

APPENDIX C

Sample Will

(provisions for miscellaneous gifts)

LAST WILL AND TESTAMENT

of

JOHN M. SMART

I, **JOHN M. SMART**, of the Town of Anywhere, County of Westchester and State of New York, being of sound mind and memory, do make, publish and declare this to be my Last Will and Testament, hereby revoking all prior Wills and Codicils:

FIRST: I direct that all my legal debts and funeral expenses (including unpaid charitable pledges) be paid by my Executor, hereinafter named, as soon as may be practicable.

[Tangibles to Executor with precatory request to distribute]

SECOND: (A) To my Executor named herein (personally, and not in a fiduciary capacity), I give and bequeath all of my tangible personal property, which shall mean all property that is not real estate and whose value is its own substance or uniqueness, such as furniture, jewelry or a coin collection. It does not include cash, books, documents or other papers that are only evidence of intangible property rights such as bank accounts, stock certificates, promissory notes, insurance policies, and the like. It is my wish, but I do not direct, that my Executor will distribute such property in accordance with my instructions, which shall provide during my life.

[Bequest to make voluntary (deductible) charitable donation after death]

(B) To _____, if she survives me, I give and bequeath the sum of Five Thousand Dollars (\$5,000). It is my wish and hope, but I do not direct, that she will make a donation in my memory to XYZ CHARITY.

[Gift of closely held business stock]

(C) To my brother FREDERICK C. SMART, if he survives me, I give and bequeath all of my capital stock in SMART FAMILY BUSINESS, INC. or the stock in any successor of that corporation, whether by merger, acquisition or the change of its name. If he fails to survive me, then such stock shall pass to my sister, REBECCA SMART, if she is living.

[Devise of life use of house]

(D) To WILLIAM F. BROWN (Beneficiary), if he survives me, I give and devise the real property located at 123 Main Street, Smithville, New York 12345, in the County of Orange and State of New York, together with all appurtenances and improvements used in connection therewith. Such devise shall, however, be only for the period of the Beneficiary's life, or until he ceases to use the property as his principal residence, whichever occurs first. If he fails to reside in the said property for a continuous period of ninety (90) days, he will be deemed to have changed principal residence, and his interest therein shall terminate.

(1) The Beneficiary shall be required to pay all costs of maintenance, assessments, insurance premiums, taxes, water charges, and repairs to the property. Upon failing to pay any such charge, any one or more of the remaindermen may pay the same, and in such event, the person or persons shall be entitled to reimbursement from the Beneficiary, and shall have a lien against the property for the amount so expended plus interest at nine percent (9%) per annum. If the property is sold to a bona fide purchaser for value, such lien shall be deemed extinguished as to the real property, but shall follow the proceeds, payable first from the Beneficiary's share of the proceeds, if any.

(2) The Beneficiary shall obtain and keep in force a policy of insurance (at his own expense) with sufficient fire insurance coverage to represent the replacement value of all structures from time to time; and personal injury liability coverage in a minimum amount of \$150,000. Such policy shall include the remaindermen as additional insureds.

(3) No bond or other security shall be required of the Beneficiary.

(4) Upon the termination of the interest of the Beneficiary in the said property, I give and devise it to those of the children of William F. Brown who are then living.

[Residue to charity for endowment]

THIRD: All the residue of my estate, both real and personal and wheresoever situate, I give, devise and bequeath to XYZ CHARITY, with offices currently at 108 Main Street, Albany, New York. I direct that the amount passing under this Article shall be added to the permanent endowment of the charity. The income, or the amount established as a spending policy by the organization (up to 5% of the fund balance each calendar year) shall be used for the general purposes of the organization. If the organization has ceased to exist at my death, or if it has merged with another organization that results in the purposes of the organization not remaining primarily assisting families of children with developmental disabilities, then I authorize my Executor to choose another charity devoted to that mission to receive this gift. Any such successor organization must qualify under Internal Revenue Code § 501(c)(3).

[Supplemental needs trust for disabled beneficiary]

(A) If my son, WAYNE HOLT (hereinafter referred to as "Wayne"), survives me, the share that otherwise would be due him shall pass to my Trustees, hereinafter named, for the following uses and purposes:

(1) To hold, invest and reinvest the same, to collect the income therefrom, and, after deducting all charges and expenses attributable thereto, to pay to Wayne, or apply to his benefit, so much of the net income therefrom as the Trustees, in the exercise of absolute discretion, may deem necessary or appropriate. Any income not so paid or applied shall be accumulated and added to the principal of this Trust, not less frequently than annually.

(2) In addition, subject to the restrictions on distributions set forth at subparagraphs (A)(3)–(7) of this Article, the Trustees shall be authorized, after deducting all charges and expenses appropriately attributable thereto, to pay to Wayne, or apply for his benefit, so much of the principal of this Trust as the Trustees may deem necessary or appropriate. This shall include, but not be limited to, any payments required to allow Wayne to continue to reside comfortably in his private residence.

(3) In exercising discretion to distribute trust principal and income in accordance with the foregoing direction, it is my expectation that the Trustees will make all trust distributions (whether principal or income), necessary to enhance the quality of Wayne's life, including, but not limited to, hiring appropriate advocates on his behalf to protect his legal rights and ensure he has access to all services, benefits, and programs (whether public or private) that will assist him in maximizing his potential during his lifetime.

(4) In exercising discretion to distribute trust principal and income hereunder, the Trustees shall first consider all other property, funds, or resources (whether principal or income, and including any government benefits to which Wayne may be entitled) that may be available to or for his use and benefit during lifetime.

(5) It is my intention by this Will to create, by the provisions for Wayne's benefit, a supplemental needs trust that conforms to the provisions of § 7-1.12 of the New York Estates, Powers and Trusts Law. In so doing, it is my further intention that the assets held for Wayne's benefit be used to *supplement*, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city or other governmental entity for which each may otherwise be eligible, or which he may be receiving at the time of my death. Consistent with that intention, it is my desire that before expending any amounts from the net income and/or principal of this Trust, the Trustees first consider the availability to Wayne of all benefits from government or private assistance programs for which he may be eligible and that, where appropriate, and to the extent possible, the Trustees shall first endeavor to maximize the collection of such benefits and to facilitate the distribution of such benefits to or for Wayne's benefit. The Trustees may exercise discretion to utilize trust assets (principal or income) in such manner as to provide goods and services that are not identical to those provided by any governmental benefit available.

(6) The Trustees, in the course of administering the trust established herein, shall be prohibited from making any payment or reimbursement to any governmental entity that may have incurred expense for the benefit of Wayne, and the Trustees shall not pay any obligation of Wayne's that is otherwise payable by any governmental entity or pursuant to any governmental program of reimbursement or payment.

(7) If any other trust is available to pay amounts for the benefit of Wayne, then the property of this Trust shall be used to supply any need of Wayne only if the Trustees shall determine that all such other trust or trusts are not authorized to provide the said need.

(8) Upon Wayne's death, the remainder of this Trust shall pass to the issue of Wayne Holt who are then living, per stirpes.

FOURTH: If any beneficiary under this Will dies within thirty (30) days after my death, I direct, as a condition subsequent, that the bequest to that beneficiary shall be divested by his or her death, and that my estate shall be disposed of pursuant to the provisions of this Will as if the beneficiary had not survived me.