

# 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, that person shall be deemed to have waived any claim that person may have 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 payment 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 systems, 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, the 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 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.

\_\_\_\_\_

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**