

# Wetlands and Subaqueous Lands Section Basic Application Form

## Section 1: Applicant Identification

1. Applicant's Name: Steven Swanson  
Mailing Address: 21 Settlers Way  
Stafford, VA  
22554

Telephone #: 540-226-8916  
Fax #: \_\_\_\_\_  
E-mail: jetboatcpa@gmail.com

2. Consultant's Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company Name: \_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
E-mail: \_\_\_\_\_

3. Contractor's Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Company Name: \_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
E-mail: \_\_\_\_\_

## Section 2: Project Description Renewal of subaqueous Lands Lease for pier/dock

4. Check those that apply:

☐ New Project/addition to existing project?

☐ Repair/Replace existing structure? (If checked, must answer #16)

5. Project Purpose (attach additional sheets as necessary):

NA - No new construction or addition

6. Check each Appendix that is enclosed with this application:

<input checked="" type="checkbox"/> A. Boat Docking Facilities	<input type="checkbox"/> G. Bulkheads	<input type="checkbox"/> N. Preliminary Marina Checklist
<input type="checkbox"/> B. Boat Ramps	<input type="checkbox"/> H. Fill	<input type="checkbox"/> O. Marinas
<input type="checkbox"/> C. Road Crossings	<input type="checkbox"/> I. Rip-Rap Sills and Revetments	<input type="checkbox"/> P. Stormwater Management
<input type="checkbox"/> D. Channel Modifications/Dams	<input type="checkbox"/> J. Vegetative Stabilization	<input type="checkbox"/> Q. Ponds and Impoundments
<input type="checkbox"/> E. Utility Crossings	<input type="checkbox"/> K. Jetties, Groins, Breakwaters	<input type="checkbox"/> R. Maintenance Dredging
<input type="checkbox"/> F. Intake or Outfall Structures	<input type="checkbox"/> M. Activities in State Wetlands	<input type="checkbox"/> S. New Dredging

## Section 3: Project Location

7. Project Site Address: 24882 Algonquin Rd  
Lewes, DE  
19958

County: ☐ N.C. ☐ Kent ☒ Sussex

Site owner name (if different from applicant): Swanson Family Trust

Address of site owner: 21 Settlers Way  
Stafford, VA  
22554

8. Driving Directions: \_\_\_\_\_

(Attach a vicinity map identifying road names and the project location)

9. Tax Parcel ID Number: 234-24,00-4,00

Subdivision Name: N/A

WSLS Use Only:		Permit #s: _____	
Type	SP <input type="checkbox"/> SL <input type="checkbox"/> SU <input type="checkbox"/> WE <input type="checkbox"/> WQ <input type="checkbox"/> LA <input type="checkbox"/> SA <input type="checkbox"/> MP <input type="checkbox"/> WA <input type="checkbox"/>		
Corps Permit: SPGP 18 <input type="checkbox"/> 20 <input type="checkbox"/> Nationwide Permit #:		Individual Permit #	
Received Date: _____		Project Scientist: _____	
Fee Received? Yes <input type="checkbox"/> No <input type="checkbox"/> Amt: \$ _____		Receipt #: _____	
Public Notice #: _____		Public Notice Dates: ON _____ OFF _____	



# Wetlands and Subaqueous Lands Section Basic Application Form

## Section 3: Project Location (Continued)

10. Name of waterbody at Project Location: Herring Creek waterbody is a tributary to: Rehoboth Bay

11. Is the waterbody: ☒ Tidal ☐ Non-tidal Waterbody width at mean low or ordinary high water \_\_\_\_\_

12. Is the project: N/A ☐ On public subaqueous lands? ☐ On private subaqueous lands?\*  
No new project ☐ In State-regulated wetlands? ☐ In Federally-regulated wetlands?

\*If the project is on private subaqueous lands, provide the name of the subaqueous lands owner:

(Written permission from the private subaqueous lands owner must be included with this application)

13. Present Zoning: ☐ Agricultural ☒ Residential ☐ Commercial ☐ Industrial ☐ Other

## Section 4: Miscellaneous

14. A. List the names and complete mailing addresses of the immediately adjoining property owners on all sides of the project (attach additional sheets as necessary):

Elaine Shupe  
24892 Algonquin Road  
Lewes, DE 19958

B. For wetlands and marina projects, list the names and complete mailing addresses of property owners within a 1,000 foot radius of the project (attach additional sheets as necessary):

NA

15. Provide the names of DNREC and/or Army Corps of Engineers representatives whom you have discussed the project with:

NA

A. Have you had a State Jurisdictional Determination performed on the property? ☐ Yes ☐ No

B. Has the project been reviewed in a monthly Joint Permit Processing Meeting? ☐ Yes ☐ No

\*If yes, what was the date of the meeting? \_\_\_\_\_

16. Are there existing structures or fill at the project site in subaqueous lands?

\*If yes, provide the permit and/or lease number(s):

SL-094/05 LA-269/00 SL-1701/95

\*If no, were structures and/or fill in place prior to 1969? ☐ Yes ☐ No

17. Have you applied for or obtained a Federal permit from the Army Corps of Engineers? NA

☐ No ☐ Pending ☐ Issued ☐ Denied Date: \_\_\_\_\_

Type of Permit: \_\_\_\_\_ Federal Permit or ID #: \_\_\_\_\_

18. Have you applied for permits from other Sections within DNREC?

☒ No ☐ Pending ☐ Issued ☐ Denied Date: \_\_\_\_\_ Permit or ID #: \_\_\_\_\_

Type of permit (circle all that apply): Septic Well NPDES Storm Water

Other: \_\_\_\_\_



**Section 5: Signature Page****19. Agent Authorization:**

If you choose to complete this section, all future correspondence to the Department may be signed by the duly authorized agent. In addition, the agent will become the primary point of contact for all correspondence from the Department.

I do not wish to authorize an agent to act on my behalf ☒ X

I wish to authorize an agent as indicated below

I, \_\_\_\_\_, hereby designate and authorize \_\_\_\_\_  
 (Name of Applicant) (Name of Agent)  
 to act on my behalf in the processing of this application and to furnish any additional information requested by the Department.

Authorized Agent's Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_ Fax #: \_\_\_\_\_  
 \_\_\_\_\_ E-mail: \_\_\_\_\_

**20. Agent's Signature:**

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge. I further understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application.

\_\_\_\_\_  
 Agent's Signature

\_\_\_\_\_  
 Date

**21. Applicant's Signature:**

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge and that I am required to inform the Department of any changes or updates to the information provided in this application. I further understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application. I grant permission to authorized Department representatives to enter upon the premises for inspection purposes during working hours.

\_\_\_\_\_  
 Applicant's Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Print Name

**22. Contractor's Signature:**

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge, and that I am required to inform the Department of any changes or updates to the information provided in this application. I further understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application.

\_\_\_\_\_  
 Contractor's Name

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Print Name



## BOAT DOCKING FACILITIES

Any boat docking facility for more than four (4) vessels is considered a marina facility (see definitions and explanations section) and requires the applicant to complete Appendices N and O, and make application to the U. S. Army Corps of Engineers for approval.

Please make sure answers to all of the questions in this appendix correspond with information on the application drawings.

1. Briefly describe the project. (Attach additional sheets as necessary.)

*No new project - This is a Renewal of Subaqueous Lands Lease*

2. Please provide numbers and dimensions as follows:

Structure Type	Number of Support Pilings	Dimensions (Channelward of MHW or OHW)		Dimensions (Channelward of MLW- n/a for non-tidal water)		New, repair or maintain
		Width ____ ft.	Length ____ ft.	Width ____ ft.	Length ____ ft.	
Dock, Pier, Lift, gangway						
<i>Pier</i>	<i>24</i>	<i>6 ft</i>	<i>66 ft</i>	<i>6 ft</i>	<i>66 ft</i>	<i>To maintain</i>
<i>Dock</i>	<i>8</i>	<i>6 ft</i>	<i>25 ft</i>	<i>6 ft</i>	<i>25 ft</i>	<i>To maintain</i>
Freestanding Pilings	Number					
<i>Yes</i>	<i>5</i>	<i>Approx 10"</i>	<i>Approx 7'</i>			<i>To maintain</i>

*↳ 1 of the pilings supports "safety platform"*

Mooring Buoy: How many moorings will be installed? \_\_\_\_\_  
 What will be used for the anchor(s)? \_\_\_\_\_  
 Anchor/Mooring Block Weight \_\_\_\_\_  
 Anchor Line Scope (Length or Ratio) \_\_\_\_\_  
 Water Depth at Mooring Location \_\_\_\_\_

3. Approximately how wide is the waterway at this project site? 900 ft. (measured from MLW to MLW)

4. What will be the mean low water depth at the most channelward end of the mooring facility? 2 to 3 ft.

5. What type of material(s) will be used for construction of the mooring facility (e.g. salt treated wood, aluminum, fiberglass floats, etc.) Use of creosote-treated wood is prohibited. *NA - No new construction*

6. Circle any of the following items that are proposed over subaqueous lands: *NA - No new construction*  
 Fish Cleaning Stations/Benches/Ladders/Water Lines/ Satellite/Electric Lines/ Handrails/Other (Describe)

If any of the items are circled above, include their dimensions and location on the application drawings.



7. What will be the distance from the most channelward end of the docking facility to the edge of any natural or man-made channel? \_\_\_\_\_ ft.

8. Describe the vessels that will be berthed at the docking facility. Please draw proposed vessel locations on plans and drawings. *NA*

Make/model _____	length _____	width _____	draft _____
Make/model _____	length _____	width _____	draft _____
Make/model _____	length _____	width _____	draft _____
Make/model _____	length _____	width _____	draft _____

9. Please provide a copy of the current state registration or Coast Guard Certificate of Documentation for each motorized vessel listed above. *NA*

10. Give the number and type of each Marine Sanitation Device (e.g. MSD III, Portable toilet) that will be used on vessels to be docked at the facility. *NA*

11. Is there currently a residence on the property? ☒ Yes ☐ No

12. Do you plan to reach the boat docking facility from your own upland property? ☒ Yes ☐ No If "No", explain your proposed means of access and provide documentation of easement or documentation authorizing access if you intend to cross someone else's property.

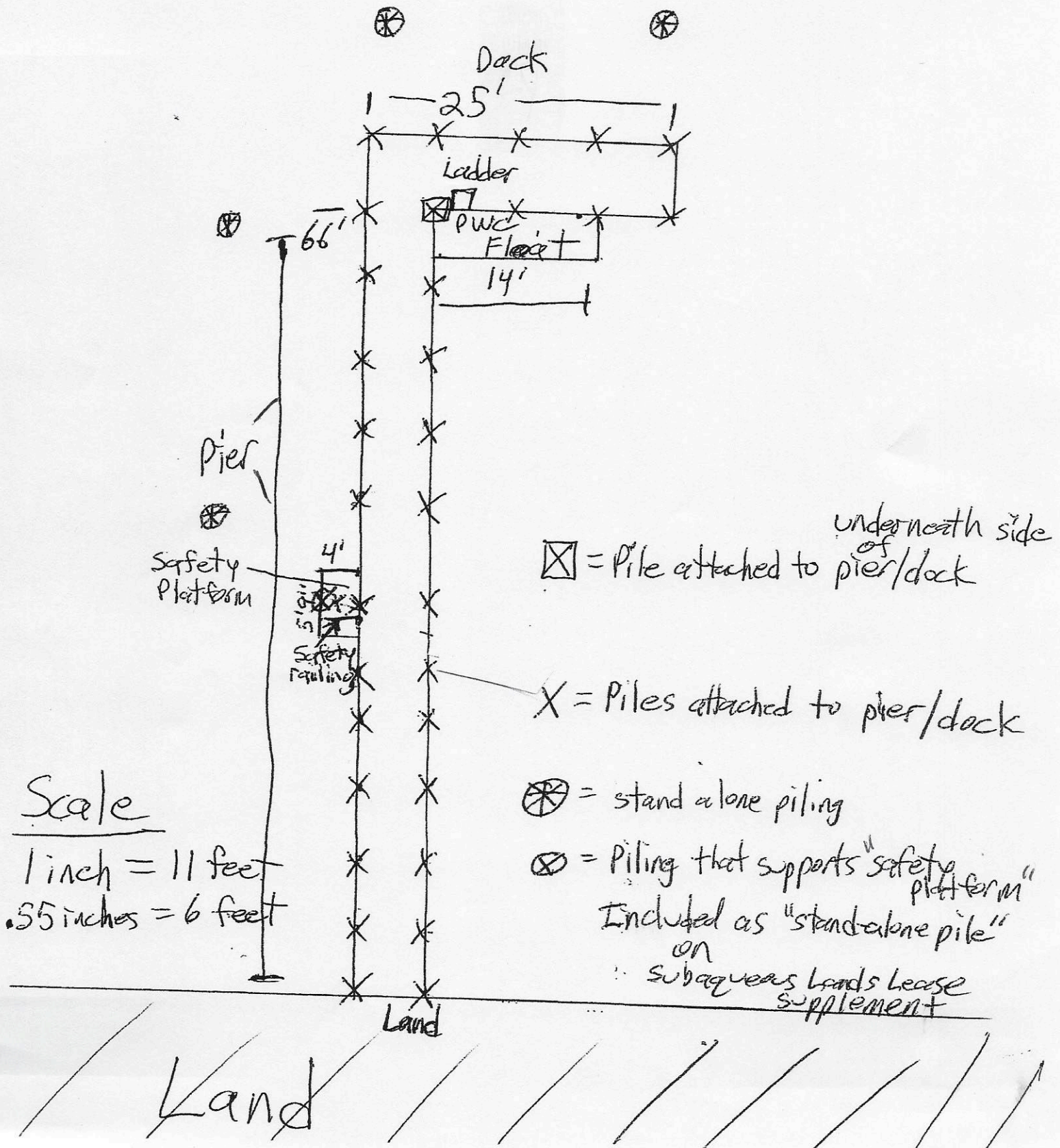
13. Will any portion of the structure be located in privately owned underwater land (such as a pond or lagoon) owned by someone other than the applicant? ☐ Yes ☒ No.  
If yes, written permission of the underwater land owner must be provided with this application.

14. What is the width of the waterfront property frontage adjacent to subaqueous lands? 107 ft. *(see survey)*  
Will any portion of the structure or any vessel be placed within 10 feet of your neighbor's property line?  
☐ Yes ☒ No  
If yes, a letter of no objection from the adjacent property owner must be included with this application.



3/24/2025

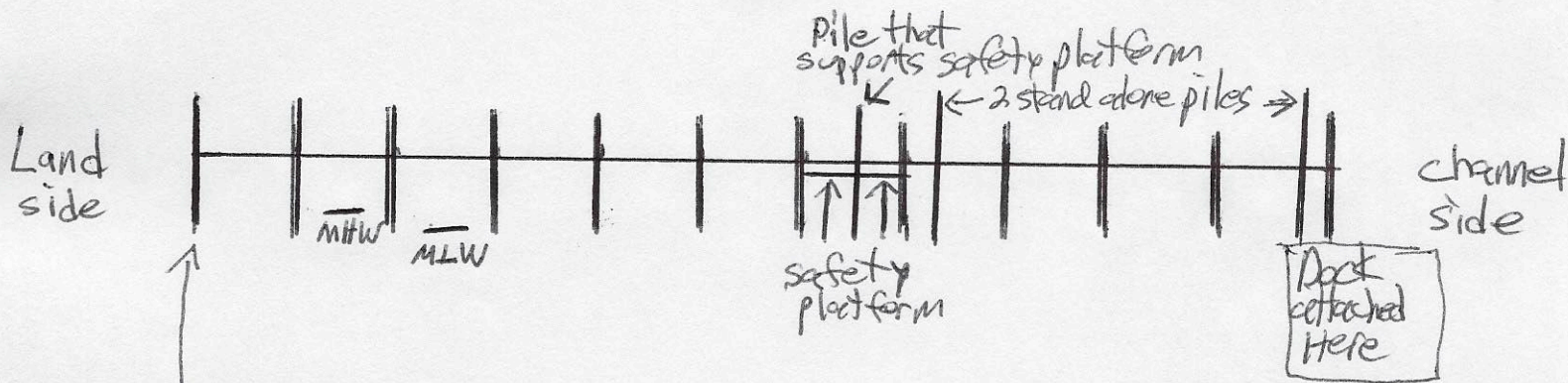
# Scaled birds-eye view of Swanson's Pier/Dock built in 1994





3/24/2025

# Cross section view of Swanson's Pier built in 1994 66' long + 6' wide



24 pilings (only 12 shown due to cross section view)  
+ 1 pile (piling) that supports safety platform  
+ 2 stand alone piles.

The pier is attached to the dock  
(25' long + 6' wide). Due to cross section  
view, that dock (attached at a 90° angle) is  
shown on other page.

Each piling is approximately 10" wide

## Scale

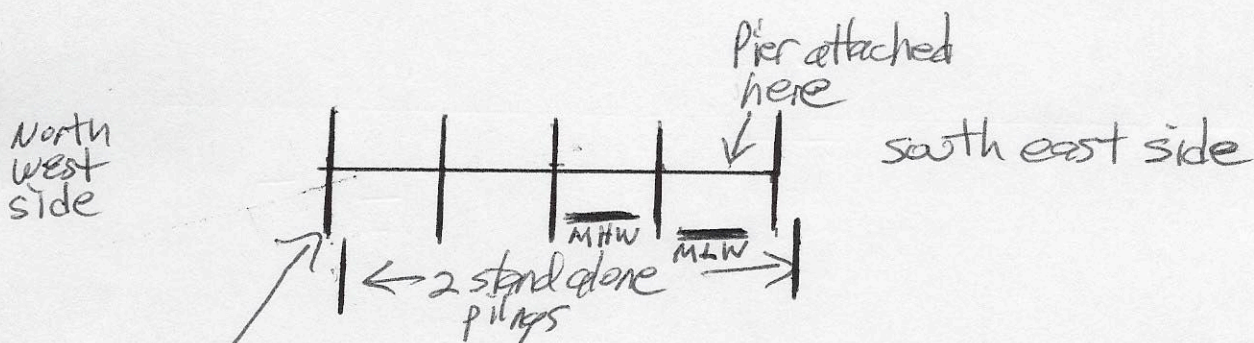
1 inch = 11 ft

• 55 inches = 6 ft



3/24/2025

Cross section view of  
Swanson's dock (attached to Pier)  
built in 1994 — 25' long + 6' wide



View of dock from channel side (view of swanson's property from the water (Herring creek))

8 pilings (only 5 shown due to cross section view)

Each piling approximately 10" wide + 7' tall + 2 stand alone pilings

The dock is attached to the pier (66' long + 6' wide)  
Due to cross section view, that pier (attached at 90° angle) is shown on other page

Scale

1 inch = 11 ft

0.55 inches = 6 ft







Prep. by: FUQUA, YORI & ROGERS  
P.O. Box 250  
Georgetown, DE 19947

Tax Map No. 2-34-24.00-4.00

DEED

THIS DEED, Made this 2<sup>ND</sup> day of AUGUST,  
1994,

B E T W E E N

CARL O. SWANSON, JR. and JEAN M. SWANSON, his wife, of  
15830 Vista Drive, Dumfries, Virginia 22026, party of the first  
part,

A N D

THE SWANSON FAMILY TRUST, dated March 25, 1994, Carl O.  
Swanson and Jean M. Swanson, Trustors and/or Trustees, of 15830  
Vista Drive, Dumfries, Virginia 22026, party of the second part,

W I T N E S S E T H ,

That the said party of the first part, for and in  
consideration of the sum of ONE DOLLAR (\$1.00) and other good and  
valuable consideration, lawful money of the United States of  
America, the receipt whereof is hereby acknowledged, hereby grants  
and conveys unto the said party of the second part, their heirs and  
assigns:

SEE EXHIBIT A HERETO ATTACHED.

IN WITNESS WHEREOF, the said party of the first part has  
hereunto set hand and seal, the day and year aforesaid.

James A. Yori  
Witness  
James A. Yori  
Witness

Carl O. Swanson, Jr. (SEAL)  
Carl O. Swanson, Jr.

Jean M. Swanson (SEAL)  
Jean M. Swanson

STATE OF  
COUNTY OF

\*  
: SS  
\*

7<sup>ND</sup>



B E T W E E N

CARL O. SWANSON, JR. and JEAN M. SWANSON, his wife, of 15830 Vista Drive, Dumfries, Virginia 22026, party of the first part,

A N D

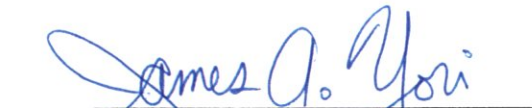
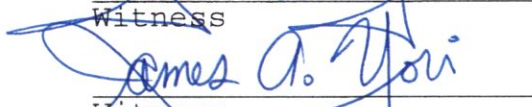
THE SWANSON FAMILY TRUST, dated March 25, 1994, Carl O. Swanson and Jean M. Swanson, Trustors and/or Trustees, of 15830 Vista Drive, Dumfries, Virginia 22026, party of the second part,

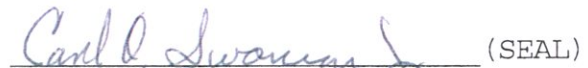
W I T N E S S E T H ,

That the said party of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part, their heirs and assigns:

SEE EXHIBIT A HERETO ATTACHED.

IN WITNESS WHEREOF, the said party of the first part has hereunto set hand and seal, the day and year aforesaid.

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

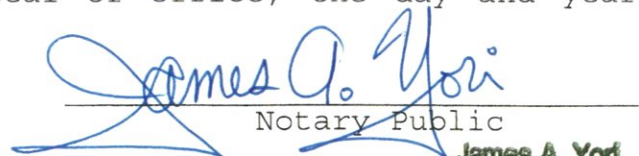
  
\_\_\_\_\_  
Carl O. Swanson, Jr. (SEAL)

  
\_\_\_\_\_  
Jean M. Swanson (SEAL)

STATE OF                   \*  
                              : SS  
COUNTY OF               \*

BE IT REMEMBERED, that on this 2<sup>ND</sup> day of AUGUST, 1994, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, CARL O. SWANSON, JR. and JEAN M. SWANSON, his wife, party to the foregoing Indenture, known to me personally to be such, and acknowledged said indenture to be their deed.

GIVEN under my hand and seal of office, the day and year aforesaid.

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

James A. Yori  
Attorney At Law  
Notarial Authority  
Per 29 Del.C. § 4323(a) (3)



EXHIBIT A

ALL THAT certain lot, piece or parcel of land situate, lying and being in Indian River Hundred, Sussex County, Delaware, and being known and designated as Lot No. F-25 on the plot of the lots of Delaware Development Co., known as "Herring Landing" Section "U", "V", & part of "F" as surveyed by Wingate & Eschenbach, Engineers and Surveyors, in April of 1965, which said plot now remains of record in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, in Plot Book 6, Page 47. The lot herein conveyed being more particularly described as follows: Beginning at a point in the southwesterly right of way of Algonquin Road, said point of beginning being a corner for this lot and Lot 24; thence running for the 1st line along the southwesterly right of way of Algonquin Road 100 feet to the corner of Lot F-26, as shown on the aforesaid plot; thence running for the 2nd line South 89 degrees 00 minutes West, along the line dividing the lot herein conveyed from Lot F-26 and from Lot F-28 250 feet; thence running for the 3rd line South 29 degrees 00 minutes West, 100 feet, more or less, to Herring Creek; thence returning to the place of Beginning and running for the 4th line along the line dividing the lot herein conveyed from Lot F-24, South 88 degrees 42 minutes 28 seconds West, 250.50 feet, more or less, to Herring Creek; thence running for the 5th line from the end of the 4th line in a westerly direction along the meanderings of Herring Creek to the end of the 3rd line, be the contents what they may.

BEING the same land conveyed unto Carl O. Swanson, Jr. and Jean M. Swanson, his wife, by deed of Delaware Development Co., recorded September 28, 1966, in the Office of the Recorder of Deeds, Georgetown, Delaware, in Deed Book 611, Page 414.

SUBJECT to restrictions as outlined in Deed recorded in Deed Book 611, Page 414.



**THE SWANSON FAMILY TRUST  
DATED MARCH 25, 1994**

**Restatement dated April 30, 2019**



1501 FARM CREDIT DRIVE, SUITE 2000  
MCLEAN, VIRGINIA 22102



# The Swanson Family Trust

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# **The Swanson Family Trust**

## **Article One Establishing the Trust**

On March 25, 1994, we established the Swanson Family Trust, and reserved the right to amend the trust, in whole or in part. On this day, April 30, 2019, we revoke all restatements and amendments to that instrument and now exercise our power to amend that instrument in its entirety, so that after amendment the Swanson Family Trust now states:

The parties to this restated trust are **Carl O. Swanson, Jr.**, also known as **Carl O. Swanson**, and **Jean M. Swanson** (the *Trustors*) and **Carl O. Swanson, Jr.**, **Jean M. Swanson** and **Steven D. Swanson** (collectively, the *Trustee*).

Notwithstanding any other provision to the contrary, we specifically authorize either Trustor, if serving as Co-Trustees, to act independently of the other. As Co-Trustees we shall each have the authority to perform all powers and acts of the Trustee as granted under this trust instrument. Any other persons or entities serving as successor Co-Trustees shall also have the power to act independently subject to the terms and provisions of the "Trust Administration" Article, below, whereby the signature of only one Trustee is required to exercise the powers of the Trustee.

We intend to create a valid trust under the laws of Virginia and under the laws of any state in which any trust created under this trust document is administered. The terms of this trust prevail over any provision of Virginia law, except those provisions that are mandatory and may not be waived.

### **Section 1.01 Identifying the Trust**

For convenience, the trust may be referred to as:

"The Swanson Family Trust dated March 25, 1994."

To the extent practicable, for the purpose of transferring property to the trust or identifying the trust in any beneficiary or pay-on-death designation, the trust should be identified as:

"Carl O. Swanson, Jr., Jean M. Swanson and Steven D. Swanson, Trustees of the Swanson Family Trust dated March 25, 1994, and any amendments thereto."

For all purposes concerning the identity of the trust or any property titled in or payable to the trust, any description referring to the trust will be effective if it reasonably identifies the trust or indicates that the trust property is held in a fiduciary capacity.

## **Section 1.02     Reliance by Third Parties**

Third parties may require documentation to verify the existence of this trust, or particular provisions of it, including the name of the Trustee or the powers held by the Trustee. To protect the confidentiality of this instrument, the Trustee may use an affidavit or a certification of trust that identifies the Trustee and sets forth the authority of the Trustee to transact business on behalf of the trust instead of providing a copy of this instrument. The affidavit or certification may include pertinent pages from this instrument, including title or signature pages.

A third party may rely upon an affidavit or certification of trust that is signed by the Trustee with respect to the representations contained in it. A third party relying upon an affidavit or certification of trust will be exonerated from any liability for actions the third party takes or does not take in reliance upon the representations contained in the affidavit or certification of trust.

A third party dealing with the Trustee will not be required to inquire into this trust's terms or the authority of the Trustee, or to see to the application of funds or other property received by the Trustee. The Trustee's receipt of any money or property paid, transferred, or delivered to the Trustee will be a sufficient discharge to the third party from all liability in connection with its application. A written statement by the Trustee is conclusive evidence of the Trustee's authority. Third parties are not liable for any loss resulting from their reliance on a written statement by the Trustee asserting the Trustee's authority or seeking to effect a transfer of property to or from the trust.

## **Section 1.03     Trustors as Sole Beneficiaries**

We are creating this revocable living trust and any separate trusts established under this instrument with the intent that assets transferred to the trust be held for our sole benefit while we are living, except as otherwise expressly stated, and for the benefit of our beneficiaries after our death on the terms and conditions set forth in this instrument. During our joint lifetimes, we are the sole beneficiaries of our trust, except as may be otherwise expressly stated.

The Trustee shall hold, manage, invest, and reinvest the trust property, and shall collect the income thereof and dispose of the net income and principal solely for our benefit. The Trustee shall distribute as much of the income and principal from our respective shares of the trust property as may be requested by either or both of us, from time to time, without regard to the amount of, or the reasons for, such withdrawals.

In order to accomplish the intent set forth in this Section, we have given our Trustee broad discretion with respect to the management, distribution, and investment of assets in our trust.

All provisions of this trust are to be interpreted to accomplish our objectives.

## **Section 1.04     Transferring Property to the Trust**

Any person or entity may transfer any property to the trust in any manner authorized by law.



**(a) Funding of the Trust**

By executing this instrument, we transfer, convey, and assign the property, which may be described in the attached schedules for convenience, to the Trustee. We also transfer all our right, title, and interest in and to all of our property that may legally be held in trust and that may be transferred to the trust by this assignment. This assignment includes all of our real, personal, tangible, and intangible property located in the United States, whether separate property or community property, and whether acquired before or after the execution of this instrument, except for these assets that are expressly not transferred by this instrument:

life insurance policies, unless the ownership of a policy is transferred to the trust by a separate instrument that specifically refers to the policy;

corporate and self-employed (*Keogh*) pension, profit-sharing, and stock bonus plans;

qualified retirement plans;

commercial annuities;

Section 1244 (small business) stock; and

any property, the transfer of which would result in the immediate recognition of income subject to income or other taxes, would result in the loss of a homestead exemption, or would violate a restriction on transfer agreement.

**(b) Acceptance by the Trustee**

By executing this instrument, the Trustee accepts and agrees to hold the property transferred to the trust as trust property. All property transferred to the trust after the date of this trust must be acceptable to the Trustee. The Trustee may refuse to accept any property. The Trustee shall hold, administer, and dispose of all accepted trust property for our benefit and for the benefit of our beneficiaries, in accordance with the terms of this trust.

**(c) Community Property**

Any community property transferred to the trust, including the property's income and the proceeds from the property's sale or exchange, will retain its character as community property during our lives, to the same extent as if it had not been transferred to the trust.

**(d) Separate Property**

Separate property transferred to the trust will retain its character as separate property. Our separate property shall be identified as the separate property of either of us on the attached schedules. The separate property of either of us, including the property's income and proceeds from the

property's sale or exchange, will remain separate property. Each of us has the unrestricted right to remove all or any part of our separate property at any time.

If property titled in the separate name of one of us is transferred to the trust without being listed as separate property on the attached schedules, the person transferring the property will be considered to have made a gift to the other of one-half of the transferred property's value immediately before transferring it to the trust. Once transferred to the trust, each of us will own one-half of the property as tenants in common, and each half will be treated as separate property of each of us.

An amount that is payable to the trust on a life insurance policy that is the separate property of either of us will retain its character as separate property. Likewise, any retirement benefits payable to the trust that are the separate property of either of us will retain their character as separate property.

**(e) Joint Property**

Each of us will own one-half of any joint property that we transfer to the trust and any property we designate as Joint Property on Schedule J as tenants in common. This property will be treated as one-half the separate property of each of us. If joint tenancy property with right of survivorship is transferred to the trust, we will be considered to have severed the joint tenancy immediately before transferring the property, and no right of survivorship will exist with respect to this property.

Any property that was held by us as tenants by the entirety that is conveyed as tenants by the entirety to our trust, and the proceeds of that property, will have the same immunity from the claims of our separate creditors as if we had continued to hold the property or its proceeds as tenants by the entirety pursuant to Virginia Code Section 55-20.2(B).

**(f) Marital Property Agreement Controls**

If we have entered into or in the future enter into a marital property agreement, the terms of that agreement will control the characterization of property titled in the name of the trust. In the absence of a marital property agreement, property titled in the name of the trust will be governed by the terms of this trust.

**Section 1.05 Powers Reserved by Us as Trustors**

As Trustors, we retain the powers set forth in this Section in addition to any powers that we reserve in other provisions of this instrument.

**(a) Action on Behalf of the Trust**

Whenever both of us are serving as Trustee, either or both of us may act for and conduct business on behalf of the trust without the consent of any other Trustee.



Whenever one of us is alive but not serving as Trustee, and the other is serving as Trustee, the one who is serving as Trustee may act for and conduct business on behalf of the trust without the consent of any other Trustee.

After one of us dies, the ability of the survivor of us, when serving as Trustee, to conduct business on behalf of us without the consent of any other Trustee is subject to the terms and conditions of the trust.

**(b) Amendment, Restatement, or Revocation**

Acting jointly, we may amend, restate, or revoke this instrument, in whole or in part, for any purpose. Acting jointly, we retain the absolute right to amend, restate, or revoke any term or provision of this trust in whole or in part. Each of us individually retains the right to revoke any term or provision of this trust in whole or in part as to each of our separate property.

Any amendment, restatement, or revocation must be made in writing and delivered to the then-serving Trustee.

An agent acting under a power of attorney may exercise the powers in this Subsection to the extent the agent is authorized. The agent's good-faith acts, forbearances, or omissions are conclusive on all persons interested in the trust, and the agent will not be liable for the consequences.

**(c) Addition or Removal of Trust Property**

Either of us may add property to the trust. Both of us, acting jointly may remove any property from the trust. Each of us, acting alone, may remove our own separate property from the trust. Community property removed from the trust will retain its character as community property.

**(d) Control of Income and Principal Distributions**

We retain the right to control the distribution of income and principal from any revocable portion of the trust. We may direct the Trustee to distribute as much of the net income and principal of the trust property as we consider advisable to us or to other persons or entities. The Trustee may distribute the net income and principal to us or for our unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed net income is to be added to the principal of the trust.

Unless otherwise directed, the Trustee shall distribute the net income from the community property to us at least quarterly and shall distribute the net income from a Trustor's separate property to that Trustor at least quarterly.

The Trustee may also distribute principal of the community property for the unrestricted use of either or both of us and the principal of a Trustor's separate property for the unrestricted use and benefit of that Trustor, even

to the exhaustion of all trust property. Any undistributed net income is to be added to the principal of the trust.

**(e) Approval of Investment Decisions**

We reserve the absolute right to review and change the Trustee's investment decisions as to the community property. Each of us reserves the absolute right to review and change the Trustee's investment decisions as to our respective separate property. But the Trustee is not required to seek our approval before making investment decisions.

**Section 1.06 Grantor Trust Status**

By reserving the broad rights and powers set forth in Section 1.05 of this Article, we intend to qualify the trust as a *Grantor Trust* under Internal Revenue Code Sections 671 to 677. This means that, for federal income tax purposes, each of us will be treated as the owner of one-half of all the community property held in the trust and as the owner of our respective separate property as if we held the property individually.

During any period that the trust is a Grantor Trust, the Taxpayer Identification Number of the trust will be either of our Social Security numbers, in accordance with Treasury Regulation Section 301.6109-1(a)(2).



## **Article Two**

### **Family Information**

**Carl O. Swanson, Jr.** is referred to in this trust as *husband*, and **Jean M. Swanson** is referred to in this trust as *wife*.

We have three children. They are:

**Steven D. Swanson**, born on January 13, 1955;

**John R. Swanson**, born on June 4, 1957; and

**David S. Swanson**, born on March 13, 1962.

All references in this document to *our children* are references to these children, and any children subsequently born to us or adopted by us by legal proceeding.

References to *our descendants* are to our children and their descendants, including any deceased child's descendants.

## **Article Three**

### **Trustee Succession Provisions**

#### **Section 3.01     Resignation of a Trustee**

A Trustee may resign by giving written notice to either of us. If we are both incapacitated or deceased, a resigning Trustee shall give written notice to the trust's current income beneficiaries and any other then-serving Trustee.

#### **Section 3.02     Trustee Succession while Both of Us Are Alive**

While we are both alive, this Section governs the removal and replacement of the Trustees.

##### **(a)     Removal and Replacement by Both of Us or One of US**

By joint agreement, we may remove any Trustee at any time, with or without cause. If a Trustee is removed, resigns, or cannot continue to serve for any reason, either or both of us may serve as Trustee, we may appoint a Trustee to serve with either or both of us, or we may appoint a successor Trustee.

If one of us is incapacitated, the non-incapacitated Trustor may remove any Trustee at any time, with or without cause. If a Trustee is removed, resigns, or cannot continue to serve for any reason, the non-incapacitated Trustor may serve as sole Trustee, appoint a Trustee to serve with the non-incapacitated Trustor, or appoint a successor Trustee.

##### **(b)     Successor Trustee during Incapacity of Carl O. Swanson, Jr.**

During the incapacity of **Carl O. Swanson, Jr.**, we name the following to serve as successor Trustee in this order:

**Jean M. Swanson and Steven D. Swanson**, jointly; then

**David S. Swanson** as alternate for **Steven D. Swanson**;  
and then

**John R. Swanson** as alternate for **David S. Swanson**.

If **Jean M. Swanson** is at any time unable or unwilling to serve, the currently serving Co-Trustee shall serve as sole Trustee.

If both of us are incapacitated, any currently serving successor Trustee shall have the authority to appoint a further successor Trustee to serve after the already named successor Trustees. In the event that more than one serving Trustee has made such an appointment, the earliest appointment made shall be the first successor Trustee to serve after the original successor Trustees named, with the next earliest appointment serving next, and so on, until all such named successors have then served.



**(c) Successor Trustee during Incapacity of Jean M. Swanson**

During the incapacity of **Jean M. Swanson**, we name the following to serve as successor Trustee in this order:

**Carl O. Swanson, Jr.** and **Steven D. Swanson**, jointly; then

**David S. Swanson** as alternate for **Steven D. Swanson**;  
and then

**John R. Swanson** as alternate for **David S. Swanson**.

If **Carl O. Swanson, Jr.** is at any time unable or unwilling to serve, the currently serving Co-Trustee shall serve as sole Trustee.

If both of us are incapacitated, any currently serving successor Trustee shall have the authority to appoint a further successor Trustee to serve after the already named successor Trustees. In the event that more than one serving Trustee has made such an appointment, the earliest appointment made shall be the first successor Trustee to serve after the original successor Trustees named, with the next earliest appointment serving next, and so on, until all such named successors have then served.

**(d) Removal of Trustee during Incapacity of Both of Us**

During any time both of us are incapacitated, a Trustee may be removed only for cause; an interested party must petition a court of competent jurisdiction and receive approval from the court for the Trustee removal to be effective.

All appointments, removals, and revocations must be by signed written instrument.

**Section 3.03 Trustee Succession after the Death of Either or Both of Us**

After the death of either or both of us, this Section governs the removal and replacement of the Trustees.

**(a) Upon the Death of Carl O. Swanson, Jr.**

Upon the death of **Carl O. Swanson, Jr.**, we name the following to serve as successor Trustee in this order:

**Jean M. Swanson** and **Steven D. Swanson**, jointly; then

**David S. Swanson** as alternate for **Steven D. Swanson**;  
and then

**John R. Swanson** as alternate for **David S. Swanson**.

If **Jean M. Swanson** is at any time unable or unwilling to serve, the currently serving Co-Trustee shall serve as sole Trustee.

If at any time more than one Trustee is appointed to serve jointly, and one of Trustees is unable or unwilling to serve for any reason, the other(s) shall continue to serve until such time as all of the jointly named Trustees

are unable or unwilling to serve. Only in the event all of the jointly named Trustees are unable or unwilling to serve shall the next appointed successor Trustee serve.

Any currently serving successor Trustee shall have the authority to appoint a further successor Trustee to serve after the already named successor Trustees. In the event that more than one serving Trustee has made such an appointment, the earliest appointment made shall be the first successor Trustee to serve after the original successor Trustees named, with the next earliest appointment serving next, and so on, until all such named successors have then served.

**(b) Upon the Death of Jean M. Swanson**

Upon the death of **Jean M. Swanson**, we name the following to serve as successor Trustee in this order:

**Carl O. Swanson, Jr.** and **Steven D. Swanson**, jointly; then

**David S. Swanson** as alternate for **Steven D. Swanson**;  
and then

**John R. Swanson** as alternate for **David S. Swanson**.

If **Carl O. Swanson, Jr.** is at any time unable or unwilling to serve, the currently serving Co-Trustee shall serve as sole Trustee.

If at any time more than one Trustee is appointed to serve jointly, and one of Trustees is unable or unwilling to serve for any reason, the other(s) shall continue to serve until such time as all of the jointly named Trustees are unable or unwilling to serve. Only in the event all of the jointly named Trustees are unable or unwilling to serve shall the next appointed successor Trustee serve.

Any currently serving successor Trustee shall have the authority to appoint a further successor Trustee to serve after the already named successor Trustees. In the event that more than one serving Trustee has made such an appointment, the earliest appointment made shall be the first successor Trustee to serve after the original successor Trustees named, with the next earliest appointment serving next, and so on, until all such named successors have then served.

**(c) Appointment of Successor Trustees by the Surviving Trustor**

After the death of one of us, the surviving Trustor may appoint the current or successor Trustees for any trust created under this instrument. The surviving Trustor may amend or revoke this appointment.



**(d) Removal of a Trustee**

After the death of one of us, the surviving Trustor may remove any Trustee, with or without cause. If the surviving Trustor is incapacitated, a Trustee may be removed only for cause, and only if a court of competent jurisdiction approves the removal upon the petition of an interested party.

After the death of both of us, any beneficiary may remove a Trustee only for cause, and with approval from a court of competent jurisdiction. The petition may subject the trust to the jurisdiction of the court only to the extent necessary to make the appointment.

The right to remove a Trustee under this Subsection is not to be interpreted to grant the person holding that right any of the powers of that Trustee.

A minor or incapacitated beneficiary's duly appointed Attorney(s)-in-Fact or persons serving in *loco parentis*, may act on his or her behalf.

**(e) Default of Designation**

If the office of Trustee of a trust created under this instrument is vacant and no designated Trustee (or any such successors that may have been appointed by them) is able and willing to act, the surviving Trustor may appoint a successor Trustee.

If the surviving Trustor is unable or unwilling to name a successor Trustee or if both of us are deceased, the current income beneficiary(ies) (or their duly appointed Attorney(s)-in-Fact or persons serving in *loco parentis*) holding a majority in interest in the trust property, shall select a successor Trustee to serve.

Any beneficiary may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy lasting longer than 30 days. The petition may subject the trust to the jurisdiction of the court only to the extent necessary to make the appointment and may not subject the trust to the continuing jurisdiction of the court.

A minor or incapacitated beneficiary's Attorney(s)-in-Fact or persons serving in *loco parentis*, may act on his or her behalf.

**Section 3.04 Notice of Removal and Appointment**

Notice of removal must be in writing and delivered to the Trustee being removed, along with any other then-serving Trustees. The removal notice will become effective in accordance with its provisions.

Notice of appointment must be in writing and delivered to the successor Trustee and any other then-serving Trustees. The appointment will become effective at the time of acceptance by the successor Trustee. A copy of the notice may be attached to this instrument.

### **Section 3.05 Appointment of a Co-Trustee**

Any individual Trustee may appoint an individual or a corporate fiduciary as a Co-Trustee. This Co-Trustee will serve only as long as the appointing Trustee serves, or as long as the last to serve if more than one Trustee appointed the Co-Trustee. This Co-Trustee will not become a successor Trustee upon the death, resignation, or incapacity of the appointing Trustee, unless appointed under the terms of this instrument. Although this Co-Trustee may exercise all the powers of the appointing Trustee, the combined powers of this Co-Trustee and the appointing Trustee may not exceed the powers of the appointing Trustee alone. The Trustee appointing a Co-Trustee may revoke the appointment at any time, with or without cause.

### **Section 3.06 Corporate Fiduciaries**

Any corporate fiduciary serving under this instrument as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal or state law and that is not related or subordinate to any beneficiary within the meaning of Internal Revenue Code Section 672(c).

### **Section 3.07 Incapacity of a Trustee**

If any individual Trustee becomes incapacitated, the incapacitated Trustee need not resign as Trustee. For Trustees other than one of us, a written declaration of incapacity by the Co-Trustee or, if none, by the party designated to succeed the incapacitated Trustee if made in good faith and if supported by a written opinion of incapacity by a physician who has examined the incapacitated Trustee will terminate the trusteeship. If the Trustee designated in the written declaration refuses to sign the necessary medical releases needed to obtain the physician's written opinion of incapacity within 10 days of a request to do so, the trusteeship will be terminated.

### **Section 3.08 Appointment of Independent Special Trustee**

If for any reason the Trustee of any trust created under this instrument is unwilling or unable to act with respect to any trust property or any provision of this instrument, the Trustee shall appoint, in writing, a corporate fiduciary or an individual to serve as an Independent Special Trustee as to this property or with respect to this provision. The Independent Special Trustee appointed may not be related or subordinate to any trust beneficiary within the meaning of Internal Revenue Code Section 672(c).

An Independent Special Trustee will exercise all fiduciary powers granted by this trust unless expressly limited elsewhere in this instrument or by the Trustee in the instrument appointing the Independent Special Trustee. An Independent Special Trustee may resign at any time by delivering written notice of resignation to the Trustee. Notice of resignation will be effective in accordance with the terms of the notice.

### **Section 3.09 Rights of Successor Trustees**

Each successor Trustee serving under this instrument, whether individual or corporate, will have all of the title, rights, powers and privileges granted to the initial Trustees named under this instrument. In addition, each successor Trustee will be subject to all of

the restrictions imposed on and to all discretionary and ministerial obligations and duties given to the original Trustees.



## **Article Four**

### **Administration of the Trust During a Trustor's Incapacity**

#### **Section 4.01     Definition of a Trustor's Incapacity**

A Trustor will be considered incapacitated during any time when the Trustor is unable to effectively manage his or her property or financial affairs because of age, illness, mental disorder, dependence on prescription medication or other substances, or any other cause.

#### **Section 4.02     Determination of a Trustor's Incapacity**

For purposes of this instrument, a Trustor is incapacitated if determined to be so under any one of the following Subsections.

##### **(a)     Determination by Physicians**

A Trustor will be considered incapacitated if two licensed physicians have determined the Trustor's then-existing circumstances fall within the definition of incapacity as provided in Section 4.01.

A Trustor will be considered restored to capacity if the Trustor's personal or attending physician signs a written opinion that the Trustor can effectively manage his or her property and financial affairs.

##### **(b)     Court Determination**

A Trustor will be considered incapacitated if a court of competent jurisdiction determines that the Trustor is legally incapacitated, incompetent, or otherwise unable to effectively manage his or her property or financial affairs.

##### **(c)     Detention, Disappearance, or Absence**

A Trustor will be considered incapacitated if the Trustor has an unexplained disappearance or absence for more than 60 days, or is detained under duress. A Trustor's disappearance, absence, or detention under duress may be established by an affidavit of the Trustee, or, if no Trustee is then serving under this trust, by the affidavit of any beneficiary of any trust created under this instrument. The affidavit must describe the circumstances of the Trustor's disappearance, absence, or detention under duress. A third party dealing with the Trustee in good faith may always rely on the representations contained in the affidavit.

A Trustor will be considered restored to capacity upon written notice by the missing or detained Trustor to the successor Trustee that he or she can manage his or her property and financial affairs.

#### **Section 4.03     Trust Distributions during a Trustor's Incapacity**

For purposes of this Article, *incapacitated Trustor's trust property* refers to the net income and principal of the incapacitated Trustor's separate property and the net income

and principal of the incapacitated Trustor's share of the community property, during any period when a Trustor is incapacitated, or the surviving Trustor's property as established hereinafter.

The Trustee shall administer the incapacitated Trustor's trust property as follows.

**(a) Distributions for the Incapacitated Trustor's Benefit**

The Trustee shall regularly and conscientiously make appropriate distributions of income and principal for the benefit of the incapacitated Trustor under the circumstances existing at the time each distribution is made.

The Trustee is encouraged to use income and principal from the incapacitated Trustor's trust property for the purpose of hiring caregivers or other personnel who can assist in ensuring that the incapacitated Trustor is well cared for and, to the extent that it is economically and otherwise feasible to do so, allowed to remain in his or her own home for as long as practicable. The Trustee is authorized and encouraged to hire, at the incapacitated Trustor's expense, a geriatric care manager or other professional with similar qualifications, to advise the Trustee in all matters related to the incapacitated Trustor's care. In providing for his or her care, the Trustee shall spend as much of the net income and principal of the incapacitated Trustor's trust property as the Trustee in his or her sole and absolute discretion, shall deem necessary and reasonable under the circumstances existing to provide the incapacitated Trustor with the maximum, reasonable level of medical, nursing, rehabilitative, and comfort care for the incapacitated Trustor including:

**(1) If a Trustor is Hospitalized**

If a Trustor is hospitalized, the Trustee has the discretion to seek a level of care for the Trustor including, if and when appropriate in the sole and absolute discretion of the Trustee, arranging for the Trustor to be placed in a private room, and by hiring registered or practical nurses, or other caregivers, as appropriate, on a part-time, full-time, or 24-hour basis to supplement the regular level of hospital care.

**(2) If a Trustor is Not Hospitalized**

We each prefer to remain in our home as long as the Trustee determines that it is both practically and economically reasonable to do so in the event of incapacity. If the incapacitated Trustor's medical condition is such that skilled nursing care and/or medical equipment is required, the Trustee shall take reasonable efforts to provide such care for the incapacitated Trustor in his or her home, including the hiring of part-time, full-time, or 24-hour nurses or other caregivers, the renting or purchasing of any

medical equipment necessary for the incapacitated Trustor's care and accommodating, by architectural changes if necessary, any physical needs of the incapacitated Trustor.

### **(3) Assistance in Daily Living**

The Trustee is authorized to spend from the incapacitated Trustor's trust property, income and principal to provide personal aides, homemakers, bill payers, or other persons to assist the incapacitated Trustor in daily living and who will otherwise enable the incapacitated Trustor to continue to reside at home for as long as it is practically and economically reasonable to do so.

### **(4) If a Care Facility is Required**

If the incapacitated Trustor's condition is such that the Trustee, in its sole and absolute discretion, determines that his or her best interest will be served by placing the incapacitated Trustor in the care of a nursing home or other residential care facility, the Trustee shall make every effort to select the facility which offers the highest quality of care and the most comfortable surroundings reasonably available and shall personally monitor, or shall hire, at the expense of the trust, a care manager or other qualified person who shall monitor the incapacitated Trustor's care not less often than weekly. If the Trustee, in his or her sole and absolute discretion, determines that the incapacitated Trustor's comfort and well-being would be enhanced by the hiring of additional nursing personnel, or of a companion or other caregiver, and if the hiring of such caregiver is affordable by the incapacitated Trustor's trust property, the Trustee shall have discretion to hire and shall actively direct such personnel in caring for the incapacitated Trustor.

Other appropriate distributions under this subsection include the payment of any of the incapacitated Trustor's enforceable legal obligations and insurance premiums for insurance policies owned by the incapacitated Trustor or by the trust, or by another person or trust insuring the incapacitated Trustor's life and for which the incapacitated Trustor has been making payments, including but not limited to, life, medical, disability, vehicular, property and casualty, errors and omissions and long-term health care insurance policies.

The examples included in this Subsection are for purposes of illustration only and are not intended to limit the authority of the Trustee to make any



distribution for the incapacitated Trustor's benefit that the Trustee determines appropriate.

**(b) Manner of Making Distributions**

The Trustee may make distributions for the incapacitated Trustor's benefit in any one or more of the following ways:

to the incapacitated Trustor, but only to the extent he or she is able to manage these distributions;

to other persons and entities for the incapacitated Trustor's use and benefit;

to an agent or attorney in fact authorized to act for the incapacitated Trustor under a legally valid durable power of attorney executed by the incapacitated Trustor before his or her incapacity; and

to the incapacitated Trustor's guardian or conservator who has assumed responsibility for the incapacitated Trustor under any court order, decree, or judgment issued by a court of competent jurisdiction.

**(c) Distributions for the Other Trustor's Benefit and for the Benefit of Our Dependents**

The Trustee may distribute as much of the net income and principal of the incapacitated Trustor's trust as the Trustee considers necessary for the health, education, maintenance and support of the other Trustor.

The Trustee may also distribute as much of the net income and principal of the incapacitated Trustor's trust as the Trustee considers necessary for the health, education, maintenance and support of other persons who the Trustee determines are dependent on the incapacitated Trustor for support.

**(d) Guidance for the Trustee Regarding Distributions**

When making distributions under Subsections (a) and (c), the Trustee shall give consideration first to the incapacitated Trustor's needs and the needs of the other Trustor, and then to the needs of those persons dependent on the incapacitated Trustor.

When making distributions under Subsection (c), we request that the Trustee consider other income and resources available to the beneficiaries. The Trustee may make unequal distributions, distributions to some but not all beneficiaries, or no distributions.

A distribution made to a beneficiary under this Section will not be considered an advancement, and will not be charged against the share of the beneficiary that may be distributable under any other provision of this trust.

**(e) Power to Make Gifts**

The Trustee is authorized to make gifts from the incapacitated Trustor's trust as follows.

**(1) Continuation of Gifting Program**

The Trustee is authorized to honor pledges and to continue to make gifts to charitable organizations that the incapacitated Trustor regularly supported before his or her incapacity in the previously given amounts. The Trustee may continue any gifting program initiated by the incapacitated Trustor before his or her incapacity.

**(2) Gifts Limited to the Annual Exclusion Amount**

The Trustee may make gifts on the incapacitated Trustor's behalf, to or for the benefit of any remainder or contingent beneficiary named in this instrument for purposes the Trustee considers to be in the best interest of both the incapacitated Trustor and the beneficiary, including the minimization of income, estate, inheritance, or gift taxes. Any gifts the Trustee makes under this Subsection must be limited to the federal annual gift tax exclusion amount, or other successor transfer tax limit affecting amounts gifted during lifetime.

**(3) Gifts in Excess of the Annual Exclusion Amount**

Only an Independent Special Trustee appointed under the provisions of Section 3.08 may make gifts in excess of the federal annual gift tax exclusion amount.

If the Trustee determines that gifts in amounts in excess of the federal annual gift tax exclusion amount are in the best interest of both the incapacitated Trustor and our beneficiaries, the Trustee, by unanimous vote if more than one Trustee is serving, must appoint an Independent Special Trustee unrelated by blood or marriage to any Trustee to review the facts and circumstances, and to decide whether the gifts should be made. We recommend that the Trustee select an independent certified public accountant, attorney, or corporate fiduciary to serve as the Independent Special Trustee under these circumstances.

Neither the Trustee nor the appointed Independent Special Trustee may be held liable to any beneficiary for exercising or failing to exercise its discretion to make gifts under this Subsection.

#### **(4) Gift Splitting Authorized**

The Trustee is authorized to consent to the splitting of gifts under Internal Revenue Code Section 2513 or under similar provisions of any state or local gift tax laws.

#### **(5) Gifts Limited to Ascertainable Standards**

An Interested Trustee may only make gifts that are necessary for the health, education, maintenance and support of the person to whom a gift is made. The Trustee is not required to consider other income and resources available to the recipient.

#### **(6) Methods of Making Gifts**

The Trustee may make gifts of trust property under this Subsection outright, in trust, or in any other manner that the Trustee considers appropriate.

By way of example and without limiting the Trustee's powers under this Subsection, the Trustee is specifically authorized to make gifts by creating tenancy in common and joint tenancy interests, or by establishing irrevocable trusts (including charitable or noncharitable split interest trusts). The Trustee may make gifts of trust property by establishing and contributing trust property to corporations, family limited partnerships, limited liability partnerships, limited liability companies, or other similar entities, and by making gifts of interests in any of those entities.

To accomplish the objectives described in this Subsection, the Trustee may establish and maintain financial accounts of all types and may execute, acknowledge, seal, and deliver deeds, assignments, agreements, authorizations, checks, and other instruments. The Trustee may prosecute, defend, submit to arbitration, or settle, propose, or accept a compromise with respect to a claim existing in favor of or against the incapacitated Trustor, based on or involving a gift transaction on the incapacitated Trustor's behalf. The Trustee may intervene in any related action or proceeding.

The Trustee may perform any other act the Trustee considers necessary or desirable to complete a gift on the incapacitated Trustor's behalf in accordance with the provisions of this Subsection.

#### **(7) Standard for Making Gifts**

We desire that in making gifts on the incapacitated Trustor's behalf, the Trustee consider the history of the incapacitated Trustor's gift making and our estate plan. To



the extent reasonably possible, we direct the Trustee to avoid disrupting the dispositive provisions of our estate plan as established by us prior to the Trustor's incapacity.

## **Article Five**

### **Administration of the Trust Upon the Death of a Trustor**

#### **Section 5.01     Surviving Trustor's Trust Property and Deceased Trustor's Trust Property**

After the first of us dies, the surviving Trustor's interest in any community property of the trust and the surviving Trustor's separate trust property will be referred to as the *surviving Trustor's trust property*. The surviving Trustor's trust property will be referred to as the Marital Trust, and the Trustees shall administer the Marital Trust as provided in Article Eight.

The deceased Trustor's interest in any community property of the trust and the deceased Trustor's separate trust property will be referred to as the *deceased Trustor's trust property*.

#### **Section 5.02     Administrative Trust**

Upon a Trustor's death, the trust will become irrevocable as it pertains to the administration and distribution of the deceased Trustor's trust property. The Trustee may need to apply for a separate Taxpayer Identification Number for the deceased Trustor's trust property.

Before the distribution of the deceased Trustor's trust property as provided in this trust, the deceased Trustor's trust property will be referred to as the *administrative trust*, but may continue to be known as the Swanson Family Trust during the administration period. The administrative trust will exist for the period reasonably necessary to complete the administrative tasks set forth in this Article.

#### **Section 5.03     Payment of Expenses and Taxes**

The Trustee may pay from the deceased Trustor's trust property:

- expenses of the deceased Trustor's last illness, funeral, and burial or cremation, including expenses of memorials and memorial services;

- legally enforceable claims against the deceased Trustor or the deceased Trustor's estate;

- expenses of administering the trust and the deceased Trustor's estate; and

- court-ordered allowances for those dependent upon the deceased Trustor.

These payments are discretionary with the Trustee. The Trustee may make decisions on these payments without regard to any limitation on payment of the expenses and may make payments without any court's approval. No third party may enforce any claim or right to payment against the trust by virtue of this discretionary authority.

If payment would decrease the federal estate tax charitable deduction available to the deceased Trustor's estate, the Trustee may not pay any administrative expenses from

assets passing to an organization that qualifies for the federal estate tax charitable deduction.

If payment would decrease the federal estate tax marital deduction available to the deceased Trustor's estate or violate the provisions of Treasury Regulation Section 20.2056(b)-4(d), the Trustee may not pay any administrative expenses from the net income of property qualifying for the federal estate tax marital deduction.

The Trustee may pay death taxes out of the trust property's principal, as provided in Section 5.06. But if a probate estate is opened within six months after the date of the deceased Trustor's death, the deceased Trustor's Personal Representative may pay any outstanding claims and expenses as authorized by the Personal Representative, as well as any death taxes from the deceased Trustor's probate estate to the extent that the cash and readily marketable assets in the deceased Trustor's probate estate are sufficient.

#### **Section 5.04     Restrictions on Certain Payments from Retirement Plans**

The term *designation date* means September 30 of the calendar year following the year of the deceased Trustor's death, or another date as established by Treasury Regulations or other tax law authority as the final date for determining whether this trust meets the requirements for treatment of the trust's oldest beneficiary as if the beneficiary were named individually as beneficiary of any qualified retirement plan payable to this trust.

Notwithstanding any other provision of this trust or state law to the contrary, the Trustee may not distribute any qualified retirement benefit payable to the trust or any trust created under this trust to or for the benefit of the deceased Trustor's estate, any charity, or any beneficiary other than an individual, on or after the *designation date*. Our intent is that all qualified retirement benefits held by or payable to this trust on or after the designation date be distributed to or held only for individual beneficiaries, within the meaning of Internal Revenue Code Section 401(a)(9).

Qualified retirement benefits payable to the trust may not be used or applied on or after the designation date for payment of the deceased Trustor's debts, taxes, expenses of administration, or other claims against the deceased Trustor's estate, or for payment of estate, inheritance, or similar transfer taxes due because of the deceased Trustor's death, other than those directly attributable to and the legal obligation of a particular qualified retirement plan. This Section does not apply to any bequest or expense that is specifically directed to be funded with qualified retirement benefits.

#### **Section 5.05     Excluding Life Insurance Proceeds from Creditors**

Despite anything to the contrary in this instrument, any life insurance proceeds payable to the Trustee under this instrument must never be or become part of our probate or testamentary estate. Nothing in this instrument directs that these life insurance proceeds be used to pay our debts or expenses.

#### **Section 5.06     Payment of Death Taxes**

For the purposes of this Article, the term *death taxes* refers to any taxes imposed by reason of the deceased Trustor's death by federal, state, or local authorities, including



estate, inheritance, gift, and direct-skip generation-skipping transfer taxes. For purposes of this Section, *death taxes* does not include any additional estate tax imposed by Internal Revenue Code Section 2031(c)(5)(C) or Section 2032A(c), or any other comparable recapture tax imposed by any taxing authority. Nor does the term include any generation-skipping transfer tax, other than a direct-skip generation-skipping transfer tax.

Except as otherwise provided in this Article or elsewhere in this trust, the Trustee shall provide for payment of all death taxes from the administrative trust without apportionment. The Trustee may not seek contribution toward or recovery of any payments of death taxes from any individual.

**(a) Protection of Exempt Property**

Death taxes may not be allocated to or paid from any assets that are not included in the deceased Trustor's gross estate for federal estate tax purposes. To the extent practicable, the Trustee may not pay any death taxes from assets that are exempt from generation-skipping transfer tax purposes.

**(b) Protection of the Marital Deduction**

Death taxes may not be paid from or allocated to any property that qualifies for the federal estate tax marital deduction.

**(c) Protection of the Charitable Deduction**

Death taxes may not be paid from or allocated to any assets passing to an organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless the Trustee has first used all other assets available to pay the taxes.

**(d) Property Passing Outside of the Trust**

Except as to qualified retirement benefits, death taxes imposed with respect to property included in the deceased Trustor's gross estate for death tax purposes but passing outside of the trust are to be apportioned among the persons and entities benefited. The proportion attributed to each person or entity is the taxable value of each person or entity's beneficial interest over the total taxable value of all property and interests included in the deceased Trustor's gross estate for death tax purposes. Notwithstanding the foregoing, the death taxes imposed shall only be apportioned as described herein if the value of such property passing outside of the trust is greater than 30% of the overall value of the deceased Trustor's net taxable estate. The values used for the apportionment are to be the values as finally determined under federal, state, or local law.

**(e) QTIP Property**

If the Trustee or the surviving Trustor's Personal Representative waives any right of recovery granted by Section 2207A and corresponding provisions of applicable state law, death taxes may not be apportioned to

any property included in the deceased Trustor's gross estate under Internal Revenue Code Section 2044.

### **Section 5.07      Coordination with the Personal Representative**

The following provisions are intended to help facilitate the coordination between the deceased Trustor's Personal Representative and the Trustee. These provisions apply even if the Personal Representative and the Trustee are the same person or entity.

#### **(a)      Reliance on Information from the Personal Representative**

The Trustee may rely upon the written request of the deceased Trustor's Personal Representative for payments authorized under this Article and the amounts included in those payments without computing the sums involved. If a payment is made under this Article to the deceased Trustor's Personal Representative, the Trustee will have no duty to inquire into the application of the payment.

#### **(b)      Receipt of Probate Property**

The Trustee may accept or decline any distributions of property tendered to the Trustee by the deceased Trustor's Personal Representative. If the Trustee accepts the property, the Trustee may do so without audit, and will not be required to review the Personal Representative's records.

#### **(c)      Discretionary Distributions to the Deceased Trustor's Personal Representative**

The Trustee may distribute cash, accrued income, or other trust property to the deceased Trustor's probate estate as a beneficiary of this trust, to the extent the Trustee determines that doing so is in the best interests of the trust beneficiaries.

### **Section 5.08      Authority to Make Tax Elections**

After a Trustor's death, the Trustee may make tax elections as provided in this Section. But if a Personal Representative is appointed for the deceased Trustor's probate estate, the discretionary authority granted to the Trustee as to any tax election will supersede the Personal Representative's statutorily delegated authority.

#### **(a)      Tax Elections**

The Trustee may make any tax elections necessary for the efficient administration of the deceased Trustor's estate, including:

- valuing assets according to an alternate valuation date;
- electing whether to take administration expenses as estate tax deductions or income tax deductions;
- allocating a Trustor's unused generation-skipping exemption to any portion of the trust property;

electing special-use valuation;  
deferring payment of all or any portion of any taxes; and  
treating any portion of the deceased Trustor's  
administrative trust as part of the deceased Trustor's estate  
for federal or state income tax purposes, or both.

In addition, the Trustee may elect to waive, in whole or in part, the deceased Trustor's right to have the deceased Trustor's estate reimbursed for any tax paid as a result of the inclusion in the deceased Trustor's taxable estate of property held in a qualified terminable interest property (QTIP) trust created for the surviving Trustor by the deceased Trustor.

The Trustee may make equitable adjustments between income and principal because of any tax elections made by the Trustee.

**(b) Allocation of Generation Skipping Transfer Tax Exemption**

The Trustee may elect to allocate or not allocate any portion of the Available Generation Skipping Transfer Tax Exemption ("GST") under Internal Revenue Code Section 2631, or a counterpart exemption under any applicable state law, to any property of which the deceased Trustor is considered the transferor for generation-skipping transfer tax purposes. This includes any property transferred by the deceased Trustor during life for which the deceased Trustor did not make an allocation prior to death. The exercise of the Trustee's discretion should be based on the transfers, gift tax returns, and other information known to the Trustee, with no requirement that allocations benefit the various transferees or beneficiaries in any particular manner.

**(c) Qualified Conservation Easements**

The Trustee may create a qualified conservation easement, as defined in Internal Revenue Code Section 2031(c)(8)(A), in any land held by the trust and may make the necessary election provided by Section 2031(c)(6).

**Section 5.09 Payment of Charitable Bequests**

To the extent possible, the Trustee must satisfy all charitable gifts and bequests from property that constitutes *income in respect of a decedent* (IRD) as that term is defined under the U.S. income tax laws. The distribution will qualify for the income tax charitable deduction under Internal Revenue Code Section 642(c)(2), as amended.

## **Article Six**

### **Disposition of Tangible Personal Property**

#### **Section 6.01     Distribution of Tangible Personal Property by Memorandum**

Each of us may dispose of items of tangible personal property by a signed written memorandum executed after we sign this instrument. The memorandum must refer to the trust and must reasonably identify the items and the beneficiary designated to receive each item. If either or both of us executes a memorandum, the Trustee shall incorporate the memorandum by reference into this instrument to the extent permitted by law.

The Trustee shall distribute the items of tangible personal property listed in the memorandum as promptly as practicable after the death of a Trustor who completed the memorandum, together with any insurance policies covering the property and any claims under those policies, as provided in the memorandum. If either or both of us leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date will control as to that item.

If the memorandum with the most recent date conflicts with a provision of this instrument as to the specific distribution of any item of tangible personal property, the provisions of the memorandum with the most recent date will control as to those items that are in conflict.

If the law does not permit incorporation of the memorandum by reference, the memorandum will then serve as an amendment to the trust, but only to the extent this amendment solely disposes of tangible personal property. We request that the Trustee follow our wishes and distribute the items of tangible personal property listed in the memorandum according to its terms.

#### **Section 6.02     Distribution of Remaining Tangible Personal Property**

The Trustee shall distribute any of the deceased Trustor's remaining tangible personal property not disposed of by a written memorandum to the Marital Trust to be administered as provided in Article Eight. If we are both deceased, the Trustee shall distribute the property as provided in the following Articles.

#### **Section 6.03     Definition of Tangible Personal Property**

For purposes of this Article, the term *tangible personal property* includes household furnishings, appliances and fixtures, works of art, pictures, collectibles, apparel and jewelry, books, sporting goods, and hobby paraphernalia. The term does not include any property that the Trustee determines to be part of any business or business interest owned by the deceased Trustor or the trust.

After the death of a Trustor, if the Trustee receives property to be distributed under this Article from the deceased Trustor's probate estate or in any other manner, the Trustee shall distribute the property in accordance with this Article's terms. The fact that an item of tangible personal property was not received by the trust until after the death of a Trustor does not diminish the validity of the gift. If property to be distributed under this



Article is not part of the trust property upon the death of a Trustor and is not subsequently transferred to the Trustee from the deceased Trustor's probate estate or in any other manner, then the specific distribution of property made in this Article is null and void, without any legal or binding effect.

#### **Section 6.04      Incidental Expenses and Encumbrances**

Until property distributed in accordance with this Article is delivered to the appropriate beneficiary or his or her Legal Representative, the Trustee shall pay the reasonable expenses of securing, storing, insuring, packing, transporting, and otherwise caring for the property as an administration expense. Except as otherwise provided in the trust, the Trustee shall distribute property under this Article subject to all liens, security interests, and other encumbrances on the property.

#### **Section 6.05      Residuary Distribution**

The deceased Trustor's remaining property will be administered as provided in the following Articles.

## **Article Seven**

### **Creating Trust Shares upon the Death of a Trustor**

The Trustee shall administer the deceased Trustor's remaining trust property as provided in this Article.

#### **Section 7.01      Allocation to the Marital Trust**

The Trustee shall allocate all of the deceased Trustor's remaining trust property to the Marital Trust, and shall administer the property as provided in Article Eight.

#### **Section 7.02      Surviving Trustor's Authority to Merge Trusts**

Notwithstanding the foregoing, the Trustee may combine the Marital Trust or any one or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not materially impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

The Marital Trust may continue to be referred to as The Swanson Family Trust dated March 25, 1994", and may use the surviving Trustor's social security number as the trust's tax identification number, both The Swanson Family Trust and the Marital Trust being wholly consistent with one another.

#### **Section 7.03      Disposition of Property upon Disclaimer by the Surviving Trustor**

The surviving Trustor, his or her fiduciary, or his or her agent serving under a power of attorney may disclaim any portion of any interest in or power over property passing from the deceased Trustor to or for the surviving Trustor's benefit under this instrument. If the surviving Trustor disclaims any property that would otherwise be allocated to the Marital Trust, the Trustee shall allocate the disclaimed property to the Non-Marital Share. The Trustee shall administer the Non-Marital Share as provided in Article Nine.

If the surviving Trustor disclaims his or her interest in any portion of the Non-Marital Share, the Trustee shall dispose of the disclaimed interest as though the surviving Trustor had predeceased the deceased Trustor.

## **Article Eight**

### **The Marital Trust**

The Trustee shall administer the Marital Trust as provided in this Article.

#### **Section 8.01 Trustee of the Marital Trust**

The surviving Trustor may serve as sole Trustee of the Marital Trust. The surviving Trustor may remove and replace the Trustee of the Marital Trust at any time, with or without cause. Notwithstanding any other provision in this instrument, the surviving Trustor may appoint any individual or corporate fiduciary to serve as Trustee of the Marital Trust.

#### **Section 8.02 The Surviving Trustor's Right to Amend, Restate, or Revoke**

The surviving Trustor also has the absolute right to amend, restate, or revoke the Marital Trust's terms, in whole or in part, for any purpose. Any amendment, restatement, or revocation of the Marital Trust must be in writing and signed by the surviving Trustor, or his or her legal representative, and the Trustee of the restated Marital Trust.

The right to amend by restatement may be exercised only by the surviving Trustor, or such surviving Trustor's legal representative.

#### **Section 8.03 Separate Share for Deceased Trustor's Trust Property**

To the extent that any qualified retirement plans belonging to the deceased Trustor is allocated to the Marital Trust, the Trustee shall hold this property in a separate share of the Marital Trust during the surviving Trustor's lifetime. The Trustee shall administer the separate share in accordance with all of this Article's provisions. But the surviving Trustor may not amend the terms of the separate share and the provisions of Section 4.03 permitting trust distributions to individuals other than the surviving Trustor during the incapacity of the surviving Trustor do not apply to the separate share.

The purpose of the separate share is to keep any qualified retirement plans belonging to the deceased Trustor and its accumulated income separate from the main share during the lifetime of the surviving Trustor, in order to qualify the separate share as a designated beneficiary under qualified retirement plans.

The Trustee shall distribute as much of the principal and accumulated income of the separate share to the main share of the Marital Trust as the surviving Trustor directs in writing.

#### **Section 8.04 Distribution of Income**

The Trustee shall distribute all of the net income of the Marital Trust to the surviving Trustor at least quarter-annually. Nothing contained in this instrument may limit the right of the surviving Trustor to receive the Marital Trust's entire net income.

#### **Section 8.05     Distributions of Principal**

The Trustee shall distribute as much of the principal of the Marital Trust to the surviving Trustor as he or she requests in writing for any reason.

The Trustee may also distribute as much of the principal of the Marital Trust to the surviving Trustor as the Trustee determines necessary or advisable for any purpose.

#### **Section 8.06     Unproductive Property**

Upon the written request of the surviving Trustor, the Trustee shall convert any nonproductive property held in the Marital Trust to productive property.

#### **Section 8.07     Trust Distributions during the Incapacity of the Surviving Trustor**

During any time the surviving Trustor is incapacitated, the Trustee shall administer the Marital Trust according to the provisions of Section 4.03.

#### **Section 8.08     General Power of Appointment**

The surviving Trustor may appoint all or any portion of the principal and undistributed income remaining in the Marital Trust at the surviving Trustor's death among one or more persons or entities, including the creditors of the surviving Trustor's estate.

#### **Section 8.09     Administration following the Surviving Trustor's Death**

The Marital Trust becomes irrevocable upon the death of the surviving Trustor, and the Trustee shall administer the Marital Trust consistent with the provisions of Article Five for administration following the death of the first of us to die.

Upon completion of the administrative tasks, the Trustee shall administer the unappointed balance or remainder of the Marital Trust as provided in Article Ten.

## **Article Nine**

### **The Bypass Trust**

The Trustee shall hold and administer the Non-Marital Share in a separate trust as provided in this Article. This document refers to the trust as the *Bypass Trust*.

#### **Section 9.01 Bypass Trust Beneficiary**

The surviving Trustor is the only beneficiary of the Bypass Trust during the surviving Trustor's lifetime.

#### **Section 9.02 Distribution of Income**

The Trustee shall distribute all of the net income of the Bypass Trust to the surviving Trustor at least quarter-annually during the surviving Trustor's lifetime.

#### **Section 9.03 Distribution of Principal**

The Trustee shall distribute as much principal of the Bypass Trust to the surviving Trustor as the Trustee determines necessary or advisable for the surviving Trustor's health, education, maintenance and support. Upon written request of the surviving spouse, the Trustee shall convert any nonproductive property held in the Bypass Trust, to productive property.

#### **Section 9.04 Guidelines to the Trustee**

The surviving Trustor is the only beneficiary of the Bypass Trust. In making discretionary distributions under this Article, the Trustee should bear in mind that our primary concern and objective is to provide for the well-being of the surviving Trustor, and the preservation of principal is not as important as this objective.

Without limiting the Trustee's discretion, we recommend that the Trustee not distribute principal from the Bypass Trust to the surviving Trustor until the principal of the Marital Trust is substantially exhausted.

#### **Section 9.05 Termination of the Bypass Trust**

The Bypass Trust will terminate upon the death of the surviving Trustor and the Trustee shall administer the balance or remainder of the Bypass Trust as provided in Article Ten.



## **Article Ten**

### **Distribution of Our Remaining Trust Property**

Upon the death of the survivor of us, the Trustee shall distribute our remaining trust property (not distributed under prior Articles of this agreement) as follows:

#### **Section 10.01 Reservoir Trusts® for Our Children**

The Trustee shall divide the remaining trust property in equal shares among our children, **Steven D. Swanson, John R. Swanson, and David S. Swanson**. The Trustee shall hold, administer, and distribute each such living child's share in a separate Reservoir Trust, as follows. In addition to the following, the administration of each Reservoir Trust shall be subject to and governed by all terms and provisions of this trust instrument.

##### **(a) Trustee of Trusts**

Each child shall serve as Trustee of his own trust. If a child is at any time unwilling or unable to serve as Trustee, the successor Trustee appointed to serve upon the death of the surviving Trustor under this trust instrument shall serve as Trustee over such child's trust.

##### **(b) Distributions of Income and Principal**

The Trustee may, in the Trustee's sole discretion, distribute to or for the benefit of the child as much of the income and principal of the child's trust as the Trustee determines is necessary or advisable for the child's health, education, maintenance and support, taking into consideration any other sources of support available to such child.

##### **(c) Protection from Divorce and Creditors**

It is our intent and a material purpose of the Reservoir Trust® that the trust principal and income remain our child's separate property and not a marital asset nor community property, and therefore, not subject to the jurisdiction of any divorce court or proceeding. Additionally, this trust is a spendthrift trust and shall enjoy the full benefits of spendthrift protection from creditors in accordance with the "Spendthrift Trust" provisions of this trust instrument.

##### **(d) Retirement Account Conduit Trust**

Each year, continuing until the death of such child, the Trustee shall immediately distribute free of trust all required minimum distributions received from any qualified plan or individual retirement account which is subject to IRS Code Section 401(a)(9) or Section 408 to such child after receiving such distributions. The purpose of this Subsection is to qualify the Reservoir Trust as a conduit trust under Treasury Regulation Section 1.401(a)(9) qualifying it as a Designated Beneficiary, and thereby enabling required minimum distributions to be "stretched out" over the lifetime of a beneficiary. The Trustee has the power to modify this

Subsection as necessary and shall interpret it to constitute a conduit trust for purposes of the required minimum distribution rules.

**(e) Lifetime Power of Appointment of Income and Principal**

During the child's lifetime, the Trustee may, in the Trustee's sole discretion, distribute as much of the income and principal of the child's share to or among any one or more persons or entities as the child from time to time, requests in writing (This gives the child the ability to use his or her trust funds for any person or entity.) This limited power of appointment may be exercised solely at the discretion of the child and the child shall have no obligation to make any such appointments. The child may not exercise this lifetime limited power of appointment to appoint to himself or herself, his or her estate, his or her creditors, or the creditors of his or her estate. (This legal limitation provides protection to the Reservoir Trust and keeps the Trust out of the child's estate.)

**(f) Testamentary Limited Power of Appointment**

The child may appoint all or any portion of the remainder of his or her share, to any one or more persons and/or entities in such shares as the child may deem appropriate, by specific reference to this limited power of appointment in his or her Last Will and Testament or other appropriate written instrument. Such appointment may be free of trust, to a custodian, or to a Trustee to be held in further lawful trust. The child may not exercise this power of appointment to appoint to himself or herself, his or her estate, his or her creditors, or creditors of his or her estate. (This gives the child the ability to re-direct his or her share to any person or entity.)

**(g) Distribution Upon the Death of the Child**

If a child is not then living or upon the subsequent death of the child, provided he failed to exercise the testamentary power of appointment, such child's share of the trust property or the remainder of such share shall be retained in trust for the benefit of his surviving spouse according to the exact same terms and provisions as such child's Reservoir Trust, provided they were married and living together companionably at the time of such child's death, and his spouse has not since remarried. Such surviving spouse shall serve as Trustee of her own trust. If such spouse is unable or unwilling to serve as Trustee, then the successor Trustee appointed to serve upon the death of the surviving Trustor under this trust instrument shall serve as Trustee. Furthermore, such surviving spouse shall have the same Lifetime and Testamentary Powers of appointment to our descendants as our child enjoyed.

If such deceased child left no surviving spouse, or they were not married and living together companionably at the time of such child's death, or if such surviving spouse has since remarried, or upon the death of the surviving spouse provided she failed to exercise the testamentary power of appointment, such deceased child's share of the trust property or the remainder of such share shall be distributed free of trust to his

descendants, *per stirpes*. If any such descendant is incapacitated or under age 35, then in the Trustee's sole discretion, such descendant's share may be retained in trust for his or her benefit according to the Underage and Incapacitated Beneficiaries Article, if the Trustee determines it is necessary or advisable. If such child has no living descendants, then his share of the trust property or the remainder of such share shall augment proportionally the other shares created under this Section.

**(h) Stand-By Supplemental Needs Trust**

If under any provision of this trust the Trustee is directed to make distributions to or for the benefit of any beneficiary at a time when that person is receiving, applying for, or preparing to apply for, needs-based government benefits, the Trustee shall retain and administer the beneficiary's trust property as a Supplemental Needs Trust under the Underage and Incapacitated Beneficiaries Article. The purpose of the Supplemental Needs Trust provisions is to supplement any benefits received, or for which the beneficiary may be eligible, from various governmental assistance programs, and not to supplant any benefits of this kind, nor jeopardize the beneficiary's eligibility to qualify for such benefits.

## **Article Eleven**

### **Remote Contingent Distribution**

If at any time no person or entity is qualified to receive final distribution of any part of our trust estate, this portion of our trust estate must be distributed one-half to those persons who would inherit it had **Carl O. Swanson, Jr.** then died intestate owning this property, and one-half to those persons who would inherit it had **Jean M. Swanson** then died intestate owning this property. This distribution will be as determined and proportioned under the laws of Virginia then in effect.

## **Article Twelve**

### **Distributions to Underage and Incapacitated Beneficiaries**

#### **Section 12.01 Supplemental Needs Trust**

If under any provision of this trust the Trustee is directed to distribute to or for the benefit of any beneficiary when that person is receiving, applying for, or preparing to apply for needs-based government benefits, the Trustee shall retain and administer the trust property as follows:

##### **(a) Not a Conduit Trust**

If the Trustee establishes the Supplemental Needs Trust under the terms and provisions of this Article on or before September 30 of the calendar year following the calendar year in which the applicable death occurs, the Distributions from Retirement Plans (*conduit trust provisions*) set forth in Section 13.01 do not apply to the provisions of this Section. However, if the Trustee fails to establish the Supplemental Needs Trust prior to the date specified herein, the Distributions from Retirement Plans (*conduit trust provisions*) shall apply to the provisions of this Section.

##### **(b) Distributions for Supplemental Needs**

In its sole, absolute, and unreviewable discretion, the Trustee may distribute discretionary amounts of net income and principal for supplemental needs of the beneficiary not otherwise provided by governmental financial assistance and benefits, or by the providers of services.

*Supplemental needs* refers to the basic requirements for maintaining the good health, safety, and welfare when, in the discretion of the Trustee, these basic requirements are not being provided by any public agency, office, or department of any state or of the United States.

*Supplemental needs* will also include medical and dental expenses; annual independent checkups; clothing and equipment; programs of training, education, treatment, and rehabilitation; private residential care; transportation, including vehicle purchases; maintenance; insurance; and essential dietary needs. *Supplemental needs* may include spending money; additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and money to purchase appropriate gifts for relatives and friends.

The Trustee will have no obligation to expend trust assets for these needs. But if the Trustee, in its sole, absolute and unreviewable discretion, decides to expend trust assets, under no circumstances should any amounts be paid to or reimbursed to the federal government, any state, or any



governmental agency for any purpose, including for the care, support, and maintenance of the beneficiary.

**(c) Objective to Promote Independence of the Beneficiary**

While actions are in the Trustee's sole, absolute, and unreviewable discretion, all parties to this trust should be mindful that the wish is that the beneficiary live as independently, productively, and happily as possible.

**(d) Trust Assets Not to be Considered Available Resource to the Beneficiary**

The purpose of the provisions of this Section 12.01 is to supplement any benefits received, or for which the beneficiary may be eligible, from various governmental assistance programs, and not to supplant any benefits of this kind. All actions of the Trustee shall be directed toward carrying out this intent, and the Trustee's discretion granted under this instrument to carry out this intent is sole, absolute, and unreviewable.

For purposes of determining the beneficiary's eligibility for any of these benefits, no part of the trust estate's principal or undistributed income will be considered available to the beneficiary for public benefit purposes. The beneficiary must not be considered to have access to the trust's principal or income, or to have ownership, right, authority, or power to convert any asset into cash for his or her own use.

The Trustee shall hold, administer, and distribute all property allocated to this trust for the exclusive benefit of the beneficiary during his or her lifetime. All distributions from this trust share are in the sole, absolute, and unreviewable discretion of the Trustee, and the beneficiary is legally restricted from demanding trust assets for his or her support and maintenance.

In the event the Trustee is requested to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or to petition a court or any other administrative agency for the release of trust principal or income for this purpose, the Trustee is authorized to deny this request and to take whatever administrative or judicial steps are necessary to continue the beneficiary's eligibility for benefits. This includes obtaining legal advice about the beneficiary's specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to the beneficiary for eligibility purposes. Any expenses incurred by the Trustee in this regard, including reasonable attorney fees, will be a proper charge to the trust estate.

**(e) Distribution Guidelines**

The Trustee shall be responsible for determining what discretionary distributions will be made from this trust, and may use a Care Manager in accordance with the provisions of this Section. The Trustee may distribute discretionary amounts of income and principal to or for the benefit of the beneficiary for those supplemental needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services. Any undistributed income will be added to principal. In making distributions, the Trustee must:

- consider any other known income or resources of the beneficiary that are reasonably available;

- consider all entitlement benefits from any government agency, including Social Security disability payments, Medicare, Medicaid (or any state Medicaid program equivalent), Supplemental Security Income (SSI), In-Home Support Service (IHSS), and any other supplemental purpose benefits for which the beneficiary is eligible;

- consider resource and income limitations of any assistance program;

- make expenditures so that the beneficiary's standard of living will be comfortable and enjoyable;

- not be obligated or compelled to make specific payments;

- not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by this governmental agency or reimbursement is required by the state; and

- not be liable for any loss of benefits.

**(f) Use of Care Manager**

The Trustee shall have the option of utilizing the services of a Care Manager to advise on how best to provide for the beneficiary's needs. The primary objective of the Care Manager will be to assist the Trustee in carrying out the intentions of this trust to ensure that the beneficiary maintains a safe living situation, receives counseling services when appropriate, and lives as independently as possible.

A Care Manager must be a professional Licensed Clinical Social Worker, Professional Conservator, or care management agency with experience in the field of assessment of conditions similar to those of the beneficiary, and familiarity with the public benefits to which the beneficiary may be entitled.

**(g) Distribution Advisement**

If the Trustee uses a Care Manager, the Care Manager will advise the Trustee concerning discretionary distributions to be made from the trust that are helpful and appropriate for the beneficiary's needs, including payment for medical care, counseling services, and daily support.

**(h) Care Manager Account for Periodic Payments**

If the Trustee uses a Care Manager, the Care Manager may establish periodic payments for part or all of the payments authorized under this trust and maintain a separate bank account for disbursement by the Care Manager. Any account must be carried in the trust's name and must have the trust's federal tax identification number. At least monthly, the Care Manager shall provide information on receipts and disbursements from this account to the Trustee. This account must contain no more than an amount reasonably necessary for the beneficiary's needs for a period of 60 days.

The Trustee will not be held liable for any actions of the Care Manager, unless the Trustee has actual knowledge of and consented to the Care Manager's proposed actions before the actions were actually taken. The Care Manager must not make any distributions that may cause a reduction of public benefits unless the Trustee has consented to the distribution.

**(i) Annual Care Plan**

If the Trustee uses a Care Manager, the Care Manager shall provide a written care plan for purposes of evaluation of the beneficiary's medical and psychosocial status to the Trustee at least annually. The care plan must include recommendations concerning resources and services beneficial to the beneficiary.

**(j) Quarterly Assessments**

If the Trustee uses a Care Manager, the Care Manager shall visit the beneficiary at least quarterly to assess his or her physical and emotional needs, including the appropriateness of the present placement, attendant care, access to required resources, reliability for making and keeping medical appointments, and access to socialization activities.

**(k) Compensation of the Care Manager**

If the Trustee uses a Care Manager, the Care Manager will be entitled to fair and reasonable compensation for the services he or she provides. The compensation amount will be for the customary and prevailing charges for services of a similar nature during the same time and in the same geographic locale.

**(l) The Resignation of a Care Manager**

Any Care Manager may resign by giving 30 days' written notice to the Trustee.

**(m) Replacement of Care Manager**

The Trustee may terminate the Care Manager without cause and name a replacement. If a Care Manager cannot serve for any reason, the Trustee may name a replacement, who may begin to serve immediately. A successor Care Manager must also be a professional Licensed Clinical Social Worker, Professional Conservator, or care management agency with experience in the field of assessment of conditions similar to those of the beneficiary, and familiarity with the public benefits to which the beneficiary may be entitled.

**(n) No Seeking of Order to Distribute**

For purposes of determining the beneficiary's state Medicaid program equivalent eligibility, no part of the trust estate's principal or undistributed income may be considered available to the beneficiary. The Trustee shall deny any request by the beneficiary to:

release trust principal or income to or on behalf of the beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or

petition a court or any other administrative agency for the release of trust principal or income for this purpose.

In its sole, absolute, and unreviewable discretion, the Trustee may take necessary administrative or legal steps to protect the beneficiary's state Medicaid program equivalent eligibility. This includes obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to the beneficiary for purposes of determining state Medicaid program equivalent eligibility. Expenses for this action, including reasonable attorney fees, will be a proper charge to the trust estate.

**(o) Indemnification of Trustee When Acting in Good Faith**

The Trustee will be indemnified from the trust property for any loss or reduction of public benefits sustained by the beneficiary as a result of the Trustee exercising the authority granted to the Trustee under this Section in good faith.

**(p) Termination and Distribution of the Supplemental Needs Trust**

If the Trustee, in its sole, absolute, and unreviewable discretion, determines that the beneficiary is no longer dependent on others and is able to independently support himself or herself, the Trustee shall distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this Section 12.01 had not been effective.

If the other provisions of this trust do not provide for the remaining property's distribution or retention, then the Trustee shall distribute the remaining property to the beneficiary outright and free of trust.

*Independently support* is satisfied when the beneficiary has been gainfully employed for 33 months of the 36-month period immediately preceding the decision to terminate the trust share.

The terms *gainful employment* and *gainfully employed* mean the full-time employment that produces sufficient net income to enable the beneficiary to contribute not less than 100% of the funds (exclusive of other revenue sources) that are necessary to provide for the beneficiary's independent care, support, maintenance, and education. In its sole, absolute, and unreviewable discretion, the Trustee shall determine whether or not the beneficiary has satisfied the condition of gainful employment.

#### **(q) Distribution upon the Death of the Beneficiary**

Upon the beneficiary's death, the Trustee shall distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this Section 12.01 had not been effective. If the other provisions of this trust provide for the beneficiary's share to be held in trust, then those provisions will be interpreted as though the beneficiary died after the establishment of that trust.

If the other provisions of this trust do not provide for the distribution or retention of the remaining property, then the beneficiary will have the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities. But the beneficiary may not exercise this limited power of appointment to appoint to himself or herself, his or her estate, his or her creditors or the creditors of his or her estate.

We intend to create a limited power of appointment and not a general power of appointment as defined in Internal Revenue Code Section 2041.

If any part of the beneficiary's trust is not effectively appointed, the Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, the Trustee shall distribute the unappointed balance *per stirpes* to the then-living descendants of the beneficiary's nearest lineal ancestor who was a descendant of ours or, if there is no then-living descendant, *per stirpes* to our descendants.

If we have no then-living descendants, the Trustee shall distribute the balance of the trust property as provided in Article Eleven.

### **Section 12.02 Underage and Incapacitated Beneficiaries**

If the Trustee is authorized or directed under any provision of this trust to distribute net income or principal to a person who has not yet reached 35 years of age or who is



incapacitated as defined in Section 16.09(f), the Trustee may make the distribution by any one or more of the methods described in Section 12.03. Alternatively, the Trustee may retain the trust property in a separate trust to be administered by the Trustee under Section 12.04.

We request that before making a distribution to a beneficiary, the Trustee consider, to the extent reasonable, the ability the beneficiary has demonstrated in managing prior distributions of trust property.

### **Section 12.03 Methods of Distribution**

The Trustee may distribute trust property for any beneficiary's benefit, subject to the provisions of Section 12.02 in any one or more of the following methods:

The Trustee may distribute trust property directly to the beneficiary.

The Trustee may distribute trust property to the beneficiary's guardian, conservator, parent, other family member, or any person who has assumed the responsibility of caring for the beneficiary.

The Trustee may distribute trust property to any person or entity, including the Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act or similar statute.

The Trustee may distribute trust property to other persons and entities for the beneficiary's use and benefit.

The Trustee may distribute trust property to an agent or attorney in fact authorized to act for the beneficiary under a valid durable power of attorney executed by the beneficiary before becoming incapacitated.

### **Section 12.04 Retention in Trust**

The Trustee may retain and administer trust property in a separate trust for any beneficiary's benefit, subject to the provisions of Section 12.02 as follows.

#### **(a) Distribution of Net Income and Principal**

The Trustee shall distribute to the beneficiary as much of the net income and principal of any trust created under this Section as the Trustee determines is necessary or advisable for the beneficiary's health, education, maintenance and support. Any undistributed net income will be accumulated and added to principal.

#### **(b) Right of Withdrawal**

The beneficiary may withdraw up to one-third of the beneficiary's trust upon attaining age 25, and one-half of the remainder upon attaining age 30. When the beneficiary whose trust is created under this Section either reaches 35 years of age or is no longer incapacitated, the beneficiary may withdraw all or any portion of the accumulated net income and principal from the trust. The beneficiary's right of withdrawal shall be cumulative. If the beneficiary shall have already attained age 25, 30, or 35 at the time

when the beneficiary's trust is created, the beneficiary's right(s) to withdraw shall be immediately available to the beneficiary.

**(c) Distribution upon the Death of the Beneficiary**

Subject to the terms of the next paragraph, the beneficiary whose trust is created under this Section may appoint all or any portion of the principal and undistributed net income remaining in the beneficiary's trust at the beneficiary's death among one or more persons or entities, and the creditors of the beneficiary's estate. The beneficiary has the exclusive right to exercise this general power of appointment.

The beneficiary may not exercise this power of appointment to appoint to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or creditors of the beneficiary's estate from the *limited share* of the beneficiary's trust. For purposes of this power of appointment, the *limited share* of the beneficiary's trust is that portion of the beneficiary's trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or that without the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at the beneficiary's death. If the generation-skipping tax does not then apply, the limited share will be the beneficiary's entire trust.

If any part of the beneficiary's trust is not effectively appointed, the Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, the Trustee shall distribute the unappointed balance *per stirpes* to the then-living descendants of the beneficiary's nearest lineal ancestor who was a descendant of ours or, if there is no then-living descendant, *per stirpes* to our descendants.

If we have no then-living descendants, the Trustee shall distribute the balance of the trust property as provided under the Article, "Distribution of our Remaining Trust Property", above.

**Section 12.05 Application of Article**

Any decision made by the Trustee under this Article is final, controlling, and binding upon all beneficiaries subject to the provisions of this Article.

The provisions of this Article do not apply to distributions to either of us from any trust established under this trust.

Except as provided in Section 12.01, the provisions of this Article do not apply to distributions that are required to be made to a beneficiary under the provisions of Section 13.01.

## **Article Thirteen**

### **Retirement Plans and Life Insurance Policies**

The provisions of this Article apply to qualified retirement plans and insurance policies owned by or made payable to the trust.

#### **Section 13.01 Retirement Plans**

Notwithstanding any contrary provision in this trust, this Section's provisions apply to qualified retirement plans.

##### **(a) Rights of the Trustee**

Subject to the provisions below pertaining to distributions from qualified retirement plans, the Trustee may exercise the right to determine the manner and timing of payments of qualified retirement plan benefits that are permitted and are consistent with the federal income tax rules regarding required minimum distributions under Internal Revenue Code Section 401(a)(9).

The Trustee may make a qualified disclaimer of any qualified retirement benefits or non-qualified annuity benefits payable to the trust.

No beneficiary may hold the Trustee liable for any decision regarding the selection of the death benefit election or the disclaimer of any qualified retirement benefits payable to the trust.

The Trustee may not change or designate beneficiaries under any retirement plan. Any power extended to the Trustee under the terms of a retirement plan that gives or appears to give the Trustee the power to change the identity or rights of any beneficiaries under the plan is void *ab initio*.

##### **(b) Distributions from Retirement Plans to the Marital Trust**

To the extent that at least part of any tax-favored retirement plan is distributed to the Marital Trust, the Trustee may (or must, if so requested by the surviving Trustor) cause the plan or part of the plan to be paid directly to the surviving Trustor as beneficiary, or must (if so required by the surviving Trustor) cause the plan or part of the plan to be transferred directly into another retirement plan in the surviving Trustor's name, without the intervening step of transferring it to the Marital Trust.

If the Marital Trust becomes the beneficiary of death benefits under any qualified retirement plan, each year, beginning with the year of the deceased Trustor's death, the Trustee shall withdraw at least the greater of:

the net income earned on the Marital Trust's share of the plan during the year; and

the minimum distribution required to be withdrawn from the Marital Trust's share of the plan under Internal Revenue Code Section 401(a)(9).

The Trustee may withdraw additional amounts from the Marital Trust's share of the plan as the Trustee deems advisable. The Trustee shall immediately distribute all amounts withdrawn to the surviving Trustor.

If the surviving Trustor is then deceased, the Trustee shall instead distribute the amount that would have been distributed to the surviving Trustor to the remainder beneficiary.

This Subsection's purpose is to ensure that the life expectancy of the surviving Trustor may be used to calculate the minimum distributions required by the Internal Revenue Code. This Subsection is to be interpreted consistent with this intent, despite any direction to the contrary in this trust.

Notwithstanding any other provision of this trust, the Trustee shall treat annuity and other periodic payments from any qualified retirement plans in any given year as income, to the extent the distribution represents income generated or treated as generated by any qualified retirement plan for that year. If income information is not available, then the Trustee shall apportion the annuity and other periodic payments between principal and income in an equitable and practical manner under Section 14.16.

**(c) Distributions from Retirement Plans to Trusts Other Than Trusts That Qualify for the Federal Estate Tax Marital Deduction**

Unless specifically stated otherwise beginning with the year of a Trustor's death, if any trust created under this instrument that does not qualify for the federal estate tax marital deduction becomes the beneficiary of death benefits under any qualified retirement plan, the Trustee shall annually withdraw from the trust's share of the plan the minimum distribution required under Internal Revenue Code Section 401(a)(9). This subsection applies to any administrative trust created under Article Five. The Trustee may withdraw additional amounts from the trust's share of the plan as the Trustee deems advisable, but only if the dispositive terms of the trust authorize the Trustee to immediately distribute the withdrawn amount as provided in this Subsection.

The Trustee shall immediately distribute all amounts withdrawn to the respective beneficiaries of this trust in the shares to which they are entitled, provided that any amount otherwise distributable to a beneficiary who has not yet attained age 21 shall be distributed to such beneficiary's parent or other responsible adult as custodian under an applicable Uniform Transfers to Minors Act or similar statute.

Amounts required to be withdrawn and distributed under this Subsection will reduce mandatory distribution amounts under other provisions of this trust that otherwise require distribution of all the trust's income.

This Subsection's purpose is to ensure that the trust beneficiaries' life expectancies may be used to calculate the minimum distributions required by the Internal Revenue Code. This Subsection is to be interpreted consistent with our intent, despite any direction to the contrary in this trust.

**(d) Minimum Required Distribution**

In administering the trust, the minimum required distribution for each qualified retirement plan for any year is the greater of:

the value of the qualified retirement plan determined as of the preceding year end, divided by the applicable distribution period; and

the amount that the Trustee is required to withdraw under the laws then applicable to the trust to avoid penalty.

If a Trustor dies before the required beginning date for a qualified retirement plan, the applicable distribution period means the beneficiary's life expectancy. If a Trustor dies on or after the required beginning date for a qualified retirement plan, the applicable distribution period means the beneficiary's life expectancy, or the deceased Trustor's remaining life expectancy, if longer.

Notwithstanding the foregoing, if a Trustor's death occurs on or after the required beginning date for a qualified retirement plan, the minimum required distribution for the year of death means:

the amount that was required to be distributed to the Trustor with respect to the qualified retirement plan during the year; minus

amounts actually distributed to the Trustor.

*Life expectancy, required beginning date* and other similar terms used in this Subsection, are to be determined in accordance with Internal Revenue Code Section 401(a)(9).

**Section 13.02 Life Insurance Policies**

The following provisions apply to life insurance policies owned by or made payable to the trust.

**(a) Provisions during Our Lives**

During our lives, each of us individually reserves all of the rights, powers, privileges, and options, with respect to any insurance policy, annuity, or any other third-party beneficiary contract owned by or made payable to

the trust. This includes the rights to designate and change beneficiaries, to borrow money, to surrender the policy, to receive any payments as owner, and to make any available elections.

The Trustee does not have a duty to exercise or to not exercise any rights, powers, privileges, or options with respect to any insurance policy, annuity contract, or other third-party beneficiary contract. The Trustee does not have an obligation to pay premiums or other contractual amounts that may be payable under any policy.

**(b) Provisions after Our Death**

After the death of a Trustor, the Trustee may make all appropriate elections with respect to these policies and may collect all sums made payable to the trust or to the Trustee under all these policies or contracts.

The Trustee may exercise any settlement options or other options or rights that may be available under the terms of any policy or contract. No beneficiary may hold the Trustee liable because of any election the Trustee has made with respect to any policy or contract.

**Section 13.03 Liability of Payor**

Persons or entities dealing in good faith with the Trustee are not required to see to the proper application of proceeds delivered to the Trustee, or to inquire into any provision of this trust.

A receipt signed by the Trustee for any proceeds or benefits paid will be a sufficient discharge to the person or entity making the payment.

**Section 13.04 Collection Efforts**

The Trustee shall make reasonable efforts to collect all life insurance policy proceeds and qualified retirement benefits payable to the trust.

The Trustee may commence legal or administrative proceedings to collect any life insurance policy proceeds or qualified retirement benefits to which the trust is entitled. The Trustee need not begin these proceedings until the Trustee is satisfactorily indemnified for any expenses and liabilities the Trustee may incur in connection with the proceeding.

The Trustee may settle any claims with respect to the collection of any life insurance proceeds or qualified retirement benefits to which the trust may be entitled. A settlement made by the Trustee is binding on all beneficiaries.

**Section 13.05 No Obligation to Purchase or Maintain Benefits**

Nothing in this trust imposes any obligation on either of us or on the Trustee to purchase, invest, or maintain any qualified retirement plan or life insurance policy.



## **Article Fourteen**

### **Trust Administration**

#### **Section 14.01 Deceased Spousal Exclusion Amount**

Upon the death of the first of us to die, then to the extent the first to die spouse's *applicable exclusion amount* as defined in Internal Revenue Code Section 2010(c)(2) cannot be fully used, the Trustee shall make an election under Internal Revenue Code Section 2010(c)(5)(A) to allow the second of us to die to take the first-to-die spouse's *deceased spousal unused exclusion amount* as defined in Internal Revenue Code Section 2010(c)(4), if any, into account in calculating the second to die spouse's applicable exclusion amount.

#### **Section 14.02 Homestead Provisions**

In order to claim homestead exemption rights under Sections 196.031 and 196.041, Florida Statutes, we may use, possess, and occupy any real property that may be owned by the trust. Our interest in any real property owned by the trust will be construed as *beneficial title in equity to real property* as set forth in Section 196.031(1), Florida Statutes, or any successor statute.

It is our intent that this trust be a "Qualifying Trust" for Texas Homestead exemption purposes, reserving (1) homestead protections available to us pursuant to Texas Constitution Article XVI, Section 50 and Property Code chapters 41 and 42; and (2) any available homestead tax exemption whether currently on file or not. Notwithstanding anything to the contrary contained herein, the Trustee shall allow the Trustor of the trust, or a beneficiary of the trust, the right to use and occupy as the Trustor's or beneficiary's principal residence residential property rent free and without charge except for taxes and other costs and expenses directly related to such property, for life or until the date the trust is revoked or terminated.

#### **Section 14.03 Distributions to Beneficiaries**

Whenever this trust authorizes or directs the Trustee to make a net income or principal distribution to a beneficiary, the Trustee may apply any property that otherwise could be distributed directly to the beneficiary for his or her benefit. The Trustee is not required to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this trust.

The Trustee may make cash distributions, in-kind distributions, or distributions partly in each, in proportions and at values determined by the Trustee. The Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that the Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

The Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

#### **Section 14.04 Beneficiary's Status**

Until the Trustee receives notice of the incapacity, birth, marriage, death, or other event upon which a beneficiary's right to receive payments may depend, the Trustee will not be held liable for acting or not acting with respect to the event, or for disbursements made in good faith to persons whose interest may have been affected by the event. Unless otherwise provided in this trust, a parent or Legal Representative may act on behalf of a minor or incapacitated beneficiary.

The Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. The Trustee will have no independent duty to investigate the status of any beneficiary and will not incur any liability for not doing so.

#### **Section 14.05 Mandatory Payments of a Pecuniary Amount**

If any person holds the right to receive a pecuniary amount from the trust upon our death, the Trustee must either:

- satisfy the entire pecuniary amount or irrevocably set aside property to
- satisfy the entire pecuniary amount within 15 months of our death; or
- pay appropriate interest, as defined in Treasury Regulations Section 26.2642-2(b)(4)(ii)(B), to the person.

If the Trustee satisfies the pecuniary amount with an in-kind distribution, the Trustee will allocate assets to satisfy the pecuniary amount in a manner that fairly reflects net appreciation or depreciation in the value of the available assets, as measured from the valuation date to the payment date.

#### **Section 14.06 Qualified Tuition Programs**

If the Trustee holds title to any interest in a qualified tuition program as defined under Section 529 of the Internal Revenue Code, the Trustee shall continue to hold and administer the interest on behalf of the designated beneficiary of the qualified tuition program. The Trustee may exercise any and all additional Trustee powers expressly stated under this trust agreement with respect to any qualified tuition program.

#### **Section 14.07 No Court Proceedings**

The Trustee shall administer this trust with efficiency, with attention to the provisions of this trust, and with freedom from judicial intervention. If the Trustee or another interested party institutes a legal proceeding, the court will acquire jurisdiction only to the extent necessary for that proceeding. Any proceeding to seek instructions or a court determination may only be initiated in the court with original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination is not to be construed as subjecting this trust to the court's continuing jurisdiction.

We request that any questions or disputes that arise during the administration of this trust be resolved by mediation and, if necessary, arbitration in accordance with the Uniform Arbitration Act. Each interested party involved in the dispute, including any Trustee

involved, may select an arbiter and, if necessary to establish a majority decision, these arbiters may select an additional arbiter. The decision of a majority of the arbiters selected will control with respect to the matter.

#### **Section 14.08 No Bond**

The Trustee is not required to furnish any bond for the faithful performance of the Trustee's duties unless required by a court of competent jurisdiction, and only if the court finds that a bond is needed to protect the beneficiaries' interests. No surety will be required on any bond required by any law or court rule, unless the court specifies its necessity.

#### **Section 14.09 Exoneration of the Trustee**

No successor Trustee is obligated to examine the accounts, records, or actions of any previous Trustee or the Personal Representative of a deceased Trustor. No successor Trustee may be held responsible for any act, omission, or forbearance by any previous Trustee or of the Personal Representative of a deceased Trustor.

Any Trustee may obtain written agreements from the beneficiaries or their Legal Representatives releasing and indemnifying the Trustee from any liability that may have arisen from the Trustee's acts, omissions, or forbearances. If acquired from all the trust's living beneficiaries or their Legal Representatives, any agreement is conclusive and binding on all parties, born or unborn, who may have or who may later acquire an interest in the trust.

The Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal, and may withhold distribution or allocation pending determination or release of a tax or other lien. This refunding agreement provision will not apply to any distribution that qualifies for the federal estate tax unlimited marital deduction or the federal estate tax charitable deduction.

#### **Section 14.10 Limitations on Trustee Liability**

We recognize that some individuals and institutions may be reluctant to serve as Trustee because of a concern about potential liability. Therefore, we direct that any individual or corporate fiduciary that serves as the Trustee will not incur any liability by reason of any error of judgment, mistake of law, or action or inaction of any kind in connection with the administration of any trust created under this trust, unless the Trustee's decision is shown by clear and convincing evidence to have been made in bad faith.

Any individual or corporate fiduciary currently serving as the Trustee may expend any portion of the trust assets to defend any claim brought against the Trustee, even if the Trustee's defense costs would exhaust the trust's value, unless the Trustee is shown to have acted in bad faith by clear and convincing evidence.

Any individual or corporate fiduciary that formerly served as the Trustee is entitled to reimbursement from the trust estate for any expenses, including attorney's fees and litigation costs reasonably incurred to defend any claim brought against the Trustee even

if the Trustee's defense costs would exhaust the trust's value, unless the Trustee is shown to have acted in bad faith by clear and convincing evidence.

#### **Section 14.11 Self-Dealing**

If a descendant of ours is serving as the Trustee, he or she may engage in acts of self-dealing, even though state law restricts acts of self-dealing. Unless expressly prohibited by another provision of our trust, a descendant of ours who is serving as the Trustee may enter into transactions on behalf of our trust in which the Trustee is personally interested so long as the terms of such transaction are fair to our trust. For example, a descendant of ours who is serving as the Trustee may purchase property from our trust at its fair market value without court approval.

#### **Section 14.12 Trustee Compensation**

During any period we or each of us are serving as Trustee under this agreement, we will receive no fee in connection with our service as Trustee.

Any other individual serving as Trustee is entitled to fair and reasonable compensation for the services provided as a fiduciary. A corporate fiduciary serving as Trustee will be compensated by agreement between an individual serving as Trustee and the corporate fiduciary. In the absence of an individual Trustee or an agreement, a corporate fiduciary will be compensated in accordance with the corporate fiduciary's current published fee schedule.

A Trustee entitled to compensation may charge additional fees for services provided that are beyond the ordinary scope of duties, such as fees for legal services, tax return preparation, and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out the Trustee's duties under this trust.

#### **Section 14.13 Foreign Trustees**

In creating this trust agreement, it is the intention that all trusts created by this instrument qualify as "United States Persons" under Internal Revenue Code Section 7701(a)(30)(E), and one or more United States Persons shall always have the authority to control all substantial decisions under this instrument. A person who is not a "United States Person" (as defined in Internal Revenue Code Section 7701(a)(30)(A) through (C)) shall not serve as Trustee, and any power, fiduciary or otherwise, held by a person who is not a United States Person shall be effective only to the extent such power is not the power to make a "substantial decision," as defined in Treasury Regulation Section 301.7701-7. Furthermore, any person who does not reside in one of the fifty (50) states of the United States or the District of Columbia, shall be disqualified from serving as Trustee of any trust created under this instrument.

#### **Section 14.14 Employment of Professionals**

The Trustee may appoint, employ, and remove investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, advisors, agents, and

employees to advise or assist in the performance of the Trustee's duties. The Trustee may act on the recommendations of the persons or entities employed, with or without independent investigation.

The Trustee may reasonably compensate an individual or entity employed to assist or advise the Trustee, regardless of any other relationship existing between the individual or entity and the Trustee.

The Trustee may compensate providers of contracted services at the usual rate out of the trust's income or principal, as the Trustee deems advisable. The Trustee may compensate an individual or entity employed to assist or advise the Trustee without diminishing the compensation the Trustee is entitled to under this trust. A Trustee who is a partner, stockholder, officer, director, or corporate affiliate in any entity employed to assist or advise the Trustee may still receive the Trustee's share of the compensation paid to the entity.

#### **Section 14.15 Exercise of Testamentary Power of Appointment**

A testamentary power of appointment granted under this trust may be exercised by a will, living trust or other written instrument specifically referring to the power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and may designate the terms and conditions, whether outright or in trust. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

The Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this trust has not been exercised by the beneficiary if the Trustee has no knowledge of the existence of a will, living trust or other written instrument exercising the power within three months after the beneficiary's death.

#### **Section 14.16 Determination of Principal and Income**

The Trustee shall determine how all Trustee fees, disbursements, receipts, and wasting of assets will be credited, charged, and apportioned between principal and income in a fair, equitable, and practical manner. The Trustee may allocate capital gain to income rather than principal.

The Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and the equalization of payments to or for the beneficiaries. The Trustee may select appropriate accounting periods for the trust property.

Notwithstanding the preceding provisions of this trust or Virginia law to the contrary, the Trustee shall treat distributions from any qualified retirement account to any trust established under this trust in any given year as income to the extent the distribution represents income generated or treated as generated by any qualified retirement account for that year.

**(a) Annuity and Other Periodic Payments**

*Annuity and other periodic payments* refers to distributions made to the Trustee over a fixed number of years or during the life of one or more individuals because of services provided or property transferred to the payor in exchange for future payments. This includes payments made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, individual retirement annuity, pension, profit-sharing plan, stock-bonus plan, stock-ownership plan, or similar arrangement. The Trustee shall treat annuity or other periodic payments to any trust established under this trust in any given year as income to the extent the distribution represents income generated and treated as generated by the annuity or other periodic payment for that year. If income information is not available, then the Trustee shall apportion the annuity or other periodic payments between principal and income in a fair, equitable and practical manner under the guidelines set forth in this Section.

To the extent an annuity or other periodic payment is characterized as interest, dividend, or other item of income, or an annuity or other periodic payment is made instead of interest, dividend, or other item of income, the Trustee shall allocate the payment to income. The Trustee shall allocate to principal the balance of the annuity or other periodic payment as well as any other payment received in the same accounting period that is not characterized as interest, dividend, or other item of income.

To the extent annuity or other periodic payments are made and no part of the payments are characterized as interest, dividend, or other item of income, the Trustee shall use the present value of the annuity or other periodic payments as finally determined for federal estate tax purposes, and the Internal Revenue Code Section 7520 rate used to determine the value for federal estate tax purposes to prepare an annuitization table to allocate the payments between income and principal.

If the amounts of annuity or other periodic payments change because of changes in the investment markets or other changes, the Trustee shall allocate the change in the amount of the payments between income and principal in a fair, equitable, and practical manner.

**(b) Protection of Estate Tax Marital Deduction**

If, to obtain an estate tax marital deduction for a trust established under this trust, the Trustee must allocate more of a payment to income than provided for by this Section, then the Trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

**Section 14.17 Trust Accounting**

Except to the extent required by law, the Trustee is not required to file accountings in any jurisdiction. During our lifetimes or the lifetime of the survivor of us, and as long as at



least one of us is serving as a Trustee, the Trustee is not required to provide an accounting to any person. If neither of us is serving as Trustee, the Trustee must provide an accounting to us at least annually unless waived. If both of us are incapacitated, or if one of us is deceased and the other is incapacitated, then the Trustee must provide the accounting to our Legal Representatives, unless waived by our Legal Representatives. After the death of the second of us to die, the Trustee must provide an annual accounting to the Qualified Beneficiaries of any trust created under this trust unless waived by the Qualified Beneficiaries.

The annual accounting must include the receipts, expenditures, and distributions of income and principal and the assets on hand for the accounting period. A copy of the federal fiduciary tax return filed for a trust during the accounting will satisfy this reporting requirement.

In the absence of fraud or obvious error, assent by all Qualified Beneficiaries to a Trustee's accounting will make the matters disclosed in the accounting binding and conclusive upon all persons, including those living on this date and those born in the future who have or will have a vested or contingent interest in the trust property. In the case of a Qualified Beneficiary who is a minor or incapacitated, the beneficiary's natural guardian or Legal Representative may give the assent required under this Section.

In all events, a beneficiary's Legal Representative may receive any notices and take any action on behalf of the beneficiary as to an accounting. If any beneficiary's Legal Representative fails to object to any accounting in writing within 60 days after the Trustee provides the accounting, the beneficiary's Legal Representative will be considered to assent to the accounting.

#### **Section 14.18 Information to Beneficiaries**

Privacy is an important issue to us. This Section defines the Trustee's duties to inform, account, and report to beneficiaries of various trusts created under this trust, and to other individuals during our lifetime and after our death. Except to the extent required by law, the Trustee is not required to comply with a request to furnish a copy of this trust to a Qualified Beneficiary at any time, and the Trustee is not required to send annual reports or reports upon termination of the trust to any Permissible Distributee or Qualified Beneficiary who requests the report. If the Trustee decides, in the Trustee's discretion, to provide any information to a Permissible Distributee or Qualified Beneficiary, the Trustee may exclude any information that the Trustee determines is not directly applicable to the beneficiary receiving the information. Any decision by the Trustee to make information available to any beneficiary does not constitute an obligation to provide any information to any beneficiary in the future.

##### **(a) Providing Information while Either of Us Is Alive and Not Incapacitated**

We waive all the Trustee's duties to give notice, information, and reports to any Qualified Beneficiaries other than us while either of us is alive and able to manage our financial resources effectively. The Trustee is not required to keep Qualified Beneficiaries of any trust created under this

trust other than us informed of the administration of the trust in any manner. Further, the Trustee is not required to respond to any request for information related to the administration of the trust from anyone who is not a Qualified Beneficiary, other than us.

**(b) Providing Information while Both of Us Are Incapacitated and after Our Deaths**

The Trustee shall deliver any notice, information, or reports which would otherwise be required to be delivered to either of us or to a Qualified Beneficiary to a person designated by the Trustee during any period that both of us are alive but incapacitated, during any period when one of us is deceased and the other is incapacitated, and after the death of both us. To preserve our privacy and the privacy of Qualified Beneficiaries under the trust, we request that while either of us is alive, the Trustee not provide any copies of the trust or any other information which may otherwise be required to be distributed to any beneficiary under Virginia law to any beneficiary to whom the information is not directly relevant. The designated person may, in his or her discretion and without waiver, distribute copies of all or any part of the trust or other relevant information about the trust to one or more Qualified Beneficiaries or other interested parties during any period that we are both incapacitated or one of us is deceased and the other is incapacitated.

**Section 14.19 Action of Trustees and Delegation of Trustee Authority**

When neither of us is serving as a Trustee, if two Trustees are eligible to act with respect to a given matter, they must agree unanimously for action to be taken unless the express terms of the Trustees' appointment provide otherwise. If more than two Trustees are eligible to act with respect to a given matter, the Trustees must agree by majority for action to be taken.

If the Trustees are unable to agree on a matter for which they have joint powers, we request that the matter be settled by mediation and then by arbitration, if necessary, in accordance with the Uniform Arbitration Act. Each of the Trustees may select an arbiter and these arbiters may select an additional arbiter, if necessary to establish a majority decision. The decision of a majority of the arbiters will control with respect to the matter.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee will be absolved from personal liability by registering the dissent or abstention in the trust records. After doing so, the dissenting Trustee must then act with the other Trustees in any way necessary or appropriate to effect the majority decision.

Notwithstanding the limitations set forth in this Section, unless a Trustee elects otherwise in a written instrument delivered to the other Trustees, if two or more Trustees are then serving, any one Trustee may sign any checks, agreements, or other documents on behalf of the trust with the same effect as if all Trustees had signed. Persons dealing with the signing Trustee in good faith may rely upon the signing Trustee's authority to act on behalf of the trust without inquiry as to the other Trustees' agreement.

Subject to the limitations set forth in Section 15.25, any Trustee may, by written instrument, delegate to any other Trustee the right to exercise any power, including a discretionary power, granted to the Trustee in this trust. During the time a delegation under this Section is in effect, the Trustee to whom the delegation is made may exercise the power to the same extent as if the delegating Trustee has personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice to the Trustee to whom the power was delegated.

#### **Section 14.20 Trustee May Disclaim or Release Any Power**

Notwithstanding any provision of this trust to the contrary, any Trustee may relinquish any Trustee power in whole or in part, irrevocably or for any specified period of time, by a written instrument. The Trustee may relinquish a power personally or may relinquish the power for all subsequent Trustees.

#### **Section 14.21 Trustee May Execute a Power of Attorney**

The Trustee may appoint any individual or entity to serve as the Trustee's agent under a power of attorney to transact any business on behalf of the trust or any other trust created under this trust.

#### **Section 14.22 Additions to Separate Trusts**

If upon the death of the survivor of us, or upon the termination of any trust created under this trust, a final distribution is to be made to a person who is the primary beneficiary of another trust established under this trust, and there is no specific indication whether the distribution is to be made in trust or outright, the Trustee shall make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, the distribution will be treated as though it had been an original part of the second trust.

#### **Section 14.23 Authority to Merge or Sever Trusts**

The Trustee may merge a trust created under this trust with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and have at least one Trustee in common. The Trustee may administer the merged trust under the provisions of the instrument governing the other trust, and this trust will no longer exist if it merges into another trust. Accordingly, in the event another trust is merged into this trust or a trust created under the provisions of this trust document, the Trustee may shorten the period during which this trust subsists to comply with Section 16.01, if necessary, to effect the merger. But if a merger does not appear feasible, the Trustee may consolidate the trusts' assets for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

The Trustee may sever any trust on a fractional basis into two or more separate and identical trusts, or may segregate a specific amount or asset from the trust property by allocating it to a separate account or trust. The separate trusts may be funded on a *non pro rata* basis, but the funding must be based on the assets' total fair market value on the funding date. After the segregation, income earned on a segregated amount or specific

asset passes with the amount or asset segregated. The Trustee shall hold and administer each severed trust upon terms and conditions identical to those of the original trust.

Subject to the trust's terms, the Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the effective severance date; however, the effective severance date may be retroactive to a date before the Trustee exercises the power.

#### **Section 14.24 Authority to Terminate Trusts**

The Independent Trustee may terminate any trust created under this trust at any time, if the Independent Trustee, determines that administering a trust created under this trust is no longer economical. Once distributed, the Trustee will have no further responsibility with respect to that trust property. The Trustee will distribute the trust property from a terminated trust in this order:

to us, if we are both then living;

if one of us is deceased, to the surviving Trustor, if the surviving Trustor is then a trust beneficiary;

if we are both deceased or the surviving Trustor is not a trust beneficiary, to the beneficiaries then entitled to mandatory distributions of the trust's net income, in the same proportions; and then

if none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of the trust's net income, in the amounts and shares the Independent Trustee determines.

#### **Section 14.25 Discretionary Distribution to Fully Utilize Basis Increase upon Death of Beneficiary**

To the extent we have permitted the Trustee to make distributions of principal to a trust beneficiary, the Independent Trustee may distribute as much of the trust's principal to the beneficiary as the Independent Trustee determines advisable so that, upon the beneficiary's death, his or her estate may utilize the basis increase allowed under Internal Revenue Code Section 1014 without causing an increase in the federal estate tax.

Before making a distribution of property under this Section, we request that the Trustee determine whether or not a good reason exists to retain the property in trust, such as whether the Trustee or the beneficiary might sell the property in the near future, as well as protection of the beneficiary from creditors, protection of the beneficiary from failed marriages, and protection of the asset for future generations. The Trustee has no liability to any beneficiary for any action or inaction by the Trustee under this Section, if made in good faith.

#### **Section 14.26 Foreign Tax Impact**

Notwithstanding anything to contrary contained herein, if any beneficiary hereunder may incur an undue tax burden as a result of being subject to taxes in a jurisdiction outside the United States and receiving his or her share of the trust property in further trust or from having his or her share distributed directly to him or her from a trust, then the Trustee may use his or her discretion to distribute such share to the beneficiary by whatever manner necessary to eliminate or relieve the application of such foreign tax. Methods of distribution may include, but are not limited to, distributing the share free of trust to the beneficiary and/or distributing the share to the Personal Representative named under the Last Will and Testament to further distribute the share to the beneficiary.

#### **Section 14.27 Merger of Corporate Fiduciary**

If any corporate fiduciary acting as the Trustee under this trust is merged with or transfers substantially all of its trust assets to another corporation, or if a corporate fiduciary changes its name, the successor will automatically succeed to the trusteeship as if that successor had been originally named a Trustee. No document of acceptance of trusteeship will be required.

#### **Section 14.28 Funeral and Other Expenses of Beneficiary**

Upon the death of an Income Beneficiary, the Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts, or other expenses incurred due to the death of the beneficiary from trust property. This Section only applies to the extent the Income Beneficiary has not exercised any testamentary power of appointment granted to the beneficiary under this trust.

The Trustee may rely upon any request by the deceased beneficiary's Legal Representative or family members for payment without verifying the validity or the amounts and without being required to see to the application of the payment. The Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or court rule and without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary's estate.

#### **Section 14.29 Marital Deduction Qualification**

The marital gift as described in Article Seven of this trust is intended to qualify for the federal estate tax marital deduction, and the provisions of this trust are to be construed to reflect this intent. To the extent that exercising a provision of this trust would disqualify the marital gift from the federal estate tax unlimited marital deduction, that provision is void.

#### **Section 14.30 Generation-Skipping Transfer Tax Provisions**

If any trust created under this trust would be partially exempt from generation-skipping transfer tax after the intended allocation of Available GST Exemption to the trust, then the Trustee may divide the partially exempt trust so that the allocation of Available GST Exemption can be made to a trust that will be entirely exempt from generation-skipping transfer tax. If the Trustee chooses to divide a trust that would otherwise be a partially

exempt trust, the Trustee must create and administer the separate trusts as provided in this Section.

**(a) Division into Exempt and Non-Exempt Trusts**

The Trustee shall divide the property of the otherwise partially-exempt trust into two separate trusts, the *exempt trust* and the *nonexempt trust*. The exempt trust will consist of the largest fractional share of the otherwise partially exempt trust's total assets that will permit the exempt trust to be entirely exempt from generation-skipping transfer tax. The *nonexempt trust* will consist of the balance of the otherwise partially exempt trust's total assets.

To compute the fractional share, the Trustee will use asset values as finally determined for transfer tax purposes. The Trustee must then apply the fraction to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of the fraction will include fluctuations in the trust property's value. We request that the Trustee allocate the value of any Roth IRAs payable to the trust to the exempt trust to the extent possible.

**(b) Administration of the Trusts**

The Trustee shall administer the exempt and nonexempt trusts created under this Section as separate and independent trusts, but under the same terms as the original trust. To the extent possible, the Trustee should make distributions to a non-skip person as defined by Internal Revenue Code Section 2613 from the nonexempt trust and distributions to a skip person as defined by Section 2613 from an exempt trust. The Trustee may designate names for the exempt and nonexempt trusts.

If an exempt trust and a nonexempt trust are further divided under the terms of this trust, the Trustee may allocate property from the exempt trust first to the trust from which a generation-skipping transfer is more likely to occur.

**(c) Expression of Our Intent**

Our intent is to minimize the application of the generation-skipping transfer tax to the trust property, but not to affect the total amount of trust property to which any beneficiary may be entitled under this trust. This trust must be construed and interpreted to give effect to this intent.

**(d) Additions of Property to Exempt and Non-Exempt Trusts**

If at any time any property that has an inclusion ratio greater than zero for generation-skipping transfer tax purposes would be added to a trust with property that has an inclusion ratio of zero, then the Trustee will instead hold the property in a separate trust on the same terms and conditions as the original trust.



**(e) Re-Allocation**

If the Trustee's determination of whether a trust in this trust is partially, entirely, or not exempt from GST taxes is later incorrect (for example, if the Congress by law or the Service by regulation or ruling applies the generation-skipping transfer tax retroactively to the trust), the Trustee may re-allocate the assets as of the initial division date, as provided in this Section.

**Section 14.31 Independent Trustee May Confer Testamentary Power of Appointment**

During the Primary beneficiary's lifetime, the Independent Trustee may grant the primary beneficiary a testamentary power to appoint all or part of the primary beneficiary's trust or trust share to the creditors of the primary beneficiary's estate. The Independent Trustee may require that the primary beneficiary obtain the consent of the Independent Trustee granting the power, as a condition for the exercise of the power. Any testamentary power of appointment granted by the Independent Trustee may only be exercised personally by the beneficiary, must be exercised in writing and may be revoked at any time during the lifetime of the primary beneficiary to whom the power was given. We suggest that the Independent Trustee exercise this authority to subject trust property to estate tax instead of the generation-skipping transfer tax or when it may reduce overall taxes.

# **Article Fifteen**

## **The Trustee's Powers**

### **Section 15.01 Introduction to Trustee's Powers**

Except as otherwise specifically provided in this trust, the Trustee may exercise the powers granted by this trust without prior approval from any court, including those powers set forth under the laws of the Commonwealth of Virginia or any other jurisdiction whose law applies to this trust. The powers set forth in VA Code § 64.2-105, including any substitute or successor section(s), are specifically incorporated into this trust.

The Trustee shall exercise the Trustee powers in the manner the Trustee determines to be in the beneficiaries' best interests. The Trustee must not exercise any power inconsistent with the beneficiaries' right to the enjoyment of the trust property in accordance with the general principles of trust law.

The Trustee may have duties and responsibilities in addition to those described in this trust. We encourage any individual or corporate fiduciary serving as Trustee to obtain appropriate legal advice if the Trustee has any questions concerning the duties and responsibilities as Trustee.

### **Section 15.02 Execution of Documents by the Trustee**

The Trustee may execute and deliver any written instruments that the Trustee considers necessary to carry out any powers granted in this trust.

### **Section 15.03 Investment Powers in General**

The Trustee may invest in any type of investment that the Trustee determines is consistent with the investment goals of the trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account the overall investment portfolio of the trust.

Without limiting the Trustee's investment authority in any way, we request that the Trustee exercise reasonable care and skill in selecting and retaining trust investments. We also request that the Trustee take into account the following factors in choosing investments:

- the potential return from the investment, both in income and appreciation;
- the potential income tax consequences of the investment;
- the investment's potential for volatility; and
- the role the investment will play in the trust's portfolio.

We request that the Trustee also consider the possible effects of inflation or deflation, changes in global and US economic conditions, transaction expenses, and the trust's need for liquidity while arranging the trust's investment portfolio.

The Trustee may delegate his or her discretion to manage trust investments to any registered investment advisor or corporate fiduciary.

#### **Section 15.04 Banking Powers**

The Trustee may establish any type of bank account in any banking institutions and/or credit unions that the Trustee chooses. If the Trustee makes frequent disbursements from an account, the account does not need to be interest bearing. The Trustee may authorize withdrawals from an account in any manner.

The Trustee may open accounts in the name of the Trustee, with or without disclosing fiduciary capacity, and may open accounts in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the account's fiduciary nature or refer to any trust or Trustee.

#### **Section 15.05 Business Powers**

If the trust owns or acquires an interest in a business entity, whether as a shareholder, partner, general partner, sole proprietor, member, participant in a joint venture, or otherwise, the Trustee may exercise the powers and authority provided for in this Section. The powers granted in this Section are in addition to all other powers granted to the Trustee in this trust.

##### **(a) No Duty to Diversify**

Notwithstanding any duty to diversify imposed by state law or any other provision of this trust, the Trustee may acquire or indefinitely retain any ownership interest in or indebtedness of any closely held or nonpublicly traded entity in which the trust, we, our descendants, and the spouses of our descendants have an ownership interest (the *business interests*), and even though any business interest may constitute all or a substantial portion of the trust property. We specifically authorize the Trustee to invest or indefinitely retain all or any part of the trust property in these business interests, regardless of any resulting risk, lack of income, diversification, or marketability. We waive any applicable prudent investor rule, as well as the Trustee's standard of care and duty to diversify with respect to the acquisition or retention of these business interests.

We recognize that the value of a noncontrolling interest in a business entity may be less than the underlying value of the entity's net assets. Nevertheless, we authorize the Trustee to acquire or retain any noncontrolling business interests.

##### **(b) Specific Management Powers**

The Trustee has all power and authority necessary to manage and operate any business owned by the trust, whether directly or indirectly, including the express powers set forth in this Subsection. The Trustee may participate directly in the conduct of the business, by serving as a general partner of a limited partnership, a member, manager or managing member

of a limited liability company, or a shareholder of a corporation, or may employ others to serve in that capacity.

The Trustee may participate in the management of the business and delegate management duties and powers to any employee, manager, partner, or associate of the business, without incurring any liability for the delegation. To the extent that the business interest held by the trust is not one that includes management powers (such as a minority stock interest, limited partnership interest, or a membership interest in a limited liability company), the Trustee has no obligation to supervise the management of the underlying assets, and no liability for the actions of those who do manage the business.

The Trustee may enter into management trusts and nominee trusts in which the Trustee and the trust may serve as the exclusive manager or nominee of property or property interests on behalf of any limited partnership, limited liability company, or corporation.

The Trustee, individually, or if the Trustee is a corporate fiduciary, then an employee of the Trustee, may act as a director, general or limited partner, associate, or officer of the business.

The Trustee may participate with any other person or entity in the formation or continuation of a partnership either as a general or limited partner, or in any joint venture. The Trustee may exercise all the powers of management necessary and incidental to a membership in the partnership, limited partnership, or joint venture, including making charitable contributions.

The Trustee may reduce, expand, limit, or otherwise adjust the operation or policy of the business. The Trustee may subject the trust's principal and income to the risks of the business for any term or period, as the Trustee determines.

For any business in which the trust has an interest, the Trustee may advance money or other property, make loans (subordinated or otherwise) of cash or securities, and guarantee the loans of others made to the business. The Trustee may borrow money for the business, either alone or with other persons interested in the business, and may secure the loan or loans by a pledge or mortgage of any part of any trust property.

The Trustee may select and vote for directors, partners, associates, and officers of the business. The Trustee may enter into owners' agreements with a business in which the trust has an interest or with the other owners of the business.

The Trustee may execute agreements and amendments to agreements as may be necessary to the operation of the business, including stockholder agreements, partnership agreements, buy-sell agreements, and operating agreements for limited liability companies.

The Trustee may generally exercise any powers necessary for the continuation, management, sale, or dissolution of the business.

The Trustee may participate in the sale, reorganization, merger, consolidation, recapitalization, or liquidation of the business. The Trustee may sell or liquidate the business or business interest on terms the Trustee deems advisable and in the best interests of the trust and the beneficiaries. The Trustee may sell any business interest held by the trust to one or more of the beneficiaries of this trust or to any trust in which a majority of the beneficiaries are beneficiaries of this trust. The Trustee may make the sale in exchange for cash, a private annuity, an installment note, or any combination of those.

The Trustee may exercise all of the business powers granted in this trust even though the Trustee may be personally invested in or otherwise involved with the business.

**(c) Business Liabilities**

If any tort or contract liability arises in connection with the business, and if the trust is liable, the Trustee will first satisfy the liability from the assets of the business, and only then from other trust property as determined by the Trustee.

**(d) Trustee Compensation**

In addition to the compensation set forth in Section 14.12, the Trustee may receive additional reasonable compensation for services in connection with the operation of the business. The Trustee may receive this compensation directly from the business, the trust or both.

**(e) Conflicts of Interest**

The Trustee may exercise all of the powers granted in this trust even though the Trustee may be involved with or have a personal interest in the business.

**Section 15.06 Contract Powers**

The Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that the Trustee deems advisable. The Trustee may grant options of any duration for any sales, exchanges, or transfers of trust property.

The Trustee may enter into contracts, and may deliver deeds or other instruments, that the Trustee considers appropriate.

**Section 15.07 Common Investments**

For purposes of convenience with regard to the trust property's administration and investment, the Trustee may invest part or all of the trust property jointly with property of other trusts for which the Trustee is also serving as a Trustee. A corporate fiduciary

acting as the Trustee may use common funds for investment. When trust property is managed and invested in this manner, the Trustee will maintain records that sufficiently identify this trust's portion of the jointly invested assets.

### **Section 15.08 Environmental Powers**

The Trustee may inspect trust property to determine compliance with or to respond to any environmental law affecting the property. For purposes of this trust, *environmental law* means any federal, state, or local law, rule, regulation, or ordinance protecting the environment or human health.

The Trustee may refuse to accept property if the Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to any Trustee.

The Trustee may use trust property to:

- conduct environmental assessments, audits, or site monitoring;
- take remedial action to contain, clean up, or remove any hazardous substance including a spill, discharge, or contamination;
- institute, contest, or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance;
- comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement, or cleanup of any hazardous substance; and
- employ agents, consultants, and legal counsel to assist the Trustee in these actions.

The Trustee is not liable for any loss or reduction in value sustained by the trust as a result of the Trustee's decision to retain property on which hazardous materials or substances requiring remedial action are discovered, unless the Trustee contributed to that loss through willful misconduct or gross negligence.

The Trustee is not liable to any beneficiary or to any other party for any decrease in the value of property as a result of the Trustee's actions to comply with any environmental law, including any reporting requirement.

The Trustee may release, relinquish, or disclaim any power held by the Trustee that the Trustee determines may cause the Trustee to incur individual liability under any environmental law.

### **Section 15.09 Farming and Ranching Operations**

If the trust owns or acquires an interest in a farm, ranch, or other agricultural property or business, the Trustee may exercise the authority and discretion provided in this Section. The powers granted in this Section are in addition to all other powers granted to the Trustee in this trust.



**(a) Authority to Operate the Farm or Ranch**

Notwithstanding any duty to diversify imposed by state law, the Trustee may retain and continue to operate a farm or ranch, even though the interest may constitute all or a substantial portion of the trust property.

The Trustee may take part in farm or ranch management, or hire a farm manager or a professional farm management service. The Trustee may delegate any of the powers authorized by this Section to a hired farm manager or professional farm management service.

The Trustee may purchase, sell, hold, manage, operate, lease, improve, and maintain the farm or ranch and any of its interests, and in general deal with all things necessary for operation as the Trustee deems advisable.

The Trustee may buy, sell, and raise livestock; plant, cultivate, harvest, and sell cash crops; produce timber or forest products for sale; or lease or rent all or part of the farm or ranch for cash or a crop share.

The Trustee may contract with hired labor, tenants, or sharecroppers.

The Trustee may construct, repair, and improve farm buildings, fences, and other farm or ranch structures, including drainage facilities, wells, ponds, and lagoons. The Trustee may participate in cooperative agreements concerning water and ditch rights.

The Trustee may purchase or rent any kind of farm machinery, equipment, feed, and seed necessary to operate the farm or ranch.

The Trustee may use approved soil conservation practices in order to conserve, improve, and maintain the soil's productivity. The Trustee may engage in timber or forest conservation practices.

The Trustee may engage in any farm program sponsored by any federal, state, or local governmental agency.

**(b) Business Liabilities**

If any tort or contract liability arises in connection with the farm or ranch, and if the trust is liable, the Trustee will first satisfy the liability from the assets of the farm or ranch, and only then from other property.

**(c) Trustee Compensation**

In addition to the compensation set forth in Section 14.12, the Trustee may receive additional reasonable compensation for services in connection with the operation of a farm or ranch. The Trustee may receive this compensation directly from the farm or ranch, the trust, or both.

**(d) Conflicts of Interest**

The Trustee may exercise all of the powers granted in this trust, even though the Trustee may be involved with or have a personal interest in the farm or ranch.

## **Section 15.10 Insurance Powers**

The Trustee may purchase, accept, hold, and deal with as owner, insurance policies on either or both of our lives, any beneficiary's life, or any person's life in whom any beneficiary has an insurable interest.

The Trustee may purchase disability, medical, liability, longterm health care and other insurance on behalf of and for the benefit of any beneficiary. The Trustee may purchase annuities and similar investments for any beneficiary.

The Trustee may execute or cancel any automatic premium loan agreement with respect to any policy, and may elect or cancel any automatic premium loan provision in a life insurance policy. The Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company issuing the policy or from another source. The Trustee may assign the policy as security for the loan.

The Trustee may exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy to reduce the amount of a policy, to convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or extended-term insurance nonforfeiture option contained in a policy.

The Trustee may sell any policy at its fair market value to anyone having an insurable interest in the policy, including the insured.

The Trustee may exercise any other right, option, or benefit contained in a policy or permitted by the issuing insurance company.

Upon termination of the trust, the Trustee may transfer and assign the policies held by the trust as a distribution of trust property.

## **Section 15.11 Loans and Borrowing Powers**

The Trustee may make loans to any person including a beneficiary, as well as an entity, trust, or estate, for any term or payable on demand, with or without interest, and secured or unsecured.

The Trustee may encumber any trust property by mortgages, pledges, or otherwise, and may negotiate, refinance, or enter into any mortgage or other secured or unsecured financial arrangement, whether as a mortgagee or mortgagor. The term may extend beyond the trust's termination and beyond the period required for an interest created under this trust to vest in order to be valid under the rule against perpetuities.

The Trustee may pledge or mortgage any and all property, including real property, held by the trust as collateral for a loan made to either or both of us in our individual capacity.

The Trustee may enter into, negotiate, or modify the terms of any mortgage or any other secured or unsecured agreement granted in connection with any loan entered into by either or both of us or by any Trustee, and may release or foreclose on any mortgage or security interest payable to either or both of us or to the trust.

The Trustee may borrow money at interest rates and on other terms that the Trustee deems advisable from any person, institution, or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

The Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. The Trustee may accept deeds instead of foreclosing.

The Trustee's power under this section shall also apply to irrevocable trusts established under this trust instrument. The Trustee shall remain responsible for valid debts entered into by prior Trustees.

### **Section 15.12 Nominee Powers**

The Trustee may hold real estate, securities, and any other property in the name of a nominee or in any other form, without disclosing the existence of any trust or fiduciary capacity.

### **Section 15.13 Oil, Gas and Mineral Interests**

The Trustee may acquire, maintain, develop, and exploit, either alone or jointly with others, any oil, gas, coal, mineral, or other natural resource rights or interests.

The Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell, and exchange any of those rights and interests on terms and for a price that the Trustee deems advisable.

The Trustee may execute leases, pooling, unitization, and other types of agreements in connection with oil, gas, coal, mineral, and other natural resource rights and interests, even though the terms of those arrangements may extend beyond the trust's termination.

The Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it considers proper.

The Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the trust's principal and income.

### **Section 15.14 Payment of Property Taxes and Expenses**

Except as otherwise provided in this trust, the Trustee may pay any property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments will be a charge against the trust property and will be paid by the Trustee out of income. If the income is insufficient, then the Trustee may make any payments of property taxes or expenses out of the trust property's principal. The Trustee's determination with respect to this payment will be conclusive on the beneficiaries.

### **Section 15.15 Purchase of Assets from and Loans to a Deceased Trustor's Probate Estate**

Upon the death of a Trustor, the Trustee may purchase at fair market value and retain in the form received any property that is a part of the deceased Trustor's probate or trust estate as an addition to the trust. In addition, the Trustee may make secured and unsecured loans to the deceased Trustor's probate or trust estate. The Trustee may not be held liable for any loss suffered by the trust because of the exercise of the powers granted in this Section.

The Trustee may not use any trust property for the benefit of the deceased Trustor's estate as defined in Code of Federal Regulations Title 26 Section 20.2042-1(b), unless the property is included in the deceased Trustor's gross estate for federal estate tax purposes.

### **Section 15.16 Qualified Real Property Valuation**

The Independent Trustee has the power to amend the terms of a trust holding *qualified real property* as defined in Internal Revenue Code Section 2032A, in order to permit the qualified real property to qualify for special use valuation permitted under Section 2032A, even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

### **Section 15.17 Qualified Tuition Programs**

The Trustee may purchase tuition credits or certificates or make contributions to an account in one or more qualified tuition programs as defined under Internal Revenue Code Section 529 on a beneficiary's behalf for the purpose of meeting the beneficiary's qualified higher education expenses. With respect to an interest in any qualified tuition program, the Trustee may act as Trustee, contributor, (or similar designation given to the person who maintains control of an interest in the qualified tuition program), administering the interest by actions including:

- designating and changing the designated beneficiary of the interest in the qualified tuition program;

- designating and changing the Trustee (or similar designation given to the person who maintains control of an interest in the qualified tuition program);

- requesting both qualified and nonqualified withdrawals;

- selecting among investment options and reallocating funds among different investment options;

- making rollovers to another qualified tuition program; and

- allocating any tax benefits or penalties to the beneficiaries of the trust.

Investment in a qualified tuition program will not be considered a delegation of investment responsibility under any applicable statute or other law.

### **Section 15.18 Real Estate Powers**

The Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve, and in general deal in and with real property in the manner and on the terms and conditions as the Trustee deems appropriate.

The Trustee may grant or release easements in or over, subdivide, partition, develop, make improvements to, and abandon any real property.

The Trustee may manage real estate in any manner considered best, and may exercise all other real estate powers necessary to effect this purpose.

The Trustee may enter into contracts to sell real estate. The Trustee may enter into leases and grant options to lease trust property, even though the term of the agreement extends beyond the termination of any trusts established under this trust and beyond the period that is required for an interest created under this trust to vest in order to be valid under the rule against perpetuities. The Trustee may enter into any contracts, covenants, and warranty agreements that the Trustee deems appropriate.

### **Section 15.19 Residences and Tangible Personal Property**

The Trustee may acquire, maintain, and invest in any residence for the beneficiaries' use and benefit, whether or not the residence is income producing and without regard to the proportion that the residence's value may bear to the trust property's total value, even if retaining the residence involves financial risks that Trustees would not ordinarily incur. The Trustee may pay or make arrangements for others to pay all carrying costs of any residence for the beneficiaries' use and benefit, including taxes, assessments, insurance, maintenance, and other related expenses.

The Trustee may acquire, maintain, and invest in articles of tangible personal property, whether or not the property produces income. The Trustee may pay for the repair and maintenance of the property.

The Trustee is not required to convert the property referred to in this Section to income-producing property, except as required by other provisions of this trust.

The Trustee may permit any Income Beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that the Trustee determines, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

The Trustee is not liable for any depreciation or loss resulting from any decision to retain or acquire any property as authorized by this Section.

### **Section 15.20 Digital Assets**

The Trustee has the authority to access, modify, control, archive, transfer, and delete our digital assets. Such access shall include access to the contents of electronic communications and/or the catalogue of those communications and other digital assets.

Digital assets include our sent and received emails, email accounts, digital music, digital photographs, digital videos, gaming accounts, software licenses, social-network accounts,

file-sharing accounts, financial accounts, domain registrations, Domain Name System (DNS) service accounts, blogs, listservs, web-hosting accounts, tax-preparation service accounts, online stores and auction sites, online accounts, and any similar digital asset that currently exists or may be developed as technology advances.

Our digital assets may be stored in the cloud or on our own digital devices. The Trustee may access, use, and control our digital devices in order to access, modify, control, archive, transfer, and delete our digital assets—this power is essential for access to our digital assets that are only accessible through our digital devices. Digital devices include desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar hardware that currently exists or may be developed as technology advances.

The Trustee may exercise the powers under this Section in conjunction with any other powers listed under this Article.

### **Section 15.21 Retention and Abandonment of Trust Property**

The Trustee may retain any property constituting the trust at the time of its creation, at the time of the death of a Trustor, or as the result of the exercise of a stock option, without liability for depreciation or loss resulting from retention. The Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

The Trustee may hold property that is not income producing or is otherwise nonproductive if holding the property is in the best interests of the beneficiaries in the sole and absolute discretion of the Trustee. On the other hand, the Trustee will invest contributions of cash and cash equivalents as soon as reasonably practicable after the assets have been acquired by the trust.

The Trustee may retain a reasonable amount in cash or money market accounts to pay anticipated expenses and other costs, and to provide for anticipated distributions to or for the benefit of a beneficiary.

The Trustee may abandon any property that the Trustee considers of insignificant value.

### **Section 15.22 Securities, Brokerage and Margin Powers**

The Trustee may buy, sell, trade, and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, and other securities of any kind and in any amount, including short sales. The Trustee may write and purchase call or put options, and other derivative securities. The Trustee may maintain margin accounts with brokerage firms, and may pledge securities to secure loans and advances made to the Trustee or to or for a beneficiary's benefit.

The Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. The Trustee may have all securities registered in the name of the bank or trust company or in the name of the bank's nominee or trust company's nominee. The Trustee may appoint the bank or trust company as the agent or attorney in fact to

collect, receive, receipt for, and disburse any income, and generally to perform the duties and services incident to a custodian of accounts.

The Trustee may employ a broker-dealer as a custodian for securities held by the trust, and may register the securities in the name of the broker-dealer or in the name of a nominee; words indicating that the securities are held in a fiduciary capacity are optional. The Trustee may hold securities in bearer or uncertificated form, and may use a central depository, clearing agency, or book-entry system, such as The Depository Trust Company, Euroclear, or the Federal Reserve Bank of New York.

The Trustee may participate in any reorganization, recapitalization, merger, or similar transaction. The Trustee may exercise or sell conversion or subscription rights for securities of all kinds and descriptions. The Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution, and may vote or refrain from voting on any matter.

### **Section 15.23 Settlement Powers**

The Trustee may settle any claims and demands in favor of or against the trust by compromise, adjustment, arbitration, or other means. The Trustee may release or abandon any claim in favor of the trust.

### **Section 15.24 Subchapter S Corporation Stock Provisions**

During any period the trust is not treated as a grantor trust for tax purposes under Internal Revenue Code Section 671, this trust or any trust created under this trust may hold any S corporation stock held as a separate *Electing Small Business Trust*, or as a separate *Qualified Subchapter S Trust*, as provided in this Section.

For purposes of this Section, *S corporation stock* means all capital stock issued by a corporation (or other entity taxable as a corporation for federal income tax purposes) that is treated or is intended to be treated under Section 1361(a) as an *S corporation* for federal income tax purposes.

#### **(a) Electing Treatment as an Electing Small Business Trust**

If the Trustee elects under Internal Revenue Code Section 1361(e)(3) to qualify any portion of the trust as an *Electing Small Business Trust*, the Trustee shall:

apportion a reasonable share of the unallocated expenses of all trusts created under this trust to the Electing Small Business Trust under the applicable provisions of the Internal Revenue Code and Treasury Regulations; and

administer the trust as an Electing Small Business Trust, under Internal Revenue Code Section 1361(e).



**(b) Electing Treatment as a Qualified Subchapter S Trust**

If the current Income Beneficiary of the trust makes an election under Section 1361(d)(2) to qualify the trust as a Qualified Subchapter S Trust within the meaning of Section 1361(d)(3), the Trustee shall:

refer to the Qualified Subchapter S Trust using the same name as the trust to which the stock was originally allocated, plus the name of the current Income Beneficiary of the trust, followed by the letters QSST;

administer the Qualified Subchapter S Trust in accordance with the same provisions contained in the trust to which the Trustee allocated the S corporation stock, as long as the provisions of this Subsection control the trust administration to the extent that they are inconsistent with the provisions of the original trust; and

maintain the Qualified Subchapter S Trust as a separate trust held for the benefit of only one beneficiary as required in Section 1361(d)(3).

The Trustee shall recommend that the current Income Beneficiary of the trust make a timely election to cause federal tax treatment of the trust as a Qualified Subchapter S Trust.

**(1) Current Income Beneficiary**

The *current Income Beneficiary* of a Qualified Subchapter S Trust is the person who has a present right to receive income distributions from the trust to which the Trustee has allocated the S corporation stock. A Qualified Subchapter S Trust may have only one current Income Beneficiary.

If, under the terms of the trust, more than one person has a present right to receive income distributions from the trust originally holding the S corporation stock, the Trustee shall segregate the S corporation stock into separate Qualified Subchapter S Trusts for each of these people.

**(2) Distributions**

Until the earlier of the death of the current Income Beneficiary or the date on which the trust no longer holds any S corporation stock (the *QSST termination date*), the Trustee shall distribute at least annually all of the trust's *net income*, as defined in Internal Revenue Code Section 643(b) to the current Income Beneficiary.

The terms of the trust to which the S corporation stock was originally allocated govern distributions of principal from the Qualified Subchapter S Trust. But until the QSST

termination date, the Trustee may distribute principal only to the current Income Beneficiary of the Qualified Subchapter S Trust and not to any other person or entity.

If the Qualified Subchapter S Trust terminates during the lifetime of the current Income Beneficiary, the Trustee shall distribute all assets of the Qualified Subchapter S Trust to the current Income Beneficiary outright and free of the trust.

### **(3) Allocation of Income and Expenses**

The Trustee shall characterize receipts and expenses of any Qualified Subchapter S Trust in a manner consistent with Internal Revenue Code Section 643(b).

### **(4) Trust Merger or Consolidation**

Notwithstanding any other provision of this trust that may seem to the contrary, the Trustee may not merge any Qualified Subchapter S Trust with another trust's assets if doing so would jeopardize the qualification of either trust as a Qualified Subchapter S Trust.

## **(c) Governance of the Trusts**

The following additional provisions apply to any separate trust created under this Section.

### **(1) Protection of S Corporation Status**

The Trustee must not administer a trust holding S corporation stock in a manner that would cause the termination of the S corporation status of the entity whose stock is held as part of the trust. Therefore, during any period that the trust holds S corporation stock, the Trustee must construe the terms and provisions of this trust in a manner that is consistent with the trust qualifying as an Electing Small Business Trust or as a Qualified Subchapter S Trust. The Trustee must disregard any provision of this trust that cannot be so construed or applied.

### **(2) Methods of Distribution**

The Trustee may not make distributions in a manner that would jeopardize the trust's qualification as an Electing Small Business Trust or as a Qualified Subchapter S Trust.

### **(3) Disposition of S Corporation Stock**

If the Trustee believes the continuation of any trust would result in the termination of the S corporation status of any entity whose stock is held as a part of the trust property, the

Trustee, other than an Interested Trustee, in addition to the power to sell or otherwise dispose of the stock, has the power to distribute the stock to the person who is then entitled to receive the income from the trust.

## **Section 15.25 Limitation on the Trustee's Powers**

All powers granted to Trustees under this trust or by applicable law are limited as set forth in this Section, unless explicitly excluded. The limitations set forth in this Section do not apply to either of us while we are both alive, and do not apply if either of us is serving as Trustee of the Marital Trust.

### **(a) An Interested Trustee Limited to Ascertainable Standards**

An Interested Trustee may only make discretionary decisions when they pertain to a beneficiary's health, education, maintenance, or support as described under Internal Revenue Code Sections 2041 and 2514, except as may be otherwise expressly stated.

### **(b) Interested Trustee Prohibited from Acting**

Whenever this trust specifically prohibits or limits an Interested Trustee from exercising discretion or performing an act, then any Interested Trustee serving as the Trustee is prohibited from participating in the exercise of that discretion or performance of that act. If there is no Trustee serving who is not an Interested Trustee, then an Independent Special Trustee may be appointed under the provisions of Section 3.08 to exercise the discretion or perform the act.

### **(c) Exclusive Powers of My Independent Trustee**

Whenever a power or discretion is granted exclusively to the Independent Trustee, then any Interested Trustee who is then serving as the Trustee is prohibited from participating in the exercise of the power or discretion. If there is no Independent Trustee then serving, then an Independent Special Trustee may be appointed under the provisions of Section 3.08 to exercise the power or discretion that is exercisable only by the Independent Trustee.

### **(d) No Distributions in Discharge of Certain Legal Obligations**

The Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the Trustee, including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any

manner discharge a legal obligation of the person having the power to remove the Trustee, including that person's obligation of support.

**(e) Insurance Policy on the Life of the Trustee**

If the trust holds a policy that insures the life of a Trustee, other than a Trustor, that Trustee may not exercise any powers or rights with respect to the policy. Instead, a Co-Trustee or an Independent Special Trustee must exercise the powers and rights with respect to the policy.

If any rule of law or court decision construes the ability of the insured Trustee to name an Independent Special Trustee as an incident of ownership of the policy, then a majority of the then current Income Beneficiaries (excluding the insured Trustee if he or she is a beneficiary) will select the Independent Special Trustee.

The limitations of this subsection do not apply if the proceeds of the policy would, upon the death of the Trustee, otherwise be includable in the Trustee's gross estate for federal estate tax purposes.

**(f) Insurance Policy on a Beneficiary's Life**

If the trust holds a policy that insures a beneficiary's life, other than a Trustor, the beneficiary, individually or as Trustee, may not exercise any power over the policy, its cash value, or its proceeds. This denial of power is intended to prevent an insured beneficiary from holding any power that would constitute an incident of ownership of the policy.

In addition, no distribution of income or principal to the insured beneficiary may be satisfied out of the policy's proceeds, cash value, or other economic benefit of the policy.

The limitations of this Subsection do not apply if, upon the beneficiary's death, the policy's proceeds would otherwise be included in the beneficiary's gross estate for federal estate tax purposes.

## **Article Sixteen**

### **General Provisions**

#### **Section 16.01 Maximum Term for Trusts**

To the extent permitted by law, the rule against perpetuities shall not apply to this trust agreement or any trusts created under this trust agreement, and this provision shall be given effect to the fullest extent permissible by the applicable law of any jurisdiction governing this agreement or governing the management, distribution or disposition of any trust property, real or personal, comprising all or a portion of the agreement.

However, to the extent the rule against perpetuities shall apply in whole or in part to any portion of the trust property, any differentiation between beneficiaries of this agreement as to the time for vesting of any interest therein, which shall be required in order to avoid violating the rule, shall be made by the Trustee, and any distributions of the trust property free of trust, which may likewise be required to avoid violating the rule, shall be made by the Trustee.

If under any provision of this agreement, any portion of the trust property would be held in trust beyond 21 years after the last to die of the descendants of our maternal and paternal grandparents, and the other beneficiaries hereunder, who are living at the time of the first of us to die, then such portion shall terminate and the principal of such portion and any unpaid income shall be paid and distributed to the beneficiaries then living who would have been entitled to receive the income had the trust continued, in the proportions to which they would have been entitled to receive, or if such proportions are indefinite, equally to such beneficiaries without regard to their relationship to us. For purposes of this provision, any beneficiary entitled to receive support shall be considered entitled to receive income.

#### **Section 16.02 Spendthrift Provision**

This spendthrift provision expresses and constitutes a material purpose of this trust instrument ("Trust"). Each irrevocable trust created hereunder is a spendthrift trust, unless otherwise expressly stated, and each trust shall enjoy the full benefits of spendthrift protection.

##### **(a) General Provision**

No disposition, charge or encumbrance on the income or principal of any trust established hereunder shall be valid or binding upon the Trustee. No beneficiary of this Trust shall have any right or power to sell, assign, convey, mortgage, pledge, anticipate, hypothecate, or otherwise dispose of any right, title or interest which any beneficiary may acquire to the income or principal of this Trust until such share or any part of such share shall have been actually paid over and delivered to the beneficiary by the Trustee. Neither the income nor the principal of this Trust shall be liable for, or to any extent subject to, any debts of any kind or character incurred by or contracted by any beneficiary before or after our deaths, nor shall

any such income or principal be subject in any manner to any claim of any creditor of any beneficiary, or be liable to attachment, execution or other process of law.

**(b) Delay of Distributions**

Notwithstanding any other provisions of this Trust concerning distributions to any beneficiary of any Trust created hereunder (except for any Trustor of the Trust), the Trustee of any Trust created hereunder, in the Trustee's sole discretion, may delay distributions to any beneficiary of the Trust for any of the reasons described in this paragraph. If the Trustee exercises the power to delay distributions pursuant to this paragraph, the Trustee shall have the power to continue the administration of the applicable trust for as long a period of time as the Trustee determines to be reasonably necessary under any of the following circumstances:

Involvement of the beneficiary as a defendant in a civil or criminal lawsuit or in any bankruptcy proceedings (whether voluntary or involuntary);

The beneficiary's use of any illegal chemical substances or the misuse of any legal chemical substances and/or alcohol;

The beneficiary's physical or mental disability;

Involvement of the beneficiary in a marital dissolution action;

Residency of the beneficiary in a country where the beneficiary might be deprived of the use or enjoyment of the trust assets, or affiliation by the beneficiary with a group of individuals or an organization that might deprive the beneficiary of the use or enjoyment of the Trust assets; and/or

Active military duty of the beneficiary resulting in the beneficiary's inability to use a substantial portion of the Trust assets.

During any period of time when the Trustee is delaying distribution to the beneficiary, the Trustee may make distributions for the benefit of the beneficiary in accordance with the provisions of the trust for the beneficiary's benefit. The Trustee shall be authorized to contest any action filed by a beneficiary, or a creditor of a beneficiary, seeking to secure judicially mandated distributions, and the Trustee shall be entitled to charge all fees and costs, including attorneys' fees, incurred incident to any such judicial proceeding as an administrative expense of the Trust. In exercising discretion under this paragraph, the Trustee shall be authorized to rely conclusively on any information or other representation of facts the Trustee believes to be genuine.

**(c) Removal of Beneficiary as Trustee**

In the event such beneficiary is serving as Trustee during a period in which such conditions or circumstances as are described in the foregoing paragraph of Subsection (b) of this Section, such beneficiary shall cease to serve as Trustee and shall appoint an independent Trustee that is not related or subordinate to the beneficiary making the appointment, within the meaning of Section 672(c) of the Internal Revenue Code, to serve as Trustee over such beneficiary's interest in the Trust. Should this spendthrift provision cease to apply to such beneficiary, the independent Trustee shall cease to serve as Trustee, and the beneficiary shall resume his or her role as Trustee over his or her interest in the Trust.

Notwithstanding the foregoing, a beneficiary need not resign as Trustee if, in the Trustee's sole discretion, he or she determines that the financial risk posed by legal separation or divorce, or any cause of action described above, is minimal, and thus, not likely to adversely affect the beneficiary's interest in the trust property, even if such legal separation or divorce or cause of action is likely to result in a judgment in favor of the opposing party.

**(d) Separate Trust**

Under the circumstances provided under this spendthrift provision, the Trustee may, in his or her sole discretion, retain in a separate trust, any share of the beneficiary's interest in the Trust. The beneficiaries of any separate trust created shall be the beneficiary to whom this spendthrift provision applies, and his or her then-living lineal descendants. If the beneficiary has no then-living lineal descendants, such beneficiaries of the separate trust shall be the beneficiary to whom this spendthrift provision applies and the then-living lineal descendants of ours who are younger than the beneficiary to whom this spendthrift provision applies. The Trustee may distribute to or apply for the benefit of all or any one or more of the beneficiaries of the separate trust, so much of the income and/or principal as the Trustee deems advisable. It is our intent that the separate trust shall be a discretionary trust to which no one beneficiary has any ascertainable right, title or interest to any portion, whether determined actuarially or otherwise, and the Trustee has the authority and discretion to completely withhold distributions from any one beneficiary. Upon the death of the original beneficiary to whom this spendthrift provision applied, such beneficiary's interest in the Trust shall be distributed according to the terms and provisions above that gave rise to such beneficiary's interest in the Trust.

This Section does not restrict a beneficiary's right to disclaim any interest or exercise of any power of appointment granted in this trust.



### **Section 16.03 Contest Provision**

If any person attempts to contest or oppose the validity of this trust or any amendment to this trust, or commences, continues, or prosecutes any legal proceedings to set this trust aside, then that person will forfeit his or her share, cease to have any right or interest in the trust property, and will be considered to have predeceased the last of us to die for purposes of this instrument.

### **Section 16.04 Survivorship Presumption**

If we die under circumstances in which the order of our deaths cannot be established, each of us will be considered to have predeceased the other and each Trustor's interest in any community property of the trust, and each Trustor's separate trust property will be administered as provided in Section 8.09 for administering the remaining property in the Marital Trust upon death of the surviving Trustor.

If any other beneficiary is living at the death of a Trustor, but dies within 45 days after the Trustor's death, then the beneficiary will be considered to have predeceased the Trustor for purposes of this trust.

### **Section 16.05 Effect of Legal Separation or Dissolution of Marriage**

If either of us files a petition for legal separation or dissolution of marriage, each of us, each of our respective parents as to the other of us, all of our descendants who are not the descendants of the other of us, and all spouses of such persons who are not descendants of our respective parents will be deemed to have died intestate on the date of the filing for all purposes of this instrument (except Section 16.01, above). Any exercise or exercises of any power of appointment by any person named identified in this paragraph that has not become effective prior to the filing date will be null and void. If, however, a court issues any order dismissing a petition described above, and we accept the dismissal of the petition by a written acknowledgement, then the persons identified in this paragraph will no longer be deemed to have died intestate for purposes of this instrument

### **Section 16.06 Cooperative Apartments**

With respect to any Cooperative in which we may have an interest: this Trust is revocable by us, as described in Article One; we may occupy said apartment during our lifetimes or until such time as transfer to another natural person is approved by the Cooperative; the Cooperative Ownership Contract shall be promptly transferred, upon the death of the survivor of us, to an individual or individuals subject to the Cooperative's approval; and, no amendment of the Trust instrument that affects such apartment in any way shall be made without the prior written consent of the Cooperative, and if such amendment were to be made without such consent, the Cooperative may terminate the transferor's Ownership Contract.

### **Section 16.07 Changing the Governing Law and Situs of Administration**

At any time, the Trustee may change the governing law of the trust; change the situs of the administration of the trust; and remove all or any part of the property from one jurisdiction to another. The Trustee may elect, by filing an instrument with the trust

records, that the trust will then be construed, regulated, and governed by the new jurisdiction's laws. The Trustee may take action under this Section for any purpose the Trustee considers appropriate, including the minimization of any taxes in respect of the trust or any trust beneficiary.

If considered necessary or advisable by the Trustee, the Trustee may appoint an Independent Trustee to serve as Trustee in the new situs.

If necessary and if the Trustee does not appoint an Independent Trustee within 30 days of the Trustee's action to change the governing law or situs of the trust, the beneficiaries entitled to receive distributions of the trust's net income may appoint a corporate fiduciary in the new situs by majority consent. If a beneficiary is a minor or is incapacitated, the beneficiary's parent or legal representative may act on the beneficiary's behalf.

### **Section 16.08 Antilapse Statutes**

Whether existing now or enacted later, no *antilapse* statute of Virginia or any other jurisdiction will be applied in construing any provision of this trust.

### **Section 16.09 Definitions**

For purposes of this trust, the following terms have these meanings:

#### **(a) Adopted and Afterborn Persons**

A person in any generation who is legally adopted before reaching 18 years of age and his or her descendants, including adopted descendants, have the same rights and will be treated in the same manner under this trust as natural children of the adopting parent. A person is considered legally adopted if the adoption was legal at the time when and in the jurisdiction in which it occurred.

A fetus *in utero* later born alive will be considered a person-in-being during the period of gestation.

#### **(b) Available Generation Skipping Transfer Tax Exemption**

The deceased Trustor's *Available GST Exemption* means the Generation Skipping Transfer Tax Exemption ("GST") provided in Internal Revenue Code Section 2631 in effect at the deceased Trustor's death; reduced by the aggregate of:

any amount of GST exemption allocated to the deceased Trustor's lifetime transfers, including those allocations made at the time of the deceased Trustor's death by the deceased Trustor's personal representative, by the deceased Trustor's Trustee, or by operation of law; and

any amount allocated to direct-skip persons as defined in Internal Revenue Code Section 2612(c)(1) that does not qualify for an exclusion from the generation-skipping

transfer tax occurring at the deceased Trustor's death to or for the benefit of the deceased Trustor's descendants.

At the time of the deceased Trustor's death, if the deceased Trustor has made a lifetime transfer to a trust with an inclusion ratio of greater than zero but have not filed a gift tax return and the due date for the gift tax return has not yet passed, the deceased Trustor's Available GST Exemption will also be reduced so that the trust inclusion ratio is zero, in order to exempt the transfer from generation-skipping transfer tax.

**(c) Descendants**

The term *descendants* means persons who directly descend from a person, such as children, grandchildren, or great-grandchildren. The term *descendants* does not include collateral descendants, such as nieces and nephews.

**(d) Education**

The term *education* is intended to be an ascertainable standard under Internal Revenue Code Sections 2041 and 2514 and includes:

enrollment at private elementary, junior, and senior high school, including boarding school;

undergraduate and graduate study in any field at a college or university;

specialized, vocational, or professional training or instruction at any institution, as well as private instruction; and

any other curriculum or activity that the Trustee considers useful for developing a beneficiary's abilities and interests including athletic training, musical instruction, theatrical training, the arts, and travel.

The term *education* also includes expenses such as tuition, room and board, fees, books, supplies, computers and other equipment, software memberships and/or subscriptions, tutoring, transportation, and a reasonable allowance for living expenses.

**(e) Good Faith**

For the purposes of this trust, a Trustee has acted in good faith if:

an action or inaction is not a result of intentional wrongdoing;

the Trustee did not make the decision to act or not act with reckless indifference to the beneficiaries' interests; and

an action or inaction does not result in an improper personal benefit to the Trustee.

Further, all parties subject to the provisions of this trust will treat any action or inaction made in reliance on information, consent, or directions received from the personal representative of each of our estates as made in good faith for the purposes of this Section, except for cases of willful misconduct or malfeasance on the Trustee's part.

**(f) Incapacity**

Except as otherwise provided in this trust, a person is considered incapacitated in any of the following circumstances.

**(1) The Opinion of Two Licensed Physicians**

An individual is considered to be incapacitated whenever two licensed physicians give the opinion that the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age; illness; use of prescription medications, drugs, or other substances; or any other cause. If an individual whose capacity is in question refuses to provide necessary documentation or otherwise submit to examination by licensed physicians, that individual will be considered incapacitated.

An individual is considered restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

**(2) Court Determination**

An individual is considered incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent, or legally incapacitated.

**(3) Detention, Disappearance, or Absence**

An individual is considered to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of the Trustee, or by the affidavit of any beneficiary if no Trustee is then serving. The affidavit must describe the circumstances of the individual's disappearance, absence, or detention, and may be relied upon by any third party dealing in good faith with the Trustee.

**(g) Include, Includes, Including**

In this document, the words include, includes, and including mean include without limitation, includes without limitation and including without limitation, respectively. Include, includes, and including are words of illustration and enlargement, not words of limitation or exclusivity.

**(h) Income Beneficiary**

The term *income beneficiary* means any beneficiary who is then entitled to receive distributions of the trust's net income, whether mandatory or discretionary.

Unless otherwise provided in this trust, the phrase *majority of the income beneficiaries* means any combination of income beneficiaries who would receive more than 50% of the accrued net income if that income were distributed on the day of a vote. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income receive the imputed income in equal shares.

References to a *majority* refer to a majority of the entire trust collectively until the Trustee allocates property to separate trusts or trust shares. After the Trustee allocates property to separate trusts or trust shares, references to a *majority* refer to a majority of each separate trust or trust share.

**(i) Income in Respect of a Decedent (IRD)**

The term *income in respect of a decedent* (IRD) means income received after a decedent's death that would have been taxable to the decedent if the income had been received by the decedent during the decedent's lifetime. For example, payments under qualified retirement plans and other deferred compensation arrangements are IRD. For purposes of this trust, IRD means any income that would be classified as IRD under Internal Revenue Code Section 691(a).

**(j) Independent Trustee**

The term *Independent Trustee* means any Trustee who is not an Interested Trustee as defined in Subsection (l) and includes an Independent Special Trustee appointed under the provisions of Section 3.08.

**(k) Instrument**

The term *this instrument* means this trust, and includes all trusts created under the terms of this trust.

**(l) Interested Trustee**

The term *Interested Trustee* means a Trustee who:

- is a transferor or beneficiary;
- is related or subordinate to a transferor or beneficiary;

can be removed and replaced by a transferor with either the transferor or a party who is related or subordinate to the transferor; or

can be removed and replaced by a beneficiary with either the beneficiary or a party who is related or subordinate to the beneficiary.

For purposes of this Subsection, *transferor* means a person who transferred property to the trust, including a person whose disclaimer resulted in property passing to the trust. *Beneficiary* means a person who is or may become eligible to receive income or principal from the trust under the terms of the trust, even if this person has only a remote contingent remainder interest in the trust, but not if the person's only interest is as a potential appointee under a power of appointment. *Related or subordinate* is used as defined in Internal Revenue Code Section 672(c).

#### **(m) Internal Revenue Code and Treasury Regulations**

References to the *Internal Revenue Code* or to its provisions refer to the Internal Revenue Code of 1986, as amended, and to any corresponding Treasury Regulations. References to the *Treasury Regulations*, are to the Treasury Regulations under the Internal Revenue Code in effect.

Reference to any provision or section of the Internal Revenue Code, or provision or section of any state code, is considered to refer to the provision or section of the federal and/or state tax law in effect on the date of this trust's execution.

If there is no corresponding provision or section or if the estate tax has been repealed, a reference to a provision or section of the federal and/or state tax law will refer to the provision or section that was in effect on the date of this trust's execution or to the provision or section that was in effect immediately before the tax law was repealed. This construction is solely for determining the amount of property that passes under a provision of this instrument if the Trustee determines that this result is more consistent with our intent.

The Trustee may not take any action under the powers granted under this Section that would cause any otherwise-qualifying property to fail to qualify for a marital deduction, charitable deduction, special-use valuation, or Qualified Family Owned Business Interest ("QFOBI") deduction.

The Trustee will bear no liability for any decision made in good faith under the power granted under the terms of this Section defining the term *Internal Revenue Code*.

**(n) Legal Representative or Personal Representative**

As used in this trust document, the term *legal representative* or *personal representative* means a person's guardian, conservator, executor, administrator, Trustee, attorney in fact under a Durable Power of Attorney, or any other person or entity representing a person or the person's estate.

Wherever a *parent*, *legal representative*, or *personal representative* is designated or authorized to act on behalf of a beneficiary who is a minor or incapacitated, if the beneficiary is a descendant of the Trustor(s), the parent of such beneficiary who is a descendant of the Trustor(s) shall act on behalf of the beneficiary. If no such descendant parent is willing and able to serve at the applicable time, then any other adult descendant or ancestor of the Trustor(s) shall act on behalf of the beneficiary. At no time shall a non-descendant parent or non-descendant legal representative of the Trustor(s) act on behalf of a descendant beneficiary, unless otherwise expressly stated.

If the beneficiary is not a descendant of the Trustor(s), then any parent or legal representative may act on behalf of the beneficiary as provided in this trust instrument.

**(o) Per Stirpes**

Whenever a distribution is to be made to a person's descendants *per stirpes*, the distribution will be divided into as many equal shares as there are then-living children and deceased children who left then-living descendants. Each then-living child will receive one share, and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.

**(p) Permissible Distributee**

"Permissible Distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

**(q) Primary Beneficiary**

The *primary beneficiary* of a trust created under this trust is that trust's oldest income beneficiary, unless some other individual is specifically designated as the primary beneficiary of that separate trust.

**(r) Qualified Beneficiary**

"Qualified Beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

- (1) is a distributee or Permissible Distributee of trust income or principal;

- (2) would be a distributee or Permissible Distributee of trust income or principal if the interests of the distributees described in subparagraph (1) terminated on that date; or
- (3) would be a distributee or Permissible Distributee of trust income or principal if the trust terminated on that date.

**(s) Qualified Retirement Benefits**

The term *qualified retirement plan* means a plan qualified under Internal Revenue Code Section 401, an individual retirement arrangement under Section 408 or Section 408A, or a tax-sheltered annuity under Section 403. The term *qualified retirement benefits* means the amounts held in or distributed pursuant to a plan qualified under Section 401, an individual retirement arrangement under Section 408 or Section 408A, a tax-sheltered annuity under Section 403, or any other benefit subject to the distribution rules of Section 401(a)(9).

**(t) Shall and May**

Unless otherwise specifically provided in this trust or by the context in which used, we use the word *shall* in this trust to impose a duty, command, direct, or require, and the word *may* to allow or permit, but not require. In the context of the Trustee, when we use the word *shall* we intend to impose a fiduciary duty on the Trustee. When we use the word *may* we intend to empower the Trustee to act with the Trustee's sole and absolute discretion unless otherwise stated in this trust. When we use the words *may not* in reference to the Trustee, we specifically mean the Trustee *is not permitted to*.

**(u) Trust**

The terms *this trust*, *this document*, *instrument*, and *this trust document* refer to this trust and all trusts created under the terms of this trust.

**(v) Trustee**

The terms *the Trustee* and *Trustee* refer to the Initial Trustees named in Article One and to any successor, substitute, replacement, or additional person, corporation, or other entity that ever acts as the Trustee of any trust created under the terms of this trust. The term *Trustee* refers to singular or plural as the context may require.

**(w) Trustor**

*Trustor* has the same legal meaning as *Grantor*, *Settlor* or any other term referring to the maker of a trust.



**(x) Trust Property**

The term *trust property* means all property acquired from any source and held by a Trustee under this trust.

**Section 16.10 General Provisions and Rules of Construction**

The following general provisions and rules of construction apply to this trust.

**(a) Multiple Originals; Validity of Paper or Electronic Copies**

Any person may rely on a paper or electronic copy of this trust that the Trustee certifies to be a true copy as if it were an original.

**(b) Singular and Plural; Gender**

Unless the context requires otherwise, singular words may be construed as plural, and plural words may be construed as singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word *or*, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires.

**(c) Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and Subsections used within this trust are included solely for the convenience of the reader. They have no significance in the interpretation or construction of this trust.

**(d) Governing State Law**

This trust is governed, construed, and administered according to the laws of Virginia, as amended except as to trust property required by law to be governed by the laws of another jurisdiction and unless the situs of administration is changed under Section 16.07.


**(e) Notices**

Unless otherwise stated, any notice required under this trust will be in writing. The notice may be personally delivered with proof of delivery to the party requiring notice and will be effective on the date personally delivered. Notice may also be mailed, postage prepaid, by certified mail with return receipt requested to the last known address of the party requiring notice. Mailed notice is effective on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If the party requiring notice is a minor or incapacitated individual, notice will be given to the parent or legal representative.


**(f) Severability**

The invalidity or unenforceability of any provision of this trust does not affect the validity or enforceability of any other provision of this trust. If a

court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this trust are to be interpreted as if the invalid provision had never been included.

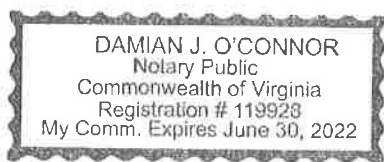
  
Carl O. Swanson, Jr., Trustor and Trustee

Jean M. Swanson  
Jean M. Swanson, Trustor and Trustee


  
Steven D. Swanson, Trustee

COMMONWEALTH OF VIRGINIA )  
 ) ss.  
COUNTY OF FAIRFAX )


[Seal & Registration Number]



  
 Notary Public  
 My commission expires: \_\_\_\_\_

  
Carl O. Swanson, Jr., Trustor


Jean M. Swanson  
Jean M. Swanson, Trustor

  
Nancy Baker, Witness

  
Larissa Danelle, Witness

COMMONWEALTH OF VIRGINIA )  
 ) ss.  
COUNTY OF FAIRFAX )

DAMIAN J. O'CONNOR  
Notary Public  
Commonwealth of Virginia  
Registration # 119928  
My Comm. Expires June 30, 2022

  
NOTARY PUBLIC, Commonwealth of Virginia  
My commission expires: \_\_\_\_\_



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS  
LAND SECTION

TELEPHONE (302) 739-9943  
FACSIMILE (302) 739-6304

Subaqueous Lands Lease No.: SL-094/05  
Renewal of Lease No.: SL-1701/95  
Date of Issuance: 11/21/05  
Lease Expiration Date: 4/11/2025  
Amended Date:  
Tax Parcel No.: 2-34-24-4

**SUBAQUEOUS LANDS LEASE  
GRANTED TO CARL AND JEAN SWANSON  
TO MAINTAIN A 6 FOOT WIDE BY 66 FOOT LONG PIER,  
A 6 FOOT WIDE BY 25 FOOT LONG DOCK, AND  
5 STAND-ALONE PILES IN HERRING CREEK  
AT 24882 ALGONQUIN ROAD, LEWES, SUSSEX COUNTY, DELAWARE**

Carl and Jean Swanson  
15830 Vista Drive  
Dumfries, Virginia 22026

Pursuant to the provisions of 7 Del. C. 7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 21<sup>st</sup> day of November A.D. 2005, to maintain the above-referenced project in accordance with the approved plans, 4 sheets, as approved on September 27, 2005; and the application dated March 14, 2005 and received by this Division on March 16, 2005.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of Herring Creek;

WHEREAS, Carl and Jean Swanson, owners of certain adjoining lands to Herring Creek, have applied for permission to maintain a 6 foot wide by 66 foot long pier, a 6 foot wide by 25 foot long dock and 5 stand-alone piles;

WHEREAS, pursuant to the provisions of 7 Del. C. 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

THIS approval is in accordance with the plan and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

THIS Lease shall be continued for a period of twenty (20) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the twenty-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

*Delaware's good nature depends on you!*



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES  
80 KINGS HIGHWAY  
DOVER, DELAWARE 19901

THOMAS E. SWANSON  
SPECIAL AGENT

WILLIAM S. SWANSON  
SPECIAL AGENT

Subsequent Land Lease No. 21-00403  
New York State No. 21-01103  
Date of Issuance: 12/1/72  
Case/Expiration Date: 1/1/73  
Amended Date:  
Tax Parcel No. 25-34-24-4

SUBSEQUENT LAND LEASE  
GRANTED TO CARL AND JEAN SWANSON  
TO MAINTAIN A FOOTWIDE BY A FOOTWIDE PIECE  
A 6 FOOT WIDE BY 100 FOOT LONG DOCK AND  
ESTABLISH AN OUTLET IN HERRING CREEK  
AT 2082 AL GODDARD ROAD, FLEET STREET COUNTY, DELAWARE

Carl and Jean Swanson  
1530 Vine Drive  
Columbia, Virginia 22020

Pursuant to the provisions of 1 Del. C. 3-301 and the Department's Regulations Governing the Issuance of Subsequent Land Leases, a Subsequent Land Lease is hereby granted on this 21st day of December, A.D. 1972, to maintain the above-referenced project in accordance with the approved plans, which were approved on September 27, 2002, and the application dated March 14, 2002, and received by this Division on March 16, 2002.

WHEREAS, the State of Delaware is the owner of ungranted riparian rights lying beneath the waters of Herring Creek;

WHEREAS, Carl and Jean Swanson, owners of certain adjoining lands to Herring Creek, have applied for permission to maintain a dock, wide on one end being 6 feet wide by 25 feet long dock and a stand-alone dock;

WHEREAS, pursuant to the provisions of 1 Del. C. 3-301, the Secretary of the Department of Natural Resources and Environmental Control, in his discretion and subject to the fact that it is not contrary to the public interest if it is a project which is subject to the terms and conditions herein set forth;

THIS application is hereby approved, with the condition and stipulations attached to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and inclosed hereinto;

THIS lease shall be continued for a period of twenty (20) years or so long as the conditions in which the lease are subject to, whichever is the shorter in time. Upon the expiration of the twenty-year term, the lease shall expire and become null and void unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be obtained if the State determines that the lease is no longer in the public interest.



THIS Lease is issued subject to the following conditions:

**SPECIAL CONDITIONS**

1. **This Lease shall not be considered valid until it has been duly recorded in the office for the Recorder of Deeds in and for the appropriate County and a copy of the recorded Lease is returned to, and has been received by, the Department.**
2. The conditions contained herein shall be incorporated into any and all construction contracts and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with maintenance which may impact subaqueous lands associated with this project.
3. **A violation was detected during the review and processing of your Lease renewal application. The approved dimensions of the structures authorized by your existing Lease are as follows: a 6 foot wide by 66 foot long pier, a 5 foot wide by 25 foot long dock and 5 stand-alone piles. However, during our site evaluation several additional structures were observed including a 4 foot by 6 foot addition to the pier; a 5 foot by 6 foot triangular gusset at the juncture of the dock and pier; a 2 foot by 12 foot addition to the dock; and a 3 foot by 7.5 foot addition to the dock. Due to the minimal nature of these violations, the Department does not intend to take enforcement action. However, this Lease shall not be construed as authorizing the illegal portions of the overbuilt structure. Should any additional modifications or additions to the existing structures be made without prior written authorization from this office, enforcement action may be taken at that time, including fines and/or a requirement that you remove the illegal structures from subaqueous lands.**
4. This Lease authorizes approximately 431 square feet of structure on public subaqueous lands, which are generally lands channelward of the mean low water line. The existing structure includes approximately 496 square feet of structure located on public subaqueous lands.
5. This Lease authorizes the lessee to maintain the authorized structure on public subaqueous lands from April 12, 2005 through April 11, 2025.
6. This Lease represents a renewal of Subaqueous Lands Lease No. SL-1701/95. All special and general conditions contained in this Lease renewal shall supersede conditions set forth in Subaqueous Lands Lease No. SL-1701/95, which has become null and void.
7. The structure shall be maintained in such a manner so as not to violate the State of Delaware Department of Natural Resources and Environmental Control "Surface Water Quality Standards," as amended August 11, 1999.
8. No portion of the decking on any pier or dock authorized by this Lease shall exceed the width dimensions for that structure identified on Page One of this Lease.
9. This Lease does not authorize any repairs, additions, or modifications to the existing structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.





10. The leased structure shall be maintained in a manner so as not to impair water access to adjacent properties.
11. The structure on subaqueous lands shall be for the explicit purpose of docking a boat.

#### **GENERAL CONDITIONS**

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination on the need for a supplemental approval will be made by this office pursuant to the lessee submitting written notification and revised plans indicating project changes to this office.
2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phases of the construction and may collect any samples or conduct any tests that are deemed necessary.
3. This Lease does not cover the structural stability of the project units.
4. Prior to the expiration of this Lease, the lessee shall remove all structures covered under this Lease unless the Lease has been renewed in accordance with its terms.
5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public may constitute reason for the discontinuance and/or removal of said action, operation or installation.
6. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.
7. The issuance of this Lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.
8. This Lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.
9. This Lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.
10. This Lease is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the lessee shall obtain the written consent of the Department to transfer this Lease to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Lease and the removal of all structures authorized by this Lease at the expense of the lessee.

10. The case, whether or not it is a matter of public interest, shall be handled in a manner consistent with the purpose of the Act.

11. The statute on the subject of this Act shall be the subject of a report.

### GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and approved by the Department of the Interior. The project shall be carried out in accordance with the conditions of the contract. The project shall be carried out in accordance with the conditions of the contract. The project shall be carried out in accordance with the conditions of the contract.

2. The project shall be carried out in accordance with the conditions of the contract. The project shall be carried out in accordance with the conditions of the contract. The project shall be carried out in accordance with the conditions of the contract.

3. This case does not cover the structural stability of the project.

4. Prior to the expiration of the term, the case shall move all structures covered under the case unless the case has been removed in accordance with the terms of the case.

5. Any action, operation or installation which is considered by the Department to be contrary to the purpose of the project shall be considered a violation of the conditions of the contract.

6. The case shall remain in good condition and shall be maintained in accordance with the conditions of the contract. The case shall be maintained in accordance with the conditions of the contract.

7. The issuance of the case does not imply approval of any other part, phase or portion of any overall project or the case shall be considered a violation of the conditions of the contract.

8. The case shall not be considered a violation of the conditions of the contract. The case shall be considered a violation of the conditions of the contract.

9. This case is subject to the terms and conditions contained in the contract. The case shall be considered a violation of the conditions of the contract.

10. This case is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the case, the case shall be considered a violation of the conditions of the contract.



11. This Lease is granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this Lease being revoked.
12. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
13. The issuance of this Lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.
14. Application for renewal must be submitted six (6) months prior to the expiration date of this Lease.
15. This Lease may be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Carl Swanson, have caused this instrument to be executed on this 8 day of Nov, 2005.

By: Carl Swanson  
Carl Swanson  
Lessee

IN WITNESS WHEREOF, I, Jean Swanson, have caused this instrument to be executed on this 8 day of Nov, 2005.

By: Jean Swanson  
Jean Swanson  
Lessee

SWORN and subscribed before me on  
this 8th day of Nov,  
2005

David C. Cribben  
Notary Public

IN WITNESS WHEREOF, I, John A. Hughes, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand this 21st day of November, 2005.

John A. Hughes  
By: Secretary of the Department of  
Natural Resources and  
Environmental Control

11. This Lease is granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this Lease being revoked.
12. The Lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
13. The issuance of this Lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.
14. Application for renewal must be submitted six (6) months prior to the expiration date of this Lease.
15. This Lease may be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Carl Swanson, have caused this instrument to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

By: Carl Swanson  
Carl Swanson  
Lessee

IN WITNESS WHEREOF, I, Jean Swanson, have caused this instrument to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

By: Jean Swanson  
Jean Swanson  
Lessee

SWORN and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

[Signature]  
Notary Public

IN WITNESS WHEREOF, I, John A. Hughes, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

[Signature]  
By: Secretary of the Department of  
Natural Resources and  
Environmental Control

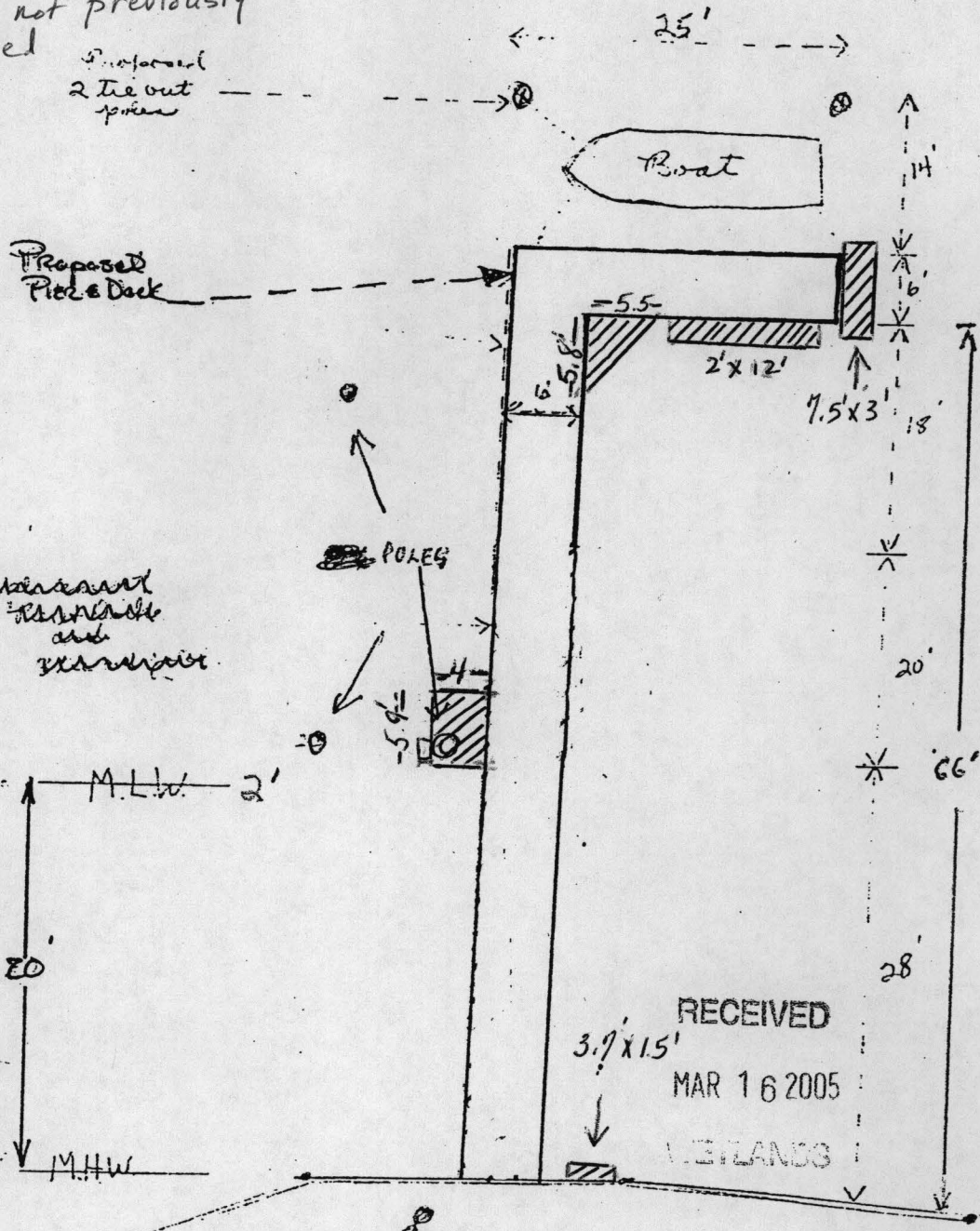


W.S.L.S.  
**APPROVED PLANS**  
 PERMIT # SL-094/05 \*  
 DATE 9/27/05 *gjh*  
 (SEE PERMIT CONDITIONS)

*NE RIVER CREEK*

JAN 13 1995

*This Lease does not authorize portions of structure not previously permitted*



REVISED PLANS RECEIVED  
 1995  
 WETLANDS & AQUATIC  
 PROTECTION BRANCH

RECEIVED  
 MAR 16 2005  
 WETLANDS

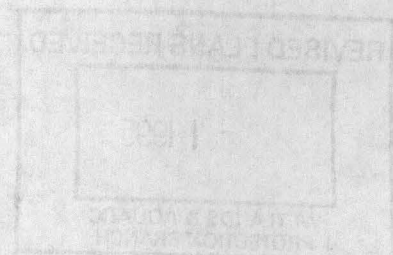
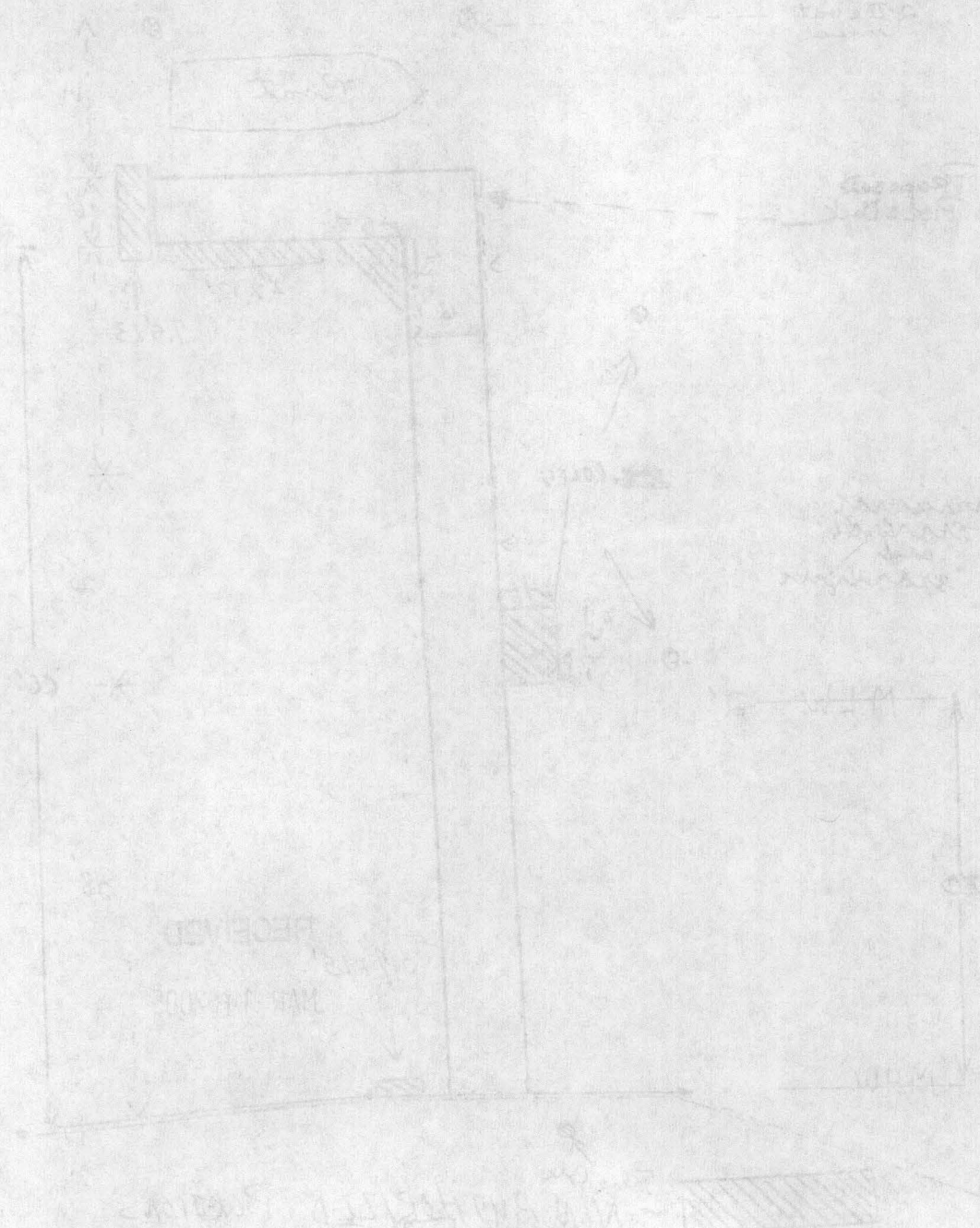
*toward  
 Sewer  
 Lot 0*

*Present  
 Structure*

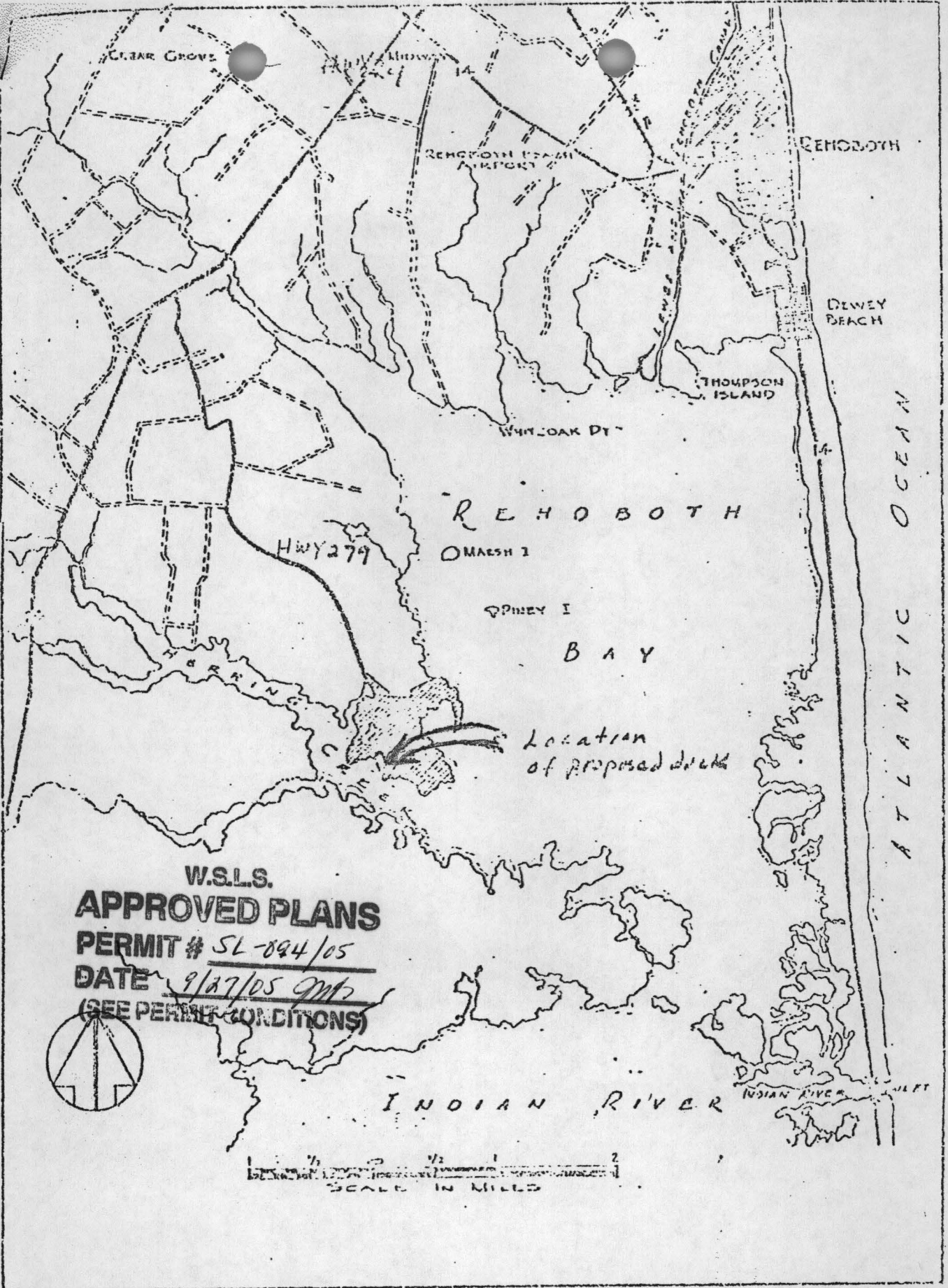
*File, File*

**NON AUTHORIZED PORTIONS  
 OF STRUCTURE**  
 DATE 9/27/05

W.S.L.S.  
**APPROVED PLANS**  
 PERMIT # 6-272  
 DATE \_\_\_\_\_  
 (SEE PERMIT CONDITIONS)







Incl #2

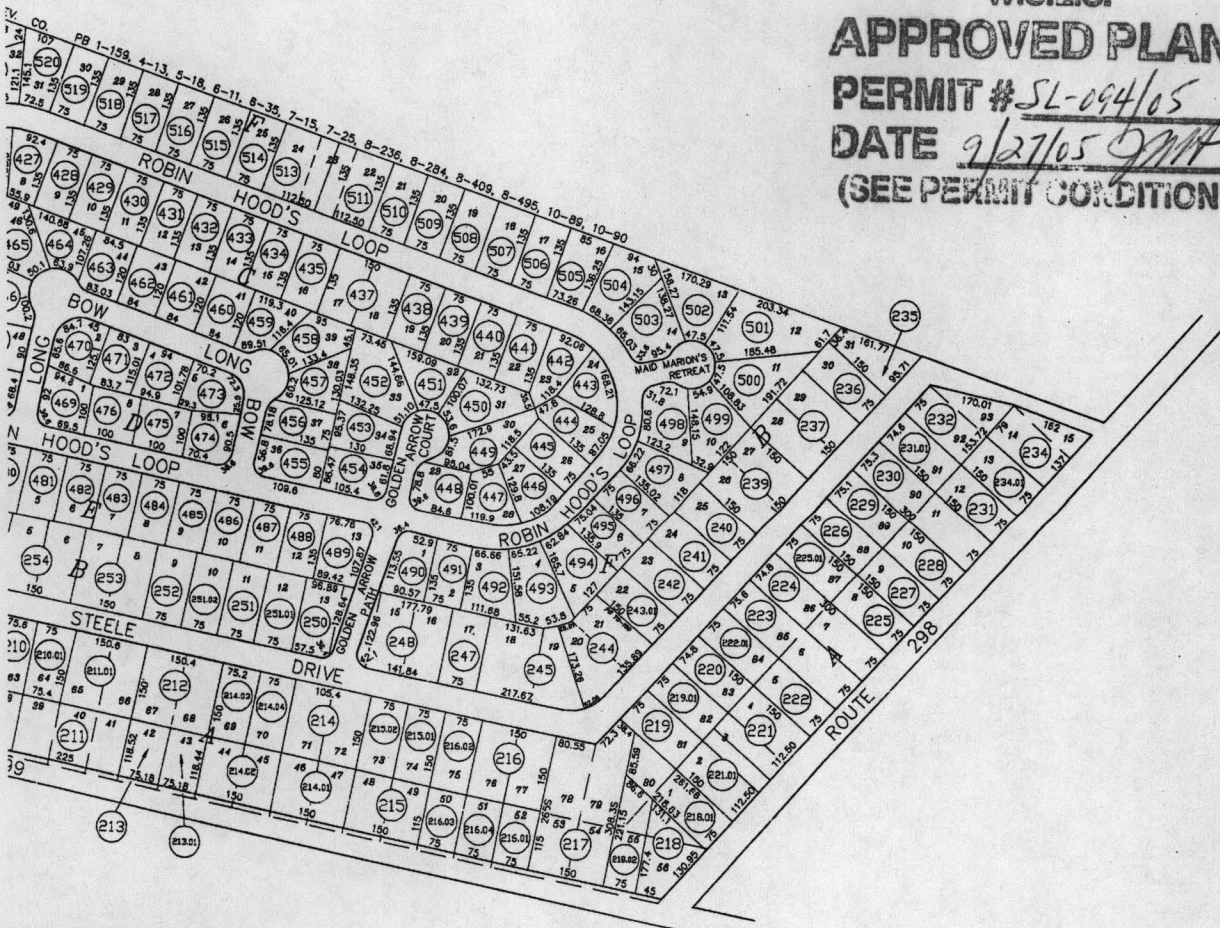
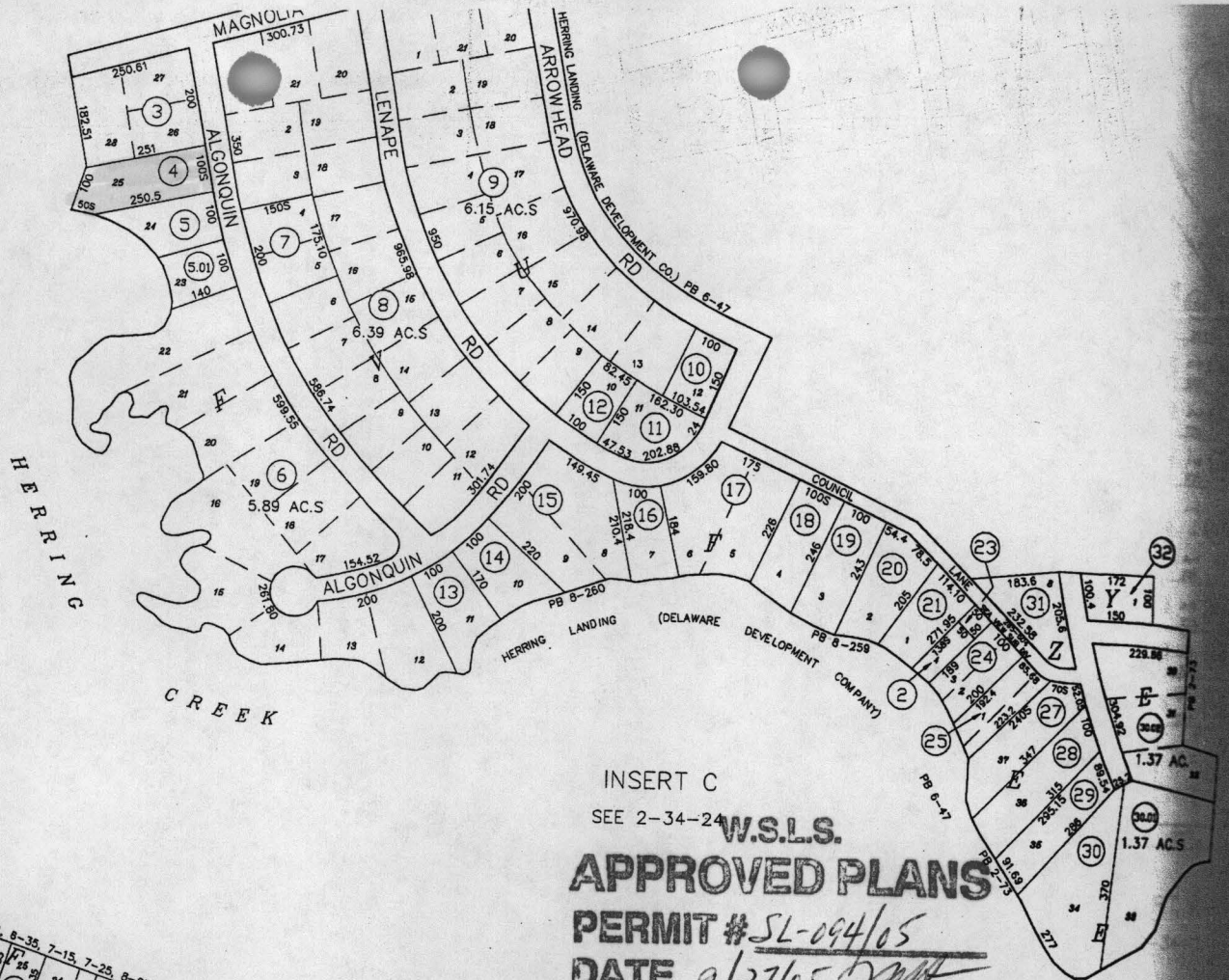
VICINITY MAP

JAN 13 1995

W.S.L.8  
APPROVED PLANS  
PERMIT # \_\_\_\_\_  
DATE \_\_\_\_\_  
(SEE PERMIT CONDITIONS)







LEGEND	
County Line	(23) Map Parcel Number
Hundred Line	
District Line	

INSERT SHEET F

APPROVED PLANS  
PERMIT # \_\_\_\_\_  
DATE \_\_\_\_\_  
(SEE PERMIT CONDITIONS)

W.S.L.S.



CREEK

"DELAWARE WILD  
LANDS, INC."

HERRING

Dock  
PIER

107'

N 29°00'00" E  
77.22'

I.P. (fd.)

AREA =  
26,615 s.f. ±

250.00'

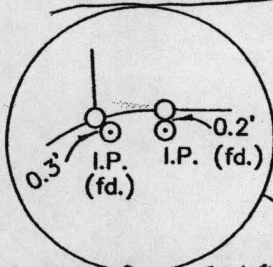
F-28

Plat

I.P. (fd.)

F-24

ELAINE DREW



189.08'

15.4'

23.6'

18.0'

24.3'

91.4'

S 88°42'28" W

Gravel Drive

CLASS "B" SURVEY

F-26

Fence

P.O.B.

IRON PIPE (fd.)

200' to R/W of  
MAGNOLIA DRIVE

A = 6.40'  
R = 1254.85'  
Δ = 00°17'32"

#24882

ALGONQUIN

ROAD

( 50' R/W )

RECEIVED

MAR 16 2005

WETLANDS

Lot #F-25

"HERRING LANDING"

Prepared for

W.S.L.S.  
APPROVED PLANS  
PERMIT # SL-094/05  
DATE 9/27/05 GAB  
(SEE PERMIT CONDITIONS)



APPROVED PLANS  
PERMIT #  
DATE  
(SEE PERMIT CONDITIONS)

W.S.L.S.

ROAD

ALCONQUIN

LOT #F-25

"HERRING CREEK"





Prepby

STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS  
LAND SECTION

TELEPHONE (302) 739-9943  
FACSIMILE (302) 739-6304

Subaqueous Lands Lease No.: SL-094/05  
Renewal of Lease No.: SL-1701/95  
Date of Issuance: 11/21/05  
Lease Expiration Date: 4/11/2025  
Amended Date:  
Tax Parcel No.: 2-34-24-4

**SUBAQUEOUS LANDS LEASE  
GRANTED TO CARL AND JEAN SWANSON  
TO MAINTAIN A 6 FOOT WIDE BY 66 FOOT LONG PIER,  
A 6 FOOT WIDE BY 25 FOOT LONG DOCK, AND  
5 STAND-ALONE PILES IN HERRING CREEK  
AT 24882 ALGONQUIN ROAD, LEWES, SUSSEX COUNTY, DELAWARE**

Retto:

Carl and Jean Swanson  
15830 Vista Drive  
Dumfries, Virginia 22026

Pursuant to the provisions of 7 Del. C. 7203, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 21<sup>st</sup> day of November A.D. 2005, to maintain the above-referenced project in accordance with the approved plans, 4 sheets, as approved on September 27, 2005; and the application dated March 14, 2005 and received by this Division on March 16, 2005.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of Herring Creek;

WHEREAS, Carl and Jean Swanson, owners of certain adjoining lands to Herring Creek, have applied for permission to maintain a 6 foot wide by 66 foot long pier, a 6 foot wide by 25 foot long dock and 5 stand-alone piles;

WHEREAS, pursuant to the provisions of 7 Del. C. 7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

THIS approval is in accordance with the plan and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

THIS Lease shall be continued for a period of twenty (20) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the twenty-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WATER RESOURCES  
500 WEST 10TH AVENUE  
DENVER, COLORADO 80202

TO: Mr. [Name]  
FROM: Mr. [Name]  
SUBJECT: [Subject]

RE: [Subject]

On [Date], [Name] applied to the Division of Water Resources for a [Type of License/Permit] for the purpose of [Purpose]. The application was reviewed and found to be in compliance with the requirements of the [Relevant Law/Regulation].

It is the policy of the Division of Water Resources to issue such licenses/permits to qualified persons for the purpose of [Purpose]. The applicant has been found to be qualified and the license/permit is hereby issued.

The license/permit is valid for a period of [Duration] and is subject to the terms and conditions set forth in the [Relevant Law/Regulation]. The applicant is required to comply with all applicable laws and regulations.

This license/permit is issued subject to the condition that the applicant shall comply with all applicable laws and regulations. The applicant is required to submit a report to the Division of Water Resources at the end of the license/permit term.

The license/permit is issued subject to the condition that the applicant shall comply with all applicable laws and regulations. The applicant is required to submit a report to the Division of Water Resources at the end of the license/permit term.



THIS Lease is issued subject to the following conditions:

**SPECIAL CONDITIONS**

1. **This Lease shall not be considered valid until it has been duly recorded in the office for the Recorder of Deeds in and for the appropriate County and a copy of the recorded Lease is returned to, and has been received by, the Department.**
2. The conditions contained herein shall be incorporated into any and all construction contracts and other ancillary documents associated with earth disturbance and any other activities directly or indirectly associated with maintenance which may impact subaqueous lands associated with this project.
3. **A violation was detected during the review and processing of your Lease renewal application. The approved dimensions of the structures authorized by your existing Lease are as follows: a 6 foot wide by 66 foot long pier, a 5 foot wide by 25 foot long dock and 5 stand-alone piles. However, during our site evaluation several additional structures were observed including a 4 foot by 6 foot addition to the pier; a 5 foot by 6 foot triangular gusset at the juncture of the dock and pier; a 2 foot by 12 foot addition to the dock; and a 3 foot by 7.5 foot addition to the dock. Due to the minimal nature of these violations, the Department does not intend to take enforcement action. However, this Lease shall not be construed as authorizing the illegal portions of the overbuilt structure. Should any additional modifications or additions to the existing structures be made without prior written authorization from this office, enforcement action may be taken at that time, including fines and/or a requirement that you remove the illegal structures from subaqueous lands.**
4. This Lease authorizes approximately 431 square feet of structure on public subaqueous lands, which are generally lands channelward of the mean low water line. The existing structure includes approximately 496 square feet of structure located on public subaqueous lands.
5. This Lease authorizes the lessee to maintain the authorized structure on public subaqueous lands from April 12, 2005 through April 11, 2025.
6. This Lease represents a renewal of Subaqueous Lands Lease No. SL-1701/95. All special and general conditions contained in this Lease renewal shall supersede conditions set forth in Subaqueous Lands Lease No. SL-1701/95, which has become null and void.
7. The structure shall be maintained in such a manner so as not to violate the State of Delaware Department of Natural Resources and Environmental Control "Surface Water Quality Standards," as amended August 11, 1999.
8. No portion of the decking on any pier or dock authorized by this Lease shall exceed the width dimensions for that structure identified on Page One of this Lease.
9. This Lease does not authorize any repairs, additions, or modifications to the existing structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.

Page 10

This letter is being sent to the following individuals:

SPECIAL AGENTS

The following individuals are being advised that they are being assigned to the following duties:

The following individuals are being assigned to the following duties:

A number of individuals are being assigned to the following duties:

The following individuals are being assigned to the following duties:

This letter is being sent to the following individuals:

The following individuals are being assigned to the following duties:

The following individuals are being assigned to the following duties:

The following individuals are being assigned to the following duties:

The following individuals are being assigned to the following duties:



SL-094/05  
Page 3 of 4

10. The leased structure shall be maintained in a manner so as not to impair water access to adjacent properties.
11. The structure on subaqueous lands shall be for the explicit purpose of docking a boat.

#### GENERAL CONDITIONS

1. The project is to be undertaken in accordance with the plans submitted and attached hereto. Any activities not specifically authorized herein may require a supplemental approval from this office prior to the initiation of construction. A determination on the need for a supplemental approval will be made by this office pursuant to the lessee submitting written notification and revised plans indicating project changes to this office.
2. Representatives of the Department of Natural Resources and Environmental Control may inspect such work during any phases of the construction and may collect any samples or conduct any tests that are deemed necessary.
3. This Lease does not cover the structural stability of the project units.
4. Prior to the expiration of this Lease, the lessee shall remove all structures covered under this Lease unless the Lease has been renewed in accordance with its terms.
5. Any actions, operations or installations which are considered by the Department to be contrary to the best interests of the public may constitute reason for the discontinuance and/or removal of said action, operation or installation.
6. The lessee shall maintain any structure on public subaqueous lands in good and safe condition and will protect and save the State of Delaware harmless from any loss, cost or damage by reason of said structures.
7. The issuance of this Lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.
8. This Lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the State of Delaware other than that of a tenant.
9. This Lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State in the vicinity of the leased premises.
10. This Lease is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the lessee shall obtain the written consent of the Department to transfer this Lease to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Lease and the removal of all structures authorized by this Lease at the expense of the lessee.

10. The party at whose place the meeting is held shall be responsible for the security of the meeting.

11. The meeting shall be held at the place specified in the notice.

### ARTICLE 10. CONFIDENTIALITY

12. It is the duty of every member of the organization to keep confidential all information which he may receive in the course of his duties or in the course of his private life which may be of use to the organization. This duty shall extend to all persons with whom he comes in contact in the course of his duties or in the course of his private life.

13. Any member who fails to observe this duty shall be liable to disciplinary action and may be expelled from the organization.

14. The organization shall not be bound by any law or regulation which is contrary to its principles.

15. The organization shall not be bound by any law or regulation which is contrary to its principles.

16. Any member who fails to observe this duty shall be liable to disciplinary action and may be expelled from the organization.

17. The organization shall not be bound by any law or regulation which is contrary to its principles.

18. The organization shall not be bound by any law or regulation which is contrary to its principles.

19. The organization shall not be bound by any law or regulation which is contrary to its principles.

20. The organization shall not be bound by any law or regulation which is contrary to its principles.

21. The organization shall not be bound by any law or regulation which is contrary to its principles.



SL-094/05  
Page 4 of 4

11. This Lease is granted for the purposes as stated herein. Any other use without prior approval shall constitute reason for this Lease being revoked.
12. The lessee shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
13. The issuance of this Lease does not constitute approval for any of the activities as may be required by any other local, state or federal governmental agency.
14. Application for renewal must be submitted six (6) months prior to the expiration date of this Lease.
15. This Lease may be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, Carl Swanson, have caused this instrument to be executed on this  
8 day of NOV, 2005.

By: Carl Swanson  
Carl Swanson  
Lessee

IN WITNESS WHEREOF, I, Jean Swanson, have caused this instrument to be executed on this  
8 day of NOV, 2005.

By: Jean Swanson  
Jean Swanson  
Lessee

SWORN and subscribed before me on  
this 8th day of NOV,  
2005

David C. Ciliberto  
Notary Public

IN WITNESS WHEREOF, I, John A. Hughes, Secretary, Department of Natural Resources  
and Environmental Control, have hereunto set my hand this 21st day of  
November, 2005.

John A. Hughes  
By: Secretary of the Department of  
Natural Resources and  
Environmental Control

RECORDER OF DEEDS  
JOHN F. BRADY  
05 DEC 27 PM 1:36  
SUSSEX COUNTY  
DOC. SURCHARGE PAID

1. The Board of Directors of the Corporation shall have the right to elect and remove the officers and directors of the Corporation and to fill any vacancies which may occur.

2. The Board of Directors shall have the right to determine the compensation of the officers and directors of the Corporation.

3. The Board of Directors shall have the right to determine the policy and general management of the Corporation.

4. The Board of Directors shall have the right to determine the capital structure of the Corporation.

5. The Board of Directors shall have the right to determine the financial policy of the Corporation.

6. The Board of Directors shall have the right to determine the dividend policy of the Corporation.

7. The Board of Directors shall have the right to determine the policy and general management of the Corporation.

8. The Board of Directors shall have the right to determine the capital structure of the Corporation.


9. The Board of Directors shall have the right to determine the financial policy of the Corporation.

10. The Board of Directors shall have the right to determine the dividend policy of the Corporation.


IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation this 1st day of January, 1951.

  
J. Edgar Hoover  
Director


IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation this 1st day of January, 1951.

  
J. Edgar Hoover  
Director

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation this 1st day of January, 1951.

  
J. Edgar Hoover  
Director

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation this 1st day of January, 1951.

  
J. Edgar Hoover  
Director

RECORDED  
INDEXED  
JAN 11 1951  
FBI - WASH DC





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS  
LANDS SECTION

TELEPHONE (302) 739-9943  
FACSIMILE (302) 739-6304

Carl and Jean Swanson  
15830 Vista Drive  
Dufries, Virginia 22026

NOV 21 2005

Dear Sir and Madam:

Enclosed is the Subaqueous Lands Lease granted by the State of Delaware. **Please note that this Lease is not valid until the Lease has been processed in accordance with the enclosed instructions.** Please read carefully all the Special and General Conditions contained within the Lease. The lessee is responsible to ensure that all the conditions, responsibilities and requirements of the Lease are strictly observed.

If you have any questions, please feel free to contact this office at (302) 739-9943.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura M. Herr".

Laura M. Herr  
Program Manager  
Wetlands & Subaqueous  
Lands Section

Enclosures



STATE OF DELAWARE  
 DEPARTMENT OF NATURAL RESOURCES  
 ENVIRONMENTAL CONTROL  
 DIVISION OF WATER RESOURCES  
 33 KING HIGHWAY  
 DOVER, DELAWARE 19901

TELEPHONE (302) 739-9943  
 FACSIMILE (302) 739-9943

WILMINGTON SUBORDINATE  
 LANDS SECTION

Carl and Jean Swanson  
 15330 Vista Drive  
 Dulles, Virginia 22028

NOV 2 1 2005

Dear Sir and Madam:

Enclosed is the Subaqueous Lands Lease granted by the State of Delaware. Please note that this lease is not valid until the lease has been processed in accordance with the enclosed instructions. Please read carefully all the Special and General Conditions contained within the lease. The lessee is responsible to ensure that all the conditions, responsibilities and requirements of the lease are strictly observed.

If you have any questions, please feel free to contact this office at (302) 739-9943.

Sincerely,

Laura M. Hiett  
 Program Manager  
 Wetlands & Subaqueous  
 Lands Section

Enclosures



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

DIVISION OF WATER  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

**WETLANDS &  
SUBAQUEOUS LANDS**

PHONE  
(302) 739-9943

The Swanson Family Trust  
c/o Carl O. Swanson & Jean M. Swanson  
5231 Harvest Glen Drive  
Glen Allen, VA 23059  
Tax Parcel: 234-24.00-4.00

Subaqueous Lands Lease: SL-094/05 (S1)  
Associated Permits: SL-094/05, LA-  
269/00, SL-1701/95  
Lease Expiration Date: April 11, 2025  
Supplemental Approval Date: 10/25/2022  
Construction Expiration Date: 10/25/2025

**SUBAQUEOUS LANDS LEASE SUPPLEMENT**

**GRANTED TO:**

**The Swanson Family Trust**

**TO UTILIZE:**

**A 6 foot wide by 66 foot long pier,  
A 6 foot wide by 25 foot long dock,  
A 4 foot wide by 6 foot long access platform,  
And 5 stand-alone piles**

**TO INSTALL AND UTILIZE:**

**A floating PWC platform**

**OCCUPYING PUBLIC SUBAQUEOUS LANDS TOTALING:**

**455 square feet**

**LOCATED CHANNELWARD OF MEAN LOW WATER:**

**In Herring Creek  
At 24882 Algonquin Road  
Lewes, Sussex County, Delaware**

Pursuant to the provisions of 7 Del. C. §7205, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 25th day of October A.D. 2022, to construct the above-referenced project in accordance with the approved plans for this Lease (3 sheets) as approved on March 28, 2022, and the application dated December 1, 2020, and received by this Department on December 10, 2020, and subsequent documentation received March 9, 2022.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of Herring Creek; and

WHEREAS, The Swanson Family Trust, owner(s) of certain lands adjoining to Herring Creek have applied for permission to amend their existing lease to now occupy 563 square feet of those public lands to install the indicated structures for private use; and

WHEREAS, pursuant to the provisions of 7 Del. C. §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW THEREFORE, this Lease Amendment is approved subject to the attached Subaqueous Lands Lease General Conditions and the following special conditions:

### **SPECIAL CONDITIONS**

1. This Supplemental Approval is an addendum to Subaqueous Lands Lease No. SL-094/05 granted to Carl O. Swanson and Jean Swanson by the State of Delaware on November 21, 2005. This Supplemental Approval shall be attached thereto and made a part thereof and shall not be considered valid until it has been duly recorded in the office for the Recorder of Deeds of the appropriate County.
2. Unless modified herein, all terms and conditions of Subaqueous Lands Lease No. SL-094/05 shall remain in full force and effect; including the **April 11, 2025** expiration date.
3. The current total square footage over public subaqueous lands authorized by this lease is now **455 square feet** represented by the 6 by 46 foot long portion of pier and 6 foot wide by 25 foot long dock, a 4 by 6 foot long access platform and 5 stand-alone piles constructed channelward of the mean low water line.
4. The lessee shall notify the Department of Natural Resources and Environmental Control within ten (10) days of completion of the work authorized by this Supplemental Approval by completing and returning the enclosed Contractor's Post Construction Completion Report form.
5. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
6. The work authorized by this Supplemental Approval is subject to the terms and conditions of the attached Department of the Army Permit Number CENAP-OP-R SPGP-20.



IN WITNESS WHEREOF, We, Carl O. Swanson and Jean M. Swanson, Representatives of The Swanson Family Trust, have caused this instrument to be executed on this 29th day of April, 2022.



(Notary Seal)

By: \_\_\_\_\_  
Carl O. Swanson (Representative)  
*Deceased - April 27, 2022*

By: Jean M. Swanson - Representative  
Jean M. Swanson (Representative)

Sworn and Subscribed before me on  
this 29th day of April, 2022.

Ram Nini Come Rem  
Notary

IN WITNESS WHEREOF, I, Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this 25th day of October, 2022.

Shawn M. Garvin  
Shawn M. Garvin, Secretary  
Department of Natural Resources and Environmental Control



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

DIVISION OF WATER  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

**WETLANDS &  
SUBAQUEOUS LANDS**

PHONE  
(302) 739-9943

**SUBAQUEOUS LANDS LEASE SUPPLEMENT  
CONTRACTOR'S COMPLETION REPORT  
POST-CONSTRUCTION**

**Subaqueous Lands Lease Number:** SL-094/05 (S1)

**Name:** The Swanson Family Trust  
c/o Carl O. Swanson & Jean M. Swanson

**Address:** 5231 Harvest Glen Drive  
Glen Allen, VA 23059

**Parcel #:** 234-24.00-4.00

*I hereby certify that I have constructed the project authorized by the above-referenced  
Subaqueous Lands Lease Supplement in accordance with the approved plans for the project.*

\_\_\_\_\_  
**Printed Name of Contractor**

\_\_\_\_\_  
**Name of Company**

\_\_\_\_\_  
**Contractor's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Telephone Number**

Upon completion of construction, this form shall be completed, signed by the contractor, and  
mailed to the Wetlands and Subaqueous Lands Section at:

**DNREC  
Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, Delaware 19901**

Or faxed to the Wetlands and Subaqueous Lands Section at: **302-739-6304**

***This form must be received by the Department within ten days of the date that construction is  
completed.***

=====  
*For official use only*

*Compliance inspection date* \_\_\_\_\_ *Built in accordance with plans* ☐ Yes ☐ No

*Scientist:* \_\_\_\_\_

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Affix  
Proper  
Postage  
Here

**Mail to:**

DNREC – Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, DE 19901

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## **WETLANDS AND SUBAQUEOUS LANDS SECTION**

**LEASE NO.: SL-094/05 (S1)**

**CONSTRUCTION EXPIRATION DATE: 10/25/2025\_**

**TO CONDUCT THE FOLLOWING ACTIVITIES:**

**TO UTILIZE:**

**A 6 foot wide by 66 foot long pier,  
A 6 foot wide by 25 foot long dock,  
A 4 foot wide by 6 foot long access platform,  
And 5 stand-alone piles**

**TO INSTALL AND UTILIZE:**

**A floating PWC platform with two associated pilings**

**LOCATED CHANNELWARD OF MEAN LOW WATER:**

**In Herring Creek  
At 24882 Algonquin Road  
Lewes, Sussex County, Delaware**

**ISSUED TO: The Swanson Family Trust c/o Carl O. Swanson & Jean M. Swanson**

**DISPLAY THIS CERTIFICATE IN A HIGHLY  
VISIBLE LOCATION ON THE JOB SITE.**

**Authorized by: \_\_\_\_\_**

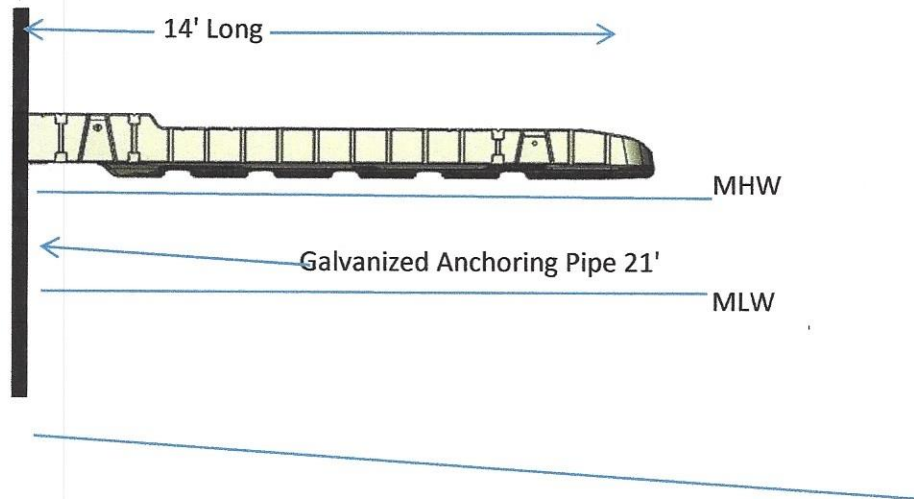
Cross Section View

Applicant:

Dave Swanson  
24882 Algonquin Rd.  
Lewes, DE

Contractor:

A Plus Marine Services, LLC  
32953 Lighthouse Rd. Unit 10  
Selbyville, DE 19975  
(302) 436 5320

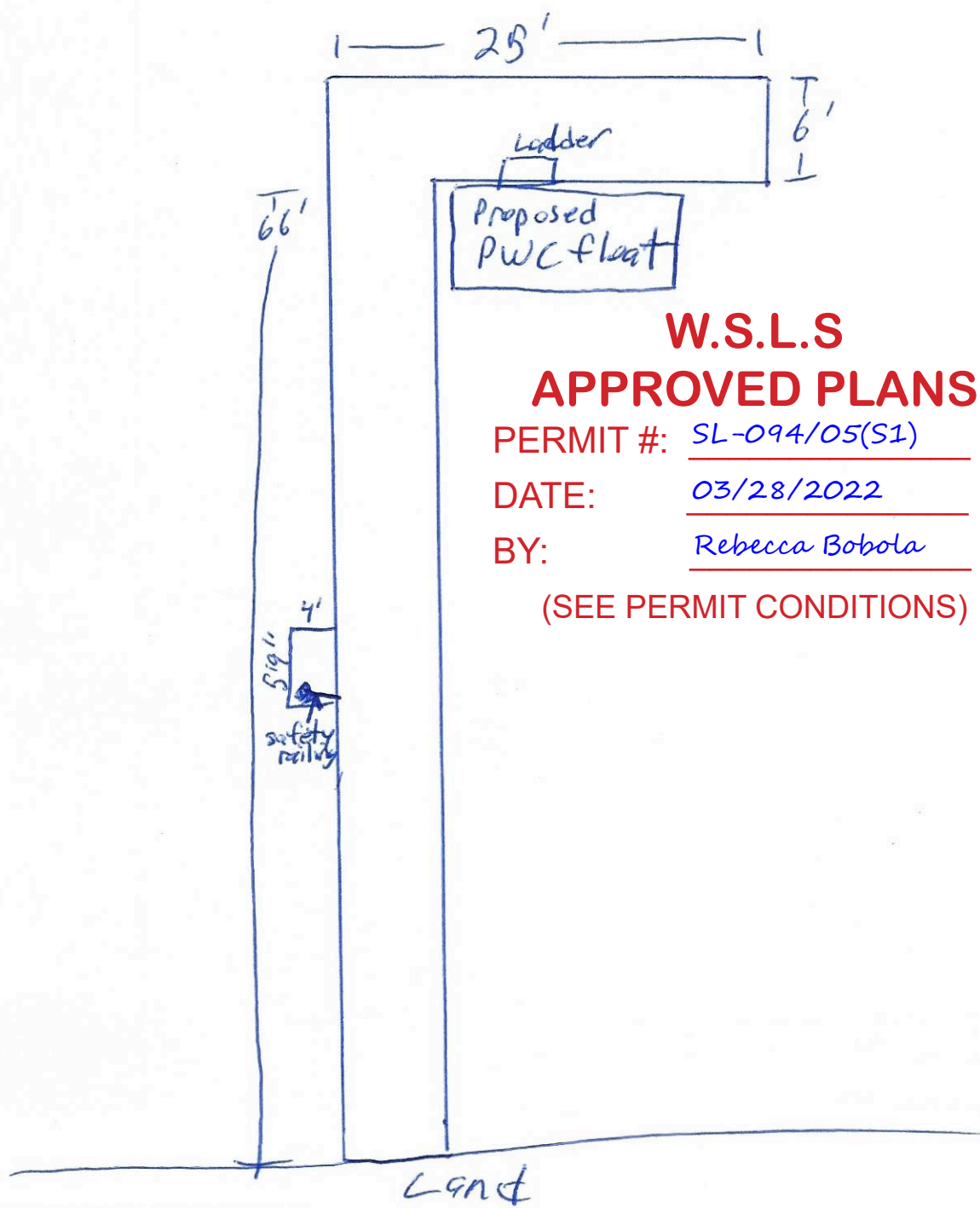


\*\*Not to scale\*\*

**W.S.L.S**  
**APPROVED PLANS**  
PERMIT #: SL-094/05(S1)  
DATE: 03/28/2022  
BY: Rebecca Bobola  
(SEE PERMIT CONDITIONS)

12/3/2021

Revised plans for floating dock  
for Personal Water Craft for Swansons



**W.S.L.S**

**APPROVED PLANS**

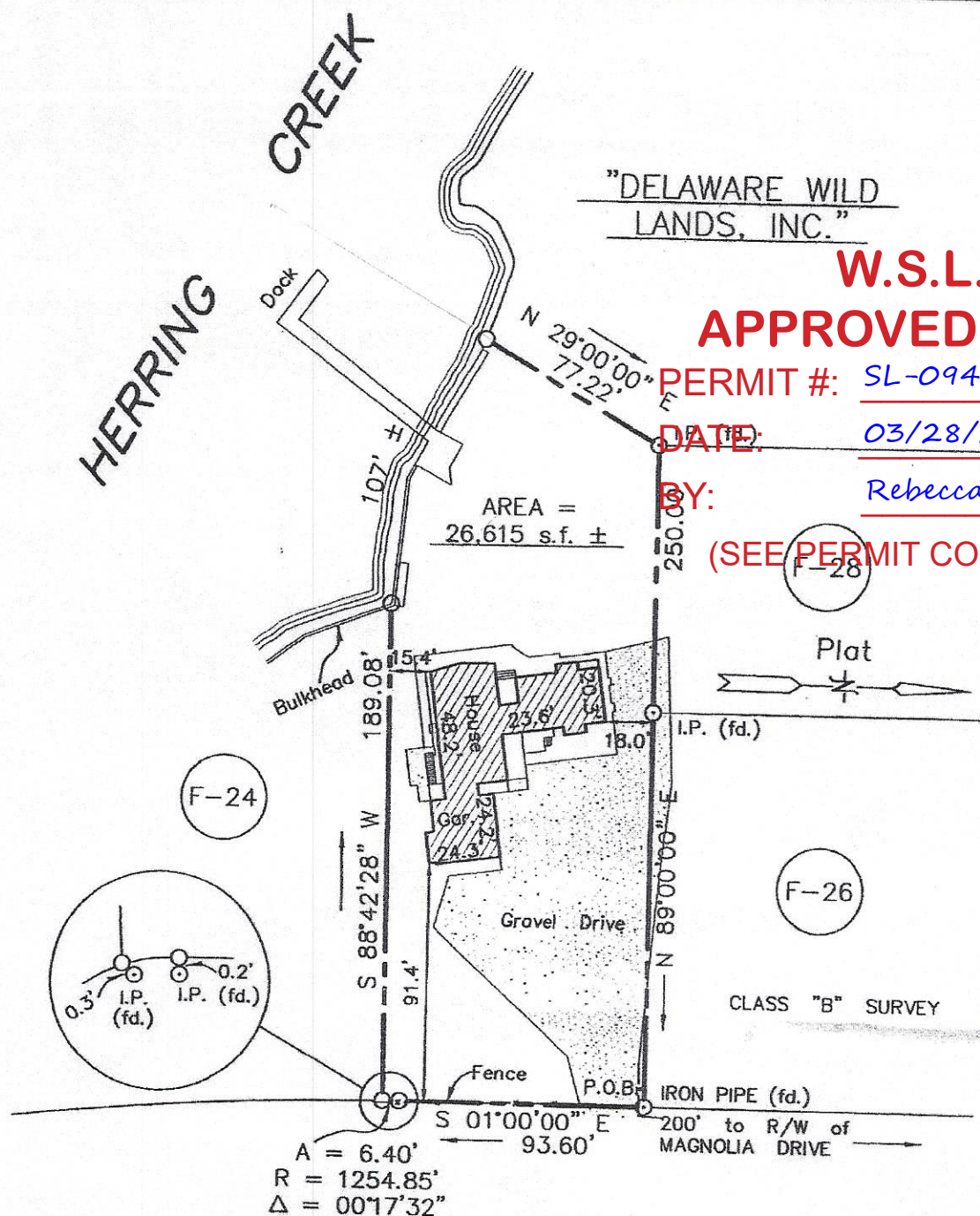
PERMIT #: SL-094/05(S1)

DATE: 03/28/2022

BY: Rebecca Bobola

(SEE PERMIT CONDITIONS)





"DELAWARE WILD  
LANDS, INC."

**W.S.L.S  
APPROVED PLANS**

PERMIT #: SL-094/05(S1)

DATE: 03/28/2022

BY: Rebecca Bobola

(SEE PERMIT CONDITIONS)

ALGONQUIN ROAD  
( 50' R/W )

Lot #F-25

"HERRING LANDING"

Prepared for



**US Army Corps  
of Engineers®**  
Philadelphia District

## **NOTICE**

**This Department of the Army permit contains important permit conditions. Please read the permit and all conditions carefully.**

**Work authorized by this permit may be inspected for compliance at any time.**

**It is your responsibility, as permittee, to ensure that all work authorized by the permit, including all work performed by contractors, be performed in strict compliance with all terms and conditions of the permit. Failure to do so may result in a determination by the District Engineer to suspend, modify, or revoke your permit (33 CFR 325.7). It may also subject you to the enforcement procedures contained at 33 CFR 326.4 and 326.5, including civil and criminal action and the possible imposition of civil penalties and criminal fines up to \$50,000.00 per day per violation.**

**You are also reminded to complete and submit to this office the notice of commencement and completion forms attached to this authorization.**

**If you have any questions about, or need to modify, any of the terms and conditions of this permit, you are requested to contact the Philadelphia District Office at (215) 656-6728.**

Delaware-SPGP-20



US Army Corps  
of Engineers  
Philadelphia District

DEPARTMENT OF THE ARMY  
STATE PROGRAMMATIC GENERAL PERMIT  
DELAWARE-SPGP-20

PERMITTEE AND PERMIT NUMBER:

CENAP-OP-R-Delaware State Programmatic General Permit 20 (SPGP-20)

ISSUING OFFICE:

Department of the Army  
U.S. Army Corps of Engineers, Philadelphia District  
Wanamaker Building, 100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the conditions specified below.

**PROJECT DESCRIPTION:** This general permit authorizes the construction of proposed and maintenance of existing piers, docks, gangways/ramps, stairs/ladders, mooring piles, boat lifts, modular floating platforms for jet skis and larger vessels, breakwaters and the replacement of existing serviceable bulkheads.

**This general permit does not authorize the following activities:** a) Any dredging or any other activity not specified in this general permit; b) Piers, docks, boat lifts and breakwaters constructed of solid fill; c) Floating docks in submerged aquatic vegetation; d) Construction of cantilevered structures beyond the authorized width of pier/dock structures; e) The storage of petrochemicals, pollutants, or hazardous products on docks or piers; f) Any structures or work within the Chesapeake and Delaware Canal or the Lewes and Rehoboth Canal - proposed work/structures within these waterways will require submission of a separate permit application to the Philadelphia District Engineer; g) Non-residential projects within the Delaware River, Delaware Bay, Nanticoke River or their tributaries; or h) Any structure or fill activity in areas named in Acts of Congress or Presidential Proclamations as Natural Landmarks, National Rivers, National Wilderness Areas, National Wildlife Refuges, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries. This general permit is not applicable for work reasonably related to another activity requiring an individual Department of the Army permit application and approval by the District Engineer, Corps of Engineers.

The District Engineer retains discretionary authority to require, on a case-by-case basis, submission of an individual Department of the Army permit application for proposed work when it is determined that such a review would be in the public interest (i.e., potential for significant impact on environmental resources, effect on navigation, etc.).

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**PROJECT LOCATION:** This general permit is applicable to navigable waters of the United States located within the geographic boundaries of the Philadelphia District, U.S. Army Corps of Engineers within the State of Delaware.

### **PERMIT CONDITIONS:**

#### **General Conditions:**

1. This general permit will expire on ***December 31, 2024***. The time limit for completing the work authorized by this general permit ends on this date. In the event that this General Permit is reissued/extended, any activity which has been authorized under the terms and conditions of this General Permit will remain authorized until such time that the required State permit/authorization issued with the general permit expires, provided the authorized activity complies with any subsequent re-authorization or modification of this general permit.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 3, below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you sell the property associated with this general permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization (see Transfer of Permit below).
4. If a conditioned water quality certification has been issued for your project by the Delaware Department of Natural Resources and Environmental Control (DDNREC), you must comply with conditions specified in the certification as special conditions to this general permit. This is specific to Section 404 discharges. All work performed under the authorization of this general permit must be consistent with the Delaware Coastal Zone Management (CZM) program. Any conditions in the required State authorization required for compliance with the State CZM program are conditions of this authorization by reference.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the conditions of your general permit.

#### **Special Conditions:**

1. In order for work and structures to be approved by this general permit the work and structures must be reviewed and receive the approval(s) of the DDNREC Subaqueous Lands Act (Title 7, Delaware Code, Chapter 72). All work shall be conducted in accordance with those plans or project description as approved by the DDNREC unless otherwise specified by this office. Additionally, in order for work to be approved under this general permit, the permittee must be furnished a copy of this general permit from the DDNREC at the time of the permittee's receipt of State approval.
2. This general permit is not applicable to work which is authorized by the State due to failure of the State to make a permit decision within the review period mandated by State Law and/or regulation, unless the State has reviewed the project, determined it compliant with applicable State rules and regulations and the terms of this general permit, and issues a State permit. This general permit is

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not applicable when work is authorized by the State as part of a settlement agreement or administrative consent order unless the State has reviewed the project, determined it compliant with applicable State rules and regulations and the terms of this general permit, and issues a State permit.

3. The applicant shall notify the Philadelphia Corps District at least 10 days prior to the commencement of authorized work by completing and signing the enclosed Notification/Certification of Work Commencement Form (Enclosure 1). The applicant shall notify the Philadelphia Corps District within 10 days of the completion of the authorized work by completing and signing the enclosed Notification/Certification of Work Completion/Compliance Form (Enclosure 2). All notifications required by this condition shall be in writing and shall be transmitted to this office by mail or by e-mail at [NAPREGULATORY@usace.army.mil](mailto:NAPREGULATORY@usace.army.mil).
4. The Corps may impose other special conditions on a project authorized pursuant to SPGP-20 where it is determined necessary to minimize adverse environmental effects or based upon any other factor of the public interest.
5. Any activities not specifically identified and authorized herein shall constitute a violation of the conditions of this permit, in whole or in part, and may result in the institution of such legal proceedings as the United States Government may consider appropriate.
6. All structures, including piers, docks, breakwaters and bulkheads authorized by this general permit, shall conform to the following specifications except where otherwise noted in the special conditions:
  - a. No more than one (1) pier/dock complex and other mooring structures constructed for a maximum of four (4) mooring spaces per buildable lot (see definitions).
  - b. No more than two (2) residential community structures (see definition) shall be permitted per residential community development for a maximum of 25 mooring spaces. Residential community structures are authorized to serve the water access needs of more than two (2) waterfront lots or residences.
  - c. No more than 25 mooring spaces per municipal project or commercial project (see definition).
  - d. For buildable lots, the maximum width of piers shall be four (4) feet and the maximum width of docks shall be five (5) feet, except where otherwise specified (see Special Condition 9). When boat lifts or a floating dock structure are constructed, then the maximum width of the structure shall be six (6) feet.
  - e. For residential community structures, municipal projects and commercial projects, the maximum width of piers shall be six (6) feet, the maximum width of docks shall be eight (8) feet, except where otherwise specified (see Special Condition 9).
  - f. Floating structures (such as docks and personal watercraft platforms) shall be constructed and operated to prevent them from resting on the waterway bottom. This may be accomplished with the use of chocks, stoppers or other devices where necessary. Personal Watercraft floating structures shall be designed to the minimum size necessary to accommodate the personal watercraft.



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- g. Breakwaters shall be constructed at least 18 inches above the bottom of the waterway with a minimum spacing of three (3) inches between sheathing.
  - h. Under normal circumstances, a minimum of 3/8", 1/2", 3/4" or 1" space is to be provided for 4", 6", 8-10", or 12" wide planks, respectively, for fixed piers/dock structures. 12-inch is the maximum plank width authorized under this general permit. The use of light-transmitting materials such as grated or latticed decking that is designed for the passage of light through the open spaces may also be used, provided the total open space is equal to or greater than that of plank spacing.
  - i. Structures shall not extend more than 20 percent of the width of the waterway measured from mean low water line and in no instances exceed 250 feet channelward of the mean high water line. All structures, including piers, docks, breakwaters and bulkheads shall not exceed 500 linear feet in length along the shoreline. Each application shall include a written justification for the number and length of all proposed structures.
  - j. All structures shall be constructed a minimum of 50 feet outside of any authorized Federal navigation channel/project.
  - k. The replacement or repair of an existing bulkhead on natural bodies of water (see definition) may not extend more than 18 inches channelward of the original authorized bulkhead. This permit authorizes the placement of stone riprap at the toe of bulkheads to prevent undermining.
7. For commercial, community and municipal structures with 5 to 25 mooring spaces:
- a. May not be constructed within wetlands, submerged aquatic vegetation beds, designated aquaculture lease areas as defined by DDNREC, or sites recognized by DDNREC as Critical Resource Waters.
  - b. The maximum width of access piers shall be six (6) feet, the maximum width of docks shall be eight (8) feet, the maximum width of finger piers shall be four (4) feet and the maximum width of floating finger piers shall be six (6) feet, except where otherwise specified (see Special Condition 9).
  - c. A draft Operation and Maintenance Plan as described in the State of Delaware Marina Regulations for commercial, community or municipal structures exceeding four (4) mooring slips shall be submitted with the permit application.
  - d. Shall not be authorized in a location that will expand or change the prohibited and/or seasonally prohibited shellfish harvest area designation.
8. In order to avoid or minimize impacts to Federally listed species and other NOAA resources, the following conditions shall apply to all authorized work:
- a. Piles shall not exceed 24 inches in diameter.
  - b. Steel pilings are not authorized under this general permit.
  - c. Impact hammers may only be used if a wooden cushion block is placed atop each pile to be driven; otherwise a vibratory hammer must be used.



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- d. Pile driving activities must use a “soft start” method. A soft start will continue for 15 minutes before full-force pile driving (see definition).
9. The following conditions shall apply to work conducted in wetlands and mudflats and over submerged aquatic vegetation (see definitions):
  - a. Piers and docks subject to this general permit which would cross wetlands, mudflats and/or submerged aquatic vegetation shall be limited to a maximum width of three (3) feet for individual lots and four (4) for municipal and residential community structures.
  - b. The height of structures, as measured from the lower most portion of the deck structure, over the wetland/mudflat floor or the mean high water line in submerged aquatic vegetation shall be a minimum of three (3) feet for individual lots and four (4) feet for municipal and residential community structures.
  - c. No more than 2 mooring spaces per buildable lot if located over submerged aquatic vegetation.
  - d. All construction equipment working on wetlands/mudflats shall be supported on mats.
  - e. Any wetlands/mudflats disturbed during construction shall be restored to pre-construction conditions.
10. Damage to structures/vessels: The permittee hereby recognizes the possibility that the structures permitted may be subject to damage by wave wash from passing vessels. The issuance of this general permit does not relieve the permittee from taking all proper steps to insure the integrity of the structures permitted and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.
11. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (This special condition is applicable to Corps of Engineers permits that provide authorization under Section 10 of the Rivers and Harbors Act of 1899).
12. The provisions of this general permit shall apply to any area designated as a component of the National Wild and Scenic River System or any river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status provided the National Park Service, after having been notified of the proposed work, determines that the proposed activity will not adversely affect the Wild and Scenic River Designation or study status.
13. The applicant must notify the District Engineer if the authorized activity may affect any historic properties listed, or determined to be eligible, or which the applicant has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of National Historic Preservation Act have been satisfied and that the activity is authorized. Furthermore, that if the permittee before or during

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prosecution of the work authorized encounters a historic property (see definition) that has not been listed or determined eligible for listing on the National Register but which may be eligible for listing in the National Register, the permittee shall immediately notify the District Engineer. Additional information regarding historic properties can be found at: <https://history.delaware.gov/> and <https://www.nps.gov/subjects/nationalregister/index.htm>.

14. Any archaeological artifacts (see definition) discovered during the performance of work under the authorization of this general permit must be adequately protected and their discovery promptly reported to the District Engineer.
15. No activity authorized under this General Permit shall adversely affect any federally-listed threatened or endangered species, as identified under the Endangered Species Act of 1973, or result in the destruction or adverse modification of critical habitat of such species. If the activity may affect listed species or critical habitat, or is likely to jeopardize proposed species, or likely to result in the adverse modification of proposed critical habitat, the Corps shall initiate and complete a Section 7 consultation or conference, as appropriate, in accordance with the Endangered Species Act of 1973 prior to authorization of the activity under this General Permit.
16. No discharge of dredged, excavated or fill material or structures may consist of unsuitable material or solid waste (e.g., trash, debris, car bodies, etc.) and all material discharged must be free from toxic pollutants in toxic amounts pursuant to Section 307 of the Clean Water Act.

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### FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:  
  
(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).  
  
(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization.
  - a. This general permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
  - b. This general permit does not grant any property rights or exclusive privileges.
  - c. This general permit does not authorize any injury to the property or rights of others.
  - d. This general permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability. In issuing this general permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this general permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

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- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

- 6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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### **DEFINITIONS OF TERMS:**

**Archaeological Artifact**- Any object manufactured, modified, or used by past humans. Examples include prehistoric projectile points (“arrowheads”), ceramic sherds, bricks, and old bottle glass.

**Buildable Lot**- For the purpose of this general permit, a buildable lot is defined as a single parcel or multiple contiguous parcels of land which supports a residential building.

**Commercial Project**- Operated primarily for profit.

**Historic Property**- Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places.

**Mooring Space**- For the purpose of this general permit, a mooring space includes boat slips, boatlifts, and personal watercraft moorings such as lifts and platforms. Davits which lift and store watercraft on land are not considered to be a mooring space for the purpose of this general permit.

**Mudflats**- Mud flats are broad, unconsolidated intertidal and subtidal soft bottom areas characterized by organic materials and fine-grained particles (generally smaller than sand). Mud flats are persistent habitats that lack visible structures and are “unvegetated”, though colonization by photosynthetic algae is an important component of mudflats. Mud flats are important for a variety of vertebrate and invertebrate species that depend on the soft bottom condition for foraging, spawning, nursery and refuge habitat; nearly all native coastal fish species use mud flat habitat throughout some portion of their life cycle. Mud flats also play a very important role in biogeochemical cycling as they trap, filter and process nutrients and organic matter. Additionally, mud flats can buffer wave energy, reducing shoreline erosion. Mud flats are considered Special Aquatic Sites as per the 404(b)(1) Guidelines.

**Natural Bodies of Water**- All tidal and non-tidal waters, except for artificial tidal lagoons.

**Residential Community Structures**- Structures constructed, owned, operated or maintained jointly for the exclusive use of the residents within a residential or planned community.

**Soft Start**- Pile driving commenced for 15 seconds at half power, followed by a 1 minute wait period. This cycle shall be repeated over the 15 minute time period prior to commencement of full force pile driving.

**Wetlands**- As defined by Section 404 of the Clean Water Act, wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands are considered Special Aquatic Sites as per the 404(b)(1) Guidelines.

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This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

**BONNER.ED**  
**WARD.E.122**  
**9023744**

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Date: 2020.01.07  
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**07-Jan-2020**

(District Engineer)

Edward E. Bonner, Chief, Regulatory Branch

(Date)

For: David C. Park, Lieutenant Colonel, Corps of Engineers  
District Commander

**TRANSFER OF PERMIT**

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(Transferee)

(Date)



