

Joe Donald Smith

Jane Helen Smith

Street Address: 123 Palm Ave  
City: San Diego  
State / Province: CA  
Postal / Zip Code: 92111

Re: Estate Planning

Dear Joe Donald Smith and Jane Helen Smith:

Enclosed please find for your review a draft of the following documents:

1. Joe Donald & Jane Helen Smith Family Trust
2. Declaration of Trust
3. Certification of Trust
4. Assignment of Personal Property.
5. The Last Will and Testament for each of you.
6. A General Power of Attorney for each.
7. An Advance Health Care Directive for each (which includes the "Living Will").
8. HIPAA Authorization and Waivers for each.
9. Final Disposition Instructions (i.e., "burial instructions").
10. The Instructions for the Distribution of Personal Property.
11. A Summary of Estate Planning Provisions.

We will not attempt in this letter to set forth all the relevant provisions of these trust documents which, as might be expected, contain a great deal of technical language. However, the gist of the documents may be generally summarized as follows:

#### Trust Agreement:

The Trust is fully revocable or changeable during your lifetime. You should continue to use your Social Security Number on all accounts; as long as you are acting as the Trustee, no special tax identification number is required, and no special accounting or tax returns need be filed. The Trust names you as the Trustee of your own property and, in the event, you are unable to continue as Trustee, Paragraph 2.C. designates the successor Trustees.

The principal purpose of the Trust is to avoid probate of the assets of your Trust and the time and expense which is involved in a probate proceeding. The Trust essentially acts in place of a will to make sure that your property passes to your beneficiaries with a minimum of hassle and expense. It is extremely important that all assets which are to be included in your Trust (i.e., real property, savings accounts, stocks and bonds, etc.) are actually titled in the name of the Trust. Another important advantage to your Trust is that it allows your designated successor Trustee to promptly take over the management of your affairs if you should become unable to manage your affairs due to illness, accident, Alzheimer's, etc. This avoids the potentially embarrassing, expensive and lengthy court process of a conservatorship.

#### Declaration of Trust:

Under certain very limited circumstances, this Declaration could possibly be helpful after your death if you neglected to transfer a valuable asset to your Trust; it merely confirms that you intended to include all of your assets within your Trust. This Declaration may substitute for the requirement that you must transfer ("title") your assets into the name of your Trust in order to avoid a potential probate of those non-Trust assets.

#### Certification of Trust:

The Certification sets forth the existence of the Trust and your unlimited right as Trustee to deal with any account or asset held in the Trust. The Certification acts as a short version of the Trust Agreement and gives any third party the information required from the Trust without getting into the dispositive provisions, which are (and should remain) confidential.

#### Assignment of Personal Property:

This Assignment acts as the method of transferring all personal property assets (generally they do not have a title or an ownership document) to your Trust (thereby avoiding the necessity or possibility of having to probate such assets); this Assignment also transfers your digital assets and/or rights (including any "social media", on-line accounts and/or email accounts) to the Trust. The form you can use to specifically designate the distribution of specific items of personal property is also included.

#### Will:

Your Will is commonly referred to as a "pour-over" will. Under the terms of the Will, any assets held by you which have not previously been transferred into your Trust will be added to the Trust at the time of your death (but may have to be subject to a probate administration in order to do so). The purpose of this is to make sure all of your assets (whether in your Trust or not) are distributed according to the dispositive plan set forth in the Trust.

#### The Durable Power of Attorney for Management of Property and Personal Affairs:

The Durable Power of Attorney is a "general power of attorney". This document is primarily intended to give your named agent the power to deal with any trust or non-trust assets in the event of your incapacity. However, this document gives your agent broad powers to dispose of, sell, convey and encumber your real and personal property; if you have any concern about granting such broad powers, please contact our office.

Advance Health Care Directive:

The Advance Health Care Directive gives your named Agents the power to make medical decisions, sign consents and/or releases with hospitals and/or doctors. It also acts as your "living will" for end-of-life decisions.

HIPAA Authorization and Waiver:

The HIPAA Authorization and Waiver is a "stand-alone" document to authorize your health care providers to release information concerning your otherwise confidential medical information to the individuals you have designated to act on your behalf in the event of disability and to any other individuals who you would also want to have such access. Please note that state law requires that this form be generated in "14 point type-face".

Burial Instructions:

The Final Disposition Instructions give you the opportunity to specify how you wish your remains to be dealt with (i.e., cremation or burial); to provide information of any prior arrangements and to designate the persons to carry-out your wishes.

Summary of Estate Planning Provisions:

This is a paragraph by paragraph explanation of the trust (as well as additional explanations of the other estate planning documents) to assist you with your review.

If you have any questions regarding any of the enclosed documents or if there are any changes which need to be made, please email support@daca.com. When you are finished with your review, please contact a local notary to have your documents notarized.

Sincerely,

DACA FINANCIAL GROUP

www.dacafg.com

877.560.DACA

**SAMPLE**

ESTATE PLANNING

PORTFOLIO

OF

Joe Donald Smith

and

Jane Helen Smith

**SAMPLE**

# Joe Donald & Jane Helen Smith Family Trust

THIS TRUST AGREEMENT is entered into by **Joe Donald Smith** and **Jane Helen Smith**, as Trustors, and **Joe Donald Smith** and **Jane Helen Smith**, as co-Trustees (hereinafter referred to as "Trustee"). For all purposes hereunder, the words "we," "us," "our," "their," and similar pronouns, shall refer to Trustors, **Joe Donald Smith** and **Jane Helen Smith**, and shall be construed as the possessive when the context would so indicate.

## ARTICLE I

### RECITALS AND CONVEYANCE

WHEREAS, we desire to establish a trust of which, during our lifetimes and the lifetime of the survivor of us, we are the exclusive recipients of the economic benefits;

WHEREAS, this Trust shall be initially funded with the assets described in the attached Schedule "A" entitled "INITIAL TRUST FUNDING"; these assets and any assets later added to the trust shall be known as the "trust estate" and shall be held, administered and distributed as provided in this document and any subsequent amendments to this document;

NOW, THEREFORE, the Trustee acknowledges receipt of the trust estate and shall hold the same in trust under the following terms, conditions and provisions.

## ARTICLE II

### DECLARATIONS

2.A. Name. This trust shall be known as **Joe Donald & Jane Helen Smith Family Trust**.

2.B. Family. We, **Joe Donald Smith** and **Jane Helen Smith**, sometimes hereinafter referred to as husband and/or wife, are married. Any children are listed below:

Kevin James Smith

Robin Helen Smith

2.C. Successor Trustees.

(1) If either of us shall cease to act for any reason, during our joint lifetimes, the other of us shall act as sole Trustee of the trust.

(2) After the death of either of us, the survivor of us shall act as sole Trustee of the trust.

(3) In the event that both of us cease to act for any reason, we shall be succeeded by

**Jack Smith**

**Sarah Jones**

Successor Trustees are Co-Trustees? (All Successor Trustees must sign) **No**

#### 2.D. Trust Estate.

(1) All property now or hereafter subject to the terms hereof shall be deemed to be our community and/or quasi-community property and the proceeds thereof shall continue to retain its character as community and/or quasi-community property during our joint lifetimes (also hereinafter called the "community estate"). It is our intention that the Trustee shall have no more extensive power over the community estate than either of us would have had under California law then in effect which governs the management of community property had no Trust not been created, and this Trust shall be interpreted to achieve this intention. This limitation shall terminate on the death of either of us.

(2) We, and/or any other person, may add to the principal of the trust by deed, will, or otherwise.

#### 2.E. Definitions. For any interpretation of this Trust, the following definitions shall apply:

(1) Beneficiary. "Beneficiary" or "beneficiaries" means any person and/or entity then eligible to receive current income or whose right to receive assets from the trust is currently vested;

(2) Cease to Act. "Cease to act" means the resignation, death, incapacity or disappearance of a Trustee;

(3) Code. "Code" refers to The Internal Revenue Code (as separately published as Title 26 of the U.S. Code), as amended, and to any regulations pertaining to the referenced sections;

- (4) Descendants. "Descendants" includes a person's lineal descendants of all generations;
- (5) Disappearance. "Disappearance" means an individual's whereabouts remains unknown for a period of sixty (60) days. If any beneficiary (including either of us) is not seen or heard of for a period of one year and no physical remains or body has been recovered, it is presumed that such beneficiary is not alive;
- (6) Education. "Education" or "educational purposes" includes any course of study or instruction which may, in the Trustee's discretion, be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests. Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable and necessary, again in the Trustee's discretion;
- (7) Incapacity.
- (a) In the case of a question or dispute, a Trustee's incapacity (whether the Trustee is either of us or a successor) is evidenced by written certification of two (2) physicians that the Trustee is unable to effectively manage his or her own property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause;
- (b) If there is no question or dispute, a Trustee's incapacity is established by the written declaration of only one doctor;
- (c) An individual is deemed incapacitated if a court of competent jurisdiction has declared the individual to be incompetent or legally incapacitated. If an individual has no grant the court making such determination valid authorization to disclose such individual's protected health information under any applicable federal and/or state statute, or if such individual subsequently revokes such authority, the individual shall be deemed incapacitated; and,
- (d) An individual is deemed 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 own property and financial affairs and such individual shall then resume the position of Trustee or co-Trustee held immediately prior to the incapacitation;
- (8) Issue. "Issue" refers to all descendants of all degrees and includes adopted persons; provided however, that the term shall refer only to the issue of lawful marriages and to children born outside of a lawful marriage, if a parent/child relationship (as determined under California law) existed between such child and his or her parent, living or deceased, who was a beneficiary hereunder. A child in gestation which is later born alive and survives for thirty (30) days shall be considered as issue in being throughout the period of gestation;
- (9) Legal Representative or Personal Representative. "Legal representative" or "personal representative" shall mean a person's guardian, conservator, executor, administrator, trustee, or any other person or entity personally representing a person or the person's estate;
- (10) Principal and Income. The determination by the Trustee in all matters as to what shall constitute principal of the trust, gross income therefrom and distributable net income under the terms of the trust shall be governed by the provisions of the Principal and Income Act of the State of California, except as to any of such matters as may otherwise be provided for in this instrument. In the event and to the extent that any of such matters relating to what constitutes principal or income of the trust and in the allocation of receipts and disbursements between these accounts is not provided for either in this Trust or in such Principal and Income Act, the Trustee has full power and authority to determine such matters;
- (11) Pronouns and Gender. The feminine, masculine or neuter gender, and the singular or plural number, is deemed to include the others whenever the context so indicates;

(12) Qualified Beneficiary. "Qualified Beneficiary" mean any person and/or entity then eligible to receive current income or whose right to receive assets from the trust is currently vested as well as those who could receive distributions after termination of the interests of current beneficiaries;

(13) Request in Writing. When either of us is acting as the Trustee or as a co-Trustee, the requirement of a writing to be signed by either of us as a Trustor and/or a beneficiary and delivered to either of us as the Trustee is waived;

(14) Right of Representation. Whenever a distribution is to be made by "right of representation" or "per stirpes," the assets are to be divided into as many shares as there are then-living children and deceased children who left living descendants. Each living child shall receive one share and each deceased child's share shall be divided among such deceased child's then-living descendants in the same manner;

(15) Shall or May. Unless otherwise specifically provided in this agreement or by the context in which used, we use the word "shall" in this Trust to command, direct or require, and the word "may" to allow or permit, but not require. In the context of the Trustee, when we use the word "may" we intend that the Trustee may act in the Trustee's sole and absolute discretion unless otherwise stated in this Trust;

(16) Trustee. Any reference to "Trustee" shall be deemed to refer to whether an individual, individuals (including either of us) or corporation is then acting as the Trustee; and,

(17) Trustor. "Trustor" has the same legal meaning as "Grantor," "Settlor," "Trustmaker," or any other term referring to the maker of a trust.

2.F. Governing Law. This Trust is intended to create a California trust and all of the terms and provisions hereof shall be interpreted according to the California Trust Code (Division 9 of the California Probate Code beginning with §15000), except as they are specifically modified herein. Nevertheless, the Trustee may change the situs of administration of the trust from one jurisdiction to another, thereby allowing this Trust to be regulated and governed by the laws of another jurisdiction. Such action may be taken for any purpose the Trustee deems appropriate including minimization of taxes.

2.G. Restrictions. The interest of any beneficiary (whether entitled to current income or possessing only a future interest) in either the income or principal of the trust or any part of it shall not be alienated or in any other manner assigned or transferred by such beneficiary; and such interest shall be exempt from execution, attachment and other legal process which may be instituted by or on behalf of any creditor or assignee of such beneficiary nor shall any part of such interest be liable for the debts or obligations (including spousal and/or child support, except as required under California law) of any such beneficiary. This paragraph is intended to impose a "Spendthrift Trust" on all interests held for any beneficiary. The rights of beneficiaries to withdraw trust property are personal and may not be exercised by a legal representative, attorney-in-fact, or others. IT IS OUR INTENT THAT THE PRECEDING SPENDTHRIFT CLAUSE AND THE PROTECTIONS IT PROVIDES BE CONSIDERED A MATERIAL PURPOSE OF THIS TRUST AND ANY SUBSEQUENT TRUST CREATED HEREUNDER.

2.H. Maximum Duration of Trusts. Regardless of any other provision herein, the maximum duration for any trust created hereunder is the longest period that property may be held in trust under the applicable statutes of the state then governing the situs of administration of this Trust. If, under those rules, such maximum duration of a trust must be determined (or alternatively determined) with reference to the death of the last survivor of a group of individuals alive upon the death of the survivor of us, or at such other time that the application of such rules limiting the duration of a trust is deemed to begin, those individuals shall

consist of all beneficiaries (including future and/or contingent) of this Trust (as hereinafter named) alive at the death of the survivor of us. Any trust created hereunder must end immediately prior to such maximum duration and, thereupon, the Trustee shall pay over the principal, free from such trust, to the person or persons then entitled to receive the net income.

2.1. No-Contest Provision. Pursuant to §21310, et seq., of the California Probate Code, in the event any beneficiary under this Trust shall, singly or in conjunction with any other person or persons, undertake any of the following actions then the right of that person to take any interest given him or her by this Trust shall be determined as it would have been determined had the person predeceased the survivor of us without being survived by issue:

(1) Contests in any court the validity of this Trust and/or any last Will of either of us which leaves assets to this Trust;

(2) Seeks to obtain adjudication in any proceeding in any court that this Trust, or any of its provisions, and/or any last Will which leaves assets to this Trust or any provision therein, of either of us is void, except to the extent permitted by §21380 of the California Probate Code;

(3) Seeks otherwise to set aside this Trust or any of its dispositive provisions;

(4) Seeks to obtain adjudication in any proceeding in any court challenging the transfer of any property to or from this Trust on the grounds that such property was not ours at the time of the transfer or at the time of our death; and/or,

(5) Files a creditor's claim against the estate of either of us or prosecutes an action against either of our estates or this Trust for a claim for damages or services alleged to have been incurred during the lifetime of either of us (this subparagraph shall not apply to a creditor's claim filed by a beneficiary solely for reimbursement of administrative costs, expenses, funds advanced in the preservation of the estate of either of us or for sums advanced for the payment of the last illness and/or funeral expenses of either of us).

The Trustee is hereby authorized to defend, at the expense of the trust, any contest or other attack of any nature on this Trust or any of its provisions. A "contest" shall include any action described above in an arbitration proceeding and shall not include any action described above solely in a mediation not preceded by a filing of a contest with a court, notwithstanding the foregoing; further, a "contest" shall not include a responsive pleading, such as an objection, response, or answer, filed by a beneficiary in defense of a characterization or transfer of property.

If California law governs the foregoing provisions of this Paragraph, then California Probate Code §21311

shall apply and the foregoing provisions of this Paragraph may only be enforced against the following types of contests:

- (1) a direct contest that is brought without probable cause;
- (2) a pleading to challenge a transfer of property on the grounds that it was not the transferor's property at the time of the transfer; and/or,
- (3) the filing of a creditor's claim or prosecution of an action based on it.

The terms "direct contest" and "pleading" have the same meanings as set forth in California Probate Code §21310. All trusts created in this agreement are "protected instruments" as provided in California Probate Code §21310(e).

2.J. Presumptions. Any beneficiary who shall not have survived thirty (30) days after the death of either of us shall be deemed not to have survived such person; except that in our case, if the order of our deaths cannot be established by proof, each of us shall be deemed to have survived the other.

2.K. Special Distributions. If any income and/or principal of any trust hereunder ever vests outright under the provisions of this Trust Agreement to a person not yet twenty-five (25), or a person who suffers from substance abuse, or a person whom the Trustee determines is incapacitated, or a person whose financial circumstances are such that failure to delay distributions will actually reduce the trust benefits to such person, then the Trustee, in the Trustee's discretion and without supervision of any court, shall hold or distribute such property (subsequently referred to in this Paragraph as the "protected property") in accordance with the following provisions:

- (1) The Trustee may hold any protected property in a separate trust for each such beneficiary, exercising as the Trustee of such trust all the administrative powers conferred in this Trust Agreement. The Trustee may accumulate or distribute to or for such beneficiary in accordance with subparagraph (2), as hereinbelow set forth, such amount or amounts of income and/or principal of the trust as the Trustee determines from time to time during the term of the trust to be appropriate. This separate trust shall terminate and vest absolutely when: (a) the beneficiary attains age twenty-five (25) and the beneficiary's age was the basis for the separate trust; (b) the beneficiary dies; (c) the trust assets are exhausted by discretionary distributions; or, (d) the reason for the separate trust no longer exists in the Trustee's discretion. At such termination, the Trustee shall distribute the protected property then on hand in trust to the beneficiary or to the beneficiary's estate if the trust terminated at the beneficiary's death.

- (2) The Trustee may distribute any protected property to or for the benefit of such beneficiary: (a) directly to the beneficiary; (b) on behalf of the beneficiary for the beneficiary's exclusive benefit; (c) to any

account in a bank, credit union, mutual fund and/or brokerage firm either in the name of such beneficiary or in a form reserving title, management and custody of such account to a suitable person for the use of such beneficiary for the maximum period permitted by the California Uniform Transfers to Minors Act; (d) in any form of an annuity; and, (e) in all ways provided by law dealing with gifts or distributions to or for minors or persons under incapacity. The receipt for distributions by any such person shall fully discharge the Trustee.

(3) In determining whether to make distributions, the Trustee may consider other resources of the beneficiary, any governmental entitlements and the future needs of the beneficiary during the term of the trust. The protected property shall, at all times, remain free of all claims by any governmental agency and/or creditors of the beneficiary.

(4) Notwithstanding the provisions of the preceding subparagraphs or any other provision of this Agreement, the Trustee shall not suspend any mandatory distributions required for a trust to qualify, in whole or in part, for any charitable deduction or characterization as a "credit trust" (as hereinafter defined in the Paragraph entitled "Retirement Accounts"). Finally, nothing herein shall prevent distribution mandated by the provisions hereinabove set forth relating to the Maximum Distribution of Trusts.

2.L. Conflict Resolution and Severability. In order to save costs of court proceedings and promote the prompt and final resolution of any dispute with regard to the interpretation of this Trust or the administration or distribution of our trust, we direct that any such dispute shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules for Wills and Trusts then in effect. Nevertheless, the following matters shall not be arbitrable: (1) questions regarding the competency of either of us; or (2) attempts to remove a fiduciary. In addition, arbitration may be waived by all sui juris parties in interest.

The arbitrator(s) shall be a practicing lawyer licensed to practice law in the State of California (or such other state whose laws then govern this Trust) and whose practice has been devoted primarily to wills and trusts for at least ten (10) years. The arbitrator(s) shall apply the substantive law (and the law of remedies, if applicable) of the State of California (or such other state whose laws then govern this Trust). The arbitrator's decision shall not be appealable to any court, but shall be final and binding on any and all persons who have or may have an interest in this Trust, including unborn or incapacitated persons, such as minors or any person for whom a conservator has been appointed or any other protective order has been made.

Further, if any provision of this Trust is invalid, that provision shall be disregarded, and the remainder of this Trust shall be construed as if the invalid provision had not been included.

2.M. Uneconomical Administration. No other provision of this Trust to the contrary, if at any time a share or trust being administered for any income beneficiary or group of income beneficiaries other than the survivor of us has such fair market value as to make the continued administration of the share or trust uneconomical as determined by the Trustee, in the Trustee's sole discretion, the Trustee may pay the entire balance of such share or trust to the person or persons then entitled to the income therefrom and to

the person or persons (if different persons from the income interests) then entitled the remainder interest thereof, in proportion to their interests therein.

## ARTICLE III

### TRUSTEESHIP

3.A. Successor Trustees. We may, during our joint lifetimes, appoint individuals or corporations as co-Trustees or successor Trustees, by a written instrument other than a Will delivered to the other Trustee(s), if any are then-acting. Upon the death of the first of us, the survivor may appoint, by the same method, individuals or corporations as co-Trustees or successor Trustees. If the survivor of us is incapacitated, the person who has been nominated to serve as successor Trustee may designate his or her successor, if there is no named successor to that successor Trustee or if the person designated as his or her successor is unable or unwilling to serve.

3.B. Appointment of Trustee. If there is no Trustee acting hereunder when a majority of the adult beneficiaries shall appoint a successor Trustee or co-Trustees by an instrument in writing, which appointment must be effective upon the date the last Trustee fails to qualify or ceases to act; provided however, if the Trustee who is being replaced was not related or subordinate (within the meaning of §672(c) of the Code) to the beneficiaries holding this power to appoint, the power to appoint a new Trustee or co-Trustees shall be limited to the appointment of a Trustee (or of co-Trustees) who is also not related or subordinate (within the meaning of §672(c) of the Code) to the beneficiaries holding this power to appoint. For purposes of this Paragraph, "beneficiaries" shall include charitable organizations.

3.C. Resignation. Any Trustee may resign at any time by giving written notice to us, if living, or the survivor of us, and thereafter to the other Trustees if any, and, if not, to all the beneficiaries. Any such notice shall become effective as agreed by a majority of the beneficiaries, but no later than thirty (30) days after such written notice. Notwithstanding the foregoing, the Trustee may, at the expense of any trust created hereunder, secure appointment of a successor Trustee of such trust by a court of competent jurisdiction.

3.D. Liability. No Trustee shall be under any obligation to examine the accounts of any prior Trustee, and a successor Trustee shall be exonerated from all liability arising from any prior Trustee's acts or negligence. It is our intention that any Trustee serving hereunder shall be accountable only from the date such Trustee actually receives the assets of the trust.

3.E. No Bond Required. No bond shall be required of any person or institution named in this Trust as the Trustee.

3.F. Compensation. The Trustees hereinabove designated in Paragraph 2.C. shall not be entitled to a fee or commission for services; otherwise, a Trustee shall be entitled to receive, out of the income and principal of the trust, compensation for its services hereunder to be determined, if a corporate Trustee, by the application of the current rates then charged by the Trustee for trusts of a similar size and character, and, if the Trustee shall be an individual, such compensation shall be a reasonable fee based on the time and effort of the Trustee. The Trustee shall be entitled to reimbursement for all travel and other necessary

expenses incurred in the discharge of the Trustee's duties. The Trustee may impose any Trustee fees or other expenses of the trust against the principal or income of the trust without any duty to seek reimbursement from the interest not charged.

3.G. Reports. While either of us is living and if we are not acting as the Trustee or as a co-Trustee, the Trustee shall render an annual accounting to us unless we have waived such accounting and, to the greatest extent permitted by law, the requirement for any notice, accounting and/or report to any other beneficiary shall be waived. If both of us are or if the survivor is incapacitated, such accounting shall be given to our legal conservator or, if no such conservator has been appointed, to our representative payee for Social Security purposes. After the death of the survivor of us, the Trustee shall render an annual accounting to each beneficiary, except as such reporting shall be waived by such beneficiary; provided however, if the only beneficiary then-entitled to an accounting is also the sole Trustee, the Trustee shall render an annual accounting to each qualified beneficiary, except as such reporting shall be waived by such qualified beneficiary.

(1) If beneficiaries entitled to an accounting are minors, their accounting shall be delivered to their parents or guardian. If beneficiaries entitled to an accounting are incapacitated, the accounting shall be delivered to their legal representative;

(2) Unless the accounting is objected to in writing within one hundred and eighty (180) days after mailing to the persons to whom the accounting is to be delivered, the account shall be deemed final and conclusive in respect to all transactions disclosed in the accounting. The accounting shall be binding on all persons interested in the trust, including beneficiaries who are not known or who are not yet born; and,

(3) The records of the Trustee shall be open at all reasonable times to inspections. The Trustee shall not be required to make any reports or accountings to the courts; however, nothing herein stated shall be deemed to restrict the Trustee from seeking judicial approval of the Trustee's accounts.

3.H. Payments to Beneficiaries.

(1) The Trustee shall pay the net income of any trust hereunder to the beneficiary to whom such income is directed to be paid, at such times as shall be convenient to such beneficiary and agreed to by the Trustee;

(2) Any income and/or principal of any trust hereunder to which any beneficiary may be entitled may, without regard to any order or assignment purporting to transfer the same to any other person, be paid or distributed by the Trustee, in the Trustee's sole discretion, into the hands of such beneficiary, or to the guardian of the person of such beneficiary, or be mailed to such beneficiary's last known address, or deposited to the account of such beneficiary in a bank or trust company of good standing, or be applied for the benefit of such beneficiary and his or her dependents directly by the Trustee; and the receipt for any payment or distribution or evidence of the application of any income or principal made in conformity with

the foregoing shall discharge the Trustee from any further liability therefore; and,

(3) Unless the Trustee shall have received actual written notice of the occurrence of an event affecting the beneficial interests of this Trust, the Trustee shall not be liable to any beneficiary of this Trust for distribution made as though the event had not occurred.

3.I. Division of Trust Estate. There shall be no requirement for the physical segregation or division of any trusts created hereunder except as segregation or division may be required by the termination of any of the trusts, but the Trustee shall keep separate accounts for the different undivided interests.

3.J. Trustee Authority.

(1) Subject to state law, a Trustee may appoint an "Attorney-in-Fact" and delegate to such agent the exercise of all or any of the powers conferred upon a Trustee and may at pleasure revoke such appointment. Any such appointment shall be made by a written, acknowledged instrument.

(2) No purchaser from or other person dealing with the Trustee shall be responsible for the application of any purchase money or thing of value paid or delivered to the Trustee, and the receipt by the Trustee shall be a full discharge; and no purchaser or other person dealing with the Trustee and no issuer, or transfer agent, or other agent that issues or transfers any securities to which any dealings with the Trustee should relate, shall be under any obligation to ascertain or inquire into the power of the Trustee to purchase, sell, exchange, transfer, mortgage, pledge, lease, distribute or otherwise in any manner dispose of or deal with any security or asset or property held by the Trustee or comprised in the trust.

(3) Prior to delivering the trust estate to a successor Trustee or to making any partial or complete distribution of principal to any beneficiary (other than a distribution that is made in the exercise of the Trustee's discretion and does not terminate the trust), the Trustee may require an approval of the Trustee's accounts and a release and discharge from all beneficiaries having an interest in the distribution. If any beneficiary or beneficiaries shall refuse to provide a requested release and discharge, the Trustee may require court settlement of such accounts; all of the Trustee's fees and expenses (including attorneys' fees) attributable to court approval of such accounts shall be paid by the trust involved to the extent that the accounts are approved.

(4) The certification of a Trustee and/or Attorney-in-Fact that such Trustee and/or agent is acting according to the terms of this Trust shall fully protect all persons dealing with such Trustee and/or agent.

(5) Notwithstanding any power of individual signature contained in this Trust or hereafter conferred on the Trustees, no one co-Trustee shall have the right, power or authority to make any unilateral decision affecting the trust, other than of a purely ministerial nature.

3.K. Release of Healthcare Information, including HIPAA Authority. We intend for the Trustee to be treated as we would regarding the use and disclosure of our individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164, and the California Confidentiality of Medical Information Act ("CMIA"), California Civil Code §56. We authorize any physician, healthcare professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health provider, any insurance company or medical information bureau or other health care clearinghouse that has provided treatment or services or that has paid for or is seeking payment from either of us for such services to give, disclose, and release, either orally or in writing, to the Trustee or Trustees, without restriction, all of our individually identifiable health information and medical records regarding any past, present or future medical or mental health condition. For the purpose of complying with §56.11 of the California Civil Code, we have each executed a form entitled AUTHORIZATION AND WAIVER FOR THE INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH concurrently herewith.

The authority given to the Trustee shall supersede any prior agreement that we have made with either of our health care providers to restrict access to or disclosure of our individually identifiable health information. The authority given to the Trustee has no expiration date and shall expire only in the event that either of us revokes the authority in writing and delivers such revocation to our health care providers.

3.L. Life Insurance. Upon the death of either of us, the Trustee shall proceed immediately to collect the net proceeds of policies, if any, on our lives that are payable to the Trustee and shall hold such proceeds for the purposes and upon the terms provided in Article VI of this Trust. Payment to the Trustee by an insurance company of the proceeds of such policies and receipt of such proceeds by the Trustee shall be a full discharge of the liability of such insurance company with respect to such proceeds, and no insurance company need inquire or take notice of this Trust or see to the application of such payments. The Trustee may prosecute or maintain any litigation necessary to enforce payment of such policies.

3.M. Retirement Accounts. To the extent any trust hereunder is the beneficiary of a Retirement Account (as hereinafter defined), the Trustee shall draw the benefits from the Retirement Account in amounts sufficient to meet the minimum distribution requirements of §401(a)(9) of the Code and the regulations thereunder (the "Required Minimum Distribution"). Notwithstanding any provision of the trust to the contrary, the Required Minimum Distribution shall be paid to or applied for the benefit of the person or persons then entitled to receive or have the benefit of the income from such trust, or if there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries; further, the Trustee shall have no power to accumulate the Required Minimum Distributions for any beneficiary.

(1) "Retirement Account" means amounts held in or payable pursuant to a plan (of whatever type) qualified under Code §401, or an individual retirement arrangement under Code §408, or a Roth IRA under Code §408A, or a tax-sheltered annuity under Code §403, or a deferred compensation plan under Code §457 or any other benefit subject to the distribution rules of Code §401(a)(9), or the corresponding

provisions of any subsequent federal tax law. It is our intention that this Trust qualify as a “conduit trust” under Code §401(a)(9) so that the trust’s beneficiaries shall be considered designated beneficiaries for purposes of the minimum distribution rules, and that distributions may therefore be taken over the trust beneficiary’s life expectancy (or the life expectancy of the oldest trust beneficiary).

(2) The Retirement Accounts shall not be subject to the claims of any creditor of either of our estates, they shall not be used for the satisfaction of any distributions to a “non-designated beneficiary” (as that term is defined in Treas. Reg. §1.401(a)(9)-4, Q&A 1) and they shall not be applied to the payment of the debts, taxes of either of us or other claims or charges against either of our estates unless and until all other assets available for such purposes have been exhausted, and even then only to the minimum extent that would be required under applicable law in the absence of any specific provision on this subject in this Trust, and, under no circumstances, shall they be used for such purpose after September 30th of the year following the death of the owner of the Account.

3.N. Powers of Invasion. A discretionary power given to a Trustee of any trust created hereunder to invade or utilize the principal of such trust for “health, support, maintenance, education” (or a similar use of such terms) shall be considered to be in compliance with §§2041 and 2514 of the Code and any exercise of such power shall be limited by those sections. Notwithstanding §16081(c) of the California Probate Code, any other discretionary power given to a Trustee of any trust created hereunder to invade or utilize the principal of such trust for any other purpose shall be deemed to be a broader power if a clear reading of the terms of such power would so indicate. Notwithstanding §16081(c) of the California Probate Code, any discretionary power to make distributions of income or principal of any trust created hereunder which is given to a current beneficiary as sole Trustee is specifically intended to be given to such sole Trustee and the right of any other beneficiary to have another Trustee appointed for the purpose of making such discretionary distributions is hereby specifically waived.

3.O. Release of Powers. Each Trustee shall have the power to release or to restrict the scope of any power that such Trustee may hold in connection with any trust created under this Trust, whether said power is expressly granted in this Trust or implied by law. The Trustee shall exercise this release in a written instrument specifying the powers to be released or restricted and the nature of any such restriction. Any released power shall pass to and be exercised by the other then-acting Trustees.

## ARTICLE IV

### TRUSTEE'S POWERS

Subject to the provisions and limitations set forth expressly herein, the Trustee shall have, in general, the power to do and perform any and all necessary acts and things in relation to the trust in the same manner and to the same extent as an individual might or could do with respect to his or her own property. No enumeration of specific powers made herein shall be construed as a limitation upon the foregoing general powers, nor shall any of the powers conferred herein upon the Trustee be exhausted by the use thereof, but each shall be continuing. In addition to the above, the Trustee shall have all of the powers enabled by §§16200, et. seq., of the California Probate Code (as though such powers were set forth herein) and, in addition, the Trustee is specifically authorized and empowered to exercise those powers hereinafter set forth in this Article IV.

4.A. Agreements. To carry out the terms of any valid agreements which we, or either of us, may

have entered into during our lifetimes regarding property owned by the trust.

4.B. Asset Title. To hold securities or other property in the Trustee's name as trustee, or in "street name," or in bearer form.

4.C. Bank Accounts. To open and maintain bank accounts in the name of the Trustee with any bank, trust company or savings and loan association authorized and doing business in any State or federally administered jurisdiction. If more than one Trustee shall be acting, the Trustees may designate one or more of them to conduct banking activities and to make deposits, withdrawals and endorsements upon giving written notice of such designation to the bank, trust company, or savings and loan association in question; and such bank, trust company or savings and loan association shall be protected in relying upon such designation.

4.D. Contracts. To enter into contracts which are reasonably incident to the administration of the trust.

4.E. Deal with Fiduciaries. To buy from, sell to, or generally deal with the Trustee individually and as a fiduciary.

4.F. Depreciation Reserve. The Trustee shall not be required to establish any reserve for depreciation or to make any charge for depreciation against any portion of the income of the trust.

4.G. Digital Assets and Electronic Communications. To exercise all powers over any digital device, digital asset, user account and electronically stored information, including any user account and digital asset that currently exists or may exist as technology develops, whether the same is in the name of this trust or the name of either of us. Such accounts shall include, without limitation, electronic banking accounts, electronic investment accounts, debt management accounts, automatic bill payment directives, and social media accounts. Such powers include, but are not limited to, changing and circumventing the username and password to gain access to such user accounts and information; accessing any of the passwords or other electronic profile data from applicable electronic record host entities; transferring or withdrawing funds or other digital assets among or from such user accounts; opening new user accounts in the name of the trust; all as the Trustee determines is necessary or advisable. The Trustee shall have full authority to access, manage, control, delete and terminate any electronically stored information and communications of the trust or which either of us has an interest to the fullest extent allowable under the federal Electronic Communications Privacy Act of 1986, 18 USC 2510 et seq., as amended from time to time, the Revised Uniform Fiduciary Access to Digital Assets Act (Part 20, Division 2 of the California Probate Code) and any other federal, state or international law; and, to take any actions which an individual owner would be authorized to take under all applicable terms of service, terms of use, licensing and other account agreements or laws. To the extent a specific reference to any federal, state, local or international law is required in order to give effect to this provision, we specifically provide that it is our intention to so reference such law, whether such law is now in existence or comes into existence or is amended after the date of this Trust Agreement.

4.H. Divisions and Distributions. In any case in which the Trustee is required to divide any trust assets into shares for the purpose of distribution (or otherwise), such division may be in kind, including undivided interests in any real property, or partly in kind and partly in money, pro rata or non-pro rata. For such purposes, the Trustee may make such sales of trust assets as the Trustee may deem necessary on such terms and conditions as the Trustee shall deem fit, and to determine the relative value of the securities or other assets so allotted or distributed; the Trustee's determination of values and of the property for such distribution shall be conclusive. The decision of the Trustee in distributing assets in reliance on this paragraph shall be binding, and shall not be subject to challenge by any beneficiary.

4.I. Indebtedness. With respect to any indebtedness owed to the trust, secured or unsecured:

(1) To continue the same upon and after maturity, with or without renewal or extension, upon such terms as the Trustee deems advisable; and,

(2) To foreclose any security for such indebtedness, to purchase any property securing such indebtedness and to acquire any property by conveyance from the debtor in lieu of foreclosure.

4.J. Invest and Reinvest. To invest, reinvest, purchase investments and keep the trust invested in any kind of property, real, personal, or mixed, including, by way of illustration but not limitation, oil and gas royalties and interests; precious metals; common and preferred stocks of any corporation; bonds; notes; debentures; trust deeds; mutual funds or other investments, including such funds administered by a Trustee; interests in Limited Liability Companies; interests in partnerships, whether limited or general and as a limited or general partner; intend hereby to authorize the Trustee to act in such manner as the Trustee shall believe to be in the best interests of the trust and the beneficiaries thereof. The Trustee is specifically vested with the power and authority to open, operate and maintain securities brokerage accounts wherein any securities may be bought and/or sold on margin, and to hypothecate, borrow upon, purchase and/or sell existing securities in such accounts as the Trustee shall deem appropriate or useful and, further, while we, or either of us, as acting as Trustee, such account(s) may deal in commodities, options, futures contracts, hedges, puts, calls and/or straddles (whether or not covered by like securities held in the brokerage account). These powers shall be construed as expanding the "standards of care" rule of the California Trust Code (Division 9 of the California Probate Code beginning with §15000) or in the Uniform Prudent Investor Act (as it may otherwise apply).

4.K. Life Insurance. To purchase insurance on the life of any person or persons, including the lives of either of us.

4.L. Loans. To borrow for the trust from any person, corporation or other entity, including the Trustee, at such rates and upon such terms and conditions as the Trustee shall deem advisable, and to pledge and/or hypothecate as security any of the assets of the trust for the benefit of which such loan is made by mortgage, deed of trust or otherwise for the debts of the trust or the debts of either of us, or to guarantee the debt of either of us; to lend money upon such terms and such conditions as the Trustee

deems to be in the best interests of the trust and the beneficiaries thereof, including the lending of money from one trust to any other trust created hereunder and to borrow on behalf of one trust from any other trust created hereunder, and further including the right to lend money to the probate estate (if any) of either of us, but in such event such loans shall be adequately secured and shall bear the then prevailing rate of interest for loans to such persons or entities for the purposes contemplated.

4.M. **Manage and Control.** To manage, control, sell at public or private sale, convey, exchange, partition, divide, subdivide, improve, repair; to grant options and to sell upon deferred payments; to pledge or encumber by mortgage or deed of trust or any other form of hypothecation; to otherwise dispose of the whole or any part of the trust on such terms and for such property or cash or credit, or any combination thereof, as the Trustee may deem best; to lease for terms within or extending beyond the duration of the trust for any purposes; to create restrictions, easements, to compromise, arbitrate, or otherwise adjust claims in favor of or against the trust; to institute, compromise and defend actions and proceedings with respect to the trust; and to secure such insurance, at the expense of the trust, as the Trustee may deem advisable. This Paragraph specifically gives the Trustee the full discretion and power to sell and convey any real property owned by the trust, including our personal residence.

4.N. **Professional Assistance.** To employ and compensate agents, investment managers, attorneys, accountants, and other professionals deemed by the Trustee to be reasonably necessary for the administration of the trust, and the Trustee shall not be liable for any losses occasioned by the good faith employment of such professionals, nor shall the Trustee be liable for any losses occasioned by any actions taken by the Trustee in good faith reliance upon any advice or recommendation thereof; to pay all costs, taxes, and charges in connection with the administration of the trust; and to be reimbursed for all reasonable expenses, including attorneys' fees incurred in the management and protection of the trust and to pay such professionals a reasonable fee without court approval thereof. Any such payment by the Trustee of such fees shall be out of principal or income as the Trustee may elect, or partially out of each. The discretion of the Trustee to pay these expenses from income or principal, or partially from each, is subject to the Trustee's fiduciary obligation to treat all income beneficiaries and remaindermen equitably.

4.O. **Purchase.** To purchase property at its fair market value as determined by the Trustee from the probate estate (if any) of either of us.

4.P. **Qualification for Government Benefits.** The Trustee is authorized to take any actions that the Trustee determines to be appropriate or necessary in connection with the qualification for or receipt of government benefits for either of us, including benefits (whether income, medical, disability, or otherwise) from any agency (whether state, federal, or otherwise), such as Social Security, Medi-Cal, Medicare, or state supplemental programs. In particular, we authorize and direct the Trustee, upon receiving written notice from either of us, the conservator of either of us, or the person holding a Durable Power of Attorney for either of us, to partition all of the community property of the Trust for the purpose of transmuting such community property to be the separate property of either of us. Upon such partition, if one of us is incompetent, the Trustee shall have the authority to divide our residence and our other assets between us in whatever manner is required to maximize any such government benefits or to maximize the non-incapacitated spouse's "Community Spouse Resource Allowance" ("CSRA") and/or "Minimum Monthly Maintenance Needs Allowance" ("MMMNA") as those terms are defined in the Medicare Catastrophic Coverage Act, as amended, or similar state laws or regulations. We authorize and encourage the Trustee to engage in estate planning, financial planning, Medi-Cal planning, long term care planning and/or asset preservation planning, to such extent and in such manner, as the Trustee shall deem necessary or

advisable. Pursuant to this authority and notwithstanding any other provision of this Trust Agreement, the Trustee may also transfer any portion of the Trust Estate without limitation to the beneficiaries hereunder, including the Trustee if the Trustee is one such beneficiary, or to another trust established for the benefit of the beneficiaries hereunder, including the Trustee if the Trustee is one such beneficiary, in the complete discretion of the Trustee, even if doing so may be considered self-dealing. Any transfers made pursuant to this authority shall, for all purposes, be deemed to have been "in my best interest" if: (1) made in accordance with the provisions of this Paragraph; and (2) made in the context of estate planning, financial planning, Medi-Cal planning, long term care planning and/or asset preservation planning.

4.Q. Receive Assets. To receive, take possession of, sue for, recover and preserve the assets of the trust, both real and personal, coming to its attention or knowledge, and the rents, issues and profits arising from such assets.

4.R. Retention of Trust Property. To retain, without liability for loss or depreciation resulting from such retention, any assets received by the Trustee or any property that may from time to time be added to the trust or any trust created hereunder; or any property in which the funds of any trust may from time to time be invested, for such time as the Trustee shall deem best, even though such property may represent a large percentage of the total property of the trust or it would otherwise be considered a speculative or inappropriate investment. This authority shall be construed as overriding the "standards of care" rule of the California Trust Code (Division 9 of the California Probate Code beginning with §15000) or in the Uniform Prudent Investor Act (as it may otherwise apply). However, this authority shall not supersede any right otherwise granted to the surviving spouse under this Trust Agreement to compel that certain trust assets be made productive.

4.S. Safe Deposit Boxes. To hire and use any safe deposit box and/or space in a vault and to surrender or relinquish any such safe deposit box and/or space in a vault.

4.T. Securities. With respect to any corporation or partnership, the stocks, bonds or interests in which may form a part of the trust estate, to act in the same manner and to exercise any and all powers which an individual could exercise as the legal owner of any such corporate stock or partnership interest, including the right to vote in person or in proxy, or to surrender, exchange or substitute stocks, bonds, or other securities as an incident to the merger, consolidation, re-capitalization or dissolution of any of such corporation, or to exercise any option or privilege which may be conferred upon the holders of such stocks, bonds, or other securities, either for the exchange or conversion of the same into other securities or for the purchase of additional securities, and to make any and all payments which may be required in connection therewith.

4.U. Tax Consequences. To prepare and file returns and arrange for payment with respect to all local, state, federal and foreign taxes incident to this Trust Agreement; to take any action and to make any election, in the Trustee's discretion, to minimize the tax liabilities of this Trust Agreement and its beneficiaries.

4.V. General Powers. To do any and all other acts necessary, proper or desirable for the benefit of

the trust and its beneficiaries, and to effectuate the powers conferred upon the Trustee hereunder.

## ARTICLE V

### OUR RETAINED POWERS

5.A. Revocation. During our joint lifetimes, this Trust may be revoked in whole or in part by an acknowledged instrument in writing signed by either of us which shall refer to this Trust and to this specific power and which shall be delivered to the then-acting Trustee and the other spouse. In the event of such revocation, the jointly owned property and/or the community estate (as hereinabove defined) held by the trust shall revert to both of us as if this Trust had not been created and any separate property held by the trust shall revert to the spouse who contributed such separate property and shall constitute spouse's separate property as if this Trust had not been created.

5.B. Amendment. We may, at any time during our joint lifetimes, amend any of the terms of this Trust by an acknowledged instrument in writing signed by both of us which shall refer to this Trust and to this specific power and which shall be delivered to the then-acting Trustee.

5.C. Revocation and Amendment after the First Death.

(1) On the death of the first of us, the surviving spouse shall have the power to amend, revoke, or terminate the entire trust in whole or in part.

(2) Revocation and amendment shall be made in the manner as herein above provided in Paragraphs 5.A. and 5.B.

(3) After the death of the surviving spouse, the trust may not be amended or revoked.

5.D. Powers Personal to Us. Our powers to revoke or amend this Trust are personal to us and shall not be exercisable on our behalf by any conservator or other person, except the revocation or amendment may be authorized, after notice to the Trustee, by the Court that appointed a conservator and/or a guardian of either of us. Notwithstanding the previous sentence, in the event that either of us appoint an "Attorney-in-Fact," we reserve the right to confer upon such Attorney-in-Fact the power (1) to add property to the trust with the consent of the Trustee; (2) by written instrument delivered to the Trustee, to withdraw any property held hereunder (to the extent that we would individually have that power); and, (3) if specifically authorized in such appointment, by written instrument delivered to the Trustee, to modify or amend or revoke the trust (provided that the duties of the Trustee may not be increased or the Trustee's fees reduced without the consent of the Trustee). Any such appointment shall be made by a written, acknowledged instrument.

5.E. Tangible Personal Property. While either of us is living, we reserve the right to retain the control,

use and possession of any or all of the tangible personal property included in the trust. We expressly limit the Trustee's responsibility with respect to the property so retained to the Trustee's function as the holder of legal title until we (or the survivor of us) surrender our right to the use and possession of any such property or until the death of both of us. In addition, we shall have the right, exercisable by written notice to the Trustee on terms specified by us, to direct the sale, transfer, gift or other disposition of any such property, with or without consideration, and the Trustee shall take all actions necessary to comply with the terms of such notice. In the event we surrender any such property to the Trustee, or upon our deaths, the Trustee shall take possession, preserve and maintain such property. The Trustee shall be responsible and accountable only for that tangible personal property which is actually in the Trustee's possession or control or, if retained by us, is found by application of reasonable diligence at the death of the survivor of us or at such time that the Trustee asserts control.

5.F. Residential Property. We reserve the right to have complete and unlimited, possession, use and control of any real property which may ever constitute an asset of the trust estate and which is occupied by us for residential purposes, thereby retaining the requisite beneficial interest and possessory rights in and to such real property to comply with the "Homestead" laws of the State in which such property is located, so that such requisite beneficial interest and possessory rights constitute in all respects "equitable title to real estate". Notwithstanding anything to the contrary contained in this trust, our interest in such real property shall be an interest in real property and such real property shall be deemed to be our homestead; such use and control shall be without rent or other accountability to the Trustee. As part of such use and control, we, and not the Trustee, shall have the responsibility to manage such property, pay taxes, insurance, utilities and all other charges against the property, and may, at our option, charge such expenses to the trust, or may request reimbursement for any advance made for such purposes.

## ARTICLE VI

### DISPOSITION OF TRUST ESTATE

6.A. Trustee's Basic Duties. During the term of this trust, the Trustee shall hold, manage, invest and reinvest the trust estate, collect the income and principal from it, pay the necessary expenses of trust administration, and distribute the income and principal as provided in this ARTICLE VI.

6.B. Disposition During Our Joint Lifetimes. During our joint lifetimes, we shall be equally entitled to the entire net income of the jointly owned property and/or the community estate (as hereinabove defined) held by the trust. At the written request of both of us, the Trustee shall pay to either spouse so much of the principal of the jointly owned property and/or the community estate held by the trust as we shall request or shall make such gratuitous transfers of the principal of the jointly owned property and/or the community estate held by the trust as we both shall direct. During our joint lifetimes, the Trustee shall also pay to each party, or shall apply for such spouse's benefit, the entire net income of such spouse's separate property (if any) held by the trust. At the written request of the spouse who contributed any separate property to the trust, the Trustee shall pay to such spouse so much of the principal of such separate property as he or she shall request; further, the Trustee may also make gifts in favor of our issue, and any spouse of such issue. In this context, a gift "in favor of" a person includes but is not limited to a gift to a trust, an account under the Uniform Transfers to Minors Act of any jurisdiction, and a Tuition Savings Account or Prepaid Tuition Plan as defined under §529 of the Code. Provided however, the aggregate amount of any gifts made in any one calendar year to any one individual shall not exceed the amount that may be made free of federal gift tax.

6.C. Disposition During Incapacity. If at any time during our joint lifetimes, it is determined that either

of us has become physically or mentally incapacitated as hereinabove defined in Paragraph 2.E., whether or not a court of any jurisdiction has declared that person in need of a conservator, the Trustee shall pay to the other of us, or apply for the benefit of either of us, first from the jointly owned property and/or the community estate (as hereinabove defined) held by the trust, and then equally from our separate estates, the amounts of net income and principal necessary in the Trustee's discretion for the proper health, support, and maintenance of both of us in accordance with our accustomed manner of living at the date of such incapacity, until the incapacitated spouse is again able to manage his or her own affairs, or until the earlier death of such incapacitated spouse. The non-incapacitated spouse may also withdraw from time to time accumulated trust income and principal of the jointly owned property and/or the community estate held by the trust. The Trustee shall accumulate any of the net income not so paid over and/or applied and shall add the same to the principal of the jointly owned property and/or the community estate or the separate estate, as the case may be.

As a guide to the Trustee, it is our intent that we, and the survivor of us, shall remain in our primary residence as long as it is medically reasonable and, if we should need convalescent care, that we be able to return home as soon as it is medically reasonable; the expense of home care shall be of secondary importance. This paragraph is for the guidance of the Trustee only and should not be considered by any third party as a restriction or limitation on the Trustee's powers to manage the trust in the Trustee's absolute discretion.

6.D. Administration of the Trust Estate at the Death of the First to Die. The first of us to die shall be called the "Deceased Spouse" and the survivor of us shall be called the "Surviving Spouse". On the death of the Deceased Spouse, the entire trust estate shall continue in trust for the benefit of the Surviving Spouse, without exception, and with the full power of revocation. During the lifetime of the Surviving Spouse, the Trustee shall pay to him or her, or apply for his or her benefit, the entire net income from the entire trust estate. At the written request of the Surviving Spouse, the Trustee shall pay to him or her as much of the principal of the entire trust estate as he or she shall request. During the lifetime of the Surviving Spouse, the Trustee, in the Trustee's sole discretion, may additionally pay to or apply for the Surviving Spouse's benefit such principal distributions as the Trustee deems necessary for the Surviving Spouse's health, support, comfort, enjoyment, welfare and maintenance. In addition to payments for the Surviving Spouse's benefit, the Trustee is specifically authorized to initiate or continue any payments to a dependent person in the manner hereinabove set forth in Paragraph 6.B.; the initiation, continuation, amount and extent of such support shall be in the Trustee's sole and absolute discretion. The Trustee shall exercise in a liberal manner the power to invade the principal of the trust estate for the Surviving Spouse, since it is our intent that the comfort, welfare and happiness of the Surviving Spouse is primary and the rights of the remaindermen in the trust shall be considered of secondary importance.

6.E. Deferral of Division or Distribution. Whenever the Trustee is directed to make a distribution of trust assets or a division of trust assets into separate trusts or shares on the death of the survivor of us, the Trustee may, in the Trustee's discretion, defer such distribution or division up to six (6) months after such death. When the Trustee defers distribution or division of the trust assets, the deferred division or distribution shall be made as if it had taken place at the time prescribed in this Trust in the absence of this Paragraph and all rights given to the beneficiaries of such trust assets under other provisions of this Trust shall be deemed to have accrued and vested as of such prescribed time; further, the beneficiaries of such trust assets shall be entitled to receive interest on the delayed distribution pursuant to California law (if there is no provision expressly applicable to trusts, then interest shall be paid pursuant to California law applicable to decedents' estates). Upon making distribution of trust assets or a division of trust assets into separate trusts at the death of the Deceased Spouse, the assets shall be valued at the date of distribution or the date of funding the trusts created by this instrument if such date is different than the date of death,

and the Trustee shall distribute or divide so as to avoid application of terminable interest rules and regulations.

Further, from time to time during the period between the death of the Deceased Spouse and the funding of any trust which is to come into existence under the terms of this Trust as a result of the death of the Deceased Spouse, Trustee may, in Trustee's discretion, distribute cash and/or other trust properties, not only to such trust, but also to or for the direct benefit of any individual beneficiary or beneficiaries of such trust (i.e., one to whom distributions of the income of such trust might then be made); provided however, that:

(1) All such direct distributions to any beneficiary of any such trust shall be in lieu of (and thus credited toward) allocations otherwise required to be made to that trust as provided above; and,

(2) No distribution which might thus be made to any beneficiary of any such trust shall exceed the amount then remaining to be allocated to that trust, or the amount which might properly be distributed by the trust to that beneficiary under the terms of that particular trust (nor shall there be any trust assets which are prohibited by any other term of this Trust from allocation to that trust).

6.F. Authorized Actions at Our Deaths. At and after the death of either of us, the Trustee is authorized and directed to pay over to our executor, administrator, or personal representative so much of the trust estate as such representative shall state in writing to be necessary or desirable to provide the estate with funds with which to pay the funeral expenses, debts, cost of administration and/or the taxes on the taxable estate, including taxes which may be levied upon the probate estate, upon the trust estate and/or upon any property or interest in property, real or equitable, which is included in the taxable estate, and any such statement of our executor, administrator, or personal representative (regardless of the nature or extent of the assets held in the estate) shall be binding and conclusive upon the Trustee and upon all persons and corporations having any interest in the trust estate.

(1) If such executor, administrator, or personal representative fails to furnish any such directions or if no such representative is appointed, the Trustee may, in its discretion, pay in whole or in part all debts which are due and enforceable against our estate, the expenses of the last illness, funeral, and administration and all taxes and other governmental charges imposed under the laws of the United States or of any state or country by reason of such death.

(2) Any estate taxes imposed on any trust assets, or on any assets included in the taxable estate of the Surviving Spouse not part of the trust estate (or not added to the trust estate following our death) shall be paid from the residue of the Trust Estate (i.e., after any specific distributions) and shall not be pro-rated among the beneficiaries and/or trusts who actually receive such property. Provided however:

(a) No taxes shall be apportioned to, charged against or paid from any gift made to a charitable organization that qualifies for a charitable deduction under §2055 of the Code.

(b) No taxes shall be apportioned to, charged against, or paid from any property qualifying for the marital deduction under §2056 of the Code.

(c) No taxes shall be apportioned to, charged against or paid from any other property excluded from the imposition of estate taxes by reason of any exemption, exclusion, or deduction applicable to the property, or because of (i) provisions of our respective Wills or this Trust that expressly exclude the property from taxation; (ii) the relationship between the deceased and the beneficiary of the property; or (iii) the character of the property. All such property shall pass free of estate taxes.

(d) All estate taxes imposed on property includible in either of our gross taxable estates under §2041 of the Code (or an applicable statute for state purposes) by reason of a general power of appointment held by the deceased shall be charged to and paid from the property subject to the power. Further, we direct that the amount of the general power of appointment shall be equal to the taxes attributable to the value of the property shall be paid to the Trustee, to be held in this Trust and used to pay such taxes. The amount of taxes attributable to the property shall equal (i) the amount of all taxes imposed on either of our taxable estates (including the value of the general power of appointment property), less (ii) the amount of all taxes that would have been imposed on the taxable estate excluding the value of the general power of appointment property. The rules promulgated under §2011 of the Code shall apply in determining the amount of the incremental tax to be paid from the general power of appointment property.

(e) Any increment in estate taxes attributable to other property in which either of us had a life interest or a term interest that did not end at our death (including a life estate or life income interest) and which is included in either of our gross taxable estates shall be borne by the holder or recipient of that property.

6.G. Distribution at the Death of the Surviving Spouse. On the death of the Surviving Spouse, the Trustee shall hold, administer and distribute the entire trust estate, as then constituted, as follows:

(1) The Trustee shall distribute such items of our tangible personal property as may then be included in the Trust Estate in accordance with any written instructions left by us, or by the survivor of us, and the remainder of such personal property, or all of it if no such instructions are left, to the residue of the Trust Estate.

**Our son Kevin James Smith is to be given all of his fathers shop tools and equipment.**

**Our daughter Robin Helen Smith is to be given all her mothers jewelry including her wedding ring.**

(1) The Trustee shall distribute the rest, remainder and residue of the Trust Estate

**Our son Kevin James Smith and our daughter Robin Helen Smith will divide our estate in equal shares between each other.**

Executed on \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ San Diego County, California.

\_\_\_\_\_  
Joe Donald Smith,

\_\_\_\_\_  
Jane Helen Smith,

Trustor

Trustor

We hereby acknowledge receipt of the trust estate, accept the terms of Joe Donald & Jane Helen Smith Family Trust, and covenant that we will execute the trust with all fidelity.

\_\_\_\_\_  
Joe Donald Smith,

\_\_\_\_\_  
Jane Helen Smith,

Co-Trustee

Trustee

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

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Joe Donald Smith and Jane Helen Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

**SAMPLE**

# DECLARATION OF TRUST

We, **Joe Donald Smith** and **Jane Helen Smith**, hereby declare that all assets of every kind and description and wheresoever situated which we jointly or individually presently own or hereafter acquire (regardless of the means by which acquired and/or the record title in which held; including, by way of illustration and not limitation, all real property, investments, bank accounts, etc.), other than any Individual Retirement Accounts or other type of plan which is tax deferred under the Internal Revenue Code of 1986, as amended, are transferred to and the same shall be owned by:

## **Joe Donald & Jane Helen Smith Family Trust,**

being a revocable living trust, which exists under a certain Trust Agreement created by us concurrently herewith.

The foregoing declaration and transfer shall apply even though "record" ownership or title, in some instances, may, presently or in the future, be registered in our respective individual names, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed. This declaration and transfer shall constitute an intention to transfer the above-listed assets to the above-mentioned trust for purposes of the ruling in Estate of Herold (1983), 16 Cal.App.4th 943. This declaration may be terminated by either of us by written notice to the trustee of the above-mentioned trust.

Executed on \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ San Diego County, California.

\_\_\_\_\_  
Joe Donald Smith

\_\_\_\_\_  
Jane Helen Smith

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Joe Donald Smith and Jane Helen Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Seal

# CERTIFICATION OF TRUST

TO: ALL FINANCIAL INSTITUTIONS, MUTUAL FUND ADMINISTRATORS, TITLE INSURERS, TRANSFER AGENTS, AND OTHER PERSONS AND INSTITUTIONS

The undersigned desire to confirm the establishment of a revocable living trust named **Joe Donald & Jane Helen Smith Family Trust** (hereinafter referred to as the "Trust"). The following provisions are found in said Trust and may be relied upon as a full statement of the matters covered by such provisions by anyone dealing with the original co-Trustees or their successors.

## CREATION OF TRUST

The Trust was created concurrently herewith by a Trust Agreement executed by the undersigned as Trustors and co-Trustees, for the benefit of the undersigned during their joint lifetimes, thereafter for the lifetime benefit of the survivor, and ultimately for the benefit of other successors/beneficiaries in interest.

## NAME OF TRUST

The name of the Trust is **Joe Donald & Jane Helen Smith Family Trust**. All assets held in the name of the Trust should be titled in substantially the following manner: Joe Donald Smith and Jane Helen Smith, as co-Trustees of Joe Donald & Jane Helen Smith Family Trust, U/A dated \_\_\_\_\_, 20\_\_.

## TRUSTEE

The currently acting co-Trustees of the Trust are **Joe Donald Smith** and **Jane Helen Smith**. If either of said co-Trustees shall cease to act for any reason, the other shall act as sole Trustee of the Trust. In the event that both cease to act for any reason, they shall be succeeded by

**Joe Smith**

**Sarah Jones**

Are Successor Trustees/Trustees? (All Successor Trustees must sign) **No**

## SIGNATURE AUTHORITY

While both Trustors are acting as co-Trustees, only one signature shall be required to conduct business with respect to property and/or assets held or owned by the Trust. Any third party dealing with the Trust may rely upon this singular authority without any further evidence. Any Trust asset may be titled to reflect this authority, including the designation "and/or".

## REVOCABILITY OF TRUST

The Trust is revocable. The persons holding the power to revoke or amend the Trust are **Joe Donald Smith** and **Jane Helen Smith**.

## TAXPAYER IDENTIFICATION NUMBER

The Trust uses the Social Security number of either Trustor as its Taxpayer Identification Number.

No separate tax identification number is required while this Trust is revocable and the Trustors or either of them is acting as Trustee.

#### ADDRESS OF THE TRUST

The Trust uses the address of the Trustors/Trustees as its location. This address is

**Street Address: 123 Palm Ave  
City: San Diego  
State / Province: CA  
Postal / Zip Code: 92111**

#### TRUSTEE AUTHORITY

(1) Subject to state law, a Trustee may appoint an Attorney-in-Fact ("Power of Attorney") and delegate to such agent the exercise of all or any of the powers conferred upon a Trustee.

(2) No purchaser from or other person dealing with a Trustee shall be responsible for the application of any purchase money or thing of value paid or delivered to such Trustee, but the receipt by a Trustee shall be a full discharge; and no purchaser or other person dealing with a Trustee, and no issuer, or transfer agent, or other agent of any issuer of any securities to which any dealings with a Trustee should relate, shall be under any obligation to ascertain or inquire into the power of such Trustee to purchase, sell, exchange, transfer, mortgage, pledge, lease, distribute or otherwise in any manner dispose of or deal with any security or any other property held by such Trustee or comprised in the trust fund.

(3) The certification of a Trustee and/or the agent and a notice that such person is acting according to the terms of the Trust shall fully protect all persons dealing with such Trustee and/or agent. Any person may rely upon the certification of any Trustee as to the powers which are not contained in this Certification of Trust, including a further enumeration of the Trustee's powers.

A person who acts in reliance on this Certification of Trust without knowledge that the representations contained in this Certification of Trust are untrue shall not be liable to any person for so acting and may assume without inquiry the existence of the facts contained in this Certification. Knowledge of the terms of the Trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the certification. Any person who in good faith enters into a transaction in reliance on this Certification of Trust may enforce the transaction against the trust property as if the representations contained in this Certification of Trust were correct.

#### TRUSTEE'S POWER

The Trustee shall have, in general, the power to do and perform any and all acts and things in relation to the trust fund in the same manner and to the same extent as an individual might or could do with respect to his or her own property including the power to buy, sell, hold, transfer, convey, or exercise any ownership rights in any asset for the Trust by executing any appropriate document, or by an oral demand to buy or sell a security; to maintain, deposit or to withdraw from any bank, brokerage or mutual fund account (including margin accounts), and to sign checks or drafts on any such account; to purchase or exercise rights in any life insurance or annuity contracts; and to borrow and pledge any Trust asset as security. In addition to the above, the Trustee shall have all of the powers enabled by §§16200, et. seq., of the California Probate Code (as though such powers were set forth herein) and, in addition, the Trustee is specifically authorized and empowered to exercise those powers set forth in Article IV of said Trust.

No specific provision of the Trust limits the general authority of the Trustee granted in the Trust and outlined above. Further, the Trust is not subject to supervision by any court nor is court permission or approval necessary for any act by the Trustee.

ADMINISTRATIVE PROVISIONS

- (1) The Trust shall be administered according to the California Trust Code (Division 9 of the California Probate Code beginning with §15000), except as shall be specifically modified therein.
- (2) The Trust has not been revoked, modified, or amended in any manner that would cause the representations contained in this Certification of Trust to be incorrect.
- (3) This Certification of Trust is a true and accurate statement of the matters referred to herein concerning the Trust.
- (4) This Certification of Trust has been signed by both of the currently acting co-Trustees of the Trust.
- (5) This Certification of Trust is intended to comply with the provisions of §18100.5 of the California Probate Code.
- (6) Reproductions of this executed original (with reproduced signatures) shall be deemed to be original counterparts of this Certification of Trust and any person who is in possession of a photocopy of this executed Certification may, in good faith, rely upon the information contained and shall not be liable to the Trustors, any Trustee or beneficiary for reliance upon the information contained.
- (7) No person shall have received notice of any event upon which the validity of this Certification of Trust depends unless said notice is in writing and until the notice is delivered to said person.

IN WITNESS WHEREOF, the undersigned declare under penalty of perjury that the foregoing is true and correct and that they have executed this Certification of Trust on \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ San Diego County, California.

\_\_\_\_\_  
 Joe Donald Smith, Jane Helen Smith,  
 Trustor-Trustee Trustor-Trustee

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

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Joe Donald Smith and Jane Helen Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_

**SAMPLE**

# ASSIGNMENT OF PERSONAL PROPERTY

We, **Joe Donald Smith** and **Jane Helen Smith**, hereby declare that all articles of personal and household use and ornament of every kind and description and wheresoever situated which we or either of us presently own or hereafter acquire regardless of the means by which acquired and/or the record title in which held; including, by way of illustration and not limitation, automobiles; club memberships; digital devices, digital assets, user accounts and electronically stored information (such accounts shall include, without limitation, electronic banking accounts, electronic investment accounts, debt management accounts, automatic bill payment directives, and social media accounts); glass; clothing; jewelry; precious stones; furniture; rugs; paintings and other works of art; books; china; silverware, collections; etc., (and including all insurance with respect thereto) are transferred to and the same shall be owned by:

## **Joe Donald & Jane Helen Smith Family Trust,**

being a revocable living trust, which exists under a certain Trust Agreement created by us concurrently herewith.

The foregoing declaration and transfer shall apply even though "record ownership or title, in some instances, may, presently or in the future, be registered in our respective individual name or names, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed. This declaration may be terminated by a duly written notice to the Trustee of the above-mentioned trust. Notwithstanding this transfer in trust, we reserve the unlimited right to the use of the aforementioned items.

Executed on \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ San Diego County, California.

\_\_\_\_\_  
Joe Donald Smith

\_\_\_\_\_  
Jane Helen Smith

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Joe Donald Smith and Jane Helen Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Seal

# LAST WILL AND TESTAMENT

## OF

### Joe Donald Smith

I, **Joe Donald Smith**, a resident of San Diego County, California, declare that this is my Last Will and Testament, hereby revoking all prior Wills and Codicils.

#### ARTICLE ONE

##### DECLARATIONS

1.A. Family. I am married to **Jane Helen Smith** and all references to “my wife” shall be to her. Any living children are listed below:

**Kevin James Smith**

**Robin Helen Smith**

Any child or children of mine born after the date of this Will shall be treated as though such child or children was/were specifically named in this Paragraph 1.A.

1.B. Trust Agreement. The term “TRUST AGREEMENT” as used in this Will shall refer to that certain unrecorded trust instrument known as the **Joe Donald & Jane Helen Smith Family Trust**, created by my wife and me concurrently herewith.

1.C. Property. I confirm to my wife her one-half interest in any of our community property, with or without the necessity of probate administration or other court order, at my wife’s discretion. It is my intention by this Will to dispose of my separate property (if any) and my interest in the property owned by my wife and me (other than any property held in joint tenancy with my wife at the time of my death).

#### ARTICLE TWO

##### FIDUCIARIES

2.A. Executor. My nomination for the Executor of my Will, to serve without bond being required, shall be the then-acting Trustee or Trustees of the above-mentioned Trust Agreement. The term “my Executor” as used in this Will shall include any personal representative of my estate.

2.B. Appointment of Special Executor. If for any reason my Executor is unwilling or unable to act as

Executor with respect to any provision of my Will or the administration of my estate, my Executor shall appoint, in writing, an individual, a bank, or a trust company that is not related or subordinate to my Executor within the meaning of §672(c) of the Internal Revenue Code (hereinafter referred to as “the Code”) to act as a substitute or special Executor for such purpose and may revoke any such appointment at will. Each substitute or special Executor so acting shall exercise all administrative and fiduciary powers granted by my Will unless expressly limited by the delegating Executor in the instrument appointing such substitute or special Executor. Any substitute or special Executor may resign at any time by delivering written notice to my Executor to that effect.

If a nominated Executor wishes to decline appointment and no other nominated Executor pursuant to Paragraph 2.A. is then available or willing to act, such declining Executor shall have the power to nominate a successor Executor to act in such declining Executor’s place and stead with all of the same powers as are hereinafter set forth.

2.C. No Bond Required. Any fiduciary appointed under this Article Two shall serve without bond being required.

## ARTICLE THREE

### DISTRIBUTION OF ESTATE

3.A. Payment of Estate Expenses. My Executor may pay, on my behalf, after consulting with the then-acting Trustee or Trustees of the above-mentioned Trust Agreement, all debts which are then due and enforceable against my estate, the expenses of my last illness, the expenses of my final disposition without regard to statutory limitation or the need for probate or court approval, the expenses of administering my estate, and all death taxes and governmental charges imposed and made payable under the laws of the United States or of any state or court by reason of my death. Such taxes shall include taxes imposed upon life insurance, endowment or annuity contracts upon my life, and upon all other property, whether passing under my Will or otherwise. I provide that the assets, if any, over which I hold any taxable power of appointment at my death shall bear the entire increment and the burden of death taxes and other governmental charges to the extent that the total of such taxes and charges is greater than would have been imposed and made payable had I not had such a power of appointment, and to the extent required by law, I exercise such power of appointment in favor of the appropriate taxing authorities to discharge such taxes. Other than the above disposition for the taxation of a power of appointment, the pro-ration of taxes imposed upon my estate shall be in the manner directed in said trust.

If my residuary estate is insufficient for such payments, in whole or in part, or if, in the discretion of my Executor, all or a part of such payments from my estate would prejudice the best interests of my estate, then my Executor shall direct the then-acting Trustee or Trustees of said trust to pay the appropriate amounts, either directly or to my Executor for such purposes.

3.B. Interest in Retirement Plans. I give my wife all of my interest, if any, in any qualified retirement plans (i.e., IRA, Keogh, 401k, Pension and/or Profit-Sharing Plans) of which she is the owner/participant.

3.C. Gift to Trust. I give, devise and bequeath the remainder of my estate to the then-acting Trustee or

Trustees of the above-mentioned Trust Agreement, together with any additions or amendments thereto, to be added to the principal of that Trust and to be held, administered and distributed under the Trust Agreement and any amendments to such Trust Agreement. I direct that such Trust Agreement shall not be administered under court supervision, control or accounting, and the Trustee shall not be required to give bond in such capacity.

3.D. Alternate Disposition. If the Trust Agreement hereinabove referred to in Paragraph 1.B. of this Will is not in effect at my death, or if for any other reason the gift to said Trust (as hereinabove set forth) cannot be accomplished, I specifically and completely incorporate the terms of said Trust Agreement into this Will by reference. In such a situation, I direct my Executor to establish a trust in accordance with the provisions of said Trust and give the remainder of my estate, excluding any property over which I might have a power of appointment, to the Trustee of such testamentary trust.

## ARTICLE FOUR

### ESTATE ADMINISTRATION

4.A. General Powers of Executor. My Executor shall have all of the powers now or hereafter conferred on the Executor by the California Probate Code, and any powers enumerated elsewhere in this Will.

4.B. Electronic Communications and Digital Assets. My Executor shall have the power to exercise all powers I may have over any digital device, digital asset, user account and electronically stored information, including any user account and digital asset that currently exists or may exist as technology develops, whether the same is in my own name or that I own or lawfully use jointly with any other individual (such accounts shall include, without limitation, electronic banking accounts, electronic investment accounts, debt management accounts, automatic bill payment directives, and social media accounts). Such powers include, but are not limited to, changing and circumventing my username and password to gain access to such user accounts and information; accessing any of my passwords or other electronic profile data from applicable electronic record host entities; transferring or withdrawing funds or other digital assets among or from such user accounts; opening new user accounts in my name; all as my Executor determines is necessary and advisable to effectively conduct my personal and financial affairs, to discharge any and all obligations I may owe and to maintain my public reputation. I hereby give my lawful consent and fully authorize my Executor to access, manage, control, delete and terminate any electronically stored information and communications of mine to the fullest extent allowable under the federal Electronic Communications Privacy Act of 1986, 18 USC 2510 et seq., as amended from time to time, the Revised Uniform Fiduciary Access to Digital Assets Act (Part 20, Division 2 of the California Probate Code) and any other federal, state or international law; and, to take any actions I am authorized to take under all applicable terms of service, terms of use, licensing and other account agreements or laws. To the extent a specific reference to any federal, state, local or international law is required in order to give effect to this provision, I specifically provide that my intention is to so reference such law, whether such law is now in existence or comes into existence or is amended after the date of this Will.

4.C. Power to Make Tax Elections. To the extent permitted by law, and without regard to the resulting effect on any other provision of this Will, on any person interested in my Estate, or on the amount of taxes that may be payable, my Executor shall have the power to choose a valuation date for tax purposes; choose the methods to pay any death taxes; elect to treat or use any item for state or federal estate or income tax purposes as an income tax deduction or an estate tax deduction; make such elections or allocations under the tax laws as the trustee of the trust hereinabove referenced in Paragraph

1.B. directs or, in the absence of such a direction, to the extent my executor deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person; and, to disclaim all or any portion of any interest in property passing at or after my death to my Estate or to a trust created by me or established for my benefit (including, but not limited to, any sub-trust established pursuant to the terms of the trust hereinabove referenced in Paragraph 1.B.).

4.D. Power to Elect "Portability". In addition to the tax powers hereinabove set forth, my Executor is specifically authorized to elect, to the extent and in the manner authorized by §2010(c)(2) of the Code and any applicable regulations thereto, the allocation to my wife of any unused portion of my "applicable exclusion amount" for federal estate tax purposes; it is my intent that my Executor may affirmatively elect "portability" of the "deceased spousal unused exclusion amount" [as said term is defined in §2010(c)(4) of the Code] pursuant to §2010(c)(5)(A) of the Code.

4.E. Nomination of Executor. If a nominated Executor wishes to decline appointment and no other nominated Executor is then available or willing to act, such declining Executor shall have the power to nominate a new Executor to act in such declining Executor's place and to act with all of the same powers as are hereinabove set forth.

4.F. Court Supervision. My Estate may be managed, administered, distributed, and settled pursuant to the Independent Administration of Estates Act (specifically including, but not limited to, the powers authorized by §§10400, et seq. of the California Probate Code, as though such powers were set forth herein).

## ARTICLE V

### MISCELLANEOUS PROVISIONS

5.A. No-Contest Provision. Pursuant to §21300 et seq., of the California Probate Code, in the event any beneficiary under this Will shall singly or in conjunction with any other person or persons, undertake any of the following actions then pending, the right of that person to take any interest given him or her by this Will shall be determined as it would have been determined had the person predeceased me without being survived by issue:

- (1) Directly contests, without probable cause, in any court the validity of my Will;
- (2) Seeks to obtain adjudication in any proceeding in any court that my Will or any of its provisions are void, except to the extent permitted by §21350 of the California Prob. Code;
- (3) Seeks otherwise to set aside my Will or any of its dispositive provisions;
- (4) Seeks to obtain adjudication in any proceeding in any court challenging the transfer of any property to or from my Estate on the grounds that such property was not mine at the time of the transfer or

at the time of my death (for purposes of this subparagraph, a contest shall not include a responsive pleading, such as an objection, response, or answer, filed by a beneficiary in defense of a characterization or transfer of property); and/or,

(5) Files a creditor's claim against my Estate or prosecutes an action against my Estate for any claim for damages or services alleged to have been incurred during my lifetime (for purposes of this subparagraph, a contest shall not include a creditor's claim filed by a beneficiary for reimbursement of administrative costs, expenses, funds advanced in preservation of my estate or sums advanced for payment of my last illness or funeral expenses).

My Executor is hereby authorized to defend, at the expense of my Estate, any contest or other attack of any nature on my Estate, this Will or any of its provisions.

5.B. Severability Clause. If any provision of this Will is invalid, that provision shall be disregarded, and the remainder of this Will shall be construed as if the invalid provision had not been included.

5.C. Governing Law. All questions concerning the validity and interpretation of this Will, shall be governed by the laws of the State of California in effect at the time this Will is executed.

5.D. Miscellaneous.

(1) As used in this Will, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others whenever the context so indicates.

(2) Article headings in this Will are inserted for convenience only, and are not to be considered in the construction of the provisions hereof.

IN WITNESS WHEREOF, I have on \_\_\_\_\_, 20\_\_\_\_, in the County of \_\_\_\_\_, State of California, signed, sealed, published and declared the foregoing instrument as and for my Last Will and Testament, in the presence of each and all of the subscribing witnesses, each of whom I have requested, in the presence of each of the others, to subscribe his or her name as an attesting witness, in my presence and in the presence of the others. I am of legal age, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Joe Donald Smith

On the date last above written, Joe Donald Smith declared to us, the undersigned, that the foregoing instrument was his Last Will and Testament and requested us to act as witnesses to it. To the best of our knowledge, Joe Donald Smith was of legal age, of sound mind, and under no constraint or undue influence. Joe Donald Smith thereupon signed this Will in our presence, all of us being present at the same time. We now, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

Executed on \_\_\_\_\_, 20\_\_\_\_, in the County of \_\_\_\_\_, State of California.

We declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
[signature – please print name under this line]      [street address]

\_\_\_\_\_  
[city, state]

\_\_\_\_\_  
[signature – please print name under this line]      [street address]

\_\_\_\_\_  
[city, state]

**SAMPLE**

# LAST WILL AND TESTAMENT

## OF

### Jane Helen Smith

I, **Jane Helen Smith**, a resident of San Diego County, California, declare that this is my Last Will and Testament, hereby revoking all prior Wills and Codicils.

#### ARTICLE ONE

##### DECLARATIONS

1.A. Family. I am married to **Joe Donald Smith** and all references to “my husband” shall be to him. Any living children are listed below:

Kevin James Smith

Robin Helen Smith

Any child or children of mine born after the date of this Will shall be treated as though such child or children was/were specifically named in this Paragraph 1.A.

1.B. Trust Agreement. The term “TRUST AGREEMENT” as used in this Will shall refer to that certain unrecorded trust instrument known as the **Donald & Jane Helen Smith Family Trust**, created by my husband and me concurrently herewith.

1.C. Property. I convey to my husband his one-half interest in any of our community property, with or without the necessity of probate administration or other court order, at my husband’s discretion. It is my intention by this Will to dispose of my separate property (if any) and my interest in the property owned by my husband and me (other than any property held in joint tenancy with my husband at the time of my death).

#### ARTICLE TWO

##### FIDUCIARIES

2.A. Executor. My nomination for the Executor of my Will, to serve without bond being required, shall be the then-acting Trustee or Trustees of the above-mentioned Trust Agreement. The term “my Executor” as used in this Will shall include any personal representative of my estate.

2.B. Appointment of Special Executor. If for any reason my Executor is unwilling or unable to act as Executor with respect to any provision of my Will or the administration of my estate, my Executor shall appoint, in writing, an individual, a bank, or a trust company that is not related or subordinate to my Executor within the meaning of §672(c) of the Internal Revenue Code (hereinafter referred to as “the Code”) to act as a substitute or special Executor for such purpose and may revoke any such appointment at will. Each substitute or special Executor so acting shall exercise all administrative and fiduciary powers granted by my Will unless expressly limited by the delegating Executor in the instrument appointing such substitute or special Executor. Any substitute or special Executor may resign at any time by delivering written notice to my Executor to that effect.

If a nominated Executor wishes to decline appointment and no other nominated Executor pursuant to Paragraph 2.A. is then available or willing to act, such declining Executor shall have the power to nominate a successor Executor to act in such declining Executor’s place and stead with all of the same powers as are hereinafter set forth.

2.C. No Bond Required. Any fiduciary appointed under this Article Two shall serve without bond being required.

## ARTICLE THREE

### DISTRIBUTION OF ESTATE

3.A. Payment of Estate Expenses. My Executor may pay from my estate, after consulting with the then-acting Trustee or Trustees of the above-mentioned Trust Agreement, all debts which are then due and enforceable against my estate, the expenses of my last illness, the expenses of my final disposition without regard to statutory limitation or the necessity of prior court approval, the expenses of administering my estate, and all death taxes and governmental charges imposed and made payable under the laws of the United States or of any state or court of record as of my death. Such taxes shall include taxes imposed upon life insurance, endowment contracts and annuity contracts upon my life, and upon all other property, whether passing under my Will or otherwise; provided that the assets, if any, over which I hold any taxable power of appointment at my death shall bear the entire increment and the burden of death taxes and other governmental charges to the extent that the total of such taxes and charges is greater than would have been imposed and made payable had I not held such a power of appointment, and to the extent required by law, I exercise such power of appointment in favor of the appropriate taxing authorities to discharge such taxes. Other than the above direction for the taxation of a power of appointment, the pro-ration of taxes imposed upon my estate shall be in the manner directed in said trust.

If my residuary estate is insufficient for such payments, in whole or in part, or if, in the discretion of my Executor, all or a part of such payments from my estate would prejudice the best interests of my estate, then my Executor shall direct the then-acting Trustee or Trustees of said trust to pay the appropriate amounts, either directly or to my Executor for such purposes.

3.B. Interest in Retirement Plans. I give my husband all of my interest, if any, in any qualified retirement plans (i.e., IRA, Keogh, 401k, Pension and/or Profit-Sharing Plans) of which he is the owner/participant.

3.C. Gift to Trust. I give, devise and bequeath the remainder of my estate to the then-acting Trustee or Trustees of the above-mentioned Trust Agreement, together with any additions or amendments thereto, to be added to the principal of that Trust and to be held, administered and distributed under the Trust Agreement and any amendments to such Trust Agreement. I direct that such Trust Agreement shall not be administered under court supervision, control or accounting, and the Trustee shall not be required to give bond in such capacity.

3.D. Alternate Disposition. If the Trust Agreement hereinabove referred to in Paragraph 1.B. of this Will is not in effect at my death, or if for any other reason the gift to said Trust (as hereinabove set forth) cannot be accomplished, I specifically and completely incorporate the terms of said Trust into this Will by reference. In such a situation, I direct my Executor to establish a trust in accordance with the provisions of said Trust Agreement and give the remainder of my estate, excluding any property over which I might have a power of appointment, to the Trustee of such testamentary trust.

## ARTICLE FOUR

### ESTATE ADMINISTRATION

4.A. General Powers of Executor. My Executor shall have all of the powers now or hereafter conferred on my Executor by the California Probate Code, and any powers enumerated elsewhere in this Will.

4.B. Electronic Communications and Digital Assets. My Executor shall have the power to exercise all powers I may have over any digital device, digital asset, user account and electronically stored information, including any user account and digital asset that currently exists or may exist as technology develops, whether the same is in my own name or that I own or lawfully use jointly with any other individual (such accounts shall include, without limitation, electronic banking accounts, electronic investment accounts, debt management accounts, automatic bill payment directives, and social media accounts). Such powers include, but are not limited to, changing and circumventing my username and password to gain access to such user accounts and information; accessing any of my passwords or other electronic profile data from applicable electronic record host entities; transferring or withdrawing funds or other digital assets among or from such accounts; opening new user accounts in my name; all as my Executor determines is necessary and advisable to effectively conduct my personal and financial affairs, to discharge any and all obligations I may owe and to maintain my public reputation. I hereby give my lawful consent and fully authorize my Executor to access, manage, control, delete and terminate any electronically stored information and communications of mine to the fullest extent allowable under the federal Electronic Communications Privacy Act of 1986, 18 USC 2510 et seq., as amended from time to time, the Revised Uniform Fiduciary Access to Digital Assets Act (Part 20, Division 2 of the California Probate Code) and any other federal, state or international law; and, to take any actions I am authorized to take under all applicable terms of service, terms of use, licensing and other account agreements or laws. To the extent a specific reference to any federal, state, local or international law is required in order to give effect to this provision, I specifically provide that my intention is to so reference such law, whether such law is now in existence or comes into existence or is amended after the date of this Will.

4.C. Power to Make Tax Elections. To the extent permitted by law, and without regard to the resulting effect on any other provision of this Will, on any person interested in my Estate, or on the amount of taxes that may be payable, my Executor shall have the power to choose a valuation date for tax purposes; choose the methods to pay any death taxes; elect to treat or use any item for state or federal estate or income tax purposes as an income tax deduction or an estate tax deduction; make such

elections or allocations under the tax laws as the trustee of the trust hereinabove referenced in Paragraph 1.B. directs or, in the absence of such a direction, to the extent my executor deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person; and, to disclaim all or any portion of any interest in property passing at or after my death to my Estate or to a trust created by me or established for my benefit (including, but not limited to, any sub-trust established pursuant to the terms of the trust hereinabove referenced in Paragraph 1.B.).

4.D. Power to Elect "Portability". In addition to the tax powers hereinabove set forth, my Executor is specifically authorized to elect, to the extent and in the manner authorized by §2010(c)(2) of the Code and any applicable regulations thereto, the allocation to my husband of any unused portion of my "applicable exclusion amount" for federal estate tax purposes; it is my intent that my Executor may affirmatively elect "portability" of the "deceased spousal unused exclusion amount" [as said term is defined in §2010(c)(4) of the Code] pursuant to §2010(c)(5)(A) of the Code.

4.E. Nomination of Executor. If a nominated Executor wishes to decline appointment and no other nominated Executor is then available or willing to act, such declining Executor shall have the power to nominate a new Executor to act in such declining Executor's place and stead with all of the same powers as are hereinabove set forth.

4.F. Court Supervision. My Estate may be managed, administered, distributed, and settled pursuant to the Independent Administration of Estates Act (specifically including all of the powers authorized by §§10400, et seq. of the California Probate Code, as though such powers were set forth herein).

#### MISCELLANEOUS PROVISIONS

5.A. No-Contest Provision. Pursuant to §21310, et seq., of the California Probate Code, in the event any beneficiary under this Will seeks, directly or in conjunction with any other person or persons, undertake any of the following actions then the right of that person to take any interest given him or her by this Will shall be determined as it would have been determined had the person predeceased me without being survived by issue:

- (1) Directly contests, without probable cause, in any court the validity of my Will;
- (2) Seeks to obtain adjudication in any proceeding in any court that my Will or any of its provisions are void, except to the extent permitted by §21350 of the California Prob. Code;
- (3) Seeks otherwise to set aside my Will or any of its dispositive provisions;
- (4) Seeks to obtain adjudication in any proceeding in any court challenging the transfer of any

property to or from my Estate on the grounds that such property was not mine at the time of the transfer or at the time of my death (for purposes of this subparagraph, a contest shall not include a responsive pleading, such as an objection, response, or answer, filed by a beneficiary in defense of a characterization or transfer of property); and/or,

(5) Files a creditor's claim against my Estate or prosecutes an action against my Estate for any claim for damages or services alleged to have been incurred during my lifetime (for purposes of this subparagraph, a contest shall not include a creditor's claim filed by a beneficiary for reimbursement of administrative costs, expenses, funds advanced in preservation of my estate or sums advanced for payment of my last illness or funeral expenses).

My Executor is hereby authorized to defend, at the expense of my Estate, any contest or other attack of any nature on my Estate, this Will or any of its provisions.

5.B. Severability Clause. If any provision of this Will is invalid, that provision shall be disregarded, and the remainder of this Will shall be construed as if the invalid provision had not been included.

5.C. Governing Law. All questions concerning the validity and interpretation of this Will, shall be governed by the laws of the State of California in effect at the time this Will is executed.

5.D. Miscellaneous.

(1) As used in this Will, masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the other gender whenever the context so indicates.

(2) Article hereto inserted in this Will are inserted for convenience only, and are not to be considered in the construction of the provisions hereof.

IN WITNESS WHEREOF, I have on \_\_\_\_\_, 20\_\_\_\_, in the County of \_\_\_\_\_, State of California, signed, sealed, published and declared the foregoing instrument as and for my Last Will and Testament, in the presence of each and all of the subscribing witnesses, each of whom I have requested, in the presence of each of the others, to subscribe his or her name as an attesting witness, in my presence and in the presence of the others. I am of legal age, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_

Jane Helen Smith

On the date last above written, Jane Helen Smith declared to us, the undersigned, that the foregoing instrument was her Last Will and Testament and requested us to act as witnesses to it. To the best of our knowledge, Jane Helen Smith was of legal age, of sound mind, and under no constraint or undue influence. Jane Helen Smith thereupon signed this Will in our presence, all of us being present at the same time. We now, at her request, in her presence and in the presence of each other, subscribe our names as witnesses.

Executed on \_\_\_\_\_, 20\_\_\_\_, in the County of \_\_\_\_\_, State of California.

We declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
[signature – please print name under this line]                      [street address]

\_\_\_\_\_  
[city, state]

\_\_\_\_\_  
[signature – please print name under this line]                      [street address]

\_\_\_\_\_  
[city, state]

**SAMPLE**

# UNIFORM STATUTORY FORM POWER OF ATTORNEY

(California Probate Code §4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE §§4400 - 4465). THE POWERS LISTED IN THIS DOCUMENT DO NOT INCLUDE ALL POWERS THAT ARE AVAILABLE UNDER THE PROBATE CODE. ADDITIONAL POWERS AVAILABLE UNDER THE PROBATE CODE MAY BE ADDED BY SPECIFICALLY LISTING THEM UNDER THE SPECIAL INSTRUCTIONS SECTION OF THIS DOCUMENT. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, **Joe Donald Smith**, of

Street Address: 123 Palm Ave

City: San Diego

State / Province: CA

Postal / Zip Code: 92111

as an individual and as co-Trustee of **Joe Donald & Jane Helen Smith Family Trust**, executed by my wife and me concurrently herewith, appoint my wife, **Jane Helen Smith**, as my Agent ("Attorney-in-Fact") to act for me in any lawful way with respect to the following initialed subjects:

If my wife is unable or unwilling to serve, I appoint **Jan Smith** as my Successor Agent to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY BUT NEED NOT, CROSS OUT EACH POWER WITH AN X.

INITIAL

- ( \_\_\_\_\_ ) (A) Real estate transactions.
- ( \_\_\_\_\_ ) (B) Tangible personal property transactions.
- ( \_\_\_\_\_ ) (C) Stock and bond transactions.
- ( \_\_\_\_\_ ) (D) Commodity and option transactions.
- ( \_\_\_\_\_ ) (E) Banking and other financial institution transactions.
- ( \_\_\_\_\_ ) (F) Business operating transactions.
- ( \_\_\_\_\_ ) (G) Insurance and annuity transactions.
- ( \_\_\_\_\_ ) (H) Estate, trust and other beneficiary transactions.

- ( \_\_\_\_\_ ) (I) Claims and litigation.
- ( \_\_\_\_\_ ) (J) Personal and family maintenance.
- ( \_\_\_\_\_ ) (K) Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or civil or military service.
- ( \_\_\_\_\_ ) (L) Retirement plan transactions.
- ( \_\_\_\_\_ ) (M) Tax matters.
- ( \_\_\_\_\_ ) (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

My Agent has the power and authority to request, review, and receive, to the extent I could do so individually, any information, verbal or written, regarding my physical or mental health, including, but not limited to, my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160-164. I hereby authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc. or other health care clearinghouse that has provided treatment or services to me, that I paid for or is seeking payment from me for such services, to give, disclose, and refer to my Agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present, or future medical or mental health condition. For the purpose of complying with §56.11 of the California Civil Code, I have executed a form entitled AUTHORIZATION OF INFORMATION WAIVER FOR THE INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH concurrently herewith. This authority given my Agent shall supersede any other agreement which I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. This authority given my agent shall be effective immediately, has no expiration date and shall expire only in the event that I revoke this authority in writing and deliver it to my health care provider.

My Agent has the power and authority to exercise all powers I may have over any digital device, digital asset, user account, and electronically stored information, including any user account and digital asset that currently exists or may be developed as technology develops, whether the same is in my own name or that I own or lawfully use jointly with any other individual (such accounts shall include, without limitation, electronic banking accounts, electronic investment accounts, debt management accounts, automatic bill payment directives, and social media accounts). Such powers include, but are not limited to, changing and circumventing my username and password to gain access to such user accounts and information; accessing any of my passwords or other electronic profile data from applicable electronic record host entities; transferring or withdrawing funds or other digital assets among or from such user accounts; opening new user accounts in my name; all as my agent determines is necessary or advisable to effectively conduct my personal and financial affairs, to discharge any and all obligations I may owe and to maintain my public reputation. I hereby give my lawful consent and fully authorize my agent to access, manage, control, delete and terminate any electronically stored information and communications of mine to the fullest extent allowable under the federal Electronic Communications Privacy Act of 1986, 18 USC 2510 et seq., as amended from time to time, the Revised Uniform Fiduciary Access to Digital Assets Act (Part 20, Division 2 of the California Probate Code) and any other federal, state or international law and to take any actions I am authorized to take under all applicable terms of service, terms of use, licensing and other account agreements or laws. To the extent a specific reference to any federal, state, local or

international law is required in order to give effect to this provision, I specifically provide that my intention is to so reference such law, whether such law is now in existence or comes into existence or is amended after the date of this document.

My Agent has the power and authority to create an irrevocable trust on my behalf wherein the beneficial interests at my death shall be the same as the dispositive provisions in the trust agreement hereinabove referenced in effect on the date such irrevocable trust is created, to name the Trustees and successor Trustees, and to fund such irrevocable trust with all or any assets of mine or other interests in property which are capable of being held in said irrevocable trust, including those assets which may then be held in the revocable trust agreement hereinabove referenced. This authority includes the power to create and fund an irrevocable trust which may qualify me for "Medi-Cal". My Agent may serve as the Trustee of the irrevocable trust. My Agent shall have the power to withdraw income or principal on my behalf or for my benefit, and to exercise whatever trust powers or elections which I may exercise.

If proceedings are initiated for the appointment of a conservator of my estate, I hereby nominate my Agent (or successor Agent) named above as such conservator. I hereby waive the requirement of a bond. I request that, if my Agent is so appointed as conservator of my estate, the court make an order granting to that person all or as many of those independent powers listed in California Probate Code §2591 as the court deems appropriate.

I revoke all prior General Powers of Attorney that I may have executed and I retain the right to revoke or amend this document and to substitute other attorneys in fact in place of my Agent herein named. Amendments to this document shall be made in writing by me personally (or by my Agent) and they shall be attached to the original of this document and recorded in the same county or counties as the original if the original is recorded.

ON THE FOLLOWING LINES, YOU MAY GIVE ADDITIONAL SPECIFIC INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This Power of Attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney.

**SAMPLE**

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Joe Donald Smith

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

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Joe Donald Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

Notary Public Seal

BY ACCEPTING OR ACTING UNDER THE ABOVE INSTRUMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

**SAMPLE**

# UNIFORM STATUTORY FORM POWER OF ATTORNEY

(California Probate Code §4401)

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE §§4400 - 4465). THE POWERS LISTED IN THIS DOCUMENT DO NOT INCLUDE ALL POWERS THAT ARE AVAILABLE UNDER THE PROBATE CODE. ADDITIONAL POWERS AVAILABLE UNDER THE PROBATE CODE MAY BE ADDED BY SPECIFICALLY LISTING THEM UNDER THE SPECIAL INSTRUCTIONS SECTION OF THIS DOCUMENT. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, **Jane Helen Smith**, of

Street Address: 123 Palm Ave

City: San Diego

State / Province: CA

Postal / Zip Code: 92111

as an individual and as co-Trustee of **Joe Donald & Jane Helen Smith Family Trust**, executed by my husband and me concurrently herewith, appoint my husband, **Joe Donald Smith**, as my Agent ("Attorney-in-Fact") to act for me in any lawful way with respect to the following initialed subjects.

If my husband is unable or unwilling to serve, I appoint **Jane Helen Smith** as my successor Agent to act for me in any lawful way with respect to the following initialed subjects.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU WANT TO GRANT.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY BUT NEED NOT, CROSS OUT EACH POWER WITH A CHECK MARK.

INITIAL

- ( \_\_\_\_\_ ) (A) Real estate transactions.
- ( \_\_\_\_\_ ) (B) Tangible personal property transactions.
- ( \_\_\_\_\_ ) (C) Stock and bond transactions.
- ( \_\_\_\_\_ ) (D) Commodity and option transactions.
- ( \_\_\_\_\_ ) (E) Banking and other financial institution transactions.
- ( \_\_\_\_\_ ) (F) Business operating transactions.
- ( \_\_\_\_\_ ) (G) Insurance and annuity transactions.
- ( \_\_\_\_\_ ) (H) Estate, trust and other beneficiary transactions.

- ( \_\_\_\_\_ ) (I) Claims and litigation.
- ( \_\_\_\_\_ ) (J) Personal and family maintenance.
- ( \_\_\_\_\_ ) (K) Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or civil or military service.
- ( \_\_\_\_\_ ) (L) Retirement plan transactions.
- ( \_\_\_\_\_ ) (M) Tax matters.
- ( \_\_\_\_\_ ) (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

**SPECIAL INSTRUCTIONS:**

My Agent has the power and authority to request, review, and receive, to the extent I could do so individually, any information, verbal or written, regarding my physical or mental health, including, but not limited to, my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160-164. I hereby authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc. or other health care clearinghouse that has provided treatment or services to me that I am or am about to be paid for or is seeking payment from me for such services, to give, disclose, and release to my Agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present, or future medical or mental health condition. For the purpose of complying with §56.11 of the California Civil Code, I have executed a form entitled AUTHORIZATION AND WAIVER FOR THE INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH concurrently herewith. This authority given my Agent shall supersede any other agreement which I may have made with my health care providers to restrict access to disclosure of my individually identifiable health information. This authority given my Agent shall be effective immediately, has no expiration date and shall expire only in the event that I revoke this authority in writing and deliver it to my health care provider.

My Agent has the power and authority to exercise all powers I may have over any digital device, digital asset, user account and electronically stored information, including any user account and digital asset that currently exists or may exist in the future, whether the same is in my own name or that I own or lawfully use jointly with any other individual (such accounts shall include, without limitation, electronic banking accounts, electronic investment accounts, debt management accounts, automatic bill payment directives, and social media accounts). Such powers include, but are not limited to, changing and circumventing my username and password to gain access to such user accounts and information; accessing any of my passwords or other electronic profile data from applicable electronic record host entities; transferring or withdrawing funds or other digital assets among or from such user accounts; opening new user accounts in my name; all as my agent determines is necessary or advisable to effectively conduct my personal and financial affairs, to discharge any and all obligations I may owe and to maintain my public reputation. I hereby give my lawful consent and fully authorize my agent to access, manage, control, delete and terminate any electronically stored information and communications of mine to the fullest extent allowable under the federal Electronic Communications Privacy Act of 1986, 18 USC 2510 et seq., as amended from time to time, the Revised Uniform Fiduciary Access to Digital Assets Act (Part 20, Division 2 of the California Probate Code) and any other federal, state or international law and to take any actions I am authorized to take under all applicable terms of service, terms of use, licensing and other account agreements or laws. To the extent a specific reference to any federal, state, local or

international law is required in order to give effect to this provision, I specifically provide that my intention is to so reference such law, whether such law is now in existence or comes into existence or is amended after the date of this document.

My Agent has the power and authority to create an irrevocable trust on my behalf wherein the beneficial interests at my death shall be the same as the dispositive provisions in the trust agreement hereinabove referenced in effect on the date such irrevocable trust is created, to name the Trustees and successor Trustees, and to fund such irrevocable trust with all or any assets of mine or other interests in property which are capable of being held in said irrevocable trust, including those assets which may then be held in the revocable trust agreement hereinabove referenced. This authority includes the power to create and fund an irrevocable trust which may qualify me for "Medi-Cal". My Agent may serve as the Trustee of the irrevocable trust. My Agent shall have the power to withdraw income or principal on my behalf or for my benefit, and to exercise whatever trust powers or elections which I may exercise.

If proceedings are initiated for the appointment of a conservator of my estate, I hereby nominate my Agent (or successor Agent) named above as such conservator. I hereby waive the requirement of a bond. I request that, if my Agent is so appointed as conservator of my estate, the court make an order granting to that person all or as many of those independent powers listed in California Probate Code §2591 as the court deems appropriate.

I revoke all prior General Powers of Attorney that I may have executed and I retain the right to revoke or amend this document and to substitute other attorneys in fact in place of the agent herein named. Amendments to this document shall be made in writing by me personally (or by my agent) and they shall be attached to the original of this document and recorded in the same county and counties as the original if the original is recorded.

ON THE FOLLOWING LINES, YOU MAY GIVE ADDITIONAL SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This Power of Attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Jane Helen Smith

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Jane Helen Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_

Notary Public Signature

Notary Public Seal

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

**SAMPLE**

# ADVANCE HEALTH CARE DIRECTIVE

(California Probate Code §4701)

## Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. (Your agent may not be an operator or employee of a community care facility or a residential care facility where you are receiving care, or your supervising health care provider or employee of the health care institution where you are receiving care, unless your agent is related to you or is a co-worker.)

Unless the form you sign limits the authority of your agent, your agent will make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that will have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.
- (b) Select or discharge health care providers and institutions.
- (c) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.
- (d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.
- (e) Make anatomical gifts, authorize autopsy and direct disposition of remains.

Part 2 of this form lets you give specific instructions about any aspect of your health care, whether or not you appoint an agent. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out Part 2 of this form.

Part 3 of this form lets you express an intention to donate your bodily organs, tissues and parts following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. The form must be signed by two qualified witnesses or acknowledged before a notary public. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the

responsibility.

You have the right to revoke this advance health care directive or replace this form at any time.

## PART 1

### POWER OF ATTORNEY FOR HEALTH CARE

1.1. DESIGNATION OF AGENT. I hereby designate my wife, **Jane Helen Smith**, as my agent to make health care decisions for me.

If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health care decision for me, I designate **Jack Smith** as my alternate agent to make health care decisions for me.

1.2. AGENT'S AUTHORITY. My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and other forms of health care to keep me alive, except as I state here:

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(Add additional sheets if needed)

1.3. WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE. My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box.

If I mark this box, my agent's authority to make health care decisions for me takes effect immediately.

1.4. AGENT'S OBLIGATION. My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

1.5. AGENT'S POSTDEATH AUTHORITY. My agent is authorized to donate my organs, tissues, and parts, authorize an autopsy and direct disposition of my remains, except as I state here or in Part 3 of this form:

If I have executed, either concurrently with the execution of this Directive or at any time in the future,

written "Final Disposition Instructions", I direct that my agent and family follow these instructions for my disposition arrangements.

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(Add additional sheets if needed)

1.6. GRANT OF AUTHORITY TO MY AGENT AND AUTHORIZATION UNDER HIPAA AND CALIFORNIA LAW FOR THE INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive, to the extent I could do so individually, any information, verbal or written, regarding my physical or mental health, including, but not limited to, any individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160-164, and the California Confidentiality of Medical Information Act ("CMI"), California Civil Code §56. I hereby authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc., or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present, or future medical or mental health condition. For the purpose of complying with §56.11 of the California Civil Code, I have executed a form titled "AUTHORIZATION AND WAIVER FOR THE INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH" concurrently herewith. This authority given to my agent shall supersede any other agreement which I may have made with my health care provider to restrict access to or disclosure of my individually identifiable health information. This authority given to my agent shall be effective immediately, has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider;

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information;

(c) Consent to the disclosure of this information;

(d) Appoint a "Patient Advocate" for me who shall have the same right to ask questions and obtain information as my agent under this form; and,

(e) Transfer my care to another health care provider if my health care provider refuses to honor my Advance Health Care Directive. I also direct and empower my agent under this form to pursue any appropriate actions against my health care provider(s) in the event my Advance Health Care Directive is not honored.

1.7. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. When necessary to implement the health care decisions that my agent is authorized by this form to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice" and;

(b) Any necessary waiver or release from liability required by a hospital or physician.

1.8. **NOMINATION OF CONSERVATOR.** If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form to serve as such conservator. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated above.

## PART 2

### INSTRUCTIONS FOR HEALTH CARE

If you fill out this part of the form, you may strike any wording you do not want.

2.1. **END-OF-LIFE DECISIONS:** I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

**Choice NOT to Prolong Life:** I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment will outweigh the expected benefits, OR

2.2. **RELIEF FROM PAIN.** Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

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(Add additional sheets if needed)

2.3. **OTHER WISHES.** (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

If I ever fall into a persistently vegetative state, I wish my misery to be reduced as painlessly as possible.

If I become senile, I wish to die naturally and without any extraordinary medical treatment.

If I am in an irreversible coma or persistent vegetative state, I do not want any form of cardio-pulmonary resuscitation ("CPR").

If I am already in an irreversible coma or persistent vegetative state and I develop some other illness or condition for which an additional course of treatment would be considered, I do not want any additional treatment to be initiated (for example, if I am in an irreversible coma and it is subsequently discovered that I have cancer, I do not want surgery, chemotherapy and/or radiation).

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(Add additional sheets if needed)

### PART 3

#### DONATION OF ORGANS, TISSUES AND PARTS AT DEATH

(OPTIONAL)

3.1  Upon my death, I give my organs, tissues, or parts (mark box to indicate yes): By checking the box above, and notwithstanding my choice in Part 2 of this form, I authorize my agent to consent to any temporary medical procedure necessary solely to evaluate and/or maintain my organs, tissues, and/or parts for purposes of donation.

My donation is for the following purposes (strike any of the following you do not want):

- (a) Transplant
- (b) Therapy
- (c) Research
- (d) Education

If you want to restrict your donation of an organ, tissue, or part in some way, please state your restriction on the following lines:

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If I leave this part blank, it is not a refusal to make a donation. My state-authorized donor registration should be followed, or, if none, my agent may make a donation upon my death. If no agent is named above, I acknowledge that California law permits an authorized individual to make such a decision on my behalf. (To state any limitation, preference, or instruction regarding donation, please use the lines above or in Section 1.5 of this form).

### PART 4

#### MISCELLANEOUS

4.1 EFFECT OF COPY. A copy of this form has the same effect as the original.

4.2 SIGNATURE. Sign and date the form here:

\_\_\_\_\_ Dated: \_\_\_\_\_, 20\_\_

Joe Donald Smith

Street Address: 123 Palm Ave

City: San Diego

State / Province: CA

Postal / Zip Code: 92111

**SAMPLE**

# STATEMENT OF WITNESSES

I declare under penalty of perjury under the laws of California (1) that **Joe Donald Smith**, the individual who signed or acknowledged this advance health care directive is personally known to me (or that his identity was proven to me by convincing evidence), (2) that the individual signed or acknowledged this advance directive in my presence, (3) that the individual appears to be of sound mind and under no duress, fraud or undue influence, (4) that I am not a person appointed as agent by this advance directive, and (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly. I further declare under perjury under the laws of California that I am not related to the individual executing this advance health care directive document by blood, marriage or adoption and, to the best of my knowledge, I am not entitled to any part of the individual's estate upon his death under a will now existing or by operation of law.

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[signature]

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[street address]

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[please print name]

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[city, state]

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[signature]

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[street address]

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[please print name]

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[city, state]

**SAMPLE**

# ADVANCE HEALTH CARE DIRECTIVE

(California Probate Code §4701)

## Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. (Your agent may not be an operator or employee of a community care facility or a residential care facility where you are receiving care, or your supervising health care provider or employee of the health care institution where you are receiving care, unless your agent is related to you or is a co-worker.)

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.
- (b) Select or discharge health care providers and institutions.
- (c) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.
- (d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.
- (e) Make anatomical gifts, authorize autopsy and direct disposition of remains.

Part 2 of this form lets you give specific instructions about any aspect of your health care, whether or not you appoint an agent. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out Part 2 of this form.

Part 3 of this form lets you express an intention to donate your bodily organs, tissues and parts following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. The form must be signed by two qualified witnesses or acknowledged before a notary public. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the

responsibility.

You have the right to revoke this advance health care directive or replace this form at any time.

## PART 1

### POWER OF ATTORNEY FOR HEALTH CARE

1.1. DESIGNATION OF AGENT. I hereby designate my husband, **Joe Donald Smith**, as my agent to make health care decisions for me.

If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health care decision for me, I designate **Jack Smith** as my alternate agent to make health care decisions for me.

1.2. AGENT'S AUTHORITY. My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and other forms of health care to keep me alive, except as I state here:

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(Add additional sheets if needed)

1.3. WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE. My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box.

If I mark this box, my agent's authority to make health care decisions for me takes effect immediately.

1.4. AGENT'S OBLIGATION. My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

1.5. AGENT'S POSTDEATH AUTHORITY. My agent is authorized to direct disposition of my remains, except as I state here or in Part 3 of this form:

My agent does not have the authority to make a disposition of a part or parts of my body (i.e., I do not wish to make any anatomical gifts).

My agent does not have the authority to authorize an autopsy unless an autopsy is required by law.

If I have executed, either concurrently with the execution of this Directive or at any time in the future, written "Final Disposition Instructions", I direct that my agent and family follow these instructions for my disposition arrangements.

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(Add additional sheets if needed)

1.6. GRANT OF AUTHORITY TO MY AGENT AND AUTHORIZATION UNDER HIPAA AND CALIFORNIA LAW FOR THE INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive, to the extent I could do so individually, any information, verbal or written, regarding my physical or mental health, including, but not limited to, individually identifiable health information or other medical records. This release authority applies to all information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. 1320d and 45 CFR 160-164, and the California Confidentiality of Medical Information Act ("CMI"), California Civil Code §56. I hereby authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc., or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose, and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present, or future medical or mental health condition. For the purpose of complying with §56.11 of the California Civil Code, I have executed concurrently herewith AUTHORIZATION AND WAIVER FOR THE INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH concurrently herewith. The authority given my agent shall supersede any other agreement which I may have made with my health care provider to restrict access to or disclosure of my individually identifiable health information. This authority given my agent shall be effective immediately, has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

(b) Execute on my behalf all releases or other documents that may be required in order to obtain this information;

(c) Consent to the disclosure of this information;

(d) Appoint a "Patient Advocate" for me who shall have the same right to ask questions and obtain information as my agent under this form; and,

(e) Transfer my care to another health care provider if my health care provider refuses to honor my Advance Health Care Directive. I also direct and empower my agent under this form to pursue any appropriate actions against my health care provider(s) in the event my Advance Health Care Directive is not honored.

1.7. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. When necessary to implement the health care decisions that my agent is authorized by this form to make, my agent has the power and authority to execute on my behalf all of the following:

- (a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice" and;
- (b) Any necessary waiver or release from liability required by a hospital or physician.

1.8. NOMINATION OF CONSERVATOR. If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form to serve as such conservator. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated above.

## PART 2

### INSTRUCTIONS FOR HEALTH CARE

If you fill out this part of the form, you may strike any wording you do not want.

2.1. END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

**Choice to Prolong Life: I want my life to last as long as possible within the limits of generally accepted health care standards.**

2.2. RELIEF FROM PAIN. Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

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(Add additional sheets if needed)

2.3. OTHER WISHES. (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

If I ever fall into a persistently vegetative state, I wish my misery to be reduced as painlessly as possible.

If I become senile, I wish to die naturally and without any extraordinary medical treatment.

If I am in an irreversible coma or persistent vegetative state, I do not want any form of cardio-pulmonary

resuscitation ("CPR").

If I am already in an irreversible coma or persistent vegetative state and I develop some other illness or condition for which an additional course of treatment would be considered, I do not want any additional treatment to be initiated (for example, if I am in an irreversible coma and it is subsequently discovered that I have cancer, I do not want surgery, chemotherapy and/or radiation).

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(Add additional sheets if needed)

### PART 3

#### DONATION OF ORGANS, TISSUES AND PARTS AT DEATH

(OPTIONAL)

3.1  Upon my death, I give my organs, tissues, or parts (mark box to indicate yes): By checking the box above, and notwithstanding my choice in Part 2 of this form, I authorize my agent to consent to any temporary medical procedure necessary solely to evaluate and/or maintain my organs, tissues, and/or parts for purposes of donation.

My donation is for the following purposes (strike any purpose following you do not want):

- (a) Transplant
- (b) Therapy
- (c) Research
- (d) Education

If you want to restrict your donation of an organ, tissue, or part in some way, please state your restriction on the following line:

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If I leave this part blank, it is not a refusal to make a donation. My state-authorized donor registration should be followed, or, if none, my agent may make a donation upon my death. If no agent is named above, I acknowledge that California law permits an authorized individual to make such a decision on my behalf. (To state any limitation, preference, or instruction regarding donation, please use the lines above or in Section 1.5 of this form).

### PART 4

MISCELLANEOUS

4.1 EFFECT OF COPY. A copy of this form has the same effect as the original.

4.2 SIGNATURE. Sign and date the form here:

\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

Jane Helen Smith

Street Address: 123 Palm Ave

City: San Diego

State / Province: CA

Postal / Zip Code: 92111

**SAMPLE**

# STATEMENT OF WITNESSES

I declare under penalty of perjury under the laws of California (1) that **Jane Helen Smith**, the individual who signed or acknowledged this advance health care directive is personally known to me (or that her identity was proven to me by convincing evidence), (2) that the individual signed or acknowledged this advance directive in my presence, (3) that the individual appears to be of sound mind and under no duress, fraud or undue influence, (4) that I am not a person appointed as agent by this advance directive, and (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly. I further declare under perjury under the laws of California that I am not related to the individual executing this advance health care directive document by blood, marriage or adoption and, to the best of my knowledge, I am not entitled to any part of the individual's estate upon her death under a will now existing or by operation of law.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[street address]

\_\_\_\_\_  
[please print name]

\_\_\_\_\_  
[city, state]

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[street address]

\_\_\_\_\_  
[please print name]

\_\_\_\_\_  
[city, state]

**SAMPLE**

**AUTHORIZATION AND WAIVER FOR THE INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH**

**(California Civil Code §56)**

A. I, Joe Donald Smith, do hereby authorize the persons named below in Paragraphs B and C, individually and severally, to have the power and authority to do all of the following:

(1) Request, review, and receive, to the extent I could do so individually, any information, verbal or written, regarding my physical or mental health, including, but not limited to, my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160-164, and the California Confidentiality of Medical Information Act ("CMIA"), California Civil Code §56. I hereby authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc., or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services (hereinafter the "covered provider/entity"), to give, disclose, and release to the persons named herein, without restriction, all of my individually identifiable health information and medical records regarding any past, present, or future medical or mental health condition.

This authority shall supersede any other agreement which I may have made with any covered provider/entity to restrict access to or disclosure of my individually identifiable health information. This authority shall be effective immediately and shall expire two (2) years following my death unless I revoke the authority in writing and deliver such revocation to a covered provider/entity;

(2) Execute on my behalf any releases or other documents that may be required in order to obtain this information;

(3) Consent to the disclosure of this information;

(4) Bring legal action to enforce this Authorization if it is not honored.

B. The specifically named persons who shall have the powers hereinabove described in Paragraph A are:

My wife Jane Helen Smith (Primary)

Street Address: 123 Palm Ave

City: San Diego

State / Province: CA

Postal / Zip Code: 92111

(858) 560-0366

-----  
Jack Smith (Secondary)

C. In addition to the persons who are specifically named in Paragraph B, the following described persons shall also have the powers hereinabove described in Paragraph A:

Any Trustee or Successor Trustee of any inter-vivos trust created by me wherein I am a Trustee and/or beneficiary.

Any agent (or "attorney-in-fact") in any General Power of Attorney created by me as the "Principal".

D. I understand the information used, disclosed, or released pursuant to this Authorization may be subject to re-disclosure by the authorized recipients whose names or positions are contained herein. No covered provider/entity shall require such authorized recipients to indemnify the covered provider/entity or agree to perform any act in order for the covered provider/entity to comply with this Authorization.

E. A copy or facsimile of this Authorization shall be accepted as though it were

the original and I am aware that I am entitled to a copy of this Authorization.

F. I hereby release any covered provider/entity that relies on this Authorization from any liability that may accrue from the use, release, or disclosure of my private information.

This Authorization and Waiver is executed by me on \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ County, California.

\_\_\_\_\_

Joe Donald Smith

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_ before me,

\_\_\_\_\_ a Notary Public, personally appeared Joe Donald Smith, who proved \_\_\_\_\_ on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_

Notary Public Signature

Notary Public Seal

**AUTHORIZATION AND WAIVER FOR THE INSPECTION AND DISCLOSURE OF  
INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH**

**(California Civil Code §56)**

A. I, Jane Helen Smith, do hereby authorize the persons named below in Paragraphs B and C, individually and severally, to have the power and authority to do all of the following:

(1) Request, review, and receive, to the extent I could do so individually, any information, verbal or written, regarding my physical or mental health, including, but not limited to, my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160-164, and the California Confidentiality of Medical Information Act ("CMIA"), California Civil Code §56. I hereby authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc., or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services (hereinafter the "covered provider/entity"), to give, disclose, and release to the persons named herein, without restriction, all of my individually identifiable health information and medical records regarding any past, present, or future medical or mental health condition.

This authority shall supersede any other agreement which I may have made with any covered provider/entity to restrict access to or disclosure of my individually identifiable health information. This authority shall be effective immediately and shall expire two (2) years following my death unless I revoke the authority in writing and deliver such revocation to a covered provider/entity;

(2) Execute on my behalf any releases or other documents that may be required in order to obtain this information;

(3) Consent to the disclosure of this information;

(4) Bring legal action to enforce this Authorization if it is not honored.

B. The specifically named persons who shall have the powers hereinabove described in Paragraph A are:

My husband Joe Donald Smith

Street Address: 123 Palm Ave

City: San Diego

State / Province: CA

Postal / Zip Code: 92111

(858) 560-0366

---

Jack Smith

C. In addition to the persons who are specifically named in Paragraph B, the following described persons shall also have the powers hereinabove described in Paragraph A:

Any Trustee or Successor Trustee of any inter-vivos trust created by me wherein I am a Trustee and/or beneficiary.

Any agent (or "attorney-in-fact") in any General Power of Attorney created by me as the "Principal".

D. I understand the information used, disclosed, or released pursuant to this Authorization may be subject to re-disclosure by the authorized recipients whose names or positions are contained herein. No covered provider/entity shall require such authorized recipients to indemnify the covered provider/entity or agree to perform any act in order for the covered provider/entity to comply with this Authorization.

E. A copy or facsimile of this Authorization shall be accepted as though it were

the original and I am aware that I am entitled to a copy of this Authorization.

F. I hereby release any covered provider/entity that relies on this Authorization from any liability that may accrue from the use, release, or disclosure of my private information.

This Authorization and Waiver is executed by me on \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ County, California.

\_\_\_\_\_  
Jane Helen Smith

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me,

\_\_\_\_\_, a Notary Public, personally appeared Jane Helen Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that s/he/they executed the same in his/her/their authorized capacity(ies), and that by s/he/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
NotaryPublicSignature

\_\_\_\_\_  
Notary Public Seal

# Final Disposition

## Authorization and Instructions

I, **Joe Donald Smith**, of

Street Address: 123 Palm Ave  
City: San Diego  
State / Province: CA  
Postal / Zip Code: 92111

being of sound mind, willfully and voluntarily make known by this document my desire that, upon my death, the final disposition of my remains be under the control of my representative, and, with respect to that final disposition only, I hereby appoint the representative and the successor representative named in this document. All decisions made by my representative with respect to the final disposition of my remains shall be binding and, for the guidance of my representative, I am making my wishes known as follows:

1. I wish to be Cremated.

2. I would like my ashes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I have made "pre-need" arrangements at: Acme & Brothers Mortuary  
1234 Main Street  
San Diego, CA 92111  
888-555-1212

4. My representative shall be:

Jack Smith

5. If my representative dies, becomes incapacitated, resigns, refuses to act, ceases to be qualified, or cannot be located within a reasonable time necessary to control the final disposition of my remains, I hereby appoint the following individual to serve as my successor representative:

Jack Smith

This authorization becomes effective upon my death. I hereby revoke any prior final disposition authorizations and/or instructions that I may have signed before the date that this document is signed. I hereby agree that any funeral director, crematory authority, or cemetery authority that receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to a funeral director, crematory authority, or cemetery authority until the funeral director, crematory authority, or cemetery authority receives actual notice of the modification or revocation. No funeral director, crematory authority, or cemetery authority may be liable because of reliance on a copy of this document.

\_\_\_\_\_  
Joe Donald Smith

I attest that Joe Donald Smith, the person who signed this document, did so or acknowledged signing this document in my presence and that he appears to be of sound mind and not subject to duress, fraud, or undue influence. I further attest that I am not the representative or the successor representative appointed under this document, that I am at least eighteen (18) years of age, and that I am not related to the person who signed this document by blood, marriage, or adoption.

\_\_\_\_\_  
[signature – please print name under this line]

\_\_\_\_\_  
[street address]

\_\_\_\_\_  
[city, state]

\_\_\_\_\_  
[signature – please print name under this line]

\_\_\_\_\_  
[street address]

\_\_\_\_\_  
[city, state]

**SAMPLE**

# Final Disposition

## Authorization and Instructions

I, **Jane Helen Smith**, of

Street Address: 123 Palm Ave

City: San Diego

State / Province: CA

Postal / Zip Code: 92111

being of sound mind, willfully and voluntarily make known by this document my desire that, upon my death, the final disposition of my remains be under the control of my representative, and, with respect to that final disposition only, I hereby appoint the representative and the successor representative named in this document. All decisions made by my representative with respect to the final disposition of my remains shall be binding and, for the guidance of my representative, I am making my wishes known as follows:

1. I wish to be Cremated

2. I would like my ashes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I have made "pre-need" arrangements at: Acme & Brothers Mortuary  
1234 Main Street  
San Diego, CA 92111  
888-555-1212

4. My representative shall be:

Joe Donald Smith

5. If my representative dies, becomes incapacitated, resigns, refuses to act, ceases to be qualified, or cannot be located within a reasonable time necessary to control the final disposition of my remains, I hereby appoint the following individual to serve as my successor representative:

Jack Smith

This authorization becomes effective upon my death. I hereby revoke any prior final disposition authorizations and/or instructions that I may have signed before the date that this document is signed. I hereby agree that any funeral director, crematory authority, or cemetery authority that receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to a funeral director, crematory authority, or cemetery authority until the funeral director, crematory authority, or cemetery authority receives actual notice of the modification or revocation. No funeral director, crematory authority, or cemetery authority may be liable because of reliance on a copy of this document.

Executed on \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ San Diego County, California.

\_\_\_\_\_  
Jane Helen Smith

I attest that Jane Helen Smith, the person who signed this document, did so or acknowledged signing this document in my presence and that she appears to be of sound mind and not subject to duress, fraud, or undue influence. I further attest that I am not the representative or the successor representative appointed under this document, that I am at least eighteen (18) years of age, and that I am not related to the person who signed this document by blood, marriage, or adoption.

\_\_\_\_\_  
[signature – please print name under this line]

\_\_\_\_\_  
[street address]

\_\_\_\_\_  
[city, state]

\_\_\_\_\_  
[signature – please print name under this line]

\_\_\_\_\_  
[street address]

\_\_\_\_\_  
[city, state]

**SAMPLE**



# SUMMARY OF ESTATE PLANNING PROVISIONS

## LIVING TRUST:

Your revocable living trust is an agreement between the “Trustor” and the “Trustee” to hold the trust assets for the benefit of the beneficiary of the trust. The Trustor is the person setting up the trust and the Trustee is the person who manages the trust. In order to form the trust, the Trustor transfers property to the Trustee to hold in the name of the trust. Since this is your trust, you are both the Trustors and you are both the initial co-Trustees of the trust. Please remember that the trust must be written with the possibility that you might not always be the Trustee (e.g., in the event of your incapacity). The trust further provides that, for your joint lifetimes and the lifetime of the survivor, you are also the beneficiaries of the trust. These points are covered in the Recitals and in Article I of the trust.

Paragraph 2.A. designates the name of the trust. This is the name you will use to re-title your assets to the trust.

Paragraph 2.B. sets forth your family situation.

Paragraph 2.C. designates who shall act as your successor trustee in the event you are no longer able to act; either due to your death or your incapacity.

Paragraph 2.D. enables you (or anyone) to add property to the trust, either during your lifetimes or at death.

Paragraph 2.E. defines the terms used throughout the trust.

Paragraph 2.F. establishes the laws of California as the operative laws controlling this trust.

Paragraph 2.G. is often referred to as a “Spendthrift Clause” because it prevents a future beneficiary from alienating (“selling”) his or her interest in the trust (usually for pennies on the dollar); it also keeps a creditor or ex-spouse of a beneficiary from being able to reach the beneficiary's interest while it is held in the trust.

Paragraph 2.H. is the Maximum Duration of Trusts provision (it is also known as the “Rule Against Perpetuities”) and most all states require it to be included in a trust. Basically, the rule states that, regardless of circumstances, a trust (or an interest in the trust) must end at some point in the future; it

does not mean that the trust must continue for that period. Since these laws can change, your trust merely states that the trust will end, assuming it was still on-going, at the end of the maximum period under California law at that time. Please note that it is extremely unlikely that this provision will ever be needed, but it must be included.

Paragraph 2.I. is the “No Contest” provision in the trust. It states that, to the extent permitted under California law, if anyone challenges the validity of the trust or your intent as expressed in the trust, that person and his or her descendants will receive nothing from the trust.

Paragraph 2.J. sets the requirement that a beneficiary must survive the survivor of you by at least thirty days to receive his or her distribution. This can avoid an unnecessary probate of the beneficiary's share of the trust. This paragraph also accounts for the possibility of a simultaneous death of the two of you.

Paragraph 2.K. creates some general rules (which will not override any specific distribution provisions) of what will happen to any trust distribution going to a beneficiary who is under the age of twenty-one or who is incapacitated at the time of the distribution. Again, if you have made specific provisions (for example, holding a trust share until age twenty-five), those specific provisions will take precedence over the general provisions in this paragraph. One of the important provisions of this paragraph is the discretionary right it gives to the Trustee to hold any distribution for a beneficiary deemed by the Trustee to be incompetent or suffering from substance abuse, or because the beneficiary's financial circumstances are such that failure to delay the distribution would actually reduce the trust benefits to the beneficiary (e.g., a beneficiary who is receiving state assistance of some kind).

Paragraph 2.L. establishes the procedure to resolve any conflicts between beneficiaries or between a beneficiary and the Trustee.

Paragraph 2.M. provides that the Trustee will distribute an interest in the trust if the cost of administering that interest makes it uneconomical to continue the trust administration on that share.

Article III has detailed provisions concerning the Trustee.

Paragraph 3.A. reiterates your authority to designate anyone you wish as a co-Trustee or as a successor Trustee.

Paragraph 3.B. gives the beneficiaries the authority to appoint a new Trustee if, for any reason, no Trustee is acting and there is no successor Trustee designated or able to act; otherwise, the court would appoint the new Trustee.

Paragraph 3.C. gives any Trustee the right to resign and, if there is not a designated successor Trustee, to have a successor Trustee appointed by the court.

Paragraph 3.D. releases a successor Trustee from any liability for the actions of a predecessor (although the predecessor Trustee would still be liable). Without this protection, no successor Trustee would ever be willing to act.

Paragraph 3.E. eliminates the requirement that a Trustee post a bond prior to acting. A bond is very difficult to obtain when there is no court supervision and is very expensive (it is paid out of the trust assets); it can also be a “Catch-22” situation because the successor Trustee cannot gain access to the trust assets to pay for the bond until he or she becomes the Trustee but cannot become the Trustee until the bond has been posted. The best advice is to designate successor Trustees you can trust.

Paragraph 3.F. sets the compensation of a successor Trustee. If a successor Trustee is a corporation (i.e., a bank) the compensation is the Trustee's published fee schedule; however, an individual successor Trustee shall not be entitled to a fee for services. A Trustee is also entitled to be reimbursed for all necessary expenses incurred in the discharge of the Trustee's duties. The language in the paragraph gives the Trustee the right to determine how the fees should be allocated.

Paragraph 3.G. discusses the reporting requirements of the Trustee. In general, a Trustee must report (“account”) to the beneficiaries of a trust at least annually. Obviously, while you are the Trustee (and the beneficiary) it is not necessary for you to account to yourself. Further, a beneficiary can waive (“give-up”) the requirement. An accounting becomes final when it is given pursuant to this paragraph and it is not objected to within one hundred and eighty days.

Paragraph 3.H. outlines the manner of payment of trust assets to the beneficiaries. This paragraph releases the Trustee from liability for any payment made in conformance to the paragraph.

Paragraph 3.I. means that a Trustee can hold separate trust interests in a common account but must maintain a separate accounting for each interest.

Paragraph 3.J. defines certain actions a Trustee can take; for example, a Trustee can, just as you can, give another person a “power of attorney”.

Paragraph 3.K. gives your successor Trustee the right to obtain your health care information which would otherwise not be accessible under the privacy provisions of the federal Health Insurance Portability and Accountability Act (“HIPAA”); because of specific California regulations on the execution of a release concerning your protected health information, there is also a separate waiver form for each of you. A

similar provision is also in your General Powers of Attorney and your Health Care powers.

Paragraph 3.L. authorizes the Trustee to collect any life insurance which is payable to the trust (i.e., the trust is the beneficiary of the policy).

Paragraph 3.M. makes sure that the trust can receive the same “stretch-out” on the pay-outs from any IRA or other tax deferred accounts which are paid to the trust (as the beneficiary) as if the account had been paid directly to an individual (this language has to be fairly technical to meet the IRS requirements).

Paragraph 3.N. provides that a discretionary power given to the Trustee to invade or utilize the principal of a trust for “health, care, education, support or maintenance” of a beneficiary shall not be a General Power of Appointment (as defined in §§2041 and 2514 of the Internal Revenue Code) which could have adverse tax consequences. The paragraph also clarifies a provision in the California Probate Code concerning discretionary powers given to a trustee.

Paragraph 3.O. permits a Trustee to release or to restrict the scope of any trustee power if necessary for an appropriate reason (such as avoiding an adverse tax consequence).

Article IV grants the powers of the Trustee. In general, the Trustee will have the same level of control over the trust assets that you enjoyed prior to transferring the assets into the trust.

Article V sets out your retained rights as trustee of your trust.

Paragraphs 5.A. and 5.B. provide you your right to revoke or change the trust at any time during your joint lifetimes. How these powers are treated is based in part on the ownership of the underlying assets.

Paragraph 5.C. discusses your unlimited right of the survivor of you to revoke or change the trust.

Paragraph 5.D. prevents the exercise of these powers by anyone other than you.

There are also provisions concerning your right to use your personal property (Paragraph 5.E.) and your principal residence (Paragraph 5.F.) without accountability to the Trustee (if you are not acting as the Trustee at any point during your lifetime); in addition, Paragraph 5.E. ensures that you are entitled to any “homestead” exemption even though your residence is titled in the trust.

Article VI is the part of the trust that controls how the assets of the trust are to be distributed; both during your lifetime and then after your death. It is the distribution after death when the trust acts like a Will, except the assets can be distributed without court supervision (i.e., no probate).

Paragraph 6.A. restates the Trustee's responsibility.

Paragraph 6.B. states your unlimited right to the income and principal during your joint lifetimes.

Paragraph 6.C. instructs the Trustee on how to distribute or accumulate the trust income and principal in the event of incapacity; it also states your desire to stay in your principal residence as long as possible and/or to return to your residence from a care facility as soon as it is medically reasonable.

Paragraph 6.D. provides that the entire trust continues in trust for the benefit of the survivor with the full power to revoke the entire trust. The survivor receives all of the income from the trust and the Trustee has the obligation to use all of the principal of the trust, if necessary, to provide for the survivor.

Paragraph 6.E. gives the Trustee the right to delay distribution of the trust for up to six months after your death. This time frame is tied to the federal estate tax "alternate valuation date" (the right to revalue the estate for tax purposes six months after the date of death), but more importantly it gives the Trustee some time to make sure all of the assets have been located and all of the debts and bills have been paid before being pressured by the beneficiaries to make a distribution. This does not mean the Trustee cannot be making some or all of the distributions in the interim.

Paragraph 6.F. authorizes the Trustee to pay from the trust all of your debts, funeral expenses, the costs of administration and any taxes. Because legally the Executor of an estate has this responsibility, this paragraph coordinates the payment with the Executor if one is appointed or gives this authority to the Trustee if one is not appointed (as is typically the case). The provisions for the payment of any death taxes is fairly technical; the important point here is that the taxes (if any) are paid from the balance of the trust before final distribution.

Paragraph 6.G. is the place in the trust where you direct how your trust (including any assets added to the trust after your death, such as life insurance or assets passing through the "Pour-Over Will") shall be distributed at your death. The first subparagraph lets you control the distribution of any tangible personal property (i.e., "things") through a separate list of instructions (this form is included with your trust papers). Please review the remainder of this paragraph carefully.

DECLARATION OF TRUST:

Under certain very limited circumstances, this Declaration could possibly be helpful after your death if you neglected to transfer a valuable asset to your Trust; it merely confirms that you intended to include all of your assets within your Trust. This Declaration is not a substitute for the requirement that you must transfer (“title”) your assets into the name of your Trust in order to avoid a potential probate of those non-Trust assets.

#### CERTIFICATION OF TRUST:

The Certification sets forth the existence of your Trust and your unlimited right as Trustees to deal with any account or asset held in the Trust. The Certification acts as a short version of the Trust Agreement and gives any third party all the information required from the Trust without getting into the dispositive provisions, which are (and should remain) confidential.

#### ASSIGNMENT OF PERSONAL PROPERTY:

This Assignment acts as the method of transferring all non-tangible personal property assets (generally such assets do not have a title or an ownership document) to your Trust (thereby avoiding the necessity or possibility of having to probate these assets); this Assignment also transfers your digital assets and/or rights (including any “social media”, on-line accounts and email accounts) to the Trust.

#### INSTRUCTIONS FOR THE DISTRIBUTION OF PERSONAL PROPERTY:

This is an optional form and can be completed at any time (you should make copies of it for future use). This is where you can designate specific items of your tangible personal property (i.e., “things”) to go to certain people at your death. For example, “We give the diamond engagement ring to our daughter MARY”; “We give the book collection to our grandson MICHAEL SMITH”; etc. You should NOT, however, use this form to designate cash gifts or specific trust assets. You can add to or change this form as often as you wish without having to amend your trust or execute a codicil to your Will; if you do add or delete a distribution, you should date and initial the addition or deletion (or complete a new form and destroy the old one).

#### WILLS:

Your Wills are commonly referred to as a “pour-over” will. Under the terms of the Will, any assets held by you which have not previously been transferred into your Trust will be added to the Trust at the time of your death (but may be subject to a probate administration in order to do so). The purpose of this is to

make sure all of your assets (whether in the Trust or not) are distributed according to the dispositive plan set forth in the Trust).

#### UNIFORM STATUTORY FORM POWER OF ATTORNEY:

This is your “general power of attorney” which is primarily intended to give your named agent (initially the other of you is the primary agent) the power to deal with any trust or non-trust assets. Please be aware that this document does give your agent broad powers to dispose of, sell, convey and encumber your real and personal property; if you have any concern about granting such broad powers, please contact me at once.

#### ADVANCE HEALTH CARE DIRECTIVES:

The Advance Health Care Directives give your named Agents (initially both of you is the primary Agent) the power to make medical decisions, sign consents and/or releases with hospitals and/or doctors. It also acts as your “living will” for end-of-life decisions.

#### HIPAA AUTHORIZATION AND WAIVERS:

The HIPAA Authorization and Waiver is a stand-alone document to authorize your health care providers to release information concerning your confidential medical information to each other and to the individuals you have designated to act on your behalf in the event of disability and to any other individuals who you would also want to have such access. Please note that state law requires that the form be generated in “14 point type-face”.

#### FINAL DISPOSITION INSTRUCTIONS:

These Instructions give you the opportunity to specify how you wish to have your remains be dealt with (i.e., cremation or burial); to provide details of any prior arrangements and to designate the persons to carry-out your wishes.

**SAMPLE**

# SUMMARY OFFIDUCIARIES AND OTHER DESIGNATED PERSONS

## TRUSTEES:

Joe Donald Smith & Jane Helen Smith as the initial Trustees

## SUCCESSOR TRUSTEE(s):

Jack Smith

Sarah Jones

**Successor Trustees acting as Co-Trustees? No**

## EXECUTORS:

The Executors are the same as the Trustees.

## AGENTS FOR THE GENERAL POWER OF ATTORNEY:

### Client

Jane Helen Smith (Primary)

Jack Smith (Secondary)

### Spouse

Joe Donald Smith (Primary)

Jack Smith (Secondary)

## AGENTS FOR THE HEALTH CARE DIRECTIVE:

### Client

Jane Helen Smith (Primary)

Jack Smith (Secondary)

### Spouse

Joe Donald Smith (Primary)

Jack Smith (Secondary)

**SAMPLE**

**FINAL DISPOSITION INSTRUCTIONS:**

**Client**

I wish to be Cremated

**Spouse**

I wish to be Cremated

**HIPAA WAIVER:**

**Client**

Jane Helen Smith (Primary)

Jack Smith (Secondary)

**Spouse**

Joe Donald Smith

Jack Smith

**SUMMARY OF CLIENT INFORMATION**

Joe Donald Smith

Jane Helen Smith

Street Address: 123 Palm Ave  
City: San Diego  
State / Province: CA  
Postal / Zip Code: 92111

(858) 560-0366

info@dacafig.com

**FAMILY:**

Client is married

**Children:**

Kevin James Smith

Robin Helen Smith

**SAMPLE**

**TRUST DETAILS:**

Trust Name: Joe Donald & Jane Helen Smith Family Trust

Trust Date: \_\_\_\_\_ (Please use date trust was notarized)

**WILL DETAILS:**

Executors:

The Executors are the same as the Trustees.

**DISTRIBUTION OPTIONS:**

Our son Kevin James Smith and our daughter Robin Helen Smith will divide our estate in equal shares between each other.

**Specific Distributions:**

Our son Kevin James Smith is to be given all of his fathers shop tools and equipment.

Our daughter Robin Helen Smith is to be given all her mothers jewelry including her wedding ring.

**SAMPLE**

# NOMINATION OF GUARDIAN

If a Guardian of the person and/or estate is required for any minor child of mine, **Jane Helen Smith** shall act as such Guardian; provided however, if she is not living or is not available, my nomination for appointment of Guardian shall be:

**Jack Richard Smith**

Any Guardian appointed under this Nomination shall serve without bond being required.

Executed on \_\_\_\_\_, 20\_\_\_\_\_, in San Diego, California.

\_\_\_\_\_  
**Joe Donald Smith**

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Joe Donald Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Seal

# NOMINATION OF GUARDIAN

If a Guardian of the person and/or estate is required for any minor child of mine, **Joe Donald Smith** shall act as such Guardian; provided however, if she is not living or is not available, my nomination for appointment of Guardian shall be:

**Jack Richard Smith**

Any Guardian appointed under this Nomination shall serve without bond being required.

Executed on \_\_\_\_\_, 20\_\_\_\_, in San Diego, California.

\_\_\_\_\_  
Jane Helen Smith

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Jane Helen Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

Notary Public Seal

# Complete Estate Plan

Please fill out our simple 5-minute questionnaire. At the end, you will have the opportunity to review your answers. If you have any questions, please contact us at [info@dacafig.com](mailto:info@dacafig.com) or 877.560.DACA. All information is encrypted & kept confidential. We never share any of your information with anyone.

## Client Info

### Choose One

Joint (Married)

### Client Name

Joe Donald Smith

### Spouse Name

Jane Helen Smith

### Trust Name

Joe Donald & Jane Helen Smith Family Trust

### County Of Residence

San Diego

### Address

123 Palm Ave  
San Diego, CA, 92111

### Email

info@dacafig.com

### Phone Number

(858) 560-0366

### Do You Have Children?

Yes

### If Yes, How Many?

2

## Children

Do you need a guardianship for your minor children?

Yes

### Primary Guardian (Client)

Jane Helen Smith

### Secondary Guardian (Client)

Jack Richard Smith

### Primary Guardian (Spouse)

SAMPLE

Joe Donald Smith  
**Secondary Guardian (Spouse)**

Jack Richard Smith

### **Child 1**

Kevin James Smith

### **Child 2**

Robin Helen Smith

## **Successor Trustees**

### **How many successor trustees?**

2

### **Successor Trustee 1**

Jack Smith

### **Co-Successor Trustees? (Yes/No)**

No

### **Successor Trustee 2**

Sarah Jones

## **Distribution Instructions**

### **Distribution Of Assets Instructions**

Our son Kevin James Smith and our daughter Robin Helen Smith will divide our estate in equal shares between each other.

#### **Example Instructions:**

1. My son James Johnson and my daughter Jamie Johnson will divide our estate in equal shares between each other.
2. My son James Johnson will receive 50% of my estate and my daughter Jamie Johnson will receive the remaining 50% of our estate.
3. My son James Johnson will receive \$25,000 dollars and the rest of the estate is to be divided equally between my son James Johnson and my daughter Jamie Johnson.

### **Instructions For Personal Property**

Our son Kevin James Smith is to be given all of his fathers shop tools and equipment.

Our daughter Robin Helen Smith is to be given all her mothers jewelry including her wedding ring.

#### *Example Instructions:*

## **Additional Estate Planning Documents**

*My grandmothers family ring is to be given to my daughter Jamie Johnson*

## **Last Will & Testament**

## **Power Of Attorney**

### **Client Primary Agent**

Jane Helen Smith

### **Client Secondary Agent**

Jack Smith

### **Spouse Primary Agent**

Joe Donald Smith

### **Spouse Secondary Agent**

Jack Smith

## **Health Care Directive / HIPPA Authorization**

### **Primary Healthcare Agent (Client)**

Jane Helen Smith

### **Secondary Healthcare Agent (Client)**

Jack Smith

### **Primary Healthcare Agent (Spouse)**

Joe Donald Smith

### **Secondary Healthcare Agent (Spouse)**

Jack Smith

**SAMPLE**

## **End Of Life Decisions (client)**

Choice NOT to Prolong Life: I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment would outweigh the expected benefits, OR

## End Of Life Decisions (Spouse)

Choice to Prolong Life: I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

## Final Disposition Instructions

### I wish to be (Client)

Cremated

### I have made "pre-need" arrangements at:

Acme & Brothers Mortuary  
1234 Main Street  
San Diego, CA 92111  
888-555-1212

### I wish to be (Spouse)

Cremated

### I have made "pre-need" arrangements at (Spouse):

Acme & Brothers Mortuary  
1234 Main Street  
San Diego, CA 92111  
888-555-1212

## Disclosures / Payments

The information contained in forms wizard is not legal advice and is for informational and/or educational purposes only. The information, templates, wizards, forms, tips, and tools provided in accordance with 299trust.com & dcafg.com is not legal advice. DACA Financial Group is not a law firm and the employees and contractors of DACA Financial Group are not acting as your attorneys, and none of them are a substitute for the advice of your own attorney or law firm licensed to practice law in your state. The employees or contractors of DACA Financial Group who wrote or modified any form, template, wizard, tip, or tool, DO NOT provide legal or any other kind of advice, are not creating or entering into an Attorney-Client relationship. Even though we make every reasonable effort to attempt to make sure our information / templates are accurate, up to date, and useful, we recommend that you consult with an attorney to practice law in your state if you want professional assurance that our materials, and your interpretation of it or them, and the information and input that you provide, is appropriate to your particular situation. These templates, tools, and information are not guaranteed to be complete or up-to-date. DACA Financial Group software is not a substitute for the advice of your own attorney. DACA Financial Group tools and templates where you provide information or make choices, even if based upon suggestions or tips provided by DACA Financial Group, and resulting in a document where that information or the outcome of your choices, does not and is not intended to represent the advice of DACA Financial Group, or the practice of law. These completed or generated documents are no more than self-help forms. DACA Financial Group is not permitted to engage in the practice of law. DACA Financial Group is prohibited from providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection or completion of forms or strategies. SELF-HELP FORMS IS PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OF INTELLECTUAL PROPERTY, OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL DACA FINANCIAL GROUP, OR ITS AGENTS, OFFICERS OR ATTORNEYS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SELF-HELP FORMS, EVEN IF DACA FINANCIAL GROUP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Communications between you and DACA Financial Group are protected by our Privacy Policy but are NOT protected by the attorney-client privilege or work product doctrine since DACA Financial Group is not a law firm and is not providing legal advice. Please also note that your access to and use of DACA Financial Group is subject to additional terms of service.

**I have read & understood the terms and agreements**

Joe Donald Smith & Jane Helen Smith

Please review your answers in this questionnaire. Once you click submit, you will receive your COMPLETE ESTATE PLAN in the email you have provided in this questionnaire within a few minutes! Should you have any questions or concerns please contact [info@dcafg.com](mailto:info@dcafg.com). We thank you for your business.

**SAMPLE**

