

# DECLARATION OF TRUST

## The Jane Doe Living Trust (the "Trust")

This DECLARATION OF TRUST (this "**Declaration**") is made and executed on the date below by and between the herein-named grantor and trustee. This trust created herein will be known as The Jane Doe Living Trust (the "**Trust**").

WITNESSETH:

[This section varies based upon your marital and parental status.]

### 1. FAMILY

At the time of executing this Trust, the grantor, Jane Doe, also known as Jane Smith, (the "**Grantor**"), is married to John Doe. The names of Jane Doe's children are listed below. Unless otherwise specifically indicated in this Trust, any provision for Jane Doe's children includes the below-named children as well as any child of Jane Doe hereafter born or adopted.

Ann Doe  
Charles Doe

### 2. TRUST PROPERTY

The Grantor declares that he or she has set aside and caused the transfer of all of his or her right, title, and interest in and to the property described in Schedule A to the Trust (together with any other property added to the Trust, the "**Trust Property**") for the use, benefit, and enjoyment of the beneficiaries named herein. At any time hereafter, the Grantor may transfer any other real or personal property to the Trust. The Trust may also receive property from any other source, including pursuant to the Grantor's last will and testament. The Trust Property will be held, administered, and distributed as set forth in the Trust and any subsequent amendments to it.

### 3. AUTHORITY, POWER, and RIGHTS OF GRANTOR

(a) Amend and Revoke. The Grantor has the authority, power, and right to amend, modify, or revoke the Trust. The Grantor is not required to give prior notice to or obtain the consent of any beneficiary or trustee hereunder before making such changes. All amendments, notices, or other documents and

instruments affecting or furthering the purposes of this Declaration must be in a signed writing delivered to the trustee.

(b) Appointment of Trustee. The Grantor may at any time appoint, substitute, or otherwise change the person designated to act as trustee or successor trustee hereunder. The Grantor is not required to give notice to or obtain the consent of any such trustee, successor trustee, or beneficiary before making such changes.

(c) Right to Income and Principal. During his or her lifetime, the Grantor will be exclusively entitled to all net income and as much principal from the Trust Property as the trustee determines is necessary for the Grantor's health, education, maintenance, support, comfort, and welfare, and these amounts will be distributed at least annually.

(d) Homestead. The Grantor reserves the right to reside in any residential real property conveyed or transferred to the Trust rent-free and without charge (except for mortgage payments, taxes, insurance, maintenance, and other related expenses) during his or her lifetime, it being the intent of this provision to preserve the requisite beneficial interest and possessory right of the Grantor in and to such real property in accordance with the applicable provisions of state homestead or similar laws, and to ensure that the Grantor does not lose eligibility for a state homestead tax exemption for which he or she otherwise qualifies.

#### **4. APPOINTMENT OF TRUSTEE**

**[This section varies based upon your selection of Trustees.]**

(a) Jane Doe will be the initial trustee of the Trust, with all of the rights, privileges, and responsibilities set forth herein.

(b) If at any time the initial trustee resigns or cannot serve due to death, disability, or incapacity, Helen Smith will be the successor trustee of the Trust and each subtrust of the Trust, if any. If such nominee is unable or unwilling to serve for any reason, David Smith will be the successor trustee. The successor trustee will assume the active administration of the Trust in accordance with the provisions set forth herein. Any successor trustee will have all of the powers, duties, authority, and discretion herein and by law granted to the initial trustee. If there are two co-trustees serving, they shall act by unanimous agreement. If there are more than two co-trustees serving, they shall act in accordance with decisions made by the majority of the co-trustees.

(c) A successor trustee's authority and power may be subsequently terminated by the Grantor without the consent of, or prior notice to, that successor trustee, if the initial trustee has sufficiently recovered from any physical or

mental impairment that prevented the initial trustee from being able to fully and competently administer the Trust.

(d) As used in this Trust, the terms “disability” and “incapacity” refer to a person’s physical or mental inability to properly manage his or her own financial affairs, as established by the written opinion of two licensed medical doctors, one of whom must be such person’s primary care physician, if any. Any healthcare provider is authorized to disclose to the successor trustee any pertinent individually identifiable health information sufficient to determine whether the trustee is physically or mentally capable of managing his or her own financial affairs. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and all other applicable state and federal law, and each successor trustee constitutes a trustee’s “personal representative” as defined by HIPAA.

## 5. POWERS AND DUTIES OF TRUSTEE

(a) General Powers and Duties. The trustee under this Declaration will have all powers necessary and appropriate to administer the Trust, including all powers granted under New York law, subject to the trustee’s fiduciary duties to the Grantor and beneficiaries and any restrictions or limits set forth under New York law. The trustee may exercise all powers without the approval or supervision of any court, the Grantor, or any beneficiary.

(b) Specific Powers. In furtherance of subsection (a) above, the powers of the trustee include, but are not limited to, the powers to:

- 1) Collect, hold, maintain, manage, and administer the Trust Property as if the trustee were the absolute owner of it;
- 2) Sell, trade, deal, encumber, mortgage, pledge, option, lease, lend, or improve the Trust Property;
- 3) Invest, reinvest, and make purchases with the income and principal of the Trust in every kind of property, asset, and investment;
- 4) Borrow money from the Trust for trust purposes;
- 5) Employ and pay reasonable fees to attorneys, accountants, financial advisors, and any other professionals deemed necessary or advisable for the proper administration of the Trust;

- 6) Enter into contracts and otherwise execute any instruments on behalf of the Trust;
- 7) Establish bank, brokerage, and other financial and nonfinancial accounts for and on behalf of the Trust, and execute any and all documents on the Trust's behalf in relation thereto, including any resolutions, certifications, or certificates required for such accounts;
- 8) Distribute or divide the Trust Property in accordance with this Declaration (subject to any restrictions or limits set forth under New York law), and execute any documents necessary to administer any trust or subtrust created by this Declaration;
- 9) Receive additional property into the Trust;
- 10) Continue, operate, expand, manage, and sell any business that is part of the Trust;
- 11) Commence, defend, arbitrate, and settle legal claims or actions concerning the Trust or the Trust Property;
- 12) Exercise voting rights, give proxies, and enter into voting agreements with respect to stock and other business ownership interests held by the Trust;
- 13) Prepare tax returns and take any necessary or desirable actions with governmental agencies;
- 14) Have authority over, and the right to access, all digital Trust Property, including the content of any of the Grantor's electronic communications, any catalogue of electronic communications sent or received by the Grantor, and any other digital asset in which the Grantor has a right or interest, in accordance with applicable state law;
- 15) Purchase and modify insurance;
- 16) Pay or disburse such sums from the assets of the Trust as may be required, necessary, or desirable to maintain the comfort and welfare of the Grantor if the Grantor is unable to actively and competently exercise judgment over financial matters by reason of a medical illness or mental impairment; and

- 17) On the death of the Grantor, pay any just debts and expenses of the Grantor.

[This section will appear if you elect to have co-trustees.]

(c) Power of Co-Trustee to Act Individually. Notwithstanding any provisions to the contrary in this trust, or any subtrust created herein, if co-trustees are serving, a single co-trustee (with written consent of the other co-trustee) shall have the right and power to act on behalf of this Trust alone, including (1) the right to buy and sell trust securities and other assets, (2) the right to execute documents including trust income tax returns, and (3) the right to open, deposit and withdraw from bank savings and checking accounts, savings and loan accounts, and money market funds, all for trust purposes. However, the power to act alone with regard to item (3) above shall apply only where both co-trustees have signed the signature card of the financial institution or money market fund agreeing that only one signature is required.

(c) Compensation. The trustee may receive reasonable compensation for services rendered as Trustee.

(d) Resignation. Any trustee may resign by providing 30 days' written notice to the beneficiaries.

## 6. **BENEFICIARIES**

Subject to the creation of any subtrusts, on the death of the Grantor, the trustee shall allocate or distribute the remaining Trust Property to the beneficiaries named below, after the payment of any just debts, funeral expenses, trust and estate administration expenses, and estate taxes:

[This section will appear if you elect to provide for specific bequests.]

(a) Specific Bequests.

The trustee shall distribute the following specific bequests:

- 1) Helen Smith will be given: Sample.

If such beneficiary is not then living, this specific bequest will be given to David Smith. If said alternate beneficiary is not then living, this specific bequest will lapse, be added to the residue of the Trust, and distributed to the remainder beneficiaries as set forth below.

**[This section will appear if you elect to provide for charitable specific bequests.]**

(b) Charitable Specific Bequests.

The trustee shall distribute the following charitable specific bequests:

- 1) American Society for the Prevention of Cruelty to Animals (ASPCA), a nonprofit tax exempt organization, in New York City, New York, or its lawful successor, will be given the sum of \$1,000.00 to be used as determined by its Board of Directors in promoting its goals.

**[This section will appear if you elect to give all your trust property to your spouse in trust for his or her lifetime.]**

(c) Residual Assets. If the Grantor's spouse, John Doe, is then living, after all specific bequests and charitable specific bequests have been made, all residual Trust Property will be held in trust for John Doe's lifetime. The trust is to be administered and distributed as follows:

- 1) The trustee shall pay to John Doe or apply for John Doe's benefit all of the net income of the trust, with such payments to be made at regular intervals as determined in the trustee's sole discretion, except that the trustee shall make payments at least annually.
- 2) The trustee may also pay to or apply for the benefit of John Doe from time to time so much of the principal as the trustee determines is necessary for John Doe's health, education, maintenance, and support.
- 3) In making any such discretionary distributions, the trustee may take into consideration all relevant circumstances, including but not limited to John Doe's accustomed standard of living and other assets and sources of income or support available to John Doe and known to the trustee.

On John Doe's death or if John Doe does not survive the Grantor, the remaining trust assets will be distributed to the alternate beneficiaries below.

**[This section will appear if you elect to give all your trust property to your spouse outright instead of in trust.]**

(c) Residual Assets. After all specific bequests and charitable specific bequests have been made, the residual Trust Property will be distributed to the Grantor's spouse, John Doe, outright and free of trust. If John Doe does not survive

the Grantor, then the remaining trust assets will be distributed to the alternate beneficiaries named below.

**[This section will appear if you elect to give all your trust property to your children equally.]**

(c) Residual Assets. After all specific bequests and charitable specific bequests have been made, the residual Trust Property will be divided into as many equal shares as there are living children of Grantor and deceased children of Grantor with issue then living. Each living child shall be given one share. Any share of the Trust Property allocated to a deceased child with issue then living shall be further divided into shares for said issue, per stirpes. The terms "issue," "child," "children," include a person who has a parent-child relationship, as defined under applicable state law, with the person through whom this person claims benefits under this Trust. These terms do include persons who are adults at the time of adoption.

**[This section will appear if you elect not to give all your property to: 1) your spouse, or 2) your children equally.]**

(c) Residual Assets. After all specific bequests and charitable specific bequests have been made, the residual Trust Property will be distributed to the following beneficiaries in the percentages set forth below:

- 1) Name: Ann Doe  
Percentage: 60%

If such beneficiary does not survive the Grantor, that share of the Trust Property that would have been given to such beneficiary will be distributed to Charles Doe.

- 2) Name: Charles Doe  
Percentage: 40%

If such beneficiary does not survive the Grantor, that share of the Trust Property that would have been given to such beneficiary will be distributed to Ann Doe.

**[This section will appear if you elect to give all of your trust property to your spouse, in trust for your spouse's lifetime, or out right, and to your children equally on your spouse's death, or if your spouse predeceases you.]**

(d) Alternate Beneficiaries. Upon John Doe's death, or if John Doe predeceases the Grantor, the remaining Trust Property will be divided into as many equal shares as there are living children of Grantor and deceased children of Grantor with issue then living. Each living child shall be given one share. Any share of the Trust Property allocated to a deceased child with issue then living shall be further divided into shares for said issue, per stirpes. The terms "issue," "child,"



"children," include a person who has a parent-child relationship, as defined under applicable state law, with the person through whom this person claims benefits under this Trust. These terms do include persons who are adults at the time of adoption.

**[This section will appear if you elect to give all of your trust property to your spouse for your spouse's lifetime, or outright, and to individual (not children equally) on your spouse's death or if your spouse predeceases you.]**

(d) Alternate Beneficiaries. Upon John Doe's death, or if John Doe predeceases the Grantor, the remaining Trust Property will be distributed to the following beneficiaries in the percentages set forth below:

- 1) Name: Ann Doe  
Percentage: 60%

If such beneficiary does not survive the Grantor, that share of the Trust Property that would have been given to such beneficiary will be distributed to Charles Doe.

- 2) Name: Charles Doe  
Percentage: 40%

If such beneficiary does not survive the Grantor, that share of the Trust Property that would have been given to such beneficiary will be distributed to Ann Doe.

## **7. DISTRIBUTION IF NO LIVING BENEFICIARIES**

If at any time before full distribution of the Trust Property all of the beneficiaries are deceased and this instrument directs no other disposition of the Trust Property, the remaining portion of the Trust Property will then be distributed to the Grantor's heirs at law, determined according to the laws of intestate succession.



[This section will appear if you elect to hold a beneficiary's share of your property in trust.]

## 8. SUBTRUSTS

(a) Creation of Subtrusts. The Grantor directs that each beneficiary designated below will receive his or her share of the Trust Property under those conditions made specifically applicable to such beneficiary and in accordance with the provisions set forth in this section:

- 1) The Trust Property distributed to Ann Doe will be retained in trust and held in a separate subtrust of the Trust until: Ann Doe is 21 years old.
- 2) The Trust Property distributed to Charles Doe will be retained in trust and held in a separate subtrust of the Trust until: Charles Doe is 21 years old.

(b) Authority of Trustee to Continue Trust. The trustee shall hold in a subtrust of the Trust those assets that are to be distributed to the beneficiaries named in subparagraph (a) above. Each subtrust may be identified by adding the name of the beneficiary to the Trust.

(c) Distribution Provisions. The trustee shall distribute, in convenient installments to or for the benefit of a beneficiary, so much of the net income and principal of the beneficiary's trust share as the trustee deems necessary, in the trustee's discretion, for the health, education, maintenance, and support of said beneficiary. Education includes, but is not limited to, college, graduate school, vocational studies, and reasonably related living and travel expenses.

- 1) In exercising any power concerning discretionary payments of income or principal to or for the benefit of the beneficiary of any trust under this Declaration, the trustee shall consider other income or resources of the beneficiary known to the trustee and the trustee may rely on the written statement of the beneficiary about such other income or resources.
- 2) Any net income not distributed to the trust beneficiaries will be added to the principal of the applicable trust share and reinvested for future distribution.
- 3) When a trust beneficiary is entitled to distribution of the balance of his or her trust share in accordance with the trust provisions set forth above, the trustee shall distribute to such trust beneficiary the remaining principal and accumulated net income of his or her trust share, less the beneficiary's pro rata share of unpaid trust administration expenses.

- 4) If a trust beneficiary predeceases the complete distribution of his or her trust, such trust will be terminated forthwith and the remaining principal balance and any accumulated but undistributed net income will be distributed to the deceased beneficiary's surviving heirs at law.
- 5) If a trustee determines, in the trustee's discretion, that the principal of a trust share is of insufficient value to economically administer, the trustee may terminate the trust in accordance with applicable state law and distribute the accrued and undistributed net income and remaining principal balance of the trust share to the trust beneficiary, outright and free of trust.

[This section appears if you include additional instructions to your trustees.]

#### **9. SPECIAL DIRECTIVES CLAUSE**

Notwithstanding any other provision of this Trust, the Grantor further directs that:

Sample.

#### **10. NONLIABILITY OF THIRD PARTIES**

(a) The Trust is created with the express interest and understanding that any third parties, including but not limited to agents, employees, or vendors, who, on the written request of the Grantor or under the color of authority granted to the trustee in this Declaration, perform any duties or render any services in furtherance of the purposes and intents of this Trust, absent any showing of fraud or bad faith, will be under no liability for the proper administration of any assets or properties being the subject of that third party's acts.

(b) This limitation of liability gives specific protection to any third party who acts, performs, or renders any services pursuant to any notice, instrument, or document believed (and represented) to be genuine, and to have been signed and presented by the proper parties.

(c) It is further the express intent of the Grantor that the nonliability of all third parties be given broad and prospective application. In particular, a depository, custodial agent, financial institution, or any other person or entity acting in a fiduciary capacity with regards to any Trust Property will suffer no liability and will incur no express or implied obligations when acting in the capacity

of a transferor, on proper request, of any assets or property either sought to be or constructively comprising the Trust Property.

## 11. MISCELLANEOUS

(a) Physical Segregation of Trust Shares Not Required. If more than one trust is created under this Declaration, the trustee is not required to physically segregate or divide the assets of the various trusts, except if physical segregation or division is required on the termination of any of the trusts. Notwithstanding the foregoing, the trustee shall maintain separate books and records for each separate trust.

(b) Distribution Authority. If the trustee is required by this Declaration to divide any Trust Property into parts or shares, for the purpose of distribution or otherwise, the trustee is authorized, in the trustee's sole discretion, to make that division and distribution in identical interests, in kind, or partly in kind or partly in money, pro rata or non pro rata. For this purpose, the trustee may sell such Trust Property not specifically devised as the trustee deems necessary.

(c) Liability for Estate Taxes. Any estate, inheritance, and succession taxes, including any interest and penalties thereon, imposed by the federal government or any state, district, or territory, attributable to Trust Property includible in the Grantor's estate, will be apportioned among the persons interested in the Trust in accordance with applicable state and federal law. The trustee is authorized and directed to seek reimbursement from the beneficiaries of the Trust of any taxes paid by the trustee to the extent allowed by law. If the trustee cannot collect from any person interested in the Trust the amount of tax apportioned to that person, the amount not recoverable will be equitably apportioned among the other persons interested in the Trust who are subject to apportionment. If a person is charged with or required to pay tax in an amount greater than his or her prorated amount because another person does not pay his or her prorated amount, the person charged with or required to pay the greater amount has a right of reimbursement against the other person.

(d) Spendthrift Provision. No interest in the principal or income of any trust created under this Declaration may be anticipated, assigned, encumbered, or subjected to a creditor's claims or legal process until it is actually received by the beneficiary. This spendthrift provision constitutes one of the material purposes of the trusts created hereunder.

(e) Payments to Minor Beneficiaries. The trustee may make distributions of a minor's trust share, up to the whole thereof, to the guardian of the minor's person or a custodian for the minor under state law, or may apply distributions directly for the minor's benefit.

(f) Qualified Subchapter S Trust Provision. It is the Grantor's intent that any trust created herein holding stock in a qualified subchapter S corporation for any beneficiary qualify as a qualified subchapter S trust ("QSST"). The current income beneficiary of said trust is directed to file the required election with the Internal Revenue Service to qualify as a QSST. The trust will have only one current income beneficiary. The income of that trust will be distributed at least annually to only the income beneficiary. The income interest of the income beneficiary will end at the earlier of the QSST termination or the death of the income beneficiary. If the QSST ends during the life of the income beneficiary all of the assets in the QSST must be distributed to the income beneficiary.

If a trust is comprised of shares in a "small business corporation," as defined in Section 1361 of the Code or any successor thereto, the trustee may segregate said trust property into a separate trust and, as trustee, may modify the terms of said trust (if necessary) so that said trust will be a QSST as defined in the Code or any successor thereto. The trustee shall make any such modification by a written document signed by the trustee and delivered to the beneficiary of said trust or to the guardian of any minor beneficiary or conservator of any incompetent beneficiary. As long as an election under Section 1362 of the Code or any successor thereto is in effect, the terms of the so-called QSST will continue for so long as necessary. When the trust property is no longer comprised of small business corporation stock or a Section 1362 election has not been made, the special QSST will terminate and the trust property will be held in accordance with the terms of the original trust.

(g) Bond. Each trustee of a trust created under this Declaration may serve without bond.

(h) Governing Law. This Trust will be construed and enforced in accordance with the laws of the state of New York.

(i) Severability. If a court of competent jurisdiction at any time invalidates or finds unenforceable any provision of this Trust, such invalidation will not invalidate the whole of this Trust. All of the remaining provisions will be undisturbed as to their legal force and effect. If a court finds that an invalidated or unenforceable provision would become valid if it were limited, then such provision will be written, deemed, construed, and enforced as so limited.

(j) Perpetuities Savings. Despite any other provision of this Trust to the contrary, the Trust will terminate no later than 21 years after the death of the last surviving beneficiary who is living at the time of the Grantor's death.

**IN WITNESS WHEREOF**, the Grantor has executed this declaration of trust on the date written below.

\_\_\_\_\_  
Signature of Jane Doe, as Grantor

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Jane Doe, as Trustee of The  
Jane Doe Living Trust

Date: \_\_\_\_\_

LEGALZOOM  
ACKNOWLEDGMENT

State of New York

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared Jane Doe, personally known to me (or proved to me on the basis of satisfactory evidence) to be the individual who signed the foregoing instrument and acknowledged to me that he or she executed the same in his or her authorized capacity, and that by such signature, the person executed the instrument.

WITNESS my hand and official seal.

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

My Commission Expires: \_\_\_\_\_

ATTESTATION AND DECLARATION OF WITNESSES

In our presence, the above-named Grantor has declared or signified that this instrument is his or her declaration of trust and has signed and executed that instrument, and in the presence of the Grantor and each other we have hereunto subscribed our names on the date set forth under our signature.

1.

(Signature of witness)

(Print Name)

Date:

(Address)

(City, State, ZIP)

2.

(Signature of witness)

(Print Name)

Date:

(Address)

(City, State, ZIP)

## Schedule A

[This section varies based upon what type of property you include in your Living Trust.]

### Trust Property

All of the Grantor's interest in the following property is transferred into the Trust:

The real property located at:

- 100 Main Street  
Rochester, New York 12345  
Type of Property: Home

The following financial accounts:

- ABC Bank  
Account Number: 9999999  
Account Type: Savings

The following stocks and/or bonds:

- 100 shares of Common Stock issued by XYZ Corporation  
Certificate Number: 9999999
- \$1,000.00 dollars in Savings Bond issued by XYZ Corporation  
Certificate Number: 9999999

The following contract interests:

- XYZ Contract  
Entered into with: Carol Smith  
Dated: 01/01/2001

Proceeds from the following life insurance policies:

- XYZ Life Insurance Company, whole life insurance  
Policy Number: 9999999

Proceeds from the following retirement accounts:

- ABC Company, annuity  
Account Number: 9999999



The following business interests:

- 100% sole proprietorship interest in LMN Business

The following additional property:

- All personal property, including but not limited to jewelry, household furniture and furnishings, clothes, digital and electronic files, and other personal items

LEGALZOOM  
SAMPLE

These are sample documents for the State of New York. Actual content differs by state and may vary based on your answers to the LegalZoom questionnaire.

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