Sample Summary of the John S Smith and Susan M Smith Living Trust

This article-by-article explanation is a brief summary of the provisions of Mr. and Mrs. Smith's Revocable Living Trust agreement.

Community Property: $2 million;

Mr. Smith's Separate Property: $1 million;

Mrs. Smith's Separate Property: $1 million;

3 Children: Child 3 has medical disability.

Mrs. Smith is a non-citizen of the U.S.

Article One
Establishing Our Trust

Article One creates your trust and identifies you as the initial trustees. The name of your trust is the **John S Smith and Susan M Smith Living Trust dated September 16, 2008**.

A more formal name for your trust is **"John S Smith and Susan M Smith, Trustees of the John S Smith and Susan M Smith Living Trust dated September 16, 2008, and any amendments thereto**." For purposes of transferring property to your trust or to identify your trust in any beneficiary or pay-on-death designation, any description permitted by law referring to your trust shall be effective. A description may refer either to the name of your trust or to the name of at least one Trustee, with an indication that the Trustee holds the property as Trustee.

This Article also contains language allowing you or a Trustee to prove the existence of your trust through use of an Affidavit or Certification of Trust. This provision protects the privacy of your trust, by allowing third parties to rely on the Affidavit or Certification of Trust, rather than needing a copy of the whole trust agreement.

To ensure that your trust is valid, the trust is initially funded with Ten Dollars Cash, together with all of your property that may be transferred to your trust by a statement to that effect in your trust agreement.

Because you retain the right to amend and revoke your trust, the trust is classified as a "Grantor Trust" under the Internal Revenue Code. For this reason you will be treated as

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the owner of all the assets held in your trust as though you owned them in your own name. While your trust is a Grantor Trust, the taxpayer identification number of your trust will be John S Smith's Social Security number.

Article Two
Family Information

Article Two contains information about family members or other persons important to you.

Article Three
Trustee Succession and Trust Protector Provisions

Article Three contains provisions for the removal and replacement of Trustees, referred to as Trustee Succession. Trustee Succession provisions are a very personal and important issue. After all, your Trustee must carry out your instructions. You should review the provisions of this Article frequently, to make sure they are consistent with your current wishes.

While you are alive, you have the right to remove and replace Trustees as you choose. If either of you is incapacitated and after one of you dies, the other may modify the trustee succession provisions of your trust.

If one of you is incapacitated, the other may serve as sole Trustee. If the other of you is unable to serve for any reason then Washington Mutual Bank, N.A. and then Bank of America, N.A. shall serve as successor Trustee in the order named.

When the first of you dies, the survivor shall serve as a Cotrustee of all trusts. Wasnington Mutual Bank and then Bank of America in the order named shall serve as successor Cotrustee with the surviving Settlor.

Upon the death of the surviving Settlor or if the surviving Settlor is unable to serve or to continue to serve as Cotrustee for any reason then Washington Mutual Bank and then Bank of America shall serve as successor Trustee.

If either of you is incapacitated, the other may remove any Trustee. If the other is also incapacitated or is deceased, a majority of the children may remove any Trustee.

After one of you dies, the survivor may remove any Trustee for any reason. Article Three also describes how Trustee vacancies are filled in the event there is no successor Trustee named in the agreement.

Any individual Trustee may appoint a Cotrustee. An individual Trustee may want to appoint a Cotrustee if the responsibilities of serving as Trustee are too burdensome.

If there is a need for an independent Trustee for any specific purpose, a provision is included allowing a Trustee to appoint a special or substitute Trustee for that purpose.

Article Three also includes provisions for the appointment of a Trust Protector after both of you have died. The Trust Protector is specifically empowered to correct any errors or ambiguities found in the trust agreement and to respond to changes in the law that affect any trusts created under the agreement.

Article Four
Administration of Our Trust
During the Incapacity of a Settlor

Article Four contains the instructions on how your trust is to be administered during any period of time either of you are incapacitated. This Article ensures that whoever is serving as Trustee has the discretion and authority to manage your affairs the way you want them managed.

The Trustee has the discretion and authority to make distributions for your benefit and for the benefit of other persons that your Trustee determines are dependent on you for support or believes you would support were you not incapacitated.

Your Trustee has the authority to make gifts directly to your beneficiaries during your incapacity. Your Trustee may make gifts to assure the continuation of any gifting program initiated before your incapacity.

Your Trustee may begin making gifts, limited to the federal annual gift tax exclusion amount, to the beneficiaries named in your Trust to minimize taxes.

Your Trustee has the authority to consent to the splitting of gifts with your spouse for gift tax purposes.

In making gifts, your Trustee is to avoid disrupting the dispositive provisions of your trust.

Article Five
Administration of Our Trust
Upon the Death of a Settlor

Upon the death of the first of you to die, all of the survivor's trust property shall be allocated to the Survivor's Trust to be held and administered under the provisions of Article Eight. The trust becomes irrevocable as it pertains to the deceased's trust property and must have its own Tax ID number. Article Five contains the instructions for the payment of debts, administrative expenses and taxes. This procedure is commonly referred to as trust Administration and the deceased's trust property is sometimes referred to as an "Administrative Trust" during this period. For convenience however, your trust will continue to be referred to as the John S Smith and Susan M Smith Living Trust.

In order to allow assets to remain in retirement plans as long as possible, Article Five includes a provision that death taxes shall not be paid from or allocated to any retirement plan assets that become trust property as a result of the deceased's death.

Because of the possibility of a probate estate to handle assets not owned by your trust at the time of death, Article Five contains provisions for the coordination of the probate estate administration and the administration of your trust. These provisions include authorizing your Trustee to loan money to the probate estate, to purchase assets from the probate estate or to actually transfer property to the probate estate if your Trustee determines that a probate of property may be beneficial.

Article Six
Disposition of Tangible Personal Property

Upon the death of the first of you to die, you have instructed your trustee to distribute your personal residence to the surviving spouse.

Article Six includes provisions for you to use a written memorandum to provide for the distribution of tangible personal property. If you decide to use a written memorandum for this purpose it must be signed and dated. It should list the items of tangible personal property designating who is to receive such property. Your Estate Planning Portfolio includes a form for you to use to create such a written memorandum.

Should you leave multiple written memoranda, the last dated memorandum shall control as to any items that are in conflict. If the writing is not legally binding, you specifically request that your Trustee follows your wishes and distribute your tangible personal property in accordance with such memorandum.

You have instructed your Trustee to distribute any tangible personal property not disposed of by a written memorandum to the survivor. If both of you are deceased, your Trustee is instructed to distribute the property to your living children to be divided among your children, as they shall agree. In the event your children do not agree the Trustee shall make the division. The Trustee, whose decision shall be final and binding, may use a lottery or rotation system to determine the order of selection and distribution of any such property, or may otherwise allocate and distribute the same. As an alternative, the Trustee may sell any such property and distribute the net proceeds equally among your children. A provision is included protecting your Trustee from liability for decisions your Trustee makes in resolving disputes among the beneficiaries or in making a decision to sell any of your personal property.

Article Seven
Creation of Trust Shares Upon the Death of a Settlor

Upon the death of the first of you to die, your Trustee will allocate all of the deceased's remaining trust property to the Marital Share. But if the deceased's Personal Representative decides not to make a "QTIP election" over a portion of the Marital Share, that portion will be allocated to the Non-Marital Share. It is important to note that if the surviving spouse is serving as Personal Representative, another individual must be appointed as Special Independent Personal Representative to make the QTIP election.

Your Trustee will administer the Non-Marital Share as provided in Article Ten.

This technique allows the survivor's Personal Representative to wait until after the first of you dies to determine what portion if any of the remaining trust property should be allocated to the Non-Marital Share.

Article Eight
The Survivor's Trust

The survivor will be the Trustee of the Survivor's Trust. The survivor may designate Cotrustees or successor Trustees. The survivor also has the absolute right to amend the terms of the Survivor's Trust by restating the terms of the Survivor's Trust in full, at any time.

The survivor receives all of the income of the Survivor's Trust and as much of the principal of the Survivor's Trust as the survivor may request in writing for any reason.

During any period of time the survivor is incapacitated your Trustee is authorized to honor pledges and continue to make gifts to charitable organizations in the amounts the survivor has customarily given.

The Trustee may also distribute income and principal for persons the Trustee determines are dependent on the survivor for support. Your Trustee is authorized to make gifts from the Survivor's Trust in order to assure the continuation of any gifting program initiated prior to the time of incapacity. Your Trustee may make gifts to the beneficiaries named in your Trust to minimize income, estate, inheritance or gift taxes. Your Trustee may prepay the cost of tuition or institute qualified state tuition plans for any contingent beneficiary named in our Trust.

Upon the death of the survivor the property remaining in the Survivor's Trust may be used to pay the expenses of administering the survivor's estate, death taxes due by reason of the survivor's death or the expenses of the last illness, funeral, and burial of the survivor.

Your Trustee will administer the balance of the Survivor's Trust as provided in Article Eleven.

Article Nine
The Marital Trust

Your Trustee shall administer the Marital Share in what is commonly referred to as a "QTIP Trust." The trust will be referred to as the Marital Trust.

During the survivor's lifetime, the survivor receives all of the net income of the Marital Trust. Your Trustee also distributes as much of the principal of the Marital Trust to the survivor as your Trustee determines necessary or advisable.

Upon the death of the survivor, the survivor has what is called a limited power of appointment. This power allows the survivor to direct how any remaining property of the Marital Trust is to be distributed among your descendants and charities qualified under Section 2055 of the Internal Revenue Code.

If the survivor is not a citizen of the United States at the time of the deceased's death and has not become a United States citizen before the date on which the federal estate tax return is filed, your Trustee may create a Qualified Domestic Trust to qualify the Marital Trust for the estate tax marital deduction.

Article Ten
The Family Trust

Your Trustee will administer the Non-Marital Share in what is commonly referred to as a "Bypass, Credit-Shelter or Family Trust." In your trust agreement the trust is referred to as the Family Trust.

The purpose of the Family Trust is to make the income and assets of the trust available for the benefit of the survivor as well as that of your descendants.

Upon the death of the survivor, the survivor has what is called a limited power of appointment. This power allows the survivor to direct how any remaining property of the Family Trust is to be distributed among your descendants and charities qualified under Section 2055 of the Internal Revenue Code.

To the extent the survivor does not exercise the limited power of appointment, your Trustee will administer the unappointed balance of the Family Trust as provided in Article Eleven.

Article Eleven
Trusts for Our Beneficiaries

Article Eleven contains the provisions for administration of the remaining trust property upon the death of the survivor of you.

Your Trustee will divide the remaining property into shares for the following beneficiaries:

Name	Relationship	Share
child one	son	1/3
child two	son	1/3
child three	daughter	1/3

child one's trust property will be administered by your Trustee as a "General Needs Trust." Your Trustee may distribute the income and principal of child one's trust to child one for his needs.

Upon his death, child one has a power of appointment to decide how any remaining property is to be distributed. If he does not exercise this power of appointment, your

Trustee will distribute any property remaining in his trust to his descendants. If child one has no descendants, your Trustee will distribute the balance of the trust property to your descendants. If you have no descendants, your Trustee will distribute the balance of the trust property as provided in Article Twelve.

If child one is deceased, his share will be distributed to his descendants in separate trusts. If he has no descendants, the share will be distributed *pro rata* to the other beneficiaries. If there are no other named beneficiaries the share will be distributed under the terms of Article Twelve.

child two's trust property will be administered by your Trustee as a "General Needs Trust." Your Trustee may distribute the income and principal of child two's trust to child two for his needs.

Upon his death, child two has a power of appointment to decide how any remaining property is to be distributed. If he does not exercise this power of appointment, your Trustee will distribute any property remaining in his trust to his descendants. If child two has no descendants, your Trustee will distribute the balance of the trust property to your descendants. If you have no descendants, your Trustee will distribute the balance of the trust property as provided in Article Twelve.

If child two is deceased, his share will be distributed to his descendants in separate trusts. If he has no descendants, the share will be distributed *pro rata* to the other beneficiaries. If there are no other named beneficiaries the share will be distributed under the terms of Article Twelve.

child three's trust property will be administered by your Trustee as a "Special Needs Trust." Your Trustee may distribute discretionary amounts of income and principal for special needs of child three not otherwise provided by governmental financial assistance and benefits, or by the providers of services. The purpose of child three's special needs trust is to provide for her needs without disqualifying her from governmental assistance and benefits.

Your Trustee has the option of appointing a Care Manager to assist in advising on how best to provide for child three's needs. A Care Manager is a professional or care management agency that has experience with conditions similar to those of child three as well as the public benefits to which child three may be entitled.

Upon her death, child three has a power of appointment to decide how any remaining property is to be distributed. If she does not exercise this power of appointment, your Trustee will distribute any property remaining in her trust to her descendants. If child three has no descendants, your Trustee will distribute the balance of the trust property to your descendants. If you have no descendants, your Trustee will distribute the balance of the trust property as provided in Article Twelve.

If child three is deceased, her share will be distributed *pro rata* to the other beneficiaries. If there are no other named beneficiaries the share will be distributed under the terms of Article Twelve.

Article Twelve
Remote Contingent Distribution

In the unlikely event that there is no one identified to receive a final distribution of any portion of your trust estate, one-half of the property will be distributed to those persons who would have inherited it if John S Smith had died without an estate plan and one-half to those persons who would have inherited it had Susan M Smith died without an estate plan.

Article Thirteen
Administration of Trusts for Underage and Incapacitated Beneficiaries

Article Thirteen provides your Trustee with various distribution options when property would otherwise be distributed to an individual who is under the age of 21, incapacitated or otherwise unable to manage the property. These options include distributing the property to the individual's legal representative or continuing to hold the property in trust.

Article Thirteen also includes provisions for a "stand by" special needs trust that only applies if a beneficiary, at the time of a distribution, is receiving or applying for needs-based government benefits.

Article Fourteen
Retirement Plans and Life Insurance Policies

Generally retirement plans and life insurance policies will not be owned by your trust, however, it is not uncommon for your trust to be designated as beneficiary of retirement plans or life insurance policies.

Article Fourteen contains provisions to ensure that your Trustee has the right to receive distributions from retirement plans and life insurance policies as well as the right to make any necessary elections.

Article Fifteen
Trust Administration

Article Fifteen contains provisions to ensure that your trust will be administered efficiently according to your wishes. This includes provisions for your trust to be administered free of court intervention; freeing your Trustee from the costly requirement of obtaining a surety bond; entitling your Trustee to reasonable compensation; and making sure your Trustee won't be wrongfully sued when carrying out your intent.

Your Trustee has the right to employ other professionals such as accountants, attorneys and investment advisors to make sure your trust is properly managed. Your Trustee must provide an annual accounting to the income beneficiaries. For convenience, one trustee may delegate authority to another trustee.

If any trust created after your deaths becomes so small that it no longer makes economic sense to administer it, the Trustee may terminate the trust and distribute the remaining property to the beneficiary then entitled to income.

Your Trustee is granted the authority to divide any trust into separate shares for generation-skipping transfer tax purposes. Your Trustee may find it advisable to exercise this authority to divide a trust into exempt and nonexempt shares to ensure that one share is totally exempt for generation-skipping transfer tax.

Article Sixteen
Our Trustee's Powers

Article Sixteen contains provisions granting your Trustee investment and administrative powers necessary to ensure that your trust and any trusts created after your deaths can administer your trust according to your wishes.

Your trust agreement includes special provisions to ensure that your trustee can effectively manage a closely held business and operate farm or ranch properties.

Your trust agreement includes provisions to deal with S Corporation stock held by a trust after your deaths.

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Article Seventeen
General Provisions

Article Seventeen contains various miscellaneous provisions as well as definitions for various terms used throughout your trust agreement.

To ensure that trusts created after your deaths are not invalid for violating a state's rule against perpetual trusts, there is a provision specifying the maximum term a trust can exist. There is also a provision to protect the assets of a trust from a beneficiary's creditors. How effective this clause is will depend upon state law.

There is a provision designed to ensure that beneficiaries will not try to defeat your intent by attacking your trust. Basically a beneficiary stands to lose all rights to distributions from your trust if the beneficiary contests any provisions of your trust.

If your marriage ends by divorce or annulment, each of you will cease to be a beneficiary of the other's trust property and each of you will be treated as though you predeceased your spouse for purposes of determining how property will be distributed.