees imposed by any educational institution, books, supplies and the like. I intend that, under ordinary circumstances, the Trustees will interpret the term education liberally.

(E) Definition of Health Care and Medical Needs. The terms "health care" and "medical needs" shall include the costs of any medical, dental, nursing or assisted living needs, including custodial needs, which are not otherwise covered by public or private insurance, as well as the premiums for any health, dental or long-term care insurance policy for the benefit of any beneficiary. I intend that, under ordinary circumstances, the Trustees will interpret the terms "health care" and "medical needs" liberally.

(F) Definition of Support. The term "support" shall mean the amount necessary to meet the basic necessities of living to avoid indigency and poverty. The Trustee may, but is not required to make distributions for support that exceed the basic necessities of living to the extent that such distributions would enable the beneficiary to maintain his or her accustomed manner of living. In making distributions for support of any beneficiary (other than me or my spouse), the Trustee shall consider the other resources reasonably available to the beneficiary. For purposes of determining the resources reasonably available to an adult beneficiary who is not engaged in gainful employment, the Trustee may instead consider the resources that would be available to such beneficiary if the beneficiary was so engaged, as well as the reason why the beneficiary is not so engaged. It is my expectation that, under ordinary circumstances, the Trustee will not make distributions to provide support for an adult beneficiary who is not engaged in full time employment unless the reasons for the failure to be so engaged are compelling. Among the reasons that I would consider compelling include, but are not limited to: disability, the active pursuit of additional education, or the election to provide care for a sick or disabled member of the beneficiary's family or the care of the beneficiary's minor children.

(G) Definition of Heirs-at-Law. The term "heirs-at-law" used with respect to any person shall mean those individuals (and in those proportions) to whom such person's Administrator would

have been required to distribute such person's intestate estate if such person had then died intestate, unmarried, owning only such property and being a resident of Massachusetts.

(H) Definition of Per Stirpes. Notwithstanding the provision of any state's law to the contrary, whenever the Trustees are directed to distribute property to an individual's descendants or descendants "per stirpes," the property shall be divided into shares beginning with the first generation below such individual, whether or not there are members of such generation living at the time of distribution. Subdivision of shares for successive generations shall be made in the same manner.

(I) Definition of Trustee. Any reference to "the Trustee" or "the Trustees" shall encompass all Trustees then acting, including any Independent Trustee. The use of the singular shall be deemed to include the plural if there is more than one Trustee then acting, and the use of the plural shall include the singular if there is only one Trustee then acting. Any use of personal pronouns indicative of gender shall be deemed to include the masculine, feminine and neuter genders, as applicable. The Trustees also are sometimes referred to herein as "fiduciaries." Unless otherwise provided, any Trustee acting under this Agreement may exercise all of the rights, powers and discretions and shall be entitled to all of the privileges and immunities granted to the named Trustee.

(J) Definition of Independent Trustee. For the purposes of this Agreement, a Trustee is an "Independent Trustee" only if such Trustee meets the following criteria: (i) is not a beneficiary currently eligible to receive the income or principal of the trust or a beneficiary who would be eligible to receive the income or principal of the trust if the trust were to terminate at the time the discretionary decision is made; (ii) is not the spouse, sibling, ancestor or descendant of a beneficiary described in (i); and (iii) in the case of any Trustee who is appointed by one or more of the beneficiaries described in (i), would not be a related or subordinate party with respect to any beneficiary who exercised the power to appoint such Trustee.

(K) Definition of Code. The term "Code" whenever used herein shall mean the Internal Revenue Code of 1986, as amended, or any corresponding provision of any subsequent Federal tax law, together with any regulations, proposed regulations or temporary regulations relating thereto.

(L) Definition of Related or Subordinate Party. The term "related or subordinate party" used with respect to any person shall have the same meaning as provided in section 672(c) of the Code, as if such person were the Grantor of the trust.

(M) Definition of Incapacity. An individual shall be considered to be incapacitated if the individual is (i) under a legal disability, or (ii) unable to give prompt and intelligent consideration to financial matters by reason of illness, mental or physical disability, disappearance, unaccountable absence or detention under duress. The determination as to whether an individual is incapacitated shall be made by the Trustees (other than such individual), or, if none, by the institution or individual designated to succeed such individual as Trustee. In making the determination, the Trustees may rely conclusively upon (i) the written opinion of the individual's primary physician or any other two physicians, each of whom is board certified in the area of medicine most proximately related to the cause of such disability, stating that the individual is under a legal disability or is unable to give prompt and intelligent consideration to financial matters by reason of illness or mental or physical disability, (ii) the receipt of credible evidence that such individual has disappeared, is unaccountably absent or is

being detained under duress, or (iii) the written order of any court. To enable the Trustees to obtain such opinions, I and all Trustees accepting their appointment as Trustee hereby waive any patient-doctor privilege or other privacy claims relating to information in the possession of any physician regarding such individual's mental or physical condition.

(N) Definition of Death Taxes. The term "death taxes," as used herein, shall mean any estate, transfer, excise, succession, inheritance, legacy, and other similar taxes (including any generation-skipping transfer tax, unless otherwise expressly provided) imposed by the federal government, any state, municipality, foreign government or any other tax authority by reason of my death. It also shall include any interest and penalties properly imposed thereon.

(O) Definition of Retirement Plan. The term "retirement plan" shall mean any plan, account or trust, the primary purpose of which is to provide for the economic benefit of the participant or beneficiary during retirement, whether or not such plan, trust or account is qualified under section 401, 403, 408 or 408A of the Code. The term "qualified retirement plan" shall mean any such plan, account or trust that is qualified under section 401, 403, 408 or 408A of the Code.

Article XIII.

Execution.

This Agreement shall not take effect until executed by me and at least one of the Trustees first named above, including myself. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

WITNESS the due execution hereof by the parties hereto as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
(L.S.)  
DANIEL A. GREEN, Grantor and Trustee

SIGNED, SEALED, PUBLISHED and DECLARED by DANIEL A. GREEN, the Grantor and Trustee, as and for his Revocable Trust, in the presence of us and each of us, who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
CATHERINE A. GREEN

Trustee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned notary public, personally appeared DANIEL A. GREEN, as Grantor and Trustee, proved to me through satisfactory evidence of identification, which was his \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who acknowledged that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
**Notary Public**

\_\_\_\_\_  
**Print Name**

My commission expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned notary public, personally appeared CATHERINE A. GREEN, as Trustee, proved to me through satisfactory evidence of identification, which was her \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who acknowledged that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
**Notary Public**

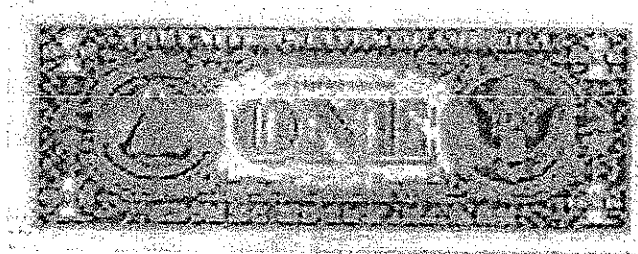
\_\_\_\_\_  
**Print Name**

My commission expires: \_\_\_\_\_

SCHEDULE A

Daniel A. Green Revocable Trust Agreement  
dated \_\_\_\_\_, 2010  
between DANIEL A. GREEN, as Grantor, and  
DANIEL A. GREEN and CATHERINE A. GREEN, as Trustees

One Dollar (\$1.00)



## ESTATE PLANNING

Final Examination  
Spring 2006

Professor Ford

### Directions:

Please write on only one side of a page in the answer booklet. Skipping lines may be beneficial for you should you decide to make a change in your answer and need space to insert writing between lines. You are cautioned to read all questions fully before beginning. Thereafter, you should approach each question by making an outline of your answer so as to best organize your response. You may write your outline in a separate booklet. The outline is for your purposes and will not be considered any part of the examination answer. Pass in every booklet in which you write plus the exam sheets, inserting booklets one inside the other, after having written your student identification number, as well as the course title, on the front of each booklet.

Issue identification and discussion are most important. You are cautioned to follow an orderly, step-by-step pattern of analysis and response. This will help keep you on track and better allow me to understand your analysis and answer. Answer only the questions that are asked.

You will have three hours to complete this exam.

### QUESTIONS:

#### **Question 1 – 27 minutes – 15%**

Emily Jackson, a new client, has asked you about probate avoidance planning with regard to her property. She wants to know whether it is advisable in her case, and if so, what are its advantages and disadvantages, if any. Emily is 47 years old, divorced and mother of a daughter, Amy, 25 years old, and a son, Glenn, 20 years old. She owns a personal residence with a mortgage, has a small IRA, and modest additional savings.

How do you respond to Emily regarding her probate avoidance question?



**Question 2 – 54 minutes – 30%**

Helen Adams, 81 years of age, relates to you that her husband, Jim, 83 years of age, has Alzheimer's, but she is caring for him at home. He is still quite manageable for the present, but she has no idea for how much longer. They own their own home subject to a line of credit secured by a mortgage. It is worth \$300,000 and the balance on the line of credit mortgage is \$20,000. Jim has an IRA worth \$160,000 from which he is drawing \$2,000 per month, the minimum required distribution. They have joint ownership of a bank account with \$24,000 in it, and one automobile worth \$9,000. Helen has \$700 per month and Jim has \$1,200 per month in Social Security income. Helen and Jim have a son, Don, 57 years old, who is married with three children and who lives twenty minutes away by car. They also have a daughter, Marie, 53 years old, who is married with two children and who lives half way across the country. Helen says she has a power of attorney document from Jim, who cannot understand financial matters. She asks what can be done to protect their assets from nursing home costs.

What preliminary issues (prior to actual planning) do you need to discuss with Helen? What might be able to be done to protect assets against a spend-down upon Jim's admission into a nursing home? Explain your answers.

**Question 3 – 36 minutes – 20%**

Client as settlor just entered into a trust agreement with bank as trustee, funding trust with \$120,000.00 in cash. Trust provides for all income to be paid out at least annually to client's 18-year-old son, who is just starting a four-year college program, for his education and living expenses away at school. Trustee may use principal if income is insufficient for the college expenses. After son graduates from college, income is to continue to be paid to son at least annually, but trustee is without authority on its own to thereafter distribute any principal until son reaches 25 years of age. At that time, trustee is directed to distribute to son one-third of principal that is then in trust on son's 25<sup>th</sup> birthday, one-half of the then principal to son on son's 30<sup>th</sup> birthday, and all the then remaining principal to son on son's 35<sup>th</sup> birthday. At all times son is to continue to receive all income of trust at least annually. Client has power to accelerate distributions of principal to son during client's lifetime.

What are the income, gift and estate tax consequences of the trust arrangement during the lifetime of the client and upon the client's death, which occurs on the son's 30<sup>th</sup> birthday. Explain your answer.

**Question 4 - 27 minutes – 15%**

You represent Harold and Maude, ages 85 and 83 respectively. You have prepared their estate plans. Each plan includes a durable power of attorney, health care proxy and will, in which they each name each other as their agent or executor. In addition, each plan names their only child, Marsha, as their alternate agent or executor. Marsha, age 53, comes to you with her husband, Max, age 56, asking that you prepare their estate plans. Marsha and Max have two children ages 22 and 25.

How do you respond to Marsha and Max's request for your representation?

**Question 5 - 36 minutes – 20%**

Grandmother Gert settled a trust with stocks and bonds of her own. She has named a bank as trustee. She has retained the power to name a new trustee if the bank should cease to serve. The trustee is to use income and principal if necessary to pay for Gert's 18 year-old granddaughter, Jennifer's, education through college, including tuition, fees, books, laptop, miscellaneous supplies. Gert gave her son, Saul, Jennifer's father, the remainder interest in the trust to be paid to him upon Jennifer's college graduation or attainment of the age of 23 years, whichever comes first. Gert also gave her son, Saul, power to direct the trustee to make distributions of principal to him, Saul, in such amounts and at such times as Saul shall direct. Jennifer is a freshman at college. The trustee is paying from the trust for college expenses, exhausting income and, as needed, dipping into principal. The trustee has had to sell some stocks to get cash to pay college expenses.

Who has tax liability for the interest and dividend income of the trust? Who has the tax liability for capital gain income on sale of investments by the trust? In whose federal gross estate for estate tax purposes will the trust corpus be includable if he or she were to die now? Explain all answers.