

Definitions and Interpretations

~~(a) This Will shall be construed in accordance with the laws of the Province of Ontario. To the extent that I am entitled to choose the applicable law to govern the succession of my assets, I choose the laws of Canada and the Province of Ontario.~~

~~(b) Unless expressly indicated otherwise, any reference to “my Trustee” applies to any person or persons acting as an estate trustee, executor or trustee of any part of my estate or any trust established herein who may be acting as such from time to time, whether original or substituted, whether one or more and whether a natural or a corporate person.~~

~~(c) Subject to any specific provision to the contrary, each person who is appointed as “my Trustee” or one of “my Trustees” shall discharge the functions of executor and estate trustee and, if appropriate in the circumstances and context, trustee of any trusts created by this Will.~~

~~(d) A “beneficiary” is a person entitled to benefit under this Will.~~

~~(e) A beneficiary who disclaims a benefit under this Will (the “Disclaimed Benefit”), shall be deemed to have died before me for the purposes of interpreting the provisions of this Will which govern the Disclaimed Benefit.~~

~~(f) “incapable beneficiary” means a beneficiary who is, or that my Trustee, in his opinion considers to be, incapable of managing property as defined in the Ontario *Substitute Decisions Act, 1992* (“incapable”) or who is under the age of 18 years.~~

~~(g) Any direction in this Will to divide any part of my estate in a certain manner shall also entail its payment in accordance with the scheme of division, unless the context dictates otherwise.~~

~~(h) Any authority in this Will to encroach on the capital and/or income of any share in my estate that is from time to time held by my Trustee in trust for a beneficiary of mine shall, unless this Will otherwise provides, include the authority to encroach to the full extent of such capital and/or income, notwithstanding that doing so may adversely affect the interest of a beneficiary or beneficiaries of mine who have a succeeding entitlement to such capital and/or income and notwithstanding that such encroachment would, but for this provision, constitute a failure by my Trustee to maintain an even hand between or among beneficiaries.~~

~~(i) “benefit” includes, without limitation, the support, health, education or maintenance of a person and includes any financial or non-financial advantage to a person.~~

~~(j) “unable or unwilling to act” means, subject to any contrary provision herein, a person who dies, is removed by court, resigns, becomes bankrupt, or becomes mentally incapable of managing property. Proof of such event can be made on such evidence as considered sufficient by such person(s) who is/are appointed to act as replacement for such person who is unable or unwilling to act. The phrase “able and willing to act” has a corresponding meaning.~~

~~(k) References to a statute, regulation or rule in this Will mean the statute, regulation or rule as, from time to time, amended and include a successor (in law or in function) to a statute, regulation or rule that has been repealed.~~

~~(l)~~—Reference to a gift to a person's issue alive at a specific date (“*the Specific Date*”), for example, “the Survival Date” or “the Ultimate Distribution Date”, “in equal shares *per stirpes*” means that the gift shall be divided:

- ~~•—equally among that person's children who are alive at *the Specific Date*, but~~
- ~~•—if any of that person's children are not alive at *the Specific Date* (a “Predeceased Child”), and the Predeceased Child leaves issue alive at *the Specific Date*, the equal amount that would have been received by the Predeceased Child, had he or she been alive at *the Specific Date*, shall be divided equally among the Predeceased Child's children who are alive at *the Specific Date*, but~~
- ~~•—if any of the Predeceased Child's children are not alive at *the Specific Date* (a “Predeceased Grandchild”), and the Predeceased Grandchild leaves issue alive at *the Specific Date*, the equal amount that would have been received by the Predeceased Grandchild, had he or she been alive at *the Specific Date*, shall be divided equally among the Predeceased Grandchild's children, and~~
- ~~•—so on with each representation for a deceased individual at each subsequent level by his or her children.~~

~~(m)~~—Subject to any specific and express provision to the contrary, any reference in this Will to a “child”, “children” or “issue” (“the Descendant”) of a particular person (“the Ancestor”):

~~(i)~~—requires that the Descendant is related by blood to the Ancestor; and

~~(ii)~~—includes adopted persons, but

~~(iii)~~—subject to paragraph , does not include a person born outside marriage nor a person who comes within the description traced through another person who was born outside marriage unless such person comes within the description by virtue of adoption.

~~(iv)~~—A person born outside of marriage shall be considered to be born within marriage to his or her mother or father, as the case may be, for the purposes of this Will where the person's mother or father, as the case may be, has, in the opinion of my Trustee, demonstrated a settled intention to treat the person as his or her child.

~~(v)~~—Any reference to a child (a “Child”) of a person (a “Parent”) shall include a Child who was conceived and born after the death of his or her Parent in accordance with the definition of “Child” in the *Succession Law Reform Act*, such Child being deemed to be born alive at the death of the Parent.

Administrative Provisions

~~(n)~~—to purchase any assets of my estate at the fair market value thereof at the time of purchase. It shall not be necessary for my Trustee to retire or obtain the approval of any Court or Judge to be a purchaser as aforesaid.

~~(o) to borrow on behalf of my estate, at any time, and from time to time upon such terms and subject to such conditions as he may see fit, such amount or amounts as in his uncontrolled discretion he deems necessary or advisable, and for the repayment of any amount so borrowed, may mortgage, charge, pledge, hypothecate or otherwise encumber any of the assets of my estate.~~

~~(p) to lend money or assets, from time to time, from my estate, to any person notwithstanding that the person may be a beneficiary, on such terms and conditions and for such length of time as my Trustee in his absolute discretion determine.~~

~~(q) to deal with any securities, shares, obligations or other interests of or in any organization, company or corporation which shall be from time to time held by my estate, to the same extent and as fully as I could if I were alive, and to take up new or further shares, rights, obligations or other interests, to join in plans for reconstruction or reorganization, to exchange shares, rights, obligations, or other interests, and to give, receive and accept and exercise options, and to pay out of my estate any monies which may be necessary for any of these purposes.~~

~~(r) Without in any way restricting the general power and discretion in this Will given to my Trustee, I hereby specially authorize and empower my Trustee to continue and carry on any business, whether incorporated or unincorporated, which I may own or in which I may be interested at the time of my death and either alone or in partnership with any person or persons who may be a partner or partners therein for the time being, for such length of time as in his uncontrolled discretion my Trustee considers to be in the best interests of my estate, and I give to my Trustee power to do all things necessary or advisable for the carrying on of any such business and, in particular, but without limiting the generality of the foregoing, my Trustee shall have the following powers, namely:~~

~~(i) My Trustee may from time to time, upon the expiration of the term of any partnership, renew the same for any period determined or otherwise, and at any time or times vary any or all of the terms contained in any partnership articles.~~

~~(ii) My Trustee may employ therein or withdraw therefrom any capital which may be employed therein at my death, or advance with or without taking security any additional capital which my Trustee deems desirable for effectually carrying on such business.~~

~~(iii) My Trustee may arrange and agree to the introduction, at any time or times, of any person or persons as a partner therein and as to the division of the profits thereof or the payment of any sum or sums in lieu of profits to any partner and as to the hiring or employment of any person or persons therein (including my Trustee) at such salary or remuneration as my Trustee shall think proper and as to the extension or curtailment of the business thereof or the adoption of any new line of business.~~

~~(iv) My Trustee may form, or join in forming, a limited company for the purpose of taking over or purchasing the whole or any part of any such business, or may sell the same to a limited company, at such price and subject to such terms and conditions as my Trustee may determine, and in consideration for any such taking over or sale, may accept cash, bonds, notes, preference, special or common shares of any company, whether or not such company is the company taking over or purchasing as aforesaid, or all or any of the aforesaid as my Trustee may think fit and any bonds, notes, preference, special or common shares so received shall be an authorized investment under this Will.~~

~~(s) — so long as any real or leasehold property shall form part of my estate, to let or lease such property from time to time, year to year, or for any term of months or years and subject to such covenants and conditions as he shall think fit, to accept surrenders of leases and tenancies, to expend money in repairs and improvements and generally to manage the property, and to give any options with respect to such property or properties as he considers advisable. I further authorize and empower my Trustee to renew and keep renewed any mortgage or mortgages upon any real estate forming part of my estate and to borrow money on any mortgage or mortgages to pay off any mortgage or mortgages which may be in existence at the time of my death or any renewal thereof.~~

~~(t) — to the extent that my Will includes provisions directing my Trustee to take certain action (such as a gift or transfer) in respect of specific property that is owned or controlled by a private corporation that I control, I direct my Trustee to take the necessary steps to have the shares of such private corporation, which may be in control or the owner of such property or a part thereof, voted in such manner to effect those provisions.~~

~~(u) — to engage or terminate the services of one or more discretionary investment managers, mutual fund managers or investment advisors, (hereafter referred to as "investment counsel"), including any investment counsel affiliated or related to my Trustee, to advise my Trustee in respect of the investment and reinvestment of any assets of my estate or any trust created by this Will, and may delegate from time to time to such investment counsel the discretion to manage all or any part of such assets, subject to such supervision and upon such terms and conditions (including the ability of such investment counsel to (i) sub-delegate such discretionary powers and (ii) to invest the assets in any form of investments that a trustee is permitted to invest in under the terms of this Will, including mutual and pooled funds) as my Trustee, acting reasonably and in good faith applying ordinary prudence in managing his own affairs, deems advisable. If the investment responsibility of my Trustee is delegated to one or more investment counsel, I authorize my Trustee, if my Trustee deems it necessary or desirable, to place any such assets into the custody of such selected investment counsel or other appropriate custodian as determined by my Trustee. I further authorize my Trustee to pay from the income or capital of such assets for which the services of an investment counsel have been retained, the remuneration of such investment counsel as my Trustee determine to be appropriate, which remuneration shall not be taken into account in determining compensation payable to my Trustee, but is to be in addition thereto.~~

~~(v) — to appoint an agent in another jurisdiction, and I authorize my Trustee to choose any person or corporation and to take the necessary steps to have such person or corporation appointed.~~

~~(w) — to purchase, at the expense of my estate, such errors and omission insurance as my Trustee deems in his sole discretion is sufficient to protect my Trustee against claims and losses arising from any error of judgment or mistake of law or other mistake or for anything, save the wilful misconduct or wilful breach of trust or fraud by such trustee during the course of the administration of my estate. The cost of such insurance shall not be deducted from the compensation to which my Trustee may otherwise be entitled to for so acting.~~

~~(x) — My Trustees shall be indemnified by my estate for any penalties, fines, and interest owing under the Ontario *Estate Administration Tax Act*, 1998, (the "EATA"), and may pay from my estate for reasonable legal and other professional fees incurred (even if the amount is greater than~~

the Tax being assessed) to defend themselves in any proceedings to determine whether they have committed an offence under the *EATA*.

~~(y) It is my intention that my estate shall be a graduated rate estate as that term is defined in subsection 248(1) of the *Income Tax Act*. My Trustee shall take all such steps as he in his absolute discretion determine, that are necessary for my estate to qualify as a graduated rate estate. Without limiting the generality of the foregoing, such steps include making any required elections or designations under the *Income Tax Act*. It is my wish and desire that my Trustee consult with such professional advisors as he considers appropriate with respect to my graduated rate estate, including the length of time that my estate should qualify as a graduated rate estate and the steps in the administration of my estate that must or ought to be completed during the graduated rate estate period.~~

Replacement of Trustees

~~(II) Subject to any other specific provision herein, in respect of any trust established hereunder, I direct that:~~

~~(a) If the sole remaining trustee becomes unable or unwilling to act as trustee (“the Departing Trustee”), whether before or after the establishment of the trust, the Trustee Appointer shall appoint such one or more person(s) and/or such Trust Corporation to act as trustee(s) (“the Replacement Trustee(s)”) of the trust.~~

~~(b) “Trustee Appointer” means:~~

~~(i) the sole remaining trustee;~~

~~(ii) if no one is acting as trustee because the sole remaining trustee has died, the personal representatives of the last acting trustee;~~

~~(iii) if no one is acting as trustee because the sole remaining trustee has resigned, the last acting trustee;~~

~~(iv) if no one is acting as trustee because the sole remaining trustee has become mentally incapable, the substitute decision maker of the last acting trustee; and~~

~~(v) if no one is acting as trustee for any other reason, the Court of competent jurisdiction of last situs of the trust.~~

~~(c) Upon appointment of the Replacement Trustee(s), the Departing Trustee shall have no liability for actions taken by the Replacement Trustee(s). The Replacement Trustee(s) shall be entitled to discharge the Departing Trustee without requiring that the Departing Trustee apply to the Court for a Passing of Accounts, if the Replacement Trustee(s) consider it advisable to do so.~~