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DATE: 10-25-06

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FROM: Nadia Campbell
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Probate
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SUBJECT: _____

COMMENTS: _____

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LAST WILL
AND
TESTAMENT
OF
KENNETH L. LAY

FILED

2006 JUL 20 PM 12:00

Beverly A. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

LAST WILL AND TESTAMENT

I, KENNETH L. LAY, a resident of Harris County, Texas, make and publish this my LAST WILL AND TESTAMENT, and I revoke all Wills and other testamentary instruments previously made by me.

ARTICLE I - IDENTIFICATION

1.1 Spouse. My wife's name is LINDA PHILLIPS LAY. All references in my Will to "my wife" are to her.

1.2 Children and Descendants. My only living descendants are my children, MARK KENNETH LAY and ELIZABETH LAY VITTOR and their respective descendants. My wife's only living descendants are her children, ROBYN HERROLD-LAY VERMEIL, TODD DAVID HERROLD, and ROBERT RAY "BEAU" HERROLD, and their respective descendants. I desire to treat my children and my wife's children equally under my Will. Accordingly, all reference in my Will to "our children" shall be to MARK KENNETH LAY, ELIZABETH LAY VITTOR, ROBYN HERROLD-LAY VERMEIL, TODD DAVID HERROLD, and ROBERT RAY "BEAU" HERROLD. All references in my Will to "our descendants" are to our children and their respective descendants.

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ARTICLE II - SPECIFIC GIFTS

2.1 Tangible Personal Property. I give all of my interest in any automobiles, clothing, jewelry, household goods, furniture and furnishings, antiques, objects of art, other articles of personal use or ornament, and other personal effects of a nature, use or classification similar to the foregoing to my wife, if she survives me. If my wife fails to survive me I give the properties described in this paragraph to those persons who are designated in a memorandum to my Executor written entirely in my own handwriting, and I give any of such property not described in any such memorandum to those of our children who survive me, equally, to be distributed as agreed upon by those of our children who are to receive properties under this paragraph. If those of our children who are to receive properties under this paragraph cannot agree on the distribution of any items, those items shall be distributed by Executor by assigning to each of those persons a number (by lottery) and then allowing each to select one item of personalty alternately in the order of their assigned numbers until all items of personalty have been distributed.

2.2 Remaining Applicable Exclusion Amount. If my wife survives me, I give my remaining applicable exclusion amount (as defined in section 12.3) to my Trustee, IN TRUST, to be administered as provided in Article V.

2.3 Remaining Generation-Skipping Exempt Amount. If my wife fails to survive me, I give to those of our descendants who survive me, per stirpes, subject to the provisions of the Generation-Skipping Trusts under Article VI, such amount of property as will be equal in value to the remaining exemption, if any, provided in Section 2631 of the Internal Revenue Code from generation-skipping tax which is available at the time of my death, reduced.

by any amount of such exemption applied to transfers made during my lifetime, under my Will or otherwise as a result of my death.

2.4 Specific Gift of Interest in Any Retirement Plans of Wife. If my wife survives me, I give to her all of my interest in any individual retirement account or qualified plan or non-qualified plan as defined in section 12.5 which stands in her name (except a Roth IRA).

2.5 Specific Gift of Interest in Any Insurance on Life of Wife. I give all of my interest in any insurance policies on the life of my wife to those of our descendants who survive me, per stirpes; provided that, if any interest in such policies is held in trust or custodianship as provided in section 8.2, my wife (i) shall not be such Trustee or Custodian, and (ii) shall not have any other incident of ownership over my interest in such policies.

2.6 Specific Gift of Principal Residence. If my wife survives me, I give to her all of my interest in the residence that we may own and be using as our principal residence at the time of my death, subject to any mortgage indebtedness with respect to such property existing at my death.

2.7 Gifts to Children. If my wife fails to survive me or dies in such a manner that it cannot be determined in what order our deaths occurred, I give to each of the following people the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000); provided that if any of the following people do not survive me, that deceased person's gift of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) shall be given to his or her descendants who survive me, per stirpes:

- a. My son, MARK KENNETH LAY;
- b. My daughter, ELIZABETH LAY VITTOR;
- c. My wife's daughter, ROBYN HERROLD-LAY VERMEIL;
- d. My wife's son, TODD DAVID HERROLD; and
- e. My wife's son, ROBERT RAY "BEAU" HERROLD.

2.8 Gifts to Sisters. If (i) my wife fails to survive me and (ii) the value of my adjusted gross estate as defined in section 12.6 exceeds Three Million Dollars (\$3,000,000), I make the following gifts:

- a. To my sister, BONNIE J. BOURNE, I give the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000); provided that if BONNIE J. BOURNE does not survive me, such ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall be given to those of her descendants who survive me, per stirpes.
- b. To my sister, SHARON SUE LAY, I give the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000); provided that if SHARON SUE LAY does not survive me, this gift shall lapse.

2.9 Charitable Gifts. If (i) my wife fails to survive me and (ii) the value of my adjusted gross estate as defined in section 12.6 exceeds Ten Million Dollars (\$10,000,000), I make the following gifts:

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- a. I give the sum of ONE MILLION DOLLARS (\$1,000,000) to the HORATIO ALGER ASSOCIATION OF DISTINGUISHED AMERICANS, INC., to be used for the National Scholarship Program.
- b. I give the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to FIRST UNITED METHODIST CHURCH, Houston, Texas.
- c. I give the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to M.D. ANDERSON CANCER CENTER, Houston, Texas.

ARTICLE III - RESIDUARY ESTATE

3.1 **Disposition of Residue if My Wife Survives Me.** If my wife survives me, I give all of my residuary estate to my Trustee, IN TRUST, to be administered pursuant to the provisions of Article IV. Notwithstanding the foregoing, I give any property which would otherwise pass as a part of my residuary estate pursuant to this section and which as the result of a disclaimer by my wife or her personal representative disclaims pursuant to Section 2518 of the Internal Revenue Code to my Trustee, IN TRUST, to be held pursuant to the provisions of administered as provided in section 8.3.

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3.2 **Disposition of Residue if My Wife Does Not Survive Me.** If my wife fails to survive me, I give all of my residuary estate to our children in equal shares if they all survive me, otherwise, to those of our descendants who survive me, per stirpes, in either event subject to the provisions of the Descendants' Trusts under Article VII.

3.3 **Disposition of Residue to Contingent Beneficiaries.** If my wife and all of our descendants fail to survive me, I give all of my residuary estate to my contingent beneficiaries.

ARTICLE IV - MARITAL DEDUCTION ("QTIP") TRUST

4.1 **Trust Identification.** My Trustee shall hold any property expressly allocated to my Trustee for administration under this Article in a trust to be called by my wife's name. My wife shall be the sole beneficiary of each such trust during her lifetime.

4.2 **Distributions.** With regard to the trust administered under this Article, my Trustee shall distribute the trust net income to my wife at least quarterly. My Trustee shall also distribute to my wife such amounts of trust principal as shall be necessary, when added to all other sources of funds reasonably available to my wife which are known to my Trustee, to provide for her health, support and maintenance, in order to maintain her, to the extent reasonably possible, in accordance with the standard of living to which she is accustomed at the time of my death. My wife shall have the power to require that any unproductive property be converted into productive property within a reasonable time.

4.3 **No Power to Appoint.** No person shall have the power to appoint any part of the trust property to any person other than to my wife.

4.4 **Allocation of Taxes Upon Death of Wife.** Upon the death of my wife, unless my wife directs to the contrary by specific reference in her Will, my Trustee shall pay

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from the trust principal the difference between all taxes (including any interest or penalty on such taxes) which must be paid by reason of my wife's death and those taxes (including any interest or penalty on such taxes) which would be payable by reason of her death had the principal of the trust administered under this Article not been includable in her gross estate for estate tax purposes. My Trustee may make such payments directly to the taxing authority or may pay over the amount so due to the duly qualified executor or administrator of my wife's estate. Written statements by the executor or administrator of my wife's estate of the sums that are due under this section shall be sufficient evidence of their amounts, and my Trustee shall be under no duty to see to the application of any such payments.

4.5 Distribution of Remaining Trust Principal Upon Death of Wife. Upon the death of my wife, the trust principal (which remains after making any payments due under section 4.4) shall be distributed as follows:

- a. If, upon my wife's death, the total net fair market value of the assets of the trust under this Article and the assets of the Family Trust under Article V exceeds the sum of THREE MILLION DOLLARS (\$3,000,000), the following distributions shall be made:
1. The sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall be distributed to my sister, BONNIE J. BOURNE; provided that if she is not then living, such ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall be distributed to her descendants who are then living, per stirpes;
 2. The sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall be distributed to my sister, SHARON SUE LAY if she is then living.
- b. If, upon my wife's death, the total net fair market value of the assets of the trust under this Article and the assets of the Family Trust under Article V exceeds the sum of TEN MILLION DOLLARS (\$10,000,000), the following distributions shall be made:

1. The sum of ONE MILLION DOLLARS (\$1,000,000) shall be distributed to the HORATIO ALGER ASSOCIATION OF DISTINGUISHED AMERICANS, INC., to be used for the National Scholarship Program.
2. The sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall be distributed to the FIRST UNITED METHODIST CHURCH, Houston, Texas.
3. The sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall be distributed to the M. D. ANDERSON CANCER CENTER, Houston, Texas.

- c. The balance of such trust property (after the distributions under a and b above, if any) shall be distributed as follows:

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1. Ninety percent (90%) thereof to our children in equal shares if they are all then living, otherwise, to those of our descendants who are then living, per stirpes; in either event subject to the provisions of the Generation-Skipping Trusts under Article VI. If no descendant of ours is living upon the death of my wife, this share shall lapse.
2. Ten percent (10%) thereof to the LINDA AND KEN LAY FAMILY FOUNDATION, a Texas non-profit corporation, provided that it is then in existence and is an organization then described in each of sections 170(c), 2055(a), and 2522(a) of the Code, or, if the LINDA AND KEN LAY FAMILY FOUNDATION does not satisfy both of such above-described conditions, then to my contingent beneficiaries.

If distributions are to be made under both subparagraphs a and b above and all of the amounts distributable cannot be fully satisfied from the trust under this Article, the distributions to be made under subparagraph b shall be made first. If, pursuant to the provisions of section 11.12 of this Will, two trusts are held under this Article, one of which is exempt from the generation-skipping transfer tax, and one of which is not exempt from the generation-skipping transfer tax, the distributions to be made under subparagraphs a and b above shall be made first from the non-exempt trust and, if assets of the non-exempt trust are insufficient, then from the exempt trust.

ARTICLE V - FAMILY ("BYPASS") TRUST

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5.1 Trust Identification. My Trustee shall hold any property expressly allocated to my Trustee for administration under this Article as one trust which shall be called by my name. My wife shall be the primary beneficiary of this trust during her lifetime.

5.2 Distributions. My Trustee shall distribute to my wife such amounts of trust income and principal as shall be necessary, when added to the funds reasonably available to my wife from all other sources known to my Trustee (including a trust under Article IV), to provide for her health, support and maintenance in order to maintain her, to the extent reasonably possible, in accordance with the standard of living to which she is accustomed at the time of my death. My Trustee may also distribute to any of our descendants such amounts of trust income and principal as are necessary, when added to the funds reasonably available to our descendants from all other sources known to my Trustee, to provide for each of their health, support, maintenance and education, taking into consideration the age, education and station in life of each such descendant; provided that, such distributions shall not, in the judgment of my Trustee, jeopardize the financial security of my wife. Notwithstanding the foregoing, my wife shall have an absolute veto power over distributions of trust income and principal to our descendants by prior written notice to my Trustee.

5.3 Distribution of Remaining Trust Property Upon Death of Wife. Upon the death of my wife, any amounts otherwise distributable under subparagraphs (a) and (b) of section 4.5 which could not be fully satisfied from the assets of the Marital Deduction Trust shall

be satisfied from the assets of the Family Trust. The remaining trust property shall be distributed to our children in equal shares if they are all then living, otherwise to those of our descendants who are then living, per stirpes, in either event subject to the provisions of the Generation-Skipping Trusts under Article VI. If no descendant of mine is living upon the death of my wife, the remaining trust property shall be distributed to my contingent beneficiaries.

ARTICLE VI - GENERATION-SKIPPING TRUSTS

6.1 **Separate Trust for Each Beneficiary.** My Trustee shall hold and administer any property given subject to this Article to any of our descendants in a separate trust for the benefit of such person, and the records of my Trustee shall be kept accordingly. Each trust administered pursuant to this Article shall be known by the name of the person for whom it was set aside (hereinafter referred to as the "Beneficiary" of his or her trust), and each Beneficiary shall be the primary beneficiary of his or her trust. It is my intention that any property held in trust pursuant to this Article VI be exempt from the generation-skipping tax. Accordingly, if any property is distributable to any person subject to this Article, but such distribution would cause a trust to have an inclusion ratio greater than zero, then notwithstanding any provision of my Will to the contrary, that portion of such distribution which is not exempt from the generation-skipping tax shall not be held under this Article, but instead shall be distributed to such person subject to the provisions of the Descendants' Trusts under Article VII.

6.2 **Distributions.** With regard to each trust administered under this Article, my Trustee shall distribute to the Beneficiary and may distribute to any descendant of the Beneficiary such amounts of trust income and principal as are necessary, when added to the funds reasonably available to each such distributee from all other sources known to my Trustee, to provide for the health, support, maintenance and education of each such distributee, taking into consideration his or her age, education and station in life. However, notwithstanding the foregoing, it is my intention that distributions to a Beneficiary who is one of our children be made first from the trust administered for his or her benefit under Article VII rather than from the trust administered under this Article, to the extent reasonable and practicable, it being my intention that the principal of the trusts administered under this Article be preserved for our grandchildren to the extent possible. I particularly desire that each of our descendants be afforded every opportunity to obtain as complete an education, including attendance at graduate and professional schools, as he or she may reasonably desire and be qualified to obtain.

6.3 **Special Power of Appointment.** Each Beneficiary, acting in such Beneficiary's individual capacity, shall have the special power to appoint (outright, in trust or otherwise) all or any part of the income and principal of such Beneficiary's trust to any one or more persons related to such Beneficiary by blood, marriage or adoption and/or to any one or more charities. Such special power shall be exercised by acknowledged instrument delivered to my Trustee during the Beneficiary's lifetime or by specific reference in the Beneficiary's Will. A Beneficiary shall not have the power pursuant to this section to appoint trust property to himself or herself, his or her creditors, his or her estate, or the creditors of his or her estate.

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6.4 Trust Term. Subject to the provisions of section 11.5, each trust administered pursuant to this Article shall last for the lifetime of the Beneficiary.

6.5 Distribution of Remaining Trust Property Upon Death of Beneficiary. Upon the death of a Beneficiary, all remaining unappointed income and principal of such Beneficiary's trust shall be divided into shares and portions of shares among the then living descendants of such deceased Beneficiary, per stirpes, and each share or portion so allotted to a descendant of the deceased Beneficiary shall be held by my Trustee in a separate trust for the benefit of such descendant (who will then become the "Beneficiary" of his or her trust) and shall be administered under this Article. If no descendant of the Beneficiary is living at the death of the Beneficiary, all remaining unappointed income and principal of his or her trust shall instead be distributed per stirpes to the then living descendants of the nearest lineal ancestor of the deceased Beneficiary who is also a descendant of ours and who has descendants then living, or, if no such descendant is then living, to our then living descendants, per stirpes. If no descendant of ours is living at the death of the Beneficiary, all remaining unappointed income and principal of his or her trust shall be distributed to my contingent beneficiaries. Notwithstanding the foregoing, if any trust property would otherwise be distributed pursuant to this section to a person for whom assets are then being held in trust under this Article, such trust property shall not be distributed outright to such person but instead shall be added to the principal of the trust held under this Article for the benefit of such person.

ARTICLE VII - DESCENDANTS' TRUSTS

7.1 Separate Trust for Each Beneficiary. My Trustee shall hold and administer any property given subject to this Article to any of our descendants in a separate trust, but subject to the provisions of section 11.12, for the benefit of such person, and the records of my Trustee shall be kept accordingly. Each trust administered pursuant to this Article shall be known by the name of the person for whom it was set aside (hereinafter referred to as the "Beneficiary" of his or her trust), and each Beneficiary shall be the primary beneficiary of his or her trust.

7.2 Distributions. With regard to each trust administered under this Article, my Trustee shall distribute to the Beneficiary and may distribute to any descendant of the Beneficiary such amounts of trust income and principal as are necessary, when added to the funds reasonably available to each such distributee from all other sources known to my Trustee, to provide for the health, support, maintenance and education of each such distributee, taking into consideration his or her age, education and station in life. I particularly desire that each of our descendants be afforded every opportunity to obtain as complete an education, including attendance at graduate and professional schools, as he or she may reasonably desire and be qualified to obtain.

7.3 Special Power of Appointment. Each Beneficiary, acting in such Beneficiary's individual capacity, shall have the special power to appoint (outright, in trust or otherwise) all or any part of the income and principal of such Beneficiary's trust to any one or

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more persons related to such Beneficiary by blood, marriage or adoption and/or to any one or more charities. Such special power shall be exercised by acknowledged instrument delivered to my Trustee during the Beneficiary's lifetime or by specific reference in the Beneficiary's Will. A Beneficiary shall not have the power pursuant to this section to appoint trust property to himself or herself, his or her creditors, his or her estate, or the creditors of his or her estate.

7.4 Trust Term. Subject to the provisions of section 11.5, each trust administered pursuant to this Article shall last for the lifetime of the Beneficiary.

7.5 Distribution of Remaining Trust Property Upon Death of Beneficiary.
Upon the death of a Beneficiary, all remaining unappointed income and principal of such Beneficiary's trust shall be divided into shares and portions of shares among the then living descendants of such deceased Beneficiary, per stirpes, and each share or portion so allotted to a descendant of the deceased Beneficiary shall be held by my Trustee in a separate trust for the benefit of such descendant (who will then become the "Beneficiary" of his or her trust) and shall be administered under this Article. If no descendant of the Beneficiary is living at the death of the Beneficiary, all remaining unappointed income and principal of his or her trust shall instead be distributed per stirpes to the then living descendants of the nearest lineal ancestor of the deceased Beneficiary who is also a descendant of ours and who has descendants then living, or, if no such descendant is then living, to our then living descendants, per stirpes. If no descendant of ours is living at the death of the Beneficiary, all remaining unappointed income and principal of his or her trust shall be distributed to my contingent beneficiaries. Notwithstanding the foregoing, if any trust property would otherwise be distributed pursuant to this section to a person for whom assets are then being held in trust under this Article, such trust property shall not be distributed outright to such person but instead shall be added to the principal of the trust held under this Article for the benefit of such person.

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ARTICLE VIII - CONTINGENT BENEFICIARIES AND CONTINGENT TRUSTS

8.1 Contingent Beneficiaries. If any property is provided to be distributed to "my contingent beneficiaries", such property shall be distributed to the LINDA AND KEN LAY FAMILY FOUNDATION, a Texas non-profit corporation, provided that it is then in existence and is an organization then described in each of sections 170(c), 2055(a), and 2522(a) of the Code, or, if the LINDA AND KEN LAY FAMILY FOUNDATION does not satisfy both of such above-described conditions, then to such one or more organizations then described in each of sections 170(c), 2055(a), and 2522(a) of the Code, as determined by Executor or Trustee, as the case may be, in its sole discretion.

8.2 Contingent Provisions for Young or Incapacitated Persons. If any share of my estate or any share of trust property to be distributed upon termination of a trust or any share of payments or proceeds payable to my testamentary Trustee is otherwise provided to be distributed to a person who has not attained age twenty-one or who, in the absolute and uncontrolled judgment of my Executor or Trustee, is incapacitated (such person is referred to as

the "Ward"), I direct my Executor or Trustee, as the case may be, either (a) to hold such share in custody as Custodian under the Uniform Transfers to Minors Act of Texas or any other state; or (b) to hold such share in a separate trust for the benefit of the Ward. It is my intention to ensure maximum flexibility in the administration of any such property, taking into consideration what is in the best interests of the Ward, and my Executor or Trustee shall not be liable for any decision made in good faith as to whether such property should be held in custodianship or held in trust for the benefit of the Ward. With respect to any property held in trust, when any Ward under age twenty-one attains such age or when any other Ward, in the absolute and uncontrolled judgment of my Trustee, becomes legally, mentally and physically capable of receiving such property, all remaining income and principal of such trust shall be distributed to the Ward, and such trust shall terminate. Prior to the termination of such trust, my Trustee shall utilize such amounts of trust income and principal as my Trustee, in my Trustee's absolute and uncontrolled discretion, deems desirable from time to time to provide for the comfort, health, support, maintenance or education of the Ward, directly and without the interposition of any guardian. If the Ward dies before the termination of the trust, the remaining trust property shall be distributed to the executors or administrators of the Ward's estate.

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8.3 Disclaimer Trust. Any property given to my Trustee to be held under the provisions of this section shall be held in a separate trust and identified as the disclaimer trust. This trust shall be administered, distributed and terminated in the same manner as provided in Article V, except that (i) all income shall be paid to my wife at least quarterly, and no distributions shall be made to any descendants of mine during my wife's life, and (ii) my wife, acting individually or as a fiduciary, shall have no power of appointment over the trust property and shall have no other powers, including any veto power, over this trust which would result in any disclaimer by my wife or her personal representative failing to be a qualified disclaimer pursuant to Section 2518 of the Internal Revenue Code.

ARTICLE IX - FIDUCIARY APPOINTMENTS

9.1 Executor and Trustee.

(a) I appoint my wife to be Independent Executrix of my Will and estate and Trustee of all trusts created by my Will. If my wife does not qualify or, having qualified, dies, resigns, becomes incapacitated, or otherwise ceases to act then, subject to the provisions of subsection 9.1(b) below, the following shall serve as the successor sole Independent Executor and successor sole Trustee, in the order named: first, BARRY H. MARGOLIS; second, JOHN M. ("MICK") SEIDL; and third, NORTHERN TRUST BANK OF TEXAS, NA. I also hereby designate the above-named fiduciaries, in the order listed, as successor custodian with respect to any property over which I am acting as custodian under the Uniform Transfers to Minors Act of Texas or any other state at the time of my death.

(b) My wife may elect at any time to have any child of ours or any corporate fiduciary meeting the requirements of section 9.4 appointed as a Co-Trustee of any trust created under my Will by acknowledged instrument delivered to such fiduciary and filed in the

permanent records of the trust. Notwithstanding the foregoing, any Beneficiary of a trust who has attained age twenty-five may elect at any time to be appointed as a Co-Trustee of his or her trust, and may elect at any time to be appointed as the sole Trustee after attaining age thirty. Any such election must be by an acknowledged instrument delivered to my Trustee then serving and filed in the permanent records of the trust. Furthermore, any Beneficiary of a trust who has attained age thirty may designate any individual or any corporate fiduciary to become Trustee of his or her trust, or to become Trustee of any trust for the benefit of any of his or her descendants, thereby replacing any other Trustee of such trust. Any such designation shall be made by acknowledged instrument delivered to my Trustee and filed in the permanent records of the trust or by specific reference in the Beneficiary's Will, with the last such instrument taking precedence (the effective date of a Will being the date of the testator's death).

(c) Notwithstanding the foregoing, if any property is held in a trust or custodianship under section 8.2 for any descendant of ours, the surviving parent of the Ward of such trust or custodianship shall serve as Trustee or Custodian for that descendant.

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(d) The term "Executor" or "Trustee" shall also mean and include any ancillary fiduciaries, co-fiduciaries, alternates or successors while serving in such fiduciary capacity under my Will. Notwithstanding any provision in my Will to the contrary, it is my desire that no trust created under my Will be classified as a foreign trust for U.S. income tax purposes. Accordingly, if the appointment of any Trustee under my Will would classify any trust as a foreign trust, then such Trustee shall in no event serve hereunder, and the trustee appointment provisions herein shall apply as if such Trustee had predeceased me.

9.2 **No Bond.** I direct that no bond or other security shall be required of my Executor or Trustee in any jurisdiction and that no other action shall be required in any court in relation to the settlement of my estate than the probating and recording of my Will and the return of an inventory, appraisal and list of claims of my estate.

9.3 **Trustee Replacement.** Any Trustee may resign as to any trust created by my Will by giving at least forty-five days' written notice (unless waived) to my wife, while living, and thereafter to the Beneficiary or Ward of such trust. If the person entitled to receive notice is legally incapacitated, such notice shall be delivered to such person's parent or guardian. My wife (or at any time that my wife is incapacitated, our children jointly) may from time to time remove any Trustee of any trust created by my Will, with or without cause, on at least forty-five days' notice (unless waived) and shall appoint a successor Trustee. Additionally, any Beneficiary of a trust who has attained age thirty may from time to time remove any Trustee of his or her trust, with or without cause, on at least forty-five days' written notice (unless waived) and shall either appoint a successor Trustee or elect to serve as sole Trustee of such trust. Any removal notice must be by acknowledged instrument delivered to the Trustee being removed and filed with the permanent records of the trust, and must contain the acceptance of the successor Trustee endorsed on it.

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9.4 Vacancy in Trusteeship. If a trusteeship would otherwise be vacant and no successor trustee who is willing and able to serve is provided for hereunder, the power to appoint a successor Trustee shall be exercisable in succession by the following persons: (a) as to any trust during my wife's lifetime, my wife, for a period of thirty days; or if my wife is incapacitated or fails to timely appoint a successor, by our children jointly; or (b) as to any trust thereafter, by any individual Trustee of such trust, for a period of thirty days; or, if the individual Trustee is incapacitated or fails to timely appoint a successor, by the Beneficiary of such trust (or an incapacitated Beneficiary's parent or guardian). If no successor Trustee has otherwise been appointed within ninety days of a vacancy in the trusteeship, then upon the written request of any interested party, the then presiding judge of the court in which my Will was originally admitted to probate, acting as an individual and not in any judicial capacity, shall have the power to appoint a successor Trustee. Any successor Trustee appointed by the guardian of an incapacitated person or by any judge shall be a bank with trust powers, or a trust company, either state or national, with at least \$100,000,000 of assets under management.

9.5 Power to Terminate Uneconomical Trust. If, in the opinion of a bank or trust company named as Trustee, it should ever become uneconomical or impractical for a corporate Trustee to act or to continue to act as Trustee of any trust created by my Will, either because of the small size of such trust or the nature of the trust assets, then notwithstanding section 9.4, such bank or trust company may: (a) resign or decline to serve as Trustee and appoint an individual as successor Trustee, if no Co-Trustee is then serving; or (b) terminate such trust (other than a trust held under Article V or section 8.3) by complete distribution to my wife, if living, otherwise to the Beneficiary or Ward of such trust.

9.6 Change of Identity of Corporate Trustee. If any bank, trust company or other corporation ever succeeds to the trust business of any corporate fiduciary appointed as Trustee herein by means of merger, consolidation, change of name, or any other form of reorganization, or if such corporate fiduciary ever transfers all of its existing fiduciary business to any other bank, trust company or corporation, then the successor bank, trust company or corporation shall succeed such corporate fiduciary in each appointment hereunder as if originally named herein, without any further action required.

9.7 Fiduciary Compensation. Every fiduciary other than my wife or a Beneficiary serving as Trustee of such Beneficiary's trust shall be entitled to fair and reasonable compensation (unless waived) for services rendered in any amount not exceeding the customary and prevailing charges for services of a similar character at the time and at the place such services are performed. Every fiduciary shall be reimbursed for the reasonable costs and expenses incurred in connection with such fiduciary's duties.

9.8 Special Provisions Regarding Barry H. Margolis. Neither BARRY H. MARGOLIS nor any accounting firm in which he is a partner or with which he is associated shall be prohibited, disqualified, or limited by law or custom, or for any other reason, from acting as accountants for my executor or trustee, even if BARRY H. MARGOLIS is then serving as such.

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executor or trustee. For accounting services, BARRY H. MARGOLIS and such firm shall be entitled to reasonable fees and expenses, which shall be in addition to those fees BARRY H. MARGOLIS might receive as executor or trustee.

9.9 Ancillary Fiduciary. If my estate or any trust created by my Will contains property located in another state or a foreign jurisdiction and my Executor or Trustee cannot, or chooses not to, serve under the laws of such state or foreign jurisdiction, my Executor or Trustee shall have the power to appoint an ancillary Executor or Trustee to serve with respect to such property. An ancillary fiduciary appointed pursuant to this section may be an individual or a corporate fiduciary.

ARTICLE X - FIDUCIARY PROVISIONS

10.1 Applicability of Texas Trust Code. Any Executor or Trustee serving hereunder shall act independently and free from control by any court and shall have all of the powers conferred upon trustees by the Texas Trust Code, and by any future amendments to the Texas Trust Code or any corresponding statute, except for any instance in which the Texas Trust Code or such other statutory provisions may conflict with the express provisions of my Will, in which case the provisions of my Will shall control unless otherwise provided by law. In addition to such powers, any Trustee or Executor serving hereunder is specifically authorized:

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(a) Property Passing from Estate. To retain, in the absolute and uncontrolled discretion of my Executor or Trustee without the duty to diversify investments, any property owned by me at the time of my death including securities of any corporate Executor or Trustee, without liability for any depreciation or loss occasioned by such retention;

(b) Authority to Sell or Lease. To exchange, sell or lease (including leases for terms exceeding the duration of all trusts created by my Will) for cash, property or credit, or to partition, from time to time, publicly or privately, at such prices, on such terms, times and conditions and by instruments of such character and with such covenants as my Executor or Trustee may deem proper, all or any part of the assets of my estate and of each trust, and no vendee or lessee of my Executor or Trustee shall be required to look to the application made by my Executor or Trustee of any funds paid to my Executor or Trustee;

(c) Payment of Loans and Debts. To use the cash and any of the securities or other property owned by me at the time of my death to satisfy any loans or other debts for which my estate is liable or to continue all or any portion of such loans or debts;

(d) Authority to Borrow. To borrow money from any source (including any fiduciary) and to mortgage, pledge, or in any other manner encumber all or any part of the assets of my estate or of any trust as may be advisable in the judgment of my Executor or Trustee for the advantageous administration of my estate or of the trusts;

(e) General Investment Powers. To invest and reinvest my estate and each of the trust estates in any kind of property whatsoever, real or personal (including oil, gas and other mineral leases, royalties, overriding royalties and other interests), whether or not productive of income and without regard to the proportion that such property or property of a similar character held may bear to my entire estate or to the entire trust;

(f) Authority to Lend. To loan funds of any trust to any person, despite the fact that such person is a beneficiary or Trustee of any trust established by my Will or is an affiliate or a relative of a beneficiary or Trustee, when, in the Trustee's absolute and uncontrolled discretion, such loan is advantageous to the trust, the amount loaned is adequately secured and the interest rate charged is adequate under the economic conditions existing at the time of the loan; provided, however, that the Trustee must give prior written notice of such loan to the primary beneficiary or Ward of such trust (or to the parent or guardian of a minor primary beneficiary or Ward), and any loan to a Trustee must first be approved by the primary beneficiary or Ward of such trust (or by the parent or guardian of a minor primary beneficiary or Ward);

(g) Nominal Title. To register and carry any securities or other property in the name of my Executor or Trustee or in the name of the nominee of any corporate Executor or Trustee (or to hold any such property unregistered) without increasing or decreasing the fiduciary liability of my Executor or Trustee; to vote any stock which may be held in my estate or in the trusts; to exercise any option, right or privilege to purchase or to convert bonds, notes, stocks (including shares or fractional shares of stock of any corporate Executor or Trustee), securities or other property, and to borrow money for the purpose of exercising any such option, right or privilege;

(h) Personal Effects. To store personal effects given to a person who is a minor (or a person who my Executor deems incapacitated) for later distribution to such person, or to sell such property and add the proceeds of sale to a trust of which such person is a beneficiary;

(i) Transactions Between Related Parties. To enter into any transaction on behalf of my estate or of any trust despite the fact that another party to any such transaction may be (i) a trust of which any Executor or Trustee under my Will is also a trustee, including any trust established by my Will; (ii) an estate of which any Executor or Trustee under my Will is also an executor or administrator, including my estate; (iii) a business or trust controlled by any Executor or Trustee under my Will or of which any such Executor or Trustee, or any director, officer or employee of any such corporate Executor or Trustee, is also a director, officer or employee; (iv) any affiliate or business associate of any beneficiary, Executor or Trustee; or (v) any beneficiary, Executor or Trustee under my Will acting individually or any relative of such person;

(j) Facility of Payment. To make, in my Executor's or my Trustee's absolute and uncontrolled discretion, any distribution required or permitted to be made to any beneficiary under my Will, or under any trust established by my Will, in any of the following ways: (i) to such beneficiary directly, even if such beneficiary is a minor or a person who is incapacitated in the absolute and uncontrolled judgment of my Executor or Trustee by reason of legal incapacity or physical or mental illness or infirmity; (ii) to the guardian of such beneficiary's person or estate; (iii) by utilizing the same, directly and without the interposition of any guardian, for the benefit of such beneficiary in accordance with the standard for distributions to such beneficiary provided in any trust under my Will; (iv) to a person or financial institution serving as Custodian for such beneficiary under the Uniform Transfers to Minors Act of Texas or any other state, specifically including a Custodianship created by my Executor or my Trustee; or (v) by reimbursing the person who is actually taking care of such beneficiary (even though such person is not the legal guardian) for expenditures made by such person for the benefit of such beneficiary; and the written receipts of the persons receiving such distributions shall be full and complete acquittances to my Executor or Trustee; except that, notwithstanding the foregoing, no distribution

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may be made pursuant to this subsection in such a way as would jeopardize any marital or charitable deduction in my estate;

(k) **Authority to Make Non Pro-Rata Distributions.** To make divisions or distributions in money or in kind, or partly in each, whenever required or permitted to divide or distribute all or any part of my estate or of any trust; to allocate particular assets or portions thereof to any one or more of the beneficiaries of my estate or the trusts as my Executor or Trustee shall deem to be for the best interests of the beneficiaries of my estate and of the trusts without any obligation to make proportionate distributions or to distribute to all beneficiaries property having an equivalent Federal income tax basis; and, in making any such divisions, distributions or allocations, the judgment of my Executor or Trustee in the selection and valuation of the assets to be so divided, distributed or allocated shall be binding and conclusive; provided, however, in exercising the foregoing judgment, my Executor or Trustee shall act in a fair and impartial manner with respect to all beneficiaries such that the exercise of the judgment of my Executor or Trustee in the selection and valuation of assets to be divided, distributed or allocated shall not jeopardize the intended estate and transfer tax results of such gifts, including any marital or charitable deduction in my estate;

(l) **Authority to Invest in Life Insurance.** To invest the trust assets in any life insurance policy or policies (including term insurance) on the life of one or more of the beneficiaries of the trusts, or on the life of any person or persons in whom one or more of the beneficiaries of the trusts have an insurable interest;

(m) **Release of Fiduciary Powers.** To release, in the absolute and uncontrolled discretion of my Executor or Trustee, any fiduciary power at any time, in whole or in part, temporarily or permanently, or to delegate any fiduciary power to any other Co-Executor or Co-Trustee serving hereunder, by an acknowledged instrument filed in my probate records;

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(n) **Corporate Trustee Deposits and Investments.** To deposit all or any part of the assets of my estate and of each trust with any corporate Executor or Trustee; and to invest and reinvest all or part of the assets of my estate and of each trust in any common trust fund of any corporate Executor or Trustee;

(o) **Business Continuity.** To continue any business (whether a proprietorship, corporation, partnership, limited partnership, limited liability partnership, limited liability company or other business entity) which I may own or in which I may be financially interested at the time of my death for such time as my Executor or Trustee may deem it to be in the best interests of my estate or of the trusts; to employ in the conduct of any such business such capital out of my general estate or out of any of the trusts as my Executor or Trustee may deem proper; to borrow money for use in any such business alone or with other persons financially interested in such business, and to secure such loan or loans by a mortgage, pledge or any other manner of encumbrance of, not only my property and interest in such business, but also such portion of my general estate or of the trusts outside of such business as my Executor or Trustee may deem proper; to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which I may own or in which I may be financially interested at the time of my death, or of any new business or business interest, all the powers which may be necessary for its successful operation;

(p) **Authority to Hold S Corporation Stock.** To hold stock in any one or more corporations which has elected to be taxed as an S corporation pursuant to

Subchapter S of the Internal Revenue Code, and which would otherwise be distributed to a trust not described in Section 1361(c)(2) of the Internal Revenue Code, in a parallel separate trust for the benefit of the primary beneficiary of such trust (who shall be referred to in this subsection as the "current income beneficiary"), which parallel separate trust shall by its terms require that: (i) during the life of the current income beneficiary, such beneficiary shall be the only income beneficiary of the trust; (ii) any corpus distribution during the life of the current income beneficiary shall be made only to such beneficiary, during which time no one shall have any power to appoint any portion of the trust property to anyone other than the current income beneficiary; (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust; (iv) upon any termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary; and (v) all of the income (as defined in Section 643(b) of the Internal Revenue Code) of the trust shall be distributed currently to the current income beneficiary. Such parallel separate trust shall be established and maintained, if at all, only so long as the current income beneficiary is a citizen or resident of the United States, and only if such beneficiary (or the legal representative of the beneficiary) makes the election described in Section 1361(d)(2) of the Internal Revenue Code. In addition, my Executor or my Trustee, in such fiduciary's sole and absolute discretion, is authorized to make any elections or give any consents which are required to achieve or maintain S corporation status for stock to be held in my estate or in trust under my Will and may also enter into such stock purchase, voting or other agreements as my Executor or my Trustee, in such fiduciary's sole and absolute discretion, shall determine to be necessary or appropriate for the protection of my estate, the trust, the shareholders of the S corporation and/or the deemed shareholders of the S corporation;

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(q) Power to Execute Mineral Agreements. To execute lease, pooling or unitization agreements (including agreements of such nature extending beyond the terms of all trusts created by my Will) with respect to any mineral or royalty interest held or acquired by my estate or any of the trusts; to drill or contract for the drilling of wells for oil, gas or other minerals; to make dry hole or bottom hole contributions; to enter into any operating agreements with reference to any mineral leases or properties held or acquired by my estate or by any trust; and generally, with reference to oil, gas and other mineral properties and operations, to enter into such agreements and to do all such other things (whether or not presently recognized as common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting or marketing oil, gas or other minerals) as my Executor or Trustee may deem to be advantageous;

(r) Power to Employ Investment Advisors. To select and employ, at the discretion of my individual Executor or Trustee but at the expense of my estate or of the trusts, any person, firm or corporation, engaged in rendering investment advisory services or investment management services, to furnish professional assistance or management in connection with making investments, managing securities, or making any other decisions with respect to the purchase, retention, sale or other disposition of property or securities belonging to my estate or the trusts; and

(s) Power to Employ Corporate Agents. To employ a bank or trust company or other business firm or corporation located anywhere within the United States, at the discretion of my Executor or Trustee but at the expense of my estate or the trusts, as custodian or agent, whether or not such custodian or agent is an affiliate of my Executor or Trustee or any person rendering services to my estate or the trusts; to have stock and securities registered in the name of such

agent or custodian or a nominee thereof without designation of fiduciary capacity, and to appoint such bank or trust company or other business firm or corporation to perform such other ministerial functions as my Executor or Trustee may direct. While such stock or securities are in the custody of any such bank or trust company or other business firm or corporation, my Executor or Trustee shall be under no obligation to inspect or verify such stock or securities nor shall my Executor or Trustee be responsible for any loss by such bank or trust company or other business firm or corporation.

10.2 Charitable Foundation. Notwithstanding the foregoing powers provisions, if any such powers granted herein to my Executor or Trustee would cause either my estate to lose all or any part of the charitable deduction for Federal estate tax purposes, pursuant to Section 2055 of the Internal Revenue Code, arising out of any gift made to the LINDA AND KEN LAY FAMILY FOUNDATION or would cause such Foundation to lose its status as an organization described in Section 501(c)(3) of the Internal Revenue Code or to lose its exemption from Federal income tax under Section 501(a) of the Internal Revenue Code, then such power shall be null and void. Any powers herein granted to my Executor shall be construed as to accomplish my intention that my estate shall be entitled to a charitable deduction for Federal estate tax purposes for any gift made to such Foundation and the Foundation shall be in compliance at all times with the applicable requirements of Section 501(c)(3) and related provisions of the Internal Revenue Code.

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10.3 Accounting Records. All assets, books of account and records of my estate and of each trust shall be available for inspection at all times during business hours by any fiduciary under my Will, by any beneficiary or by any person or persons designated by any one of them. My Trustee shall furnish written statements (which shall be deemed correct and binding one year after receipt) at least annually showing the itemized receipts and disbursements of income and principal of each trust, and otherwise reflecting the condition thereof, to the primary beneficiary of such trust.

10.4 Matters Pertaining to Successor Executor or Trustee. Any Executor or Trustee is relieved of any duty to examine the acts of any prior fiduciary, without the necessity of any court accounting, and any successor Executor or Trustee shall be responsible only for those assets which are actually delivered to such Executor or Trustee. Any successor Trustee, on executing an acknowledged acceptance of the trusteeship and upon receipt of those assets which are actually delivered to such successor Trustee by the prior Trustee, shall be vested without further act on the part of anyone with all of the estates, titles, rights, powers, duties, immunities and discretions granted to the prior Trustee.

10.5 Liability of Executor or Trustee. Any Executor or Trustee may rely in good faith upon the written opinion of an attorney, any facts stated in any instrument in writing and believed true or any other evidence deemed sufficient. Any Executor or Trustee shall be released, indemnified and held harmless from any liability for any action such Executor or Trustee may take, or for the failure of such Executor or Trustee to take any action, if done in

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good faith and without gross negligence, including, without limitation, indemnity for the ordinary negligence of such Executor or Trustee.

10.6 Transfers of Additional Property. Subject to acceptance by my Trustee, any person shall have the right, from time to time, to transfer to my Trustee, either by inter vivos transfer or by Will, such additional property as such person shall desire to become a part of the trusts hereby created. Any such additional property shall be allocated to the trusts on the basis specified by the donor, and shall thereafter be held, administered and distributed by my Trustee in accordance with the provisions of my Will. The assets of the trusts established by my Will may consist of undivided interests in the same property and my Trustee may administer such trusts as one fund.

ARTICLE XI - ADMINISTRATIVE AND TAX PROVISIONS

11.1 Survival Period. For purposes of my Will, no person except my wife shall be deemed to have survived me if such person dies within ninety days after my death. My wife shall be deemed to have survived me if she actually survives me, regardless of any statutory provision requiring a longer survival period, and in the event that my wife and I die in such a manner that it cannot be determined in what order our deaths occurred, my wife shall be presumed to have survived me.

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11.2 Apportionment of Death Taxes. I direct that all estate, inheritance, transfer and succession taxes (including any interest or penalty on such taxes) which arise in connection with my death with respect to all property passing under my Will and any property included in my gross estate for Federal estate tax purposes as a result of a gift in trust under my wife's Will which qualified for the marital deduction in my wife's estate and which is exempt from the generation-skipping tax shall be paid first out of any property held pursuant to Article IV which does not qualify for the marital deduction in my estate. The balance, if any, of such taxes (including any interest or penalty on such taxes) shall be paid out of my residuary estate without apportionment, except that if any property is a part of my residuary estate as a result of a disclaimer pursuant to Section 2518 of the Internal Revenue Code, then such taxes (including any interest or penalty on such taxes) shall be paid first out of such disclaimed property. The provisions of this section are specifically intended to override any obligation of my Executor under Section 2207A of the Internal Revenue Code to seek reimbursement from any such trust created under my wife's Will for any taxes that may result because such trust property is included in my gross estate. Notwithstanding what is stated above, the provisions of this section shall not apply to any generation-skipping taxes (including any interest or penalty on such taxes).

11.3 Spendthrift Protection. Prior to the actual receipt of property by any beneficiary, no property (income or principal) distributable under my Will or under any trust created by my Will shall be subject to anticipation or assignment by any beneficiary, or to attachment by or to the interference or control of any creditor or assignee of any beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any

beneficiary. Any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder prior to distribution shall be absolutely and wholly void.

11.4 Protection of Separate Property. To the extent permitted by law, any beneficial interest created in any trust beneficiary hereunder shall be the separate property and estate of such beneficiary, and any and all income and/or principal distributed to such beneficiary or retained in such trust shall be such beneficiary's separate property and estate.

11.5 Rule Against Perpetuities Savings Clause. Notwithstanding anything to the contrary contained in my Will, no trusts created hereby, or by exercise of a power of appointment hereunder, shall continue for more than the limiting period permitted by the applicable rule against perpetuities, applied with our descendants who are living at the time of my death as the measuring lives. Any property still held in trust at the expiration of that period shall immediately be distributed to the Beneficiary or Ward of the trust.

11.6 Option to Merge Similar Trusts. My Trustee, in my Trustee's absolute and uncontrolled discretion, may distribute all or any part of the income and principal of or may merge any trust created under my Will with any other trust(s) created by any other individual and/or me if the terms of such trusts are substantially similar, if such trusts are held for the primary benefit of the same person(s), have the same spendthrift protection, and have the same inclusion ratio for purposes of the generation-skipping tax. In the event that any trusts with different contingent beneficiaries are merged under this section and such merged trust is to be distributed to contingent beneficiaries, then the property remaining in the merged trust at the time of such distribution shall be divided pro rata among the contingent beneficiaries of each trust in proportion to the value of each trust at the time such trusts were merged. Further, if such merged trusts are to terminate at different times, my Trustee shall terminate the respective merged portions at the appropriate times on a pro rata basis in proportion to the value of each trust at the time such trusts were merged.

11.7 Distributions Prior to Closing Estate. Notwithstanding the provisions of section 11.1, my Executor, without incurring any liability, may begin distribution of income or principal from my estate immediately upon my death to the extent necessary to provide for the support of my wife, if living, or our children, if my wife is not living, in accordance with the provisions of any trust provided for by my Will, whether or not the trust has actually come into existence or received any distribution from my estate. My Trustee may begin making distributions from any trust provided for by my Will immediately upon receipt of any trust property, whether or not the administration of my estate is then complete.

11.8 Testamentary Trustee Designated as Beneficiary. Any amounts payable by beneficiary designation or contract to my testamentary Trustee shall be allocated as follows:

- (a) If my wife survives me, all of her community property interest in such amounts shall be distributed to her outright, and the balance of such amounts shall be distributed as follows:

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(i) In the event that the property passing into trust under section 2.2 of my Will is less than the maximum which could pass under the provisions of such section, then that portion of such amounts which is necessary to fully fund such gift shall be allocated to the trust created by such section; and

(ii) the remainder of such amounts shall be allocated to the trust administered under Article IV. If none of my property is otherwise provided to pass to the trust administered under Article IV, such trust shall nevertheless come into existence if any amounts are allocated to such trust under this subsection.

In the event that my wife or her personal representative disclaims pursuant to Section 2518 of the Internal Revenue Code all or any part of such amounts that she would have otherwise received under this subsection, such disclaimed property shall be allocated to the trust administered under section 8.3.

(b) If my wife fails to survive me, my Trustee shall qualify for the sole purpose of receiving such amounts, which shall be distributed as follows:

(i) in the event that the property passing to our descendants under section 2.3 of my Will is less than the maximum which could pass under the provisions of such section, then that portion of such amounts which is necessary to fully fund such gift shall be distributed to our children in equal shares if they all survive me, otherwise to those of our descendants who survive me, per stirpes, in either event subject to the provisions of the Generation-Skipping Trusts under Article VI; and

(ii) the remainder of such amounts shall be distributed to our children in equal shares if they all survive me, otherwise to those of our descendants who survive me, per stirpes, in either event, subject to the provisions of the Descendants' Trusts under Article VII.

(c) If neither my wife nor any descendant of ours survives me, such amounts shall be distributed in the manner provided for the distribution of my residuary estate in such event.

(d) Notwithstanding the foregoing provisions of this section, in the event that any such amounts are payable to my testamentary Trustee as a result of a disclaimer by my wife or her personal representative under Section 2518 of the Internal Revenue Code, then such disclaimed property shall be allocated to the trust administered under section 8.3.

(e) Such amounts shall not be liable for or used for the payment of (but may be loaned for the purpose of paying) any taxes, liabilities, debts, or any

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other claims or charges against my estate; provided that, such amounts may be used for the payment of Federal estate and state death taxes (including any interest or penalty on such taxes) assessed as to such amounts.

11.9 Interest on Certain Bequests. Interest on any pecuniary bequest provided for under my Will shall accrue at the rate of interest provided by Section 378B of the Texas Probate Code. In funding any pecuniary gift under my Will, my Executor shall value the property distributed in satisfaction of such gift at its value at the date of its distribution.

11.10 QTIP Election. I anticipate that my Executor will make the elections required to treat any gift in trust under Article IV as qualified terminable interest property pursuant to Section 2056(b)(7) of the Internal Revenue Code; provided that, if my wife is serving as my Executor she shall be free to determine whether or not to make such election as to all or any part of such gift in her sole discretion, and may make such determination in her own individual best interest, free from any fiduciary obligation. With respect to any trust (or any portion of a trust) that my Executor has elected to treat as qualified terminable interest property and which is exempt from the generation-skipping tax, my Executor shall also make the special election pursuant to Section 2652(a)(3) of the Internal Revenue Code with regard to such trust (or such portion of the trust).

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11.11 Gift Splitting and Tax Elections. My Executor may elect to consent, for gift tax purposes, to have gifts made by either my wife or me to third parties considered as having been made one-half by each of us, and my Executor may elect to join in any joint income tax return with my wife or her estate. My Executor shall elect to claim administration expenses as deductions either in the income tax returns of my estate or in the estate tax return, whichever will result in the most favorable outcome for my estate and its beneficiaries, in the sole and absolute judgment of my Executor. My Executor shall not make any adjustments in the interests of any beneficiaries as the result of any such election made under this section, and my Executor shall incur no liability for making any such election.

11.12 Generation-Skipping Tax Provisions. My fiduciaries shall comply with the following generation-skipping tax provisions.

(a) If any trust created under my Will would otherwise have an inclusion ratio for generation-skipping tax purposes greater than zero but less than one, then my Executor shall divide such trust into two separate trusts, one trust having an inclusion ratio of zero and one trust having an inclusion ratio of one. Any such division shall be evidenced by an acknowledged instrument filed in my probate records, and may be effectuated without satisfying the provisions of Section 112.057 of the Texas Trust Code. Further, if any trust property is to be distributed to or merged with another trust held pursuant to my Will, then such property shall only be added to a trust which has the same inclusion ratio for generation-skipping tax purposes as the trust from which such property is being distributed, and if no trust with the same inclusion ratio is then in existence, a new trust shall be created which shall be administered in accordance with the provisions of the trust to which such property would otherwise be transferred.

(b) I direct my fiduciaries to comply with all tax statutes and Treasury Regulations, as applicable, regarding the funding of the trusts created under my Will so as to result in the use of Federal estate tax values in determining the inclusion ratio and

applicable fraction (as those terms are described in Internal Revenue Code Section 2642(a)) for such trusts, including complying with any requirement to pay appropriate interest on any pecuniary gifts.

(c) If there is any trust administered under Article VII for a Beneficiary which is not exempt from the generation-skipping tax, then in addition to any special power of appointment provided for such Beneficiary in section 7.3, such Beneficiary, acting in such Beneficiary's individual capacity, shall have the following power, exercisable only by specific reference in his or her Will:

(1) A general testamentary power to appoint (outright, in trust or otherwise) from such non-exempt trust to such Beneficiary's estate or to any one or more persons or charities the largest monetary amount (if any) that could be added to the Beneficiary's taxable estate (determined without regard to such trust property) without causing any portion of such amount to be taxed for Federal estate tax purposes at a marginal rate of tax as high as the applicable rate of generation-skipping tax which otherwise would be payable under Section 2641 of the Internal Revenue Code in the event of such Beneficiary's death.

(2) In making the above computation, all determinants of the Beneficiary's Federal estate tax liability (as finally determined for such purposes) shall be taken into account, except that the marginal rate of tax shall be determined as if (i) no credit for state death taxes were allowed under section 2011 of the Internal Revenue Code and (ii) no Federal estate tax marital or charitable deduction were allowable with respect to such trust property. Specifically, any credit for tax on prior transfers provided for under Section 2013 of the Internal Revenue Code that is available with respect to such trust property shall be taken into account in determining the marginal rate of tax.

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(3) To the extent that any estate, inheritance, transfer and succession taxes (including any interest or penalty on such taxes) are payable from the Beneficiary's estate as a result of this general power of appointment, my Trustee shall pay to the executors or administrators of the Beneficiary's estate from the principal of the Beneficiary's non-exempt trust the difference between the amount of such taxes (including any interest or penalty on such taxes) that are payable and the amount of such taxes (including any interest or penalty on such taxes) that would be payable if the Beneficiary did not possess this general power of appointment, unless the Beneficiary shall direct otherwise by the exercise of the Beneficiary's power of appointment.

(d) My Executor may allocate any remaining exemption from the generation-skipping tax available at the time of my death to any property with respect to which I am the transferor under Chapter 13 of the Internal Revenue Code, as my Executor, in my Executor's absolute and uncontrolled discretion, deems desirable; provided that, my Executor shall not make any adjustments in the interests of any beneficiaries as the result of such allocation, and my Executor shall incur no liability in making such allocation. Any generation-skipping taxes (including any interest or penalty on such taxes) shall be paid as provided in Chapter 13 of Subtitle B of the Internal Revenue Code.

11.13 Prohibition Against Discharging Obligations. Notwithstanding anything in my Will to the contrary, no individual Trustee shall have the power to make a distribution, and no holder of a power of appointment shall have the ability to exercise such power, from any trust in a manner that would discharge a personal contractual obligation or legal obligation of support of my wife, the Trustee, the beneficiary or the powerholder.

11.14 Treatment of Trust Income. With regard to any trust in which income may be accumulated, at the end of such trust's accounting year any undistributed income shall be added to and become a part of the trust principal; provided that, any distribution from a trust to which an election made pursuant to Section 663(b) of the Internal Revenue Code applies shall be deemed to have been made from the trust income on the last day of such trust's preceding accounting year.

11.15 Allocation of Trust Receipts and Disbursements. My Trustee shall have the power and authority to allocate receipts and charge expenses to trust income or principal in a fair, just and equitable manner notwithstanding that the action taken may be contrary to the terms and provisions of the Texas Trust Code. Such allocations and charges shall be final and conclusive with respect to all interested persons. Without limiting the foregoing, my Trustee (i) may decide whether and to what extent to establish reserves for depreciation and depletion, and (ii) in receiving payments from any individual retirement account, employee benefit plan or other plan of deferred compensation, may allocate to principal any lump sum payment and, with respect to periodic payments, may allocate to principal the amount of the present value of such account or plan (determined on a reasonable basis) as of the date of my death, and to income the balance of such payments. Notwithstanding the foregoing, any Trustee who is also a beneficiary of any trust created hereunder shall not have the power or authority to allocate receipts or charge expenses in a manner that would result in such Trustee's incurring Federal tax consequences solely by reason of this provision. Further, my Trustee shall have no power or authority to allocate receipts or charge expenses in a manner so as to cause the loss of the marital or charitable deduction for Federal estate tax purposes for any gift hereunder.

11.16 Set Aside Income. During the administration of my estate, my Executor may pay to a charitable beneficiary or set aside for such beneficiary income earned on amounts passing to such beneficiary pursuant to the terms of my Will.

ARTICLE XII - DEFINITIONAL PROVISIONS

12.1 Descendants. Subject to the provisions of section 1.2, references in my Will to "descendant" or "descendants" mean lineal blood descendants of the first, second or any other degree of the ancestor designated; provided that, such references shall include, with respect to any provision of my Will, descendants who have been conceived at any specific point in time relevant to such provision and who thereafter survive birth; provided further, that such references shall also include a child adopted prior to age fourteen and such adopted child's lineal descendants by blood or adoption.

12.2 Incapacitated. A person shall be considered "incapacitated" for purposes of my Will if such person is a minor, has been declared legally incapacitated or is, in the written opinion of two attending physicians, unable to manage his or her financial affairs.

12.3 Remaining Applicable Exclusion Amount. References in my Will to "my remaining applicable exclusion amount" are to that amount of property as will be equal to the maximum amount, if any, needed (after consideration of all other items in my gross estate

which pass or have passed under other provisions of my Will or otherwise) to increase my taxable estate, as supplemented by any estate tax-excluded and any estate tax exempt assets, as determined for Federal estate tax purposes to the largest amount possible without incurring any Federal estate tax on my estate. In making the computations necessary to determine my remaining applicable exclusion amount, the final determinations of the Federal estate tax proceedings shall control, except that any disclaimer pursuant to Section 2518 of the Internal Revenue Code made by my wife or her personal representative shall be disregarded, and it shall be presumed that my Executor has made the elections required to treat all of the gifts to my wife in sections 2.3 and 3.1 as qualified terminable interest property pursuant to Section 2056(b)(7) of the Internal Revenue Code, whether or not such elections have actually been made. Further, in making such computations, my Executor shall consider all credits against the Federal estate tax allowed by the Internal Revenue Code, except that the credit allowed by Section 2011 of the Internal Revenue Code shall be considered only when such credit will not result in an increase in the state death taxes otherwise payable to any state by reason of my death, and the credit allowed by Section 2013 of the Internal Revenue Code shall be considered only when such credit arises as a result of transfers from transferors who predeceased me by no more than two years. In the event my wife or her personal representative disclaims pursuant to Section 2518 of the Internal Revenue Code all or any part of the gift that would otherwise pass under section 2.2, such disclaimed property shall pass pursuant to Article III as a part of my residuary estate. Except as otherwise provided above, the gift in trust for my wife in section 3.1 is intended to entitle my estate to the maximum marital deduction, and any provision in my Will which may conflict with or fail of this intention shall either be disregarded or else shall be reconciled to accomplish this objective.

704-96-3272

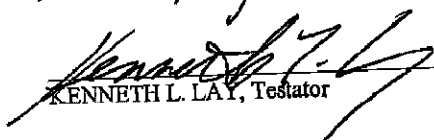
12.4 Generation-Skipping Tax. References in my Will to the "generation-skipping tax" or to "generation-skipping taxes" are to the tax imposed by Chapter 13 of Subtitle B of the Internal Revenue Code.

12.5 Non-Qualified Plan. References in my Will to "non-qualified plan" are to a trust, contract, plan, account, annuity, deferred compensation arrangement, stock option (or stock appreciation right) arrangement or any other benefit (excluding life insurance on the employee's life), which is non-qualified for federal tax purposes.

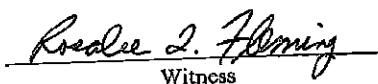
12.6 Adjusted Gross Estate. References in my Will to my "adjusted gross estate" shall be to my adjusted gross estate, as determined for federal estate tax purposes, but not taking into consideration (i) any properties included in my estate for estate tax purposes under Internal Revenue Code §2044 (qualified terminable interest property), or (ii) any allowable deduction for charitable bequests made pursuant to my Will.

12.7 Internal Revenue Code. References in my Will to various provisions of the "Internal Revenue Code" and "Treasury Regulations" are to such designated provisions of and regulations promulgated under the Internal Revenue Code of 1986, as amended, or any corresponding statute hereafter in effect.

IN TESTIMONY WHEREOF, I have placed my initials on each of the foregoing pages of this, my LAST WILL AND TESTAMENT, and in the presence of two Witnesses, who are acting as witnesses at my request, in my presence and in the presence of each other, I hereunto sign my name, on this the 8th day of August, 2003.


KENNETH L. LAY, Testator

The foregoing instrument was signed by the Testator in our presence and declared by him to be his LAST WILL AND TESTAMENT, and we, the undersigned Witnesses, sign our names hereunto as witnesses at the request and in the presence of the said Testator, and in the presence of each other, on this the 8th day of August, 2003.


Witness

10407 Heather Hill, Houston, TX 77086
Residence Address


Witness

2828 Hayes Rd. #225 Houston TX 77082
Residence Address

704-96-3273

THE STATE OF TEXAS §
 §
 COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared
 KENNETH L. LAY, ROSALEE T. FLEMING and BINTIA A. HUGLI
 _____, known to me to be the Testator and the witnesses,
 respectively, whose names are subscribed to the annexed or foregoing instrument in their
 respective capacities, and, all of said persons being by me duly sworn, the said KENNETH L.
 LAY, Testator, declared to me and to the said witnesses in my presence that said instrument is
 his LAST WILL AND TESTAMENT, and that he had willingly made and executed it as his free
 act and deed for the purposes therein expressed; and the said witnesses, each on his oath stated to
 me, in the presence and hearing of the said Testator, that the said Testator had declared to them
 that said instrument is his LAST WILL AND TESTAMENT, and that he executed same as such
 and wanted each of them to sign it as a witness; and upon their oaths each witness stated further
 that they did sign the same as witnesses in the presence of the said Testator and at his request;
 that he was at that time eighteen years of age or over and was of sound mind; and that each of
 said witnesses was then at least fourteen years of age.

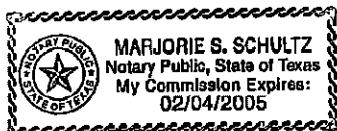
704-96-3274

Kenneth L. Lay
 KENNETH L. LAY, Testator

Rosalee T. Fleming
 Witness

Bintia A. Hugli
 Witness

SUBSCRIBED AND SWORN TO before me by the said KENNETH L. LAY,
 Testator, and by the said ROSALEE T. FLEMING and BINTIA A. HUGLI
 witnesses, this 8th day of AUGUST, 2003.



Marjorie S. Schultz
 Notary Public in and for
 the State of Texas

RECORDER'S MEMORANDUM:
 At the time of recordation, this instrument was
 found to be inadequate for the best photographic
 reproduction because of illegibility, carbon or
 photo copy, discolored paper, etc. All blackouts
 additions and changes were present at the time
 the instrument was filed and recorded.

522607

Date: 08/08/06 Trace: 1300170830 96520
 This space is to be used for validating by the County Clerk in the County of Harris County, Texas
 Not: \$30.00 Letters Rest \$2.00 CC Surcharge \$52.00

COUNTY AUDITOR FORM NO. 148

NO. 96520

OFFICE OF BEVERLY B. KAUFMAN, COUNTY CLERK, HARRIS COUNTY, TEXAS

PROBATE COURT 1

Court No. 1Date: 8-8-06

RESTRICTED APPLICATION FOR LETTERS

(Testamentary, or of Guardianship, or of Administration)

PROBATE
DOCKET NO.365466

STYLE OF DOCKET:

Kenneth Lee Lay

NAME OF PERSONAL REPRESENTATIVE:

Linda Phillips Lay

TITLE OF PERSONAL REPRESENTATIVE:

TRUSTEE

DATE OATH FILED:

8-8-06HTS

ORDER DATE:

8-8-06

DATE APPROVED BOND FILED:

AMOUNT OF BOND: \$

LETTERS:

To Be Picked Up ☒

A. A.

To Be Mailed (at purchaser's risk) ☐

Phone No.

(713) 892-4813

To:

Nathan Jacobs

(Street or P.O. Box Address)

City

State

Zip Code

Jeaniealt-phone
Signature of Person Registering

RECEIPT FOR PAYMENT FOR LETTERS ABOVE DESCRIBED

Received of the person, whose signature appears hereinabove, the sum of:

FiftyDollars (50.00) for issuing the 25 Letters hereinabove described.

NOTE: This receipt is not valid unless it is validated on the Cash Register in the office of the County Clerk of Harris County, Texas.

I authorize the County Clerk to mail this order to me by regular U.S. Mail and release the County Clerk of any and all responsibility of my failure to receive same.

BEVERLY B. KAUFMAN,
County Clerk and Clerk of Probate Courts
Harris County, Texas

Deputy County Clerk

Form No. 1-02-01 (Rev. 11/07/99)

080806
Deputy County Clerk
Office-To Customer
Office-To County Auditor

**Nathan
Sommers
Jacobs**

August 8, 2006

Via Hand Delivery

Harris County Clerk
Probate Courts Department - Intake
201 Caroline, 8th Floor
Houston, Texas 77002

Attention: Nadia

Re: In Re: Estate of Kenneth Lee Lay, Deceased; Probate Court No. 1, Cause No. 365466

Dear Nadia:

Please find enclosed for filing in the referenced case with the Probate Courts of Harris County, Texas, an Oath of Independent Executrix.

Please file stamp and return the enclosed copy of the Oath to the waiting messenger.

If you have any questions regarding the enclosure, please phone me.

Thank you for your assistance with this matter.

Sincerely,



Marvin D. Nathan

jmk
Enclosure

A Professional Corporation
ATTORNEYS AND COUNSLORS
2800 POST OAK BOULEVARD | 61ST FLOOR
HOUSTON, TEXAS 77056-6102
MAIN: 713.960.0303

Direct: 713.892.4833 | Fax: 713.892.4840
Email: mnathan@nathansommers.com

OFFICE OF BEVERLY B. KAUFMAN, COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENTIN MATTERS OF PROBATE
PROBATE COURT NO. 1
HARRIS COUNTY, TEXAS

DOCKET NO. 365,466

ESTATE OF: KENNETH LEE LAY
DECEASED**FILE COPY**
LETTERS TESTAMENTARY

KNOW ALL MEN BY THESE PRESENTS THAT IT IS HEREBY CERTIFIED:

1. ON AUGUST 8, 2006, LINDA PHILLIPS LAY WAS DULY APPOINTED BY ORDER OF SAID COURT AS INDEPENDENT EXECUTRIX OF THE LAST WILL OF KENNETH LEE LAY, DECEASED;
2. ON AUGUST 8, 2006, SAID INDEPENDENT EXECUTRIX QUALIFIED AS THE LAW REQUIRES;
3. INSOFAR AS THE RECORDS IN MY OFFICE SHOW, SAID INDEPENDENT EXECUTRIX IS STILL ACTING IN SAID CAPACITY.

WITNESS MY HAND AND SEAL OF SAID COURT, AT HOUSTON, TEXAS, ON AUGUST 8, 2006.

BEVERLY B. KAUFMAN, CLERK
PROBATE COURT NO. 1
HARRIS COUNTY, TEXAS

(SEAL)

NDC
NADIA D. CAMPBELL
DEPUTY COUNTY CLERKNo. 96520/NDCRECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.