



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: PTR-14-298367

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SUBSEQUENT PROBATE PETITION

IN THE MATTER OF THE ROBIN WILLIAMS TRUST

001P04729829

Instructions:

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11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN FRANCISCO**

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15 In the Matter of the
16 THE ROBIN WILLIAMS TRUST
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SUPERIOR COURT
COUNTY OF SAN FRANCISCO
2014 DEC 19 PM 3:51
CLERK OF THE COURT
BY: *[Signature]*
DEPUTY CLERK

Case No. **PTR - 14 - 29 8367**
BENEFICIARY'S PETITION FOR
INSTRUCTIONS PER PROB. CODE §
17200 et seq. REGARDING
INTERPRETATION OF TRUST TERMS

DATE: **MAR 30 2015**
TIME: **PROBATE DEPARTMENT**
DEPT: **9:00 A.M., RM. 204**

VERIFICATION SIGNATURE VIA
FACSIMILE

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21 “jewelry.” *Merriam-Webster Online Dictionary*. 2014. <http://www.merriam-webster.com/dictionary/jewelry> (19 Dec. 2014) 8

22 “memorabilia.” *Merriam-Webster Online Dictionary*. 2014. <http://www.merriam-webster.com/dictionary/memorabilia> (19 Dec. 2014) 7

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1 Susan Schneider Williams, beneficiary of the Second Amendment to and Complete
2 Restatement of Trust Agreement of the Robin Williams Trust, (hereinafter "Mrs. Williams" or
3 "Petitioner"), submits this Petition for Instructions and respectfully alleges as follows:

4 **INTRODUCTION**

5 Susan Schneider Williams lost her husband through a shocking and emotionally charged
6 event that occurred in their own home in Tiburon. Since the incident, she was not given time to
7 grieve her loss free from the frenetic efforts to interfere with her domestic tranquility and even
8 short term continuity of her home life with her two high school boys.

9 As shown below, there is no doubt that there are interpretive variations of the documents
10 at issue and no doubt that a substantial number of items that would otherwise sought to be
11 removed will indeed belong to Mrs. Williams or the trust that is supposed to have been created in
12 her name.

13 **NOTICE**

14 The following is a list of names and addresses of all persons entitled to notice of this
15 petition:

16 Joel Faden, co-Trustee
17 250 W. 57th St., 26th Flr.
18 New York, NY 10107

19 Arnold Kassoy
20 Manatt Phelps & Phillips, LLP
21 11355 W. Olympic Blvd.
22 Los Angeles, CA 90064

23 The Windfall Foundation
24 c/o Arnold Kassoy
25 Manatt Phelps & Phillips, LLP
26 11355 W. Olympic Blvd.
27 Los Angeles, CA 90064

28 Daniel Spencer
5 Echo Avenue
Corte Madera, CA 94925

Rebecca Spencer
5 Echo Avenue
Corte Madera, CA 94925

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Cody Williams
540 El Camino Del Mar
San Francisco, CA 94121

McLaurin Williams
1035 N. Barksdale
Memphis, TN 38107

Zachary Williams
4135 23rd Street
San Francisco, CA 94114

Zelda Williams
2330 Bronson Hill Drive
Los Angeles, CA 90068

There are no known requests for special notice regarding proceedings involving the Trust.

JURISDICTION AND VENUE

This Court has jurisdiction over all issues submitted in this Petition for Instructions pursuant to Probate Code section 17000, et seq.

Venue is proper because the principal place of administration of the Trust is San Francisco, California.

BACKGROUND

A. THE ROBIN WILLIAMS TRUST

By instrument dated June 24, 2010, Robin Williams as settlor executed a trust agreement establishing the Second Amendment to and Complete Restatement of Trust Agreement of the Robin Williams Trust (hereinafter the "Trust"). Arnold Kassoy of Manatt served as Mr. Williams's legal counsel during this time.

On August 11, 2014, Mr. Williams passed away and the Trust became irrevocable by operation of its terms. After Mr. Williams's untimely death, Joel Faden and Stephen Tenenbaum served as successor co-Trustees of the Trust.

On August 22, 2014, Mr. Fadden mailed a notice from the co-Trustees under Probate Code section 16061.7.

1 On September 13, 2014, Stephen Tenenbaum resigned as co-Trustee of the Trust.
2 Pursuant to the terms of the Trust, Arnold Kassoy was appointed successor co-Trustee. Mr.
3 Kassoy and Mr. Faden continue to manage the Trust, with other attorneys from Mr. Kassoy's
4 firm, Manatt Phelps & Phillips, LLP, serving as legal counsel for the co-Trustees.

5 **B. THE SUSAN TRUST**

6 Under paragraph 4.3.1.3, the Trust directs the co-Trustees to create a trust for Mrs.
7 Williams (herein after the "Susan Trust"). The Trust states that the Susan Trust is to be held and
8 administered for Mrs. Williams's benefit during her lifetime. (Ex. A, ¶ 4.3.1.3, p. 11.)¹ The
9 paragraphs governing the Susan Trust do not appoint the co-Trustees of the Trust as trustees for
10 the Susan Trust. Indeed, the provisions do not name any trustee. (Id. at ¶¶ 4.3.1.3(a)-(h), p. 11-
11 13.)

12 The Trust directs that the Susan Trust should be funded with the Tiburon residence as
13 well as its contents. However, items of tangible personal property specifically gifted pursuant to
14 paragraph 4.3.1.1 are not included in the Susan Trust. While paragraph 4.3.1.1 provides for three
15 specific gifts, only one is at issue in this matter. The Trust provides that specific items of
16 personal property shall go to Mr. Williams's children, which states as follows:

17 Subject to subparagraph (c), below [which deals with the contents
18 of Mr. Williams' Napa residence], all of Settlor's clothing jewelry,
19 personal photos taken prior to his marriage to SUSAN, Settlor's
20 memorabilia and awards in the entertainment industry and the
21 tangible personal property located at 1100 Wall Road, Napa, CA
that the Trustee determines not to sell shall be distributed to
Settlor's then living children in substantially equal shares as they
shall agree.

22 (Id. at ¶ 4.3.1.1(b), p. 8-9.) As outlined more fully in the next section, the co-Trustees' actions
23 and statements have given rise to issues in the interpretation of the language of these provisions.

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25
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27 ¹ In the interests of maintaining personal privacy, a redacted version of the Trust has been
28 attached as Exhibit A. All noticed parties have copies of the Trust. Per the Court's request, we
are prepared to lodge a full copy of the Trust for the Court's review.

1 These provisions are ambiguous as to the location of the tangible personal property.
2 Given Mr. Williams's desire to have Mrs. Williams continue to reside in their Tiburon home, it
3 is reasonable to interpret the provisions to provide an immediate gift of items in the Napa
4 residence to the children, and not the items in the Tiburon residence. Any other interpretation
5 would lead to Mrs. Williams's home being stripped while Mrs. Williams still lives there. For
6 example, if the gift of tangible personal property were not restricted to the Napa residence, then
7 Mr. Williams's promise ring and the tuxedo he wore at his wedding to Mrs. Williams would be
8 removed from their home. It is difficult to imagine Mr. Williams desiring that outcome.

9 There are also ambiguities as to what is considered jewelry, whether memorabilia is
10 limited to memorabilia related to the entertainment industry, how to distinguish between
11 memorabilia and contents of the home, and what to do with tangible personal property for the
12 Tiburon residence that was stored off-site and/or at the Napa residence.

13 In addition to real and personal property, the Trust directs that the Susan Trust is to
14 include a reserve fund. The fund should be a sufficient sum to cover the costs for the Tiburon
15 residence for the rest of Mrs. Williams's lifetime. (Id. at ¶ 4.3.1.3, p. 11.) These costs include,
16 but are not limited to, "mortgage or trust deed payments, property taxes and assessments,
17 insurance premiums, maintenance expenses, all ordinary and extraordinary repairs and necessary
18 improvements[.]" (Id.) Any remaining net income from the Susan Trust is to be paid to Mrs.
19 Williams annually. (Id. at ¶ 4.3.1.3(b), p. 12.) The co-Trustees have taken a restrictive
20 interpretation of this provision, despite the broad phrasing of the Trust terms. As such, it has
21 become necessary to seek this Court's instruction, among other reasons.

22 **C. NECESSITY OF THIS PETITION FOR INSTRUCTIONS**

23 The actions of the co-Trustees of the Trust have made it clear that a petition for
24 instructions pursuant to section 1700 of the Probate Code is necessary for the orderly
25 administration of the Trust and the creation of the Susan Trust.

26 Within days after Mr. Williams's untimely death, the co-Trustees, through their agents,
27 unilaterally removed Mr. Williams's personal property and asked for permission from Mrs.
28 Williams after the fact.

1 Within weeks, the co-Trustees, with the help of then counsel (now co-Trustee) Mr.
2 Kassoy, insisted on gaining access to Mrs. Williams's home for the purpose of dividing and
3 removing property under the specific gifts of the Trust. These efforts continued even after Mrs.
4 Williams expressed concern regarding the interpretation of the Trust terms and before any
5 information from the co-Trustees was provided regarding how they intended to interpret the
6 Trust. Specifically, Mr. Kassoy notified Mrs. Williams on Friday, September 12, 2014 (exactly
7 one month and one day after Mr. Williams's death), that the removal of Mr. Williams's personal
8 property would occur on Monday, September 15, 2014. The co-Trustees had keys to her home.
9 Naturally, Mrs. Williams became frightened of the co-Trustees invading her home (where she
10 and her two teen-age sons reside); she was forced to retain counsel to intervene on her behalf to
11 obtain clarification and an orderly process. Shortly thereafter, certain home-related services
12 were cancelled.

13 Further, the co-Trustees have taken certain positions as to the interpretation of the Trust
14 terms that need clarification or resolution. For example, Mr. Kassoy, in correspondence to
15 counsel of Mrs. Williams's request for an orderly inventorying of the tangible personal property,
16 stated that "memorabilia" was supposed to be defined in the broadest sense possible. He wrote,
17 "This would include all items related to Robin's career and the entertainment industry, all items
18 related to his childhood, all items in his office other than furniture, all items he collected over the
19 years (such as toys, bikes, games, trinkets and the like) and those things for which Robin is/was
20 memorable." However, it is clear from the Trust, that memorabilia is a specific exception to the
21 contents of the Tiburon home, which are supposed to fund the Susan Trust. As such, it is
22 necessary to bring this Petition for Instructions to clarify the terms of the Trust.

23 **REQUEST FOR INSTRUCTIONS**

24 **A. PROPERTY SUBJECT TO THE SUSAN TRUST**

25 Susan and Robin Williams lived in two houses – 95 St. Thomas Way, Tiburon, and 1100
26 Wall Road, Napa. The marital abode was 95 St. Thomas Way. The Trust provides in paragraph
27 4.3.1.3 that the gift in trust for Susan includes the 95 St. Thomas Way residence and its contents.
28 Further, as written, the specific bequest of tangible personal property to the children under

1 subparagraph 4.3.1.1(b) of the Trust is limited to those items located at 1100 Wall Road, Napa,
2 CA. Mrs. Williams would agree that the co-Trustees can marshal and take possession of the
3 tangible personal property assets in the Napa residence alone.

4 **1. Inclusion of Stored Contents of Tiburon Residence in the Susan Trust**

5 The Trust bequeaths the “residence (and the contents thereof...)” to the Susan Trust. (Ex.
6 A, ¶ 4.3.1.3, p. 11.) The Trust further explains that Mrs. Williams has a life estate in the use of
7 the residence as well as the use of “the furniture and furnishings therein and other contents[.]”
8 (Id. at ¶ 4.3.1.3(a), p. 11.) At the time of Mr. Williams’s death, items for the Tiburon residence
9 were stored in several storage units as well as at the Napa real property. Accordingly, Mrs.
10 Williams seeks an instruction that the items for the Tiburon residence as stored elsewhere are
11 contents of the home and, as such, are administered by the Susan Trust.

12 California probate courts have not considered this specific issue. In other states that have
13 considered this issue, courts have found that a residence, i.e. a home, should be broadly
14 interpreted. For example, in In re Hulse’s Estate, 72 N.Y.S.2d 724 (N.Y. 1947), the court
15 interpreted a bequest of the “contents of my home” under a will. In determining the scope of the
16 bequest, the court explained that “One’s home is something more than the house in which he
17 lives—it includes surrounding grounds, buildings such as garages, store houses and others used
18 in connection with the occupancy of the property and many other things according to the wealth
19 and fancy of the owner.” Id. at 726.

20 In this matter, the Trust as written uses the term “contents” to be as inclusive as possible.
21 The only exceptions to “contents” are set forth in paragraph 4.3.1.1 of the Trust. (Ex. A, ¶
22 4.3.1.1, p. 8.) These are specific gifts of tangible personal property at the Napa real property.
23 Mrs. Williams does not seek to include these specific gifts in the Susan Trust. Mrs. Williams
24 seeks to abide by the general intent of Mr. Williams, which – as expressed in the Trust – was to
25 allow her to stay in their Tiburon home as it was during their marriage. To this end, Mrs.
26 Williams asks this Court to issue an instruction that items intended for the Tiburon residence that
27 were previously stored in other locations are to be included in, and administered under the terms
28 of the Susan Trust.

1 **B. SPECIFIC GIFTS OF TANGIBLE PROPERTY AT TIBURON HOME**

2 In the alternative, if the Court finds that the specific gifts as outlined in subparagraph
3 4.3.1.1(b) of the Trust applies to tangible property at Mrs. Williams’s Tiburon home, the
4 following issues regarding the interpretation of the terms of the specific gifts must be addressed
5 to expedite anticipated interpretation issues.

6 **1. Entertainment Industry Memorabilia is Excluded from the Susan**
7 **Trust**

8 In this alternative interpretation, under the terms of the Trust, “memorabilia and awards
9 in the entertainment industry” are exempt from the Susan Trust. (Ex. A, ¶¶ 4.3.1.1(b), p. 8,
10 4.3.1.3, p. 11.) However, the term “memorabilia” is not defined by the Trust. In ordinary terms,
11 “memorabilia” are understood to be “objects or materials that are collected because they are
12 related to a particular event, [or] person[.]” Prob. Code § 21122; “memorabilia.” *Merriam-*
13 *Webster Online Dictionary*. 2014. <http://www.merriam-webster.com/dictionary/memorabilia> (19
14 Dec. 2014); see also Media Tech. Licensing, LLC v. The Upper Deck Co., Nos. SA CV 01–1198
15 AHS (ANx), SA CV 03–897 AHS (ANx), 2008 WL 6023808, *1 (C.D. Cal. Oct. 6, 2008)
16 (memorabilia defined as “object valued for its connection with historical events, culture, or
17 entertainment.”). For example, in Cairns v. Franklin Mint Co., 292 F.3d 1139 (2002), items such
18 as jewelry, plates, and dolls that depicted Princess Diana were memorabilia. *Id.* at 1144-45
19 (Franklin Mint Co., a company that manufactured these items sued another company for
20 marketing similar items in violation of their right of publicity). Like the Princess, Mr. Williams
21 was a famous person. Thus, memorabilia are objects that are collected because of their depiction
22 of him or relation to his fame. In other words, this does not include Mr. Williams’s personal
23 collections of knick-knacks and other items that are not associated with his famous persona.

24 Further, as written in the Trust, the term “memorabilia” is limited to items “in the
25 entertainment industry.” (Ex. A, ¶¶ 4.3.1.1(b), p. 8.) By reading the sentence as a whole, and
26 according to ordinary grammatical meanings, the term “memorabilia” is modified by the
27 following description “in the entertainment industry.” Prob. Code § 21122. As such,
28 “memorabilia” are items that are collected because they relate to Mr. Williams’s acting career in

1 the entertainment industry. An example of an item that falls under this category is the
2 suspenders that Mr. Williams wore on the Mork and Mindy show. Mrs. Williams seeks an
3 instruction clarifying the term memorabilia to expedite the administration of the Trust and the
4 Susan Trust.

5 **2. Mr. Williams's Watches At His Tiburon Home Are Included in the**
6 **Susan Trust**

7 The Trust provides that "jewelry...prior to [Mr. Williams's] marriage to [Mrs.
8 Williams]" shall be distributed to Mr. Williams's children. (Ex. A, ¶ 4.3.1.1(b) p. 8-9.) But, the
9 term "jewelry" is not defined by the Trust. Mr. Williams left behind numerous watches. These
10 watches are separate from other jewelry that he owned prior to his marriage with Mrs. Williams.
11 Accordingly, the issue presented is whether "jewelry" is exclusive of Mr. Williams's watches.
12 Petitioner seeks an instruction that watches are not jewelry and should, therefore, be treated as
13 contents of the Tiburon home that are part of the Susan Trust.

14 Jewelry is defined as "decorative objects (such as rings, necklaces, and earrings) that
15 people wear on their body." "jewelry." *Merriam-Webster Online Dictionary*. 2014.
16 <http://www.merriam-webster.com/dictionary/jewelry> (19 Dec. 2014). In Kelly v. Dollard, 216
17 Cal. 312 (1932), the court considered whether particular items of personal property had been
18 held in trust. The personal property at issue consisted of jewelry and watches, among other
19 things. Id. at 314. The Court referred to watches separately from the several other items of
20 jewelry. Id. at 314, 316 ("the box containing . . . jewelry and watches"). Other courts have
21 similarly distinguished watches from jewelry. See Hall v. Susskind, 109 Cal. 203, 203 (1895)
22 ("This is an action to recover ...the value of certain property, to wit, diamonds, watches, and
23 jewelry"); Jensen v. Chamtech Services Ctr., No. CV96-9034 CBM, 1997 WL 351081, *3-4
24 (C.D. Cal. 1997) (Federal court in granting an injunction, enjoined the selling, transferring, etc.
25 of "watches and jewelry").

26 In light of the courts' treatment of watches as a category of personal property that is
27 separate and distinct from jewelry, Mr. Williams's watches do not pass as a specific gift of
28

1 tangible personal property under subparagraph 4.3.1.1(b) of the Trust. The watches that were in
2 the Tiburon home are part of the contents of the home and, as such, are part of the Susan Trust.²

3 **C. THE SUSAN TRUST RESERVE FUND**

4 Under the terms of the Trust, the Susan Trust is to be funded with adequate amount of
5 cash or other property to constitute an appropriate reserve fund to cover all costs related to the
6 Tiburon home. These costs are broadly defined as “including, but not limited to, mortgage or
7 trust deed payments, property taxes and assessments, insurance premiums, maintenance
8 expenses, all ordinary and extraordinary repairs and necessary improvements[.]” (Ex. A, ¶
9 4.3.1.3, p. 11.) As written in the Trust, the broad definition of costs includes all expenses
10 associated with daily upkeep as well as unexpected renovations and improvements of the
11 Tiburon residence.

12 Courts that have examined these terms have found the following: 1) maintenance of a
13 residence can include “gardener and pool service, and all utility bills,” In re Marriage of
14 Harrison, 179 Cal. App. 3d 1216, 1229 (1986) (reviewing without comment the trial court’s
15 order); 2) ordinary repairs are repairs that are necessary to keep the property in efficient
16 operating condition, In re Kelley’s Estate, 63 Cal. 2d 679, 685 (1965); and 3) extraordinary
17 repairs are those that “tend[] to increase the value” of the home, In re Roberts’ Estate, 27 Cal. 2d
18 70, 79 (1945) (interpretation of term in a will).

19 Mrs. Williams seeks to maintain her home as she did when she was married to Mr.
20 Williams. It is clear from reading the provisions for the Susan Trust that this was Mr. Williams’s
21 intent. The Trust provided her with a life estate in their marital home, full use of the furniture,
22 furnishings, and all other contents, and a fund to cover all costs related to the home. (Ex. A, ¶¶
23 4.3.1.3-(a), p. 11.)

24 In addition, Mrs. Williams is concerned that the co-Trustees will allocate their fees plus
25 their attorneys’ fees to the Susan Trust and to that extent, she requests that the net present value
26

27 ² Similarly, because the Trust specifically excludes jewelry *after* Mr. Williams’s marriage
28 to Mrs. Williams, the couple’s wedding rings are not subject to the specific bequest under section
4.3.1.1(b).

1 of such fees be included in the reserve. In other words, Mrs. Williams interprets that broad
2 language of the Susan Trust to cover expenses to be determined by the Court.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner prays for an order of the Court:

- 5 A. That notice has been given as required by order of this Court;
- 6 B. Declaration by the Court finding that the specific gift of tangible personal
7 property under subparagraph 4.3.1.1(b) of the Robin Williams Trust is limited to
8 those items located at 1100 Wall Road, Napa, CA;
- 9 C. Declaration by the Court finding that contents of the Tiburon home as stored in
10 other locations are property under the Susan Trust pursuant to paragraph 4.3.1.3
11 of the Robin Williams Trust;
- 12 D. Declaration by the Court that the term “memorabilia” is modified by the term “in
13 the entertainment industry” as found in subparagraph 4.3.1.1(b) of the Robin
14 Williams Trust;
- 15 E. Declaration by the Court that the term “memorabilia” as modified by the term “in
16 the entertainment industry” pursuant to subparagraph 4.3.1.1(b) of the Robin
17 Williams Trust is limited to specific items of tangible personal property as it
18 relates to Robin Williams’s acting career;
- 19 F. Declaration by the Court that “jewelry” is limited to items purchased prior to
20 Robin Williams’s marriage to Susan Williams as stated in subparagraph 4.3.1.1(b)
21 of the Robin Williams Trust;
- 22 G. Declaration by the Court that “jewelry” does not include watches as stated in
23 subparagraph 4.3.1.1(b) of the Robin Williams Trust;
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- H. Declaration by the Court that the reserve fund of the Susan Trust includes all services used during Robin Williams's lifetime to maintain the Tiburon residence as stated in paragraph 4.3.1.3 of the Robin Williams Trust;
- I. Declaration by the Court that the reserve fund of the Susan Trust includes a net present value of Trustee fees as stated in paragraph 4.3.1.3 of the Robin Williams Trust;
- J. For such other orders as this Court deems proper and fit;
- K. For such other relief as this Court deems just and proper;
- L. For costs of suit.

Dated: December 19, 2014

KERR & WAGSTAFFE LLP

By: *J. Wagstaffe / JS*
JAMES M. WAGSTAFFE

Attorneys for Beneficiary
SUSAN SCHNEIDER WILLIAMS

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VERIFICATION

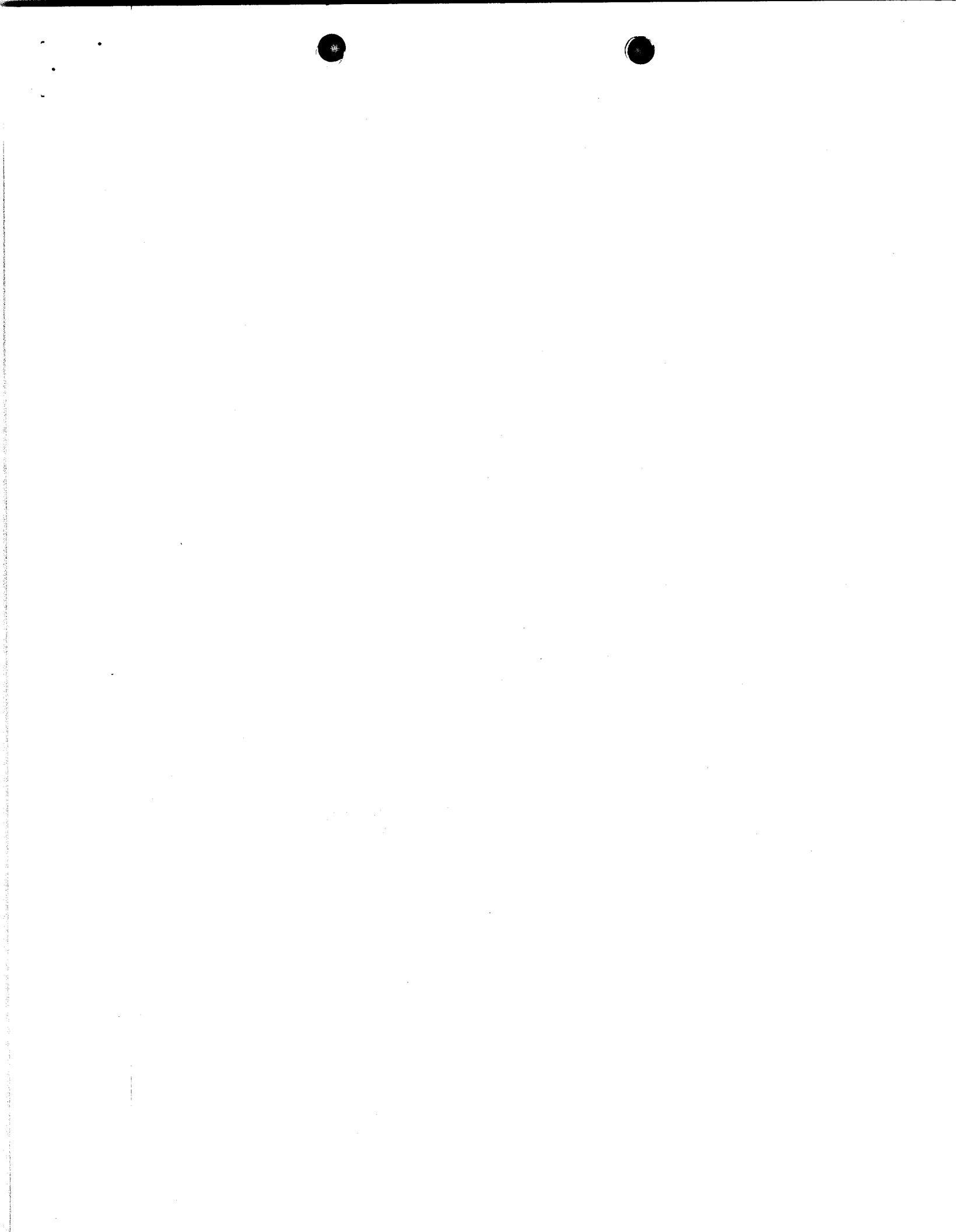
I, SUSAN WILLIAMS, state:

That I am one of the Beneficiaries in this action; that I have read the foregoing PETITION FOR INSTRUCTIONS and know the contents thereof; that the same is true of my own knowledge, except as to the matters that are therein stated on my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

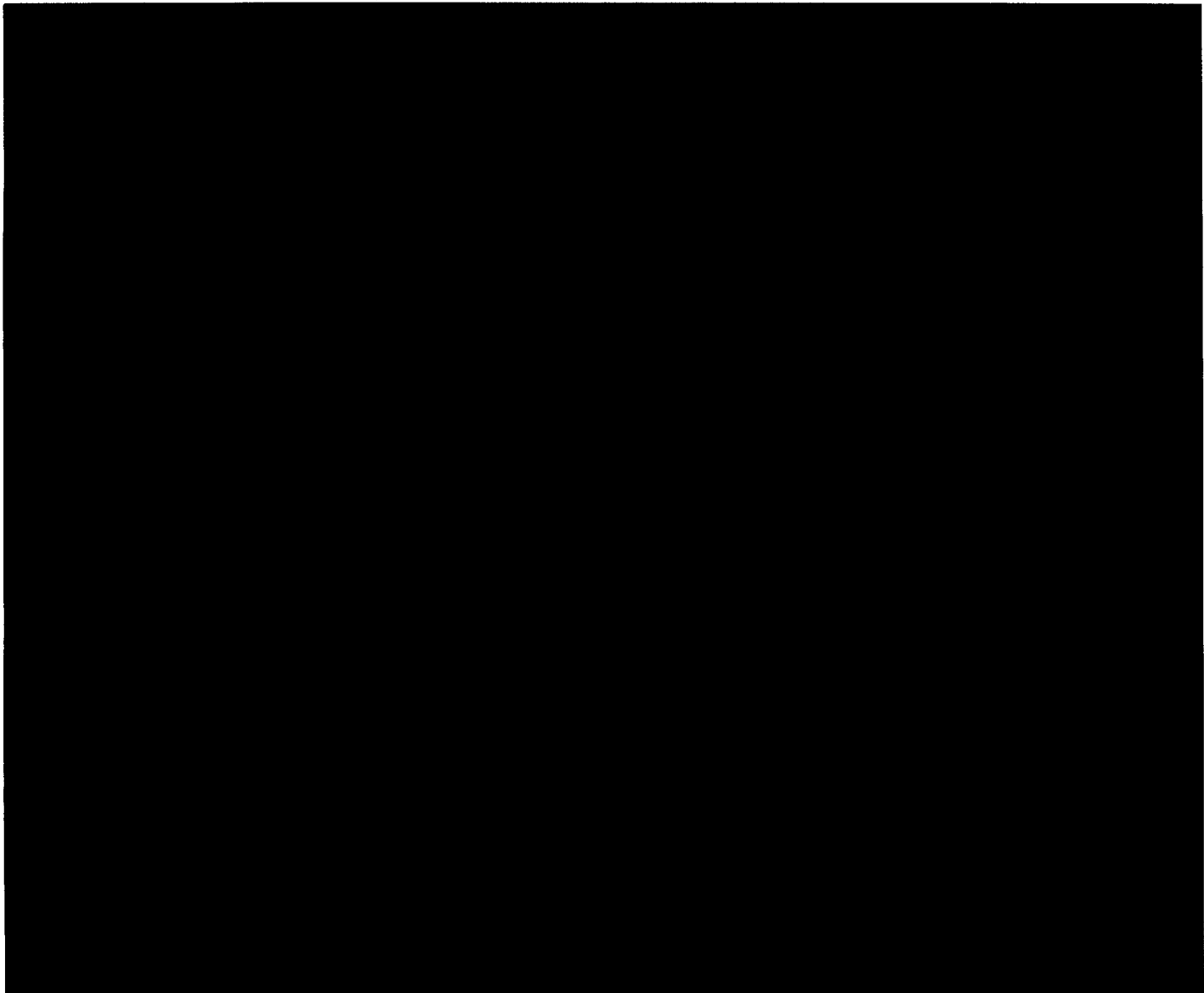
Executed on December 19, 2014, in Tiburon California.


Susan Williams



**SECOND AMENDMENT TO AND
COMPLETE RESTATEMENT OF TRUST AGREEMENT OF
THE ROBIN WILLIAMS TRUST**

This SECOND AMENDMENT TO AND COMPLETE RESTATEMENT ("Restatement") of the Trust Agreement dated June 24, 2010 ("Trust Agreement") (establishing the ROBIN WILLIAMS TRUST ("Trust")) is made as of the date set forth below by ROBIN M. WILLIAMS as Settlor and as Trustee.



power, or an attempted exercise of this power shall have been invalid or ineffective for any reason, the property subject to it shall be added to the property disposed of in Paragraph 4.3, below.

4.3 Disposition of Unappointed Trust Assets. On the death of the Settlor, after making the payments described in Paragraph 4.1, above, and subject to the exercise of the Settlor's power of appointment described in Paragraph 4.2, above, the Trustee shall make the gifts set forth in Paragraph 4.3.1 *et seq.*, below (including the gift in trust for Settlor's spouse as provided in Paragraph 4.3.1.3, *et seq.*) and shall distribute the residue of the trust estate as provided in Paragraph 4.3.2, *et seq.*, below.

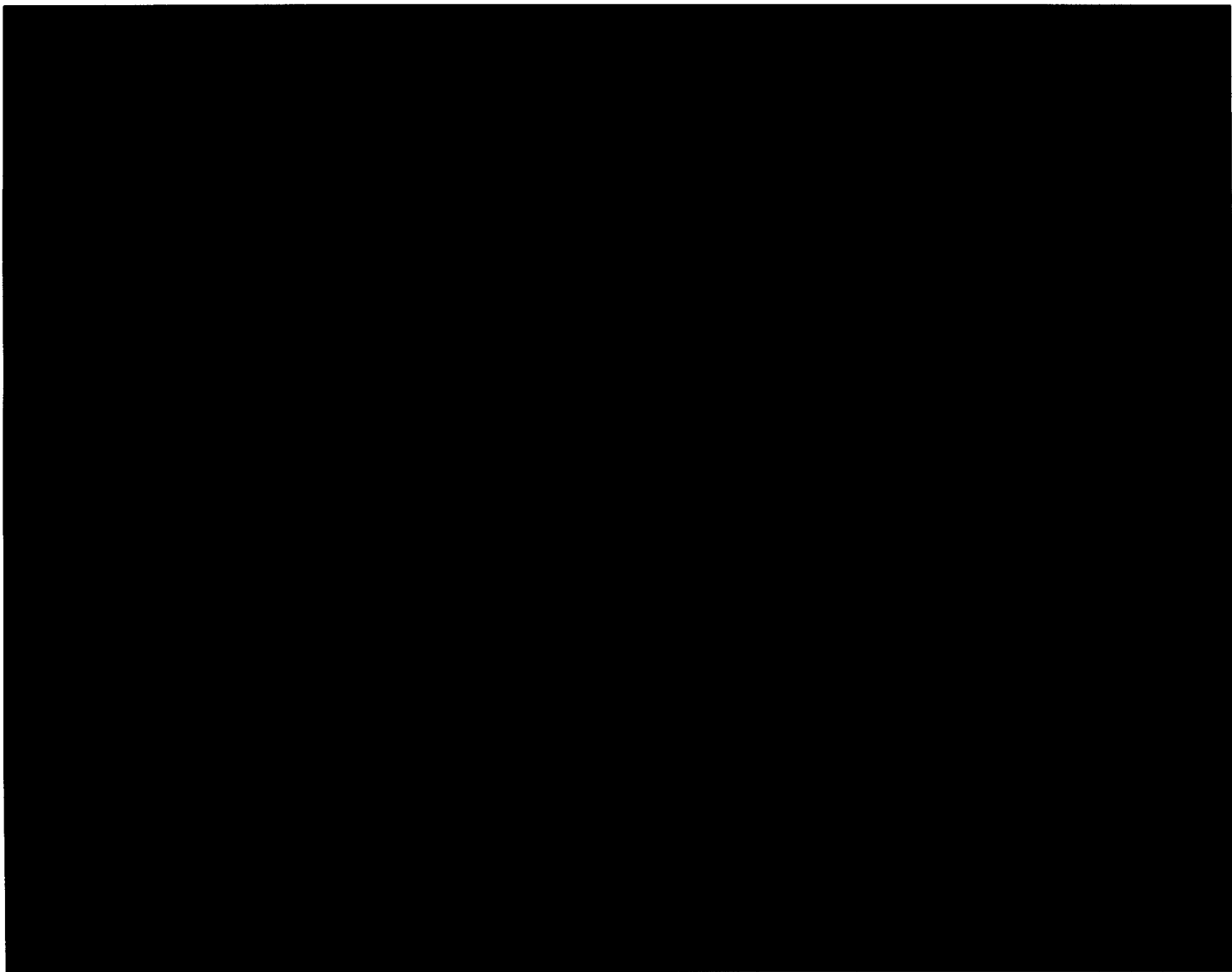
4.3.1 Specific Gifts. The Trustee shall distribute the following specific gifts, free of any and all estate, death, inheritance and succession taxes, to the individuals indicated:

4.3.1.1 Specific Gifts of Tangible Personal Property and Real Property. The Trustee shall distribute the following tangible personal property and real property:

(a) All ownership interest in the right to Settlor's name, voice, signature, photograph, likeness and right of privacy/publicity (sometimes referred to as "right of publicity") to the Windfall Foundation, a California Nonprofit Corporation ("THE WINDFALL FOUNDATION"), subject to the restriction that such right of publicity shall not be exploited for a twenty-five (25) year period commencing on the date of Settlor's death. If THE WINDFALL FOUNDATION shall not then exist or if contributions to THE WINDFALL FOUNDATION shall not then qualify for the charitable deduction pursuant to Sections 170(c) and 2055(a) of the Internal Revenue Code, the Trustee shall distribute such right of publicity to such one or more charitable organizations with a similar purpose to that of THE WINDFALL FOUNDATION as the Trustee shall select, contributions to which shall qualify for the charitable deduction pursuant to Sections 170(c) and 2055(a) of the Internal Revenue Code.

(b) Subject to subparagraph (c), below, all of Settlor's clothing, jewelry, personal photos taken prior to his marriage to SUSAN, Settlor's memorabilia and awards in the entertainment industry and the tangible personal property located at 1100 Wall

Road, Napa, CA that the Trustee determines not to sell shall be distributed to Settlor's then living children in substantially equal shares as they shall agree. In the event the children are not able to agree on the division of the foregoing tangible personal property, the Trustee shall decide, in the Trustee's reasonable discretion, which items shall be distributed to each child, which items shall be sold and how much of the proceeds therefrom shall be distributed to each child, and which items shall be gifted to one or more charitable organizations (including the institution holding Settlor's archived material) deemed appropriate by the Trustee and which qualify for the charitable deduction pursuant to Sections 170(c) and 2055(a) of the Internal Revenue Code. The Trustee's determination and decision with regard all of to the foregoing in this subparagraph shall be final and absolute.



Unless otherwise specified, if any individual named in subparagraphs (a) through (e), above, does not survive Settlor, his or her gift shall fail and the amount of such gift shall be added to and become part of the residue of the trust estate which is distributed pursuant to Paragraph 4.3.2, below.

4.3.1.3 Gift in Trust for SUSAN. If Settlor and SUSAN are still married and not separated (as defined below) at Settlor's death, the Trustee shall set aside in a separate trust ("SUSAN's Trust"), which trust shall be held and administered as provided below for the benefit of SUSAN during her remaining lifetime, the following property: (a) Settlor's residence (and the contents thereof excluding items of tangible personal property specifically gifted pursuant to the preceding Paragraph 4.3.1.1, above) located at 95 St. Thomas Way, Tiburon, CA 94920 (the "Residence"); and (b) an amount of cash or other property reasonably determined by the Trustee to constitute an appropriate reserve fund to cover during SUSAN's lifetime all costs related to the Residence including, but not limited to, mortgage or trust deed payments, property taxes and assessments, insurance premiums, maintenance expenses, all ordinary and extraordinary repairs and necessary improvements to the Residence and all obligations to SUSAN under this Paragraph 4.3.1.3, *et seq.* If SUSAN does not survive Settlor, if she survives but is not married to Settlor or if SUSAN and Settlor are married but separated at the date of Settlor's death, this gift shall fail and said property shall be distributed pursuant to Paragraph 4.3.2, below, as part of the residue. For purposes hereof, the term "separated" shall have the same meaning as "separation" has in the Prenuptial Agreement dated September 28, 2011 and in this regard, Settlor and SUSAN shall be deemed separated if a "terminating event" has occurred. A "terminating event" is defined as the first to occur of the following events: (i) the filing and service of a petition for dissolution or divorce, nullity or annulment, or separation or separate maintenance; (ii) the execution of a separation, marital settlement agreement, or other agreement indicative of an intention to terminate the marriage; (iii) the sending of written notice by either of Settlor or SUSAN to the other of an intention to remain apart. Settlor and SUSAN shall not be deemed separated if they are living separate and apart without a terminating event.

(a) During SUSAN's lifetime, SUSAN shall be entitled to reside in the Residence free of rent and to use the furniture and furnishings therein and other contents, in accordance with the terms and conditions of this Paragraph 4.3.1.3 *et seq.*

(b) During SUSAN's lifetime, the Trustee shall pay all mortgage or trust deed obligations, property tax and assessments, insurance premiums, maintenance expenses, ordinary and extraordinary repairs and necessary improvements with respect to the Residence out of income and principal of this Trust in accordance with the principles applicable to the charging of payments under California law. Any remaining net income of this Trust shall be distributed to SUSAN no less often than annually.

(c) Without causing an expiration or termination of SUSAN's occupancy rights and right to net income, SUSAN shall have the right to instruct the Trustee to do the following:

(i) To lease the Residence to a third party for the fair market rental value as determined by the Trustee and to pay to SUSAN the gross rental amount therefrom without reduction for the obligations to be paid by this Trust related to the Residence; or

(ii) To sell the Residence for its fair market value and to purchase a Replacement Residence for an amount equal to or less than the net sales proceeds; and the Replacement Residence and any remaining sales proceeds shall be held in this Trust upon the same terms and conditions of this Paragraph 4.3.1.3 set forth above.

(d) Upon SUSAN's death, any accrued or undistributed net income shall be distributed to SUSAN's estate and the Residence, its contents and any other assets of the trust shall be distributed as provided below:

(i) All of the contents of the Residence other than SUSAN's tangible personal property shall be distributed to Settlor's issue, by right of representation.

(ii) The Residence shall be sold and the Trustee shall allocate the net sales proceeds thereof together with any and all other assets of the Trust (less any related expenses of administration and income and death taxes) into as many equal shares as there are children then living of Settlor, children then living of SUSAN from her first marriage and deceased children of each who leave issue then living. Each share allocated to a

then living child shall be distributed to such child and each share allocated to a group composed of the living issue of a deceased child shall be distributed to such issue by right of representation.

(e) Power to Make SUSAN's Trust Productive. During SUSAN's lifetime, she shall have the power to require the Trustee to make all or any part of the principal of this Trust productive, or to convert promptly any unproductive or underproductive part into productive property. This power shall be exercised by SUSAN in a written instrument delivered to the Trustee.

(f) Settlor's Intention re Marital Deduction. It is the Settlor's intention to enable SUSAN's Trust to qualify in whole or in part for the federal estate tax marital deduction under Section 2056(b)(7) of the Internal Revenue Code, as may be amended from time to time. In no event shall the Trustee take any action or have any power that would impair the marital deduction. If the marital deduction is elected as to all or part of SUSAN's Trust, then all provisions of SUSAN's Trust shall be interpreted to conform to this primary objective.

(g) Power to Reform SUSAN's Trust. The Trustee is authorized, in the Trustee's sole discretion, to either:

(i) Authority to Reform. Reform the terms of SUSAN's Trust to comply with the requirements of Section 2056A of the Internal Revenue Code and the Regulations promulgated thereunder; or

(ii) Authority to Petition Court. Petition any court with jurisdiction over SUSAN's Trust to have the terms of the Trust reformed to comply with the requirements of Section 2056A of the Internal Revenue code and the Regulations promulgated thereunder.

(h) Intent to Comply With Prenuptial Agreement. It is Settlor's intent that this Paragraph 4.3.1.3 et. seq. shall comply with the terms of, and obligations imposed on Settlor under, the Prenuptial Agreement with SUSAN dated September 28, 2011; and the provisions of this paragraph shall be so interpreted.