

**PROTECTING AN ARTIST'S LEGACY THROUGH ESTATE  
PLANNING, PROBATE AND POST-DEATH ADMINISTRATION OF  
AN ARTIST'S RIGHTS**

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**CHAPTER 8.1**



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## ESTATE PLANNING: PRESERVING AN ARTIST'S LEGACY

By Ken Pajak

*"Can't take it with you.  
Everybody knows.  
Can't take it with you when you go.  
Can't hide your love away,  
Save it up for a rainy day,  
Ya can't take it with you when you go.*

*Play it high or low.  
Break the bank in Monte Carlo.  
You can play it just the way it falls.  
Cut it like you want to.  
But it just might come back and haunt you.  
Lady Luck's your mama when she calls."*

By Dickey Betts and Don Johnson  
© 1979 EMI Blackwood Music, Inc.  
and Pangola Publishing Company

As recorded by The Allman Brothers Band

### I. INTRODUCTION

George David Weiss, Hank Cochran, Jimmy Dean, Bill Aucoin, Ronnie James Dio, Richie Hayward, Teddy Pendergrass and J.D. Salinger all died in 2010. One glance at [www.deadrockstars.com](http://www.deadrockstars.com), a website that chronicles the deaths of musicians, producers, personal managers, and creative artists, and you will likely agree with my belief that those of us who are alive and well are witnessing an unprecedented transfer of intellectual property from those who created musical and literary works in the 20<sup>th</sup> century to their heirs or chosen distributees. What if tomorrow never comes? One website - [www.deathlist.net](http://www.deathlist.net) - goes even further and predicts the likelihood of certain persons to die in 2010. That's one list on which I definitely do not want to see my name.

I wonder how many of these persons created a comprehensive estate plan? How many had at least a simple will or trust?

Probate litigation is on the rise. Many of these estates will likely be involved in disputes between heirs, which can deplete

estate assets, take years to settle due to lack of planning, and tarnish the artist's legacy.

Proper estate planning can minimize the potential for probate litigation, make life easier on those they left behind, and preserve their artistic legacy.

Convincing artistic clients to plan for the future by creating an estate plan is challenging. It is difficult enough to schedule these clients for an appointment to sit down and discuss a contract, but then to seriously contemplate dying and create a will that gives everything they've worked so hard for to someone else, is almost always an arduous task. Most artists want to focus on living and creating music, and not on dying and distributing assets.

So how do you get an artist to spend the time and money on estate planning? One way is to help the artist understand that estate planning presents an opportunity for them to exercise some control over their musical legacy and reduce the possibility their estate being depleted and their legacy tarnished by probate litigation.

What artist does not want to be a legend? What songwriter does not desire to write a legendary song? What performer does not want to make a recording to which all others are compared? Artists want to be remembered. In fact, I believe that most artists have a deep desire to achieve immortality through their creative works.

If an artist cares about his or her legacy, then a comprehensive estate plan should be implemented. Estate planning for creative artists (musicians, songwriters, producers, performers, etc...) can be compared to crafting the song of one's life and legacy. It is much more than preparing a will or trust – it is doing in the present what they can to preserve their legacy for future generations.

### A. Overview

This article is intended to provide the entertainment lawyer and non-probate practitioner with a brief overview and high-level answers to the following questions:

1) What is the general scope of estate planning for an artist?

2) How can advance directives help an artist?

3) Why should an artist have at least a simple will?

4) What is a literary trust? How can it help an artist preserve his or her legacy?

## **II. ESTATE PLANNING FOR THE ARTIST.**

Estate planning primarily focuses on two broad categories: 1) Issues of Physical Being and 2) Issues of Wealth.

Issues of physical being concern care for the body. They can be divided into two groups: a) medical issues and decision making during life and b) disposition of the body after death.

Issues of wealth concern property ownership, taxation, and transfer. They can also be divided into two groups: a) the management of assets and financial decision making during life and b) the management and transfer of wealth in the most efficient manner after death.

**A. Planning for Issues of Physical Being.** A person has the right to make her own medical decisions, even if she is unable to communicate. Estate planning provides an opportunity to make some medical decisions in advance. Accordingly, the documents reflecting these advance decisions are generally described as "advance directives." The advance directives that pertain to issues of physical being are as follows:

- 1) Medical Power of Attorney;
- 2) Directive to Physicians;
- 3) Declaration of Guardian of Person and Estate in Advance of Need;
- 4) Declaration of Guardian for Minor Children;
- 5) Directive for Mental Health Treatment;
- 6) HIPAA Authorization;
- 7) Out-of-Hospital Do Not Resuscitate Order;
- 8) Disposition of Remains; and,

9) Statutory Durable Power of Attorney (Financial).

**1. Medical Power of Attorney.** Also known as a "Durable Power of Attorney for Healthcare," this document names an individual to make health care decisions on the artist's behalf that the artist could make if he or she were competent. A physician must certify that the artist is incompetent, and must make reasonable efforts to inform the artist of any proposed treatment or withdrawal or withholding of treatment before acting under the advance directive.

The individual named to make decisions on behalf of the incompetent person may neither consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery or abortion, nor neglect to provide comfort measures for the person.

This power goes into effect upon incompetence of the person and may be changed or revoked at any time, orally or in writing, without regard to the person's mental state or competency.

Notwithstanding this document, treatment may not be given to or withheld from the person if the person objects, regardless of the person's mental competency.

**2. Directive to Physicians Regarding Life Support.** Also known as a "Living Will," this directive is a mechanism for a artist to state, in advance, his or her wishes regarding foregoing life-sustaining procedures that would only serve to artificially postpone the time of death in the event he or she has a terminal or irreversible condition. This directive may also designate an individual to make a treatment decision in the event the person becomes incompetent or is mentally or physically incapable of communicating his or her wishes. The power goes into effect only if the person has a terminal or irreversible condition, and is incompetent or cannot make or communicate decisions on his or her own behalf. It may be changed or revoked at any

time, orally or in writing, without regard to the person's mental state or competency.

**3. Declaration of Guardian of Person and Estate in Advance of Need.** If an artist becomes incapacitated to the extent that they cannot care themselves or their finances, a guardianship may be required. This directive allows an artist to designate who they want to serve as their guardian in the event a guardianship proceeding is filed.

There are two types of guardianships: 1) Guardian of the Estate (Financial Affairs) and 2) Guardian of the Person. A Guardian of the Person holds the power to control the physical presence of the "ward." For example, the Guardian of the Person has the power to place a ward in a nursing home. The Guardian of the Estate has the duty to manage a person's financial affairs and must account to the probate court for every dollar spent. An important feature of this document is that you can designate who you do not want to serve as your guardian and the judge cannot appoint those persons under any circumstance.

The purpose of another advance directive, the Statutory Durable Power of Attorney, (discussed below) is to avoid a costly guardianship by naming a person to act on behalf of an artist in the event an artist is absent or incompetent. In the event that a third party will not rely upon the Statutory Durable Power of Attorney, a guardianship becomes necessary and, once granted, the Statutory Durable Power of Attorney is automatically revoked.

**4. Declaration of Guardian for Minor Children.** The most common motivation for younger families to initiate estate planning is the birth of a child. This event often conjures up the following question: Who will care for and raise my child in the event that I cannot?

An estate plan should include a directive identifying the person or persons who will become the guardian of one's child and a guardian of that child's financial affairs. As parents, we are the natural and legal

guardians of our children's physical person. However, we are not the legal guardians of our child's financial affairs or their "estate."

As such, if an artist has minor children, the artist should appoint a guardian to take care of their physical person if both parents die or become incompetent before they reach age 18 (one may choose to appoint a married couple as co-guardians). This guardian would be the guardian of their person. By the same token, parents should also appoint a guardian of their child's estate and appoint a trustee to manage any money a child inherits.

**5. Directive for Mental Health Treatment.** Texas law allows a person to direct, in advance, the types of mental health treatment that will be provided to them if it is determined by a court that one's ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that they lack the capacity to make mental health treatment decisions. "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, and preferences regarding emergency mental health treatment. Although this directive is not commonly used, its mere existence can be a comforting if an artist has a history of mental illness or if other circumstances exist.

**6. HIPAA Authorization.** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) contained medical privacy rules that restrict disclosure of private healthcare information. An artist can use this directive to give permission to a medical provider to disclose private healthcare information to someone other than the artist.

**7. Out-of-Hospital Do Not Resuscitate Order (DNR).** A person who is not hospitalized can execute an out of hospital DNR. This directive informs ambulance paramedics that the person does not wish to

receive life-saving assistance or treatment such as cardiopulmonary resuscitation, defibrillation, or other specified treatments. A person in the final stages of a terminal illness may consider this directive. This DNR must be signed by two witnesses and the attending physician. As such, it is typically not prepared by a lawyer during the estate planning process but, instead, is most often prepared by a physician's office.

**8. Appointment of Agent for Disposition of Remains.** "I want to be cremated and my ashes..." If an artist wishes to appoint someone to dispose of their remains in a specific manner, or if there is cause to believe that an artist's loved ones will have differing opinions as to how remains are to be disposed, then this directive should be considered as a means to clearly specify to their loved ones who, what, when, where and how to dispose of their remains.

**9. Statutory Durable Power of Attorney.** This document names an individual to manage the financial, business, property and legal affairs of an artist in the event they cannot manage their affairs themselves, for whatever reason (touring out of the country, too busy, mentally incompetent). The power is effective either immediately upon execution or upon the subsequent incapacitation of the artist and may be changed or revoked at any time while the artist has capacity. A power of attorney may be broad or limited to certain powers (i.e., publishing matters, real estate, etc...). As such, a Statutory Durable Power of Attorney can be tailored to manage only an artist's intellectual property. As mentioned above, it is also a useful tool to avoid or defer the creation of a costly guardianship of the estate of an artist in the event they become incapacitated.

Although an agent acting under a power of attorney is a fiduciary, there is little, if any, oversight, which could lead to abuse. Therefore, if oversight is desired, then a

guardianship of the estate is likely in the incompetent artist's best interest.

As you can see, these advance directives can be utilized to protect an artist's physical being, assets, and business affairs during life, which should help create continuity and seamless transitions of personal and business affairs in the event of incompetency or death, thereby preserving an artist's legacy.

**B. Planning for Issues of Wealth.** As stated above, issues of wealth concern an artist's property ownership, taxation, and transfer. While this article is not intended to be a thorough or exhaustive discussion of intellectual property ownership, transfers and associated rights, or federal and state income or estate taxation, it is, however, designed to generally re-introduce the entertainment lawyer to wills and trusts, and to facilitate probate by helping the entertainment lawyer identify opportunities for an artist to create and preserve their assets and their legacy.

Additionally, because Congress has created massive confusion concerning federal estate, gift and generation skipping taxation in 2010 and beyond, these tax issues are beyond the scope of this discussion. Until Congress cleans up its mess, the entertainment lawyer discussing estate planning with an artist client concerned about federal estate tax should advise the artist to consult with an estate planning attorney. A prudent rule to follow is that if the gross value of an artist's estate is \$1,000,000 or more, then the estate planner should be consulted to perform an analysis of the artist's exposure to estate taxes based on the then current laws.

**1. Management of assets and financial decision making during life.** Artists can preserve their legacy by prudently managing their business affairs during their life. Doing so will minimize problems commonly encountered during the transition of the artist's business affairs from life to death.



On the lowest level, this is done by the artist themselves and, unless properly advised along the way, the ownership and transfer of an artist's intellectual property is often not adequately documented. In these situations, the estate planner or probate attorney often finds that Copyrights are not registered, licenses are not memorialized in writing, and partnerships are not clearly defined. If left undone, the probate administration of this artist will be much more costly due to the confusion and potential for litigation.

On the highest level, the more successful artists have the resources to hire attorneys, personal managers and business managers to provide guidance and counseling with regards to business affairs. These artists often form loan-out companies to, among other things, shield them from personal liability and to receive income generated from their professional services. These artists also prudently centralize the ownership and management of the artist's intellectual property in business organizations and revocable or irrevocable living trusts, which are discussed below.

To preserve an artist's legacy, these formal business entities and trusts should be organized to operate with little interruption after the incapacity or death of the artist. This can be done through proper business succession planning within the company and/or the appointment of successor trustees after the death or incapacity of the current trustee.

**2. Management and transfer of wealth in the most efficient manner after death.** A comprehensive estate plan should begin with: 1) a basic evaluation of the current business affairs of an artist; 2) an audit of intellectual property ownership to identify any problem areas or inconsistencies; and, 3) evaluation through use of a checklist of items that may need to be done by the entertainment lawyer so that the final estate plan will accomplish the artist's legacy goals.

Depending on the scope of the estate plan and how much money the client is

willing to invest in getting their affairs in order, the estate planner may initially work with the entertainment lawyer, personal manager, business manager, or CPA to identify or answer some or all of the following before or after the initial meeting with the artist:

- ✓ Are all Copyrights registered and/or appropriately titled?
- ✓ What Copyright renewal rights exist?
- ✓ What termination rights exist?
- ✓ Are all Trademarks registered, asserted and/or properly titled?
- ✓ Are the artist's business organizations properly organized and in good standing?
- ✓ Has the artist created a trust?
- ✓ If applicable, has the artist properly documented transfers, assignments, licenses to the business organization or trust?
- ✓ Does the artist have copies of all assignments and licenses of intellectual property?
- ✓ Is the artist married? If so, does the artist have a pre-nuptial or post-nuptial agreement?
- ✓ Which property is separate property and which is community property?
- ✓ Does the artist have children? Are they from the current marriage?
- ✓ Does the artist have a current will, trust or advance directives?

- ✓ What are the current fair market values of the artist's businesses, which may include ownership of a publishing catalog or masters?
  - ✓ Does the artist own any life insurance policies?
  - ✓ What are the artist's other assets and how is each titled?
  - ✓ Has the artist named a beneficiary on bank and investment accounts?
8. Minimize complexity of estate administration;
  9. Minimize the total tax liability of the estate;
  10. Minimize time for distribution of estate to desired beneficiaries;
  11. Minimize the likelihood of will contests during estate administration; and,
  12. Maximizing control over one's artistic legacy.

This is not an exhaustive list, but it will provide the estate planner with enough information to form an impressionistic perspective of the artist's management of assets during life.

In the beginning, cost is always a factor. As such, until the estate planner is able to explain how the investment of time and resources will help the artist, the estate planner should curtail this list based on the initial scope of representation. Some artists merely want to initially create and pay for a simple will and advance directives.

**Prioritize Goals.** During the initial meeting, the planner should identify the artist's most important goals. In general, estate planning goals can be identified by discussing the following common goals:

1. Maximize control during life;
2. Maximize access to assets during life;
3. Maximize preservation of assets during and after life;
4. Maximize adequate management of assets during surviving spouse's life;
5. Maximize family privacy;
6. Maximize desired management arrangements after the death of either one or both spouses;
7. Minimizing time of estate administration;

**No Planning.** A failure to plan ensures that an artist's property passes to the artist's heirs pursuant to state law. The Honorable Judge Guy Herman of Travis County Probate Court No. 1 has created a fine descent and distribution diagram that can be found at the following URL:

[http://www.co.travis.tx.us/probate/pdfs/DnD\\_diagrams.pdf](http://www.co.travis.tx.us/probate/pdfs/DnD_diagrams.pdf)

In addition, the Travis County Probate Court's website ([www.co.travis.tx.us](http://www.co.travis.tx.us)) is an excellent source for practical and procedural probate information.

The main point to convey to artists is that if an artist dies intestate, their property could wind up in the hands of an heir who has little or no interest in preserving the artist's legacy and who may deplete, waste, or sell an artist's valuable works to the highest bidder.

**Simple Will.** For some artists, only a "simple" will is desired. I define a "simple" will as one that changes the intestate distribution scheme and disposes of all property to someone that the artist chooses. It also appoints an executor to act without bond and independent of court supervision, thereby reducing the time and costs of probate and maximizing efficiency.

At a minimum, executing a simple will saves the artist money, allows an artist to determine who inherits her estate, and makes estate administration easier.

**Complex Plans.** For other artists, a more complex estate plan may be desired or necessary. These plans may include creating new business organizations to own intellectual property or testamentary trusts designed to reduce or eliminate federal estate, gift, and/or generation skipping transfer taxes. Many artists create a revocable living trust ("RLT") to manage property during their life and to provide for privacy and seamless transfer of property after life.

A revocable living trust can be an excellent tool for an artist to utilize in legacy planning. In fact, Michael Jackson used this tool in his estate planning.

A "RLT" is a trust established during the artist's life. The artist transfers some or all property ownership to the RLT, which may include ownership interests in a business organization which owns copyrights or other intellectual property. The artist can maintain control over their assets by naming themselves as the trustee of the trust. The artist is generally the primary beneficiary of the trust income for the duration of the artist's life and can invade the trust's principal if desired. Remainder beneficiaries, such as their spouse and their children are identified to receive trust income, principal or other property upon the artist's death. The artist identifies successor trustees to serve in the event of the artist's incapacity or death. The successor trustee then carries out the terms of the trust and ensures uninterrupted centralized management of the artist's assets already owned by the trust.

Attacking the validity of a RLT is more difficult than attacking a will because, among other things, they are in existence prior to the incapacity or death of an artist and likely function long before such incapacity or death, thereby making them a sound and impervious vehicle through which the artist's legacy lives on.

In addition, a RLT provides more privacy than a will because the assets held in the trust do not have to be inventoried and

made public as they are with property passing under a will.

The caveat: as with any complex arrangement, a RLT is more costly and it requires close attention and maintenance in order to work properly. All current assets must be transferred into the name of the trustee of the trust and assets purchased later should be purchased in the name of the trustee, not the individual artist.

Inevitably, some property is left out of the trust and will need to pass through probate. In order to ensure that all property eventually passes to persons through the trust, an artist will need to prepare a will at the same time as the trust is prepared. This type of will is referred to as a "pour-over" will because it directs that some or all probate assets "pour-over" into the RLT. Regardless of the additional cost and maintenance, a revocable living trust can be the most appropriate vehicle for an artist whose primary goal is preserving their legacy.

**Literary Trusts.** In recent years, copyright owners have increasingly created "Literary Trusts" to centralize ownership and management of literary property. Such a trust usually appoints a trustee experienced in the exploitation and administration of intellectual property. A Literary Trust may hold only an artist's literary works or contain other properties as well. It can be created as a revocable or irrevocable trust during life or spring into existence after the death of an artist. Additionally, an artist could design the literary trust to function as a non-profit trust.

In legacy planning, an artist will want to appoint a Literary Trustee who will prudently administer and manage the trust literary property in such a way as to preserve and foster the legacy of the artist. The trust terms should give the trustee all of the powers necessary to administer the literary property. Attached are examples of a Revocable Living "Literary" Trust and a testamentary literary trust.

I have heard rumors of some estate planners naming a "Literary Executor." In Texas, the executor is court appointed and is a fiduciary responsible for administering the whole probate estate and can be personally liable for certain actions taken as executor and, arguably, for actions taken by a co-executor. Therefore, although, it is conceivable that an artist can appoint co-executors and designate one executor to manage only the literary properties, in my opinion, the added planning and administration expense, coupled with potential liability exposure for the acts of a co-executor, may not be justify naming a "Literary Executor." I personally believe that creating a testamentary literary trust identifying a "Literary Trustee" would be a cleaner and more efficient vehicle to achieve the artist's desired goals.

### **III. Estate Plan Example: Big Picture View of Alleged Michael Jackson Estate Plan**

#### ***Revocable Living Trust with a Pour-Over Will***

In 1995, Michael Jackson is believed to have set up a revocable living trust known as the Michael Jackson Family Trust ("Family Trust"). Based on customary estate planning, it is assumed that he also executed a "pour over" will at the same time. As previously stated, a "pour over" will compliments a revocable living trust and directs the executor to pour over any remaining assets that were not transferred to the Family Trust during his life.

The document linked below purports to be an Amended and Restated version of the Family Trust referenced above dated March 22, 2002. The validity of this document is unconfirmed. A digital copy can be found here:

<http://www.sofloridaestateplanning.com/uploads/file/JacksonTrust.pdf>

Michael Jackson's Will and Application for Probate filed in the California Probate Court can be found here:

<http://i.cdn.turner.com/cnn/2009/images/07/01/mj.will.pdf>

Assuming the above-referenced Family Trust is the governing trust document, it provides that Michael Jackson was entitled to receive all of the net income from the Family Trust, plus as much of the principal as he requested. Michael's post-death distribution plan divides his estate among charities, his children, and his mother.

**20% to Charity.** More specifically, Michael first gives 20% of the Family Trust to charity for the benefit of "children and/or children's causes" after his death.

**Estate Taxes.** After this gift is made, the Trustee is directed to pay all federal and state taxes and the costs of estate administration.

**Remaining Balance: 50% to Mom and 50% to Children.** If Michael Jackson was survived by any of his children, and Katherine Jackson also survived Michael, then 50% of the remaining trust balance was to be designated the "Michael Jackson Children's Trust" and 50% of the remaining balance is to be designated the "Katherine Jackson Trust."

However, if no children survive Michael, and Katherine Jackson survived him, then 100% of the remaining trust corpus would be designated the "Katherine Jackson Trust." Similarly, if Katherine Jackson failed to survive Michael, and at least one child survived him, then 100% of the remaining trust corpus was to be designated the "Michael Jackson Children's Trust".

If neither Katherine Jackson nor any child survived Michael, then 100% of the trust corpus was to be designated the "Michael Jackson Relatives Trust" for the benefit of his nieces and nephews, "Levon Jackson, Elijah Jackson, Anthony Jackson, Taj Jackson, Tarylle Jackson, and T.J. Jackson."

If the Katherine Jackson Trust is created, then she shall receive as much of the net income or principal as the Trustee may determine for her "care, support, maintenance, comfort, and well-being." Upon Katherine's death, any remaining balance shall go to the Michael Jackson Children's Trust and, if none, then to the Michael Jackson Relatives Trust.

If the Michael Jackson Children's Trust is created, then it shall be divided among his children and each shall receive the net income quarterly, subject to the discretion of the Trustee. Upon a child reaching the age of 21, the Trustee shall distribute the net income to each child at least annually. Upon reaching age 30, a child shall receive 1/3 of the then trust principal. Upon reaching age 35, a child shall receive 1/2 of the then trust principal. Upon reaching age 40, a child shall receive all of the then trust principal. If a child dies before such termination, then the balance shall go to that child's issue and, if none, to Michael's then surviving children. If no surviving children exist, then to the Michael Jackson Relatives Trust.

If the net income is insufficient for the child's care, support, maintenance or education, then the child may dip into the principal. In addition, if a child wishes to purchase a home or start a business with a sound business plan, then the Trustee may distribute such amounts as he or she deems appropriate.

This is just one example of an estate plan and the documents available to us represent only a piece of Michael Jackson's overall estate plan. It is highly probable that he created life insurance trusts for his children and implemented other estate tax motivated tools of which we are not aware.

**IV. Conclusion.** Probate litigation is on the rise. Many artist estates will likely be involved in disputes between heirs, which can deplete estate assets, take years to settle due to lack of planning, and tarnish the artist's legacy.

Proper estate planning can minimize the potential for probate litigation, make life easier on those that artists leave behind, and preserve an artist's legacy.

As such, entertainment lawyers, personal managers, business managers should address the issue of estate planning when advising their artist clients. Artists should know that estate planning presents an opportunity for the artist to exercise some control over their musical legacy and reduce the possibility their estate being depleted and their legacy tarnished by probate litigation.

If an artist cares about his or her legacy, then a comprehensive estate plan should be implemented to preserve their legacy for future generations.

\*Special thanks to Kenton J. Yaklin, J.D. Candidate, May 2011 for his assistance in researching and securing content for this chapter.

# COPY

## TRUST AGREEMENT CREATIVE THE

## ██████████ LITERARY TRUST

This Trust Agreement is made by and among ██████ as Trustor, and ██████ and ██████ as Trustees. When the term Trustee is used in this Trust Agreement, it shall refer to both Trustee, if both are acting; or to one Trustee, if only one Trustee is then acting.

1. **Identification of Property.** Trustor has transferred and delivered to the Trustee the property described in Exhibit "A" attached hereto and made a part hereof. The Trustee accepts such property in trust under the terms of this Trust Agreement. Trustor reserves the right to Trustor or to any other person to add any other property, whether real, personal or mixed, by deed, will or any other manner to the trust herein created, subject to the Trustee's acceptance, and any such property so added shall be subject to the terms of this Trust Agreement.

2. **Identification and Purpose of Trust.** The Trust created hereunder shall be known as the ██████ Literary Trust. The purpose of the trust is to provide for the unified management of the literary work created by ██████ and the copyrights relating thereto, so as to maximize its value and enhance the literary reputation of ██████.

3. **Distribution Provisions of REVOCABLE TRUST.** The trust estate of the Literary Trust shall be held on the following terms, as well as on all other applicable terms of trust in this Trust Agreement:

(A) The Trustee shall distribute annually the net income of the trust, including any royalty payments relating to the copyrights associated with the literary work created by ██████ to or for the benefit of ██████. After the death of ██████, the Trustee shall distribute annually the net income of the trust equally to or for the benefit of ██████ and ██████ if both of them are surviving, or all to the survivor of them, if only one of them is surviving; provided that, if ██████ or ██████ is not then surviving, the portion of the net income of the trust to which such predeceasing person would have been entitled if he were surviving shall be distributed to the issue of such predeceasing person, per stripes.

(B) The trust shall terminate when the Trustee, in the Trustee's sole reasonable discretion, determines that the trust is no longer necessary to manage the literary work of ██████ and any copyright associated with such literary work. Upon the termination of the trust, the then remaining trust estate, if any shall be distributed to ██████, if she is then surviving. If ██████ is not then surviving, the then remaining trust estate shall be distributed equally to ██████ and ██████, if they are both surviving, or all to the survivor of them, if only one of them is surviving; provide that, if ██████

██████████ or ██████████ is not then surviving, the portion of the then remaining trust estate to which such predeceasing person would have been entitled if such predeceasing person were surviving shall be distributed to the issue of such predeceasing person, per stirpes.

**4. Withdrawal Provisions.** The Trustor may from time to time by giving the Trustee reasonable notice in writing alter, amend, revoke or terminate the trust and this Trust Agreement, and upon receipt of any such notice, the Trustee promptly shall take such action as may be appropriate to carry out Trustor's instructions. If any portion of the trust estate is withdrawn by Trustor, this Trust Agreement shall terminate as to the property so withdrawn, but shall continue as to all other property of the trust estate not so withdrawn. If this Trust Agreement or any provision hereof is altered or amended, the duties, powers, responsibilities and liabilities of the Trustee shall not be substantially changed without the Trustee's consent. In the event a guardian for Trustor should be appointed by any court of competent jurisdiction, this trust shall be irrevocable by such guardian and shall not be subject to amendment during the existence of such guardianship. This Trust shall become irrevocable upon the Trustor's death.

**5. Designation, Appointment and Removal of Trustee.** The designation and appointment of any substitute or successor Trustee of the trust created hereunder shall be made as follows:

(A) If for any reason and at any time ██████████ or ██████████ is unable or unwilling to act as Trustee, the one of them who is able and willing so to act is appointed as Sole Trustee. ██████████ and ██████████, acting together (or the one of them who is able and willing so to act, if the other of them is not able and willing so to act), may appoint in writing, as a successor Trustee, one or more individuals who, in the opinion of ██████████ and ██████████, has the literary knowledge and background to effectively carry out the purpose of the trust created hereunder. It is Trustors' desire that at all times during the existence of the trust, an individual who is familiar with ██████████'s work and who is knowledgeable and has experience in dealing with literary works be a Trustee of the trust created hereunder.

(B) Throughout this Trust Agreement, wherever appropriate, the term "Trustee" shall refer to any Sole or Co-Trustee then acting hereunder; provided that, Co-Trustees shall act jointly. However, a Co-Trustee may act alone, if the Co-Trustees agree in writing that, for the purpose of administrative convenience, one or more of the powers of a Trustee set forth in this Trust Agreement may be exercised by one Co-Trustee without the joinder of the other Co-Trustee. Any successor or substitute Trustee appointed hereunder shall have the same powers, rights and responsibilities as the Trustee originally named.

(C) Any Trustee may resign or refuse to act hereunder without court action by giving at least thirty (30) days' written notice to the Co-Trustee, if any,

and each beneficiary of such trust created hereunder; provided that, if any such beneficiary is then under a legal disability such notice may be given to the guardian of such beneficiary's estate, or if there is no such guardian, to the person having the care or custody of such beneficiary.

(D) Trustor shall not remove a Trustee acting hereunder without cause, nor shall Trustor appoint an additional Trustee if the two initially named Trustees are acting hereunder. If Trustor removes a Trustee for cause, the Trustor must give thirty (30) days' written notice to such Trustee, and within thirty (30) days following the written notice of removal, Trustor shall appoint by written instrument a successor or substitute Trustee.

(E) Except as otherwise provided herein, if at any time any Trustee named or acting hereunder is unable or unwilling to act or to continue to act as Trustee hereunder and no successor or substitute Trustee named hereunder is able and willing so to act, Trustor may appoint within thirty (30) days of the receipt of written notice of such refusal or resignation, a successor or substitute Trustee hereunder.

(F) If for any reason and at any time there is no Trustee able and willing to act as Trustee, a Trustee or Co-Trustees may be selected by the income beneficiary (if there is only one income beneficiary) or by a majority of income beneficiaries (if there is more than one income beneficiary) of such trust. In the event an income beneficiary of such trust is incapacitated, the guardian of the person, or the one having the care and custody of such incapacitated beneficiary may act on behalf of such income beneficiary in choosing a Trustee.

**6. Compensation.** A Trustee shall receive for such services in that capacity compensation not to exceed 1.5% of the value of the trust estate being administered by the Trustee. If Co-Trustees are acting, this compensation shall be shared by the Co-Trustees in proportion to the time invested by each Trustee in administering the trust. A Trustee shall be entitled to reimbursement from the trust estates for all expenses, including, but not limited to, compensation to agents and fees for professional services incurred in the administration thereof.

**7. Acceptance of Property.** Acceptance by the Trustee of any property as part of the trust created hereunder shall be without liability or responsibility for the condition of the asset or property and without liability or responsibility for the validity of the title thereto. In making any distribution and in taking any action whatsoever hereunder, the Trustee may rely and shall be fully protected in relying upon any notice, certificate, affidavit or other paper or document believed by such Trustee to be genuine, or upon any evidence deemed by such Trustee to be sufficient.

**8. General Administrative Provisions:** The trust created hereunder shall be held and administered subject to the following terms and conditions:



(A) No bond or other security shall be required of any Trustee acting hereunder.

(B) Distributions to a beneficiary may be made: (i) directly to the beneficiary; (ii) to the guardian or other similar representative (including the trustee) of an incapacitated beneficiary; (iii) to a custodian (including the trustee) for a minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State; or (iv) by expending the same directly for the benefit of the beneficiary or by reimbursing a person who has advanced funds for the benefit of the beneficiary. The Trustee shall not be responsible for a distribution after it has been made to any person in accordance with this provision.

(C) Specifically, and not by way of limitation, the Trustee shall have the following powers:

- (i) To negotiate new contracts for unpublished manuscripts;
- (ii) To supervise the preparation of manuscripts for publication;
- (iii) To find a publisher for unpublished works and enter into publishing contracts;
- (iv) To supervise permissions and other reprint queries and negotiations;
- (v) To handle miscellaneous queries, including, but not limited, to archives and future biographies;
- (vi) To collect on overdue royalties;
- (vii) To renegotiate existing contracts;
- (viii) To copyright or renew any copyright of any copyrightable work; to exploit in such manner as the Trustee shall determine any such copyright and to authorize the use of such part or all of any copyrightable work, or any rights arising by any reason of any copyright, in such manner as the Trustee shall determine; and
- (viii) To engage in other activities designed to sustain and enhance ~~the~~ ~~Trustee's~~ reputation.

In addition, the Trustee may retain, hold or acquire unproductive property, if such Trustee determines such action to be in the best interests of the income beneficiary. The Trustee may make loans to a beneficiary, guarantee loans or borrow money in

any manner, with or without security, upon such terms and conditions as the Trustee deems best. The Trustee may make capital contributions to any business or entity, including, but not limited to, corporations, partnerships, and proprietorships, and may participate as a partner, shareholder or in any other capacity in the formation, operation, dissolution, liquidation or reorganization of any such business. The Trustee also shall have all of the powers now or hereafter granted to trustees under the Texas Trust Code.

(D) The Trustee is authorized to employ attorneys, accountants, investment advisors, literary agents, and such other agents as the Trustee shall deem necessary or desirable. The Trustee shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the trust, and to delegate to said manager investment discretion. Such appointment shall include the power to acquire and dispose of such assets. The Trustee may charge the compensation of such attorneys, accountants, investment advisors, investment managers, specialists and other agents and any other expenses against the trust.

(E) In determining income for distribution from any trust created herein, the Trustee, in such Trustee's sole, reasonable discretion, shall allocate or apportion the revenues, receipts or proceeds of the trust as to principal and income and shall allocate or apportion the charge of disbursements, expenses, depreciation, depletion, amortization, obsolescence, and similar or related charges and accruals or losses of the trust as to principal or income, and the Trustee's determination need not necessarily be according to the provisions of the Texas Trust Code. When such discretion is not exercised by the Trustee, the provisions of the Texas Trust Code shall control, except as otherwise provided herein.

(F) The Trustee shall not be disqualified to enter into any transaction on behalf of the trust for the reason only that another party to such transaction is: (i) a trust of which the Trustee is trustee; (ii) a business controlled directly or indirectly by a Trustee or a beneficiary of the trust created hereunder; (iii) a Trustee or a beneficiary of the trust created hereunder acting in such party's own behalf, including, but not limited to, entering into a contract with a Trustee who is acting in his or her individual capacity, to promote and manage the literary work created by ██████████, or (iv) an estate of which a Trustee hereunder is acting in any fiduciary capacity.

(G) At the termination of the trust, the decision of the Trustee as to the timing partition, division, composition (whether in cash or in any other property, or both, or in undivided interests or otherwise, including composing shares differently) and valuation of any distribution of all or any portion of the trust estate, and as to the proper persons entitled to receive a distribution hereunder shall be final and binding on all parties concerned insofar as any liability or responsibility of such Trustee is concerned.

(H) Notwithstanding any other provision of this Trust Agreement, any trust created hereunder or pursuant to the exercise of a power of appointment granted hereunder shall terminate, if not sooner terminated, twenty-one (21) years after the date of the death of the last to die of the last surviving beneficiary (including a contingent beneficiary) of any trust hereunder who is in being at the time of date this Trust Agreement becomes effective. The property comprising the trust estate of any trust which terminates by reason of this Paragraph shall be delivered, free of trust, to the income beneficiary thereof.

**9. Accountings.** The Trustee shall render an accounting of its administration of the trust to the Trustor annually and the Trustor's approval thereof shall be binding upon all persons interested in the trust. The Trustee may, but is not required to, prepare and file accountings with any Court. Prior to delivering all of the property of any trust hereunder to a successor Trustee or to making any partial or complete distribution of trust principal, the Trustee may require an approval of its accounting either by a release and discharge by the Trustor, if living, or the beneficiary or beneficiaries of any such trust after the Trustor's death or by a Court of competent jurisdiction. All of the Trustee's fees and expenses (including reasonable attorneys' fees) attributable to any accounting shall be paid by such trust.

**10. Limitations on Liability of Trustee.** No Trustee hereunder shall be liable for any loss or depreciation in value of the properties of the trust estate, except such loss as is attributable to gross negligence, a willful breach of trust or bad faith on the part of such Trustee, and no Trustee shall be accountable or held liable for any act or omission of any agent of such Trustee, if such Trustee has used good faith and ordinary care in the selection of such agent, and in such event, any liability shall be solely that of such agent. Any successor Trustee is relieved of any duty to examine the acts of any prior fiduciary, or to require an accounting therefrom, and shall be responsible only for those assets actually delivered to such Trustee.


**11. Payment of Death Taxes.** Upon Trustor's death, the Trustee shall pay to the personal representative of Trustor's estate from the principal and income of the trust an amount necessary to pay that portion of Trustor's legal and valid debts, funeral expenses, and death taxes that remain unpaid after exhausting the assets of the Trustor's probate estate. Before such payment is made from the trust, the personal representative of Trustor's estate must present to the Trustee an inventory of the assets of Trustor's probate estate and a detailed list of Trustor's debts, funeral expenses and taxes owed. Notwithstanding the foregoing, no portion of the trust estate, or any amount payable to the Trustee by reason of the death of Trustor, which would not otherwise be liable for the debts of Trustor under applicable state law shall be available for the purpose of paying any of the Trustor's debts, funeral expenses, death taxes and administration expenses.

**12. Incapacity of Beneficiary.** If any person for whom no trust is created hereunder is entitled to a portion or all of the trust estate of a trust created hereunder at the termination

of such trust and is incapacitated, the property distributable shall be vested in such beneficiary, but distribution shall be postponed until such beneficiary shall gain or regain capacity. If such beneficiary should die before attaining such capacity or complete distribution hereunder, all of such property vested in such beneficiary shall be distributed to such beneficiary's estate. In the meantime, the Trustee shall hold such property in trust, continue to exercise all the rights, privileges and powers granted to the Trustee hereunder, and shall distribute to or for the benefit of such beneficiary as much, or all, of the net income and principal of the retained property as the Trustee considers necessary for the support, maintenance, and education of such beneficiary, and shall add to principal any income not so expended. The Trustee shall have all the powers given to a trustee under the Texas Trust Code, as well as all other powers given to the Trustee under this Trust Agreement. Notwithstanding the foregoing, if any person, who is entitled to any property from a trust created hereunder at the termination of such trust is under age twenty-one (21), the Trustee may distribute any such property to an individual designated by such Trustee as custodian for such beneficiary under the Texas Uniform Transfers to Minors Act.

**13. Interpretive Provisions.** For purposes of the trust created hereunder:

(A) The term "issue" shall refer only to lineal descendants of the first, second or any other degree of relationship of the person in question who were either: (a) born or conceived prior to or during a legal, ceremonial marriage of the parents; (b) legally adopted while under the age of eighteen (18) years in a statutory proceeding; (c) born to a female lineal descendant of the person in question; (d) voluntarily or involuntarily legitimated while under the age of eighteen (18) years by a court decree entered prior to the death of the person in question; or (e) acknowledged by the person in question while under the age of eighteen (18) years in a statement of paternity as provided in the Texas Family Code, or a like statement properly executed in another jurisdiction.



(B) The income of the trust less the charges to such income shall constitute the "net income" of such trust. The Trustee may, in the Trustee's sole discretion, determine that an amount of the income generated by the trust should be retained in the trust to be applied toward the expenses of managing the trust estate. Any such retained amount shall be considered a charge to the income in determining the net income to be distributed to a beneficiary. Notwithstanding the foregoing, a beneficiary hereunder shall be distributed sufficient income to pay any income taxes on the income of the trust taxed to such beneficiary. The term "trust estate" shall include the original principal and all other properties of the trust, real, personal or mixed, however and whenever acquired, which may be included in or belong to the trust, and any income therefrom, including any undistributed income, so long as same shall remain in trust hereunder.

(C) A person hereunder shall be presumed to be incompetent or incapacitated if such person is under the age of twenty-one (21) or, if such person

is an adult, upon the written certification of two (2) medical doctors, including such person's personal physician, if available. A person shall have capacity hereunder upon reaching the age of twenty-one (21) or, if such person is an adult, such person shall be presumed to be competent upon the written certification of such person's personal physician, or if such person's personal physician is not available, of one (1) medical doctor. The Executor shall be fully protected as to any action taken based on such a determination of incompetence or competence of any person hereunder.

(D) The term "death taxes" shall refer to all estate, inheritance and succession taxes, together with any interest and penalties thereon, which are assessed by the reason of Trustor's death (other than any taxes imposed by Chapter 13 or Section 2032A of the Internal Revenue Code). Taxes imposed by reason of Chapter 13 shall be paid as provided in Chapter 13. Taxes imposed by reason of Section 2032A shall be paid by the "qualified heir" liable under said Section.

(E) Notwithstanding any other provisions of this Agreement, a Trustee shall always be bound by those principles of equity that are the foundation of fiduciary capacity and shall not have the power to enlarge or shift any of the beneficiary interests herein, except as an incidental consequence of the discharge of such Trustee's duties.

(F) The construction and validity of any trust created hereunder shall be controlled by the laws of the State of Texas. The administration of any such trust shall be controlled by the laws of the State of Texas unless and until the Trustee shall, by written notice (i) to each income beneficiary of any trust, or (ii) if such beneficiary is under a legal disability, to the guardian of the person of such beneficiary or the person having the care or custody of such beneficiary, designate the laws of any other jurisdiction, whether a state within the United States of America or any nation or political subdivision of a nation other than the United States of America, as the controlling law with respect to the administration of such trust, in which event the laws so designated shall so apply to the trust as if designated herein until the laws of some other such jurisdiction are so designated, except that notwithstanding any such designation, the laws of the State of Texas shall continue to apply to the extent that the powers of the Trustee are broader under the laws of the State of Texas than under such other designated laws. To minimize any tax in respect of any trust, or any beneficiary thereof, or for such other purpose as the Trustee deems appropriate, the Trustee may in the Trustee's sole and absolute discretion remove all or any part of the property of, or the situs of administration of, such trust from one jurisdiction to another and elect, by an instrument filed with the trust records, that thereafter such trust shall be construed, regulated and governed as to administration by the laws of such other jurisdiction.

(G) Any reference to a statute herein shall refer to such statute, as

amended, through the date of determination hereunder, or any similar successor statute.

(H) Headings are included in this Agreement only for convenient reference, and are not intended to be a part of, or affect the meaning, interpretation or construction of any provisions of this Will.

EXECUTED on the dates of the respective acknowledgments hereto, to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
- TRUSTOR -

\_\_\_\_\_  
- TRUSTEE -

- TRUSTEE -

THE STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_,  
20 \_\_, by \_\_\_\_\_ in the capacity therein stated.

\_\_\_\_\_  
Notary Public in and for the State of Texas

THE STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_,  
20 \_\_, by \_\_\_\_\_ in the capacity therein stated.

\_\_\_\_\_  
Notary Public in and for the State of Texas

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_, by \_\_\_\_\_ in the capacity therein stated.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

LAST WILL AND TESTAMENT  
OF  
GEORGE A. MILES, JR. (a/k/a BUDDY MILES)

I, GEORGE A. MILES, JR. (a/k/a BUDDY MILES), residing in the County of Travis and State of Texas do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils made by me at any time heretofore.

FIRST: I direct that no just debts shall be paid unless payment is presented to the Executor, other than debts secured by mortgages and real property, and funeral expenses be paid as soon as practicable after my death.

SECOND: All tangible personal property, including, without limitation, jewelry, clothing and other articles of personal use or adornment, household furniture, furnishings and other articles of household use or ornament and automobiles, together with all insurance policies relating thereto, owned by me at the time of my death, I give and bequeath to my friend and partner, [REDACTED] [REDACTED] (hereinafter "[REDACTED]"). Any distribution authorized in this Article shall be in full discharge of my Executor with respect thereto.

THIRD: A. I give and bequeath to my Literary Trustees hereinafter named, IN TRUST, all of my right, title and interest in musical works composed by me and all royalties and revenues derived therefrom, including (a) all copyrights in the

**Sound Recordings? Audiovisual Works?**



said musical works in whatever country they are registered and whether in their original or renewal terms, including any copyright existing under common law or the law of any jurisdiction where such copyrights may exist; (b) all license agreements and contracts relating to the use and exploitation of said musical works; and (c) all royalties, moneys and other proceeds which may accrue after my death and are derived from the use or exploitation of said musical works, including all sums due from music publishers, mechanical and performing rights societies such as ASCAP and similar organizations wherever located ("Literary Property"). My Literary Trustees shall hold, manage, invest and reinvest the principal of such trust and shall pay the net income therefrom to ██████████ during her life.

B. Upon ██████████ death:

1. The principal of this trust and any undistributed net income therefrom, shall be held IN FURTHER TRUST by my Literary Trustees for the benefit of my great nephews, ██████████ ██████████ (hereinafter "██████████") and ██████████. (hereinafter "██████████"); my great nieces, ██████████ (hereinafter "██████████") and ██████████ ██████████ (hereinafter "██████████"); my step granddaughter, ██████████ (hereinafter "██████████"); and my step grandson, ██████████ (hereinafter "██████████"), who shall then be living (collectively referred to as "Beneficiaries" and severally as "Beneficiary"). My Literary Trustees shall invest and reinvest the principal of such trust and, during any period in which a Beneficiary shall be attending a full-time educational

institution, my Literary Trustees may or apply to or to the use of a Beneficiary so much or all of the net income therefrom as my Literary Trustees may in their absolute discretion determine to be necessary to finance such Beneficiary's "educational expenses" (as hereinafter defined). Any net income not paid or applied by my Literary Trustees shall be added to the principal of the trust whenever convenient. Notwithstanding the foregoing, my Literary Trustees, at any time and from time to time, may pay to or apply for the benefit of a Beneficiary so much of the net income therefrom as my Literary Trustees may deem necessary or advisable for such Beneficiary's health, support or maintenance regardless of whether such Beneficiary shall be attending a full-time educational institution. My Literary Trustees, at any time or from time to time, may pay the net income therefrom to any one Beneficiary to the exclusion of all other Beneficiaries, or to two or more of them in equal or unequal amounts or proportions. No prior payment of net income need be taken into account in making any subsequent payment of net income. In exercising their powers my Literary Trustees may, but need not, consider any other resources that may be available to a Beneficiary from any source.

2. "Educational expenses", as used herein, shall include fees and expenses incurred directly at a private high school or private college or university for undergraduate education, specifically including, but not limited to: (i) tuition and other fees, dues and charges, room and board,

clothing, and books and supplies; (ii) reasonable costs of trips for interviews at schools and expenses involved in connection with entrance applications and examinations; (iii) expenses for transportation between such schools and such Beneficiary's place of residence; (iv) tutoring (other than any room, board or transportation charges of the tutor); (v) costs of all lessons (music, arts, athletics) and athletic equipment; and (vi) any other purpose or activity as such Literary Trustees shall determine in their absolute discretion to be "educational".

3. This trust shall terminate on the last to occur of (i) the completion of all of the Beneficiaries undergraduate educations at an accredited college or a university, (ii) the attainment by all of the Beneficiaries of the age of twenty-one (21) years, (iii) the time that the youngest of all the Beneficiaries shall, by a duly acknowledged written instrument, advise the Literary Trustees that he or she no longer intends to continue his or her undergraduate education, or (iv) the death of the youngest Beneficiary prior to attaining the age of twenty-one (21) years, at which time the then principal of this trust, together with all income then on hand or accrued, shall be distributed in equal shares to the then living Beneficiaries, provided, however, that if any Beneficiary shall not be living at the such time, but shall have then living descendants at such time, the share that such deceased Beneficiary would have received had he or she then be living shall be distributed to his or her then

living descendants at such time, per stirpes. If none of the Beneficiaries and their descendants shall then be living at such time, such property shall be distributed in accordance with the provisions of Paragraph D of Article FOURTH hereof.

C. If none of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] shall survive me, my Literary Property shall be disposed of pursuant to Paragraph D of Article FOURTH hereof, and I give and bequeath it accordingly.

D. Any provisions of this Will to the contrary notwithstanding, after [REDACTED]'s death, my Literary Trustees may at any time in their discretion terminate the trust created in this Article THIRD, and transfer, pay over and deliver all of the then principal and income of such trust to the Beneficiaries of such trust, if in the sole discretion of the Literary Trustees, the continuation of such trust is no longer necessary in the best interests of the Beneficiaries of such trust.

E. The judgment of my Literary Trustees as to whether, when, to whom and to what extent to pay income or principal of the trust shall be conclusive and it is my intention that no Beneficiary have the right or power to compel my Literary Trustees to make payment of income or principal to any Beneficiary and that no court have power under any statute to pay income or principal to any Beneficiary.

FOURTH: All the rest, residue and remainder of the property, both real and personal, and wherever situated, which I

may own or be entitled to at the time of my death (my "Residuary Estate"), shall be distributed as follows:

A. I give, devise and bequeath my Residuary Estate to [REDACTED], if she shall survive me.

B. If [REDACTED] shall not survive me, I give devise and bequeath my Residuary Estate in equal shares to [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], who shall survive me.

C. If none of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] shall survive me, such property shall be disposed of pursuant to Paragraph D of this Article FOURTH.

D. Wherever any provision of this Will shall require that property be disposed of as provided in this Paragraph D of this Article FOURTH, I give, devise and bequeath such property to any charitable organization selected by my Executor or Literary Trustees, as the case may be, in their sole and absolute discretion and recognized as a charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.

FIFTH: If any beneficiary under this Will and I should die in a common accident or disaster or under such circumstances that it cannot be established by proof who died first, then all the provisions of this Will shall take effect as if such beneficiary had predeceased me.

SIXTH: I direct that all inheritance, estate,

transfer, succession, legacy and other death and similar taxes including any interest and penalties thereon imposed by any jurisdiction whatsoever by reason of my death shall be paid from my Residuary Estate as an administration expense, without apportionment, if and to the extent that the same are imposed in respect of property owned by me and passing under this Will. All such taxes in respect of any other property shall be apportioned against and paid by the persons in possession thereof or benefited thereby, in the manner provided by law.

SEVENTH: My Executor, in her discretion, may defer payment or distribution of any part or all of any principal vesting in and payable to a beneficiary under twenty-one (21) years of age until the beneficiary attains twenty-one (21) years, meanwhile applying to such beneficiary's use so much of such principal and of the income therefrom, including any accumulated income, and at such time or times as my Executor, in her discretion, may deem advisable. Any income not expended by my Executor shall be added to principal. My Executor shall transfer, pay over and deliver any remaining principal and income to the beneficiary when he or she shall have attained the age of twenty-one (21) years, or to the estate of such beneficiary upon his or her death prior to having attained the age of twenty-one (21) years.

With respect to any property held under this Article, my Executor shall have all the powers, privileges, discretions and immunities conferred upon her elsewhere in this

Will.

My Executor may make payment of income or principal applicable to the use of a beneficiary under the age of twenty-one (21) years under any provision of this Will in any or all of the following ways:

A. By paying the same to the legal guardian or other person having the care and control of such beneficiary or to a custodian under the Uniform Transfers to Minors Act (or similar act) which, my Executor in her sole discretion, may designate herself, or any other adult person(s) to act as such custodian without requiring the recipient to qualify in any jurisdiction as donee of a power in trust or in any other capacity, or to post any bond or security.

B. By paying directly to the beneficiary such sums as my Executor may deem advisable as an allowance.

C. By expending it in such other manner as my Executor in her discretion believes will benefit such beneficiary.

Any payment or distribution authorized in this Article shall be a full discharge to my Executor with respect thereto.

EIGHTH: A. In addition to such powers as she may have by law, I fully authorize and empower my Executor with respect to any and all property at any time constituting part of my estate in her discretion, to retain such property for so long as she may deem advisable; to sell the same at public or private sale, for cash or

on credit; to invest and reinvest in any property without being limited to the class of securities authorized for the investment of trust funds by executors; in the division and distribution of my estate, to make partition, division or distribution of property in kind and for such purpose to determine the value thereof to the extent permitted by law; and, generally, to do all such acts and take all such proceedings with respect to such property as if the absolute owner thereof, and no person dealing with my said Executor shall be obligated to see to the proper application of any monies paid or loaned to her.

NINTH: In addition to (and not in lieu of) the provisions of Article EIGHTH, I grant to my Literary Trustees (or if there shall be no Literary Trustee acting hereunder or available to qualify hereunder, to the Executor who is acting hereunder), the following powers with respect to my Literary Property:

A. To negotiate, arrange and contract for the publication anywhere in the world of such portions of my Literary Property as have not heretofore been published, on such terms as my Literary Trustees shall deem advantageous, in the name of and for the benefit of said trust.

B. To negotiate, arrange and contract for the republication or further license of such portions of my Literary Property as have been previously published and for the sale, licensing, sub-licensing, leasing or other disposition of any of the subsidiary rights (including, without limitation, stage,



screen, radio, television, mechanical or electrical reproduction, audio and/or visual cassettes and commercial exploitations rights) in any portion of my Literary Property, whether such works have heretofore been published or not, in the name of and for the benefit of said trust.

C. To register with the Register of Copyrights of the United States or appropriate authorities in other countries copyrights in such of my writings as have not been heretofore registered.

D. To renew copyrights on behalf of those entitled to claim renewal, whether such copyrights were originally obtained in my name or the name of my original publisher (or otherwise) and to exercise in the name of and for the benefit of said trust all rights of termination and recapture as are provided by law.

E. To sue in the name of and for the benefit of said trust (i) for infringement of copyright, (ii) for breach of contract, (iii) for recovery of monies due, and/or (iv) to establish or claim reversion of any rights.

F. To sell any part or all of my Literary Property, at public or private sale, at times and upon such terms and conditions as to my Literary Trustees may deem advisable, including such representations on behalf of my said trust as to genuineness and authenticity, as they shall deem advisable.

G. To employ counsel to effect any of the foregoing powers.

H. To delegate to other persons such ministerial duties as my Literary Trustees may deem necessary for the benefit of the expeditious administration of my Literary Property.

I. Generally to exercise with respect to my Literary Property all rights, powers and privileges, although not hereinbefore specifically mentioned, which might or could be exercised by an individual owning any such property in his own right.

J. To do any and all other acts and to execute, acknowledge and deliver any and all instruments necessary, proper or advisable to effectuate the powers provided herein.

K. To retain the same for such period as my Literary Trustees deem advisable for the benefit of said trust.

L. To lend any part or all of my Literary Property from time to time to any library, university, or other similar institution for purposes of exhibition or research, for such period of time and upon such terms and conditions as my Literary Trustees shall determine.

M. To retain agents for the sale thereof, and expert consultants with respect to the proper care and disposition of my Literary Property or any part thereof.

N. To pay such agents and experts reasonable compensation for their services.

O. To perform such acts and to enter into such agreements or arrangements in respect of my Literary Property (or

any part thereof) as my Literary Trustees could do if they were the absolute owners thereof.

P. To pay any expenses arising in connection with the retention, sale or disposition of my Literary Property or any part thereof (including the cost of any insurance in respect thereof which my Literary Trustees may purchase) out of the principal or income of said trust, as my Literary Trustees shall deem advisable in the circumstances. Nothing herein contained shall be deemed to require my Literary Trustees to insure my said Literary Property and any determination by my Literary Trustees as to whether or not to insure any part thereof, and as to the amount of such insurance shall be conclusive and binding and not subject to review; and my Literary Trustees shall in no event be liable to the beneficiaries of my Literary Property for deterioration in the condition, or depreciation in the value, of my Literary Property or any part thereof, or for any representation made in good faith in connection with the sale or disposition thereof.

\*  
Q. Persons dealing with my Literary Trustees shall not be bound to see to the application of any moneys paid to my Literary Trustees pursuant to their exercise of any of the foregoing powers.

TENTH: A. I appoint my friend and partner, [REDACTED], as Independent Executor of this Will. If my friend and partner, [REDACTED], shall for any reason fail to qualify or cease to serve as Independent Executor, I appoint my friend and

attorney, [REDACTED], as successor Independent Executor. I direct that the last acting of [REDACTED] and [REDACTED] shall appoint his or her successor as Independent Executor by instrument in writing, duly acknowledged and filed in the Court where this Will shall be admitted to probate, or by his or her duly probated Will.

B. I appoint my friend and partner, [REDACTED] and my friend and attorney, [REDACTED], as my Literary Trustees of the trust created under Article THIRD of this my Will. If either of [REDACTED] or [REDACTED] shall for any reason fail to qualify or cease to serve as a Literary Trustee, then the remaining Literary Trustee shall serve as the sole Literary Trustee of said trust. The last acting Literary Trustee of [REDACTED] and [REDACTED] shall appoint his or her successor Literary Trustee of said trust by an instrument in writing, duly acknowledged and filed in the Court where this Will shall be admitted to probate, or by his or her duly probated Will.

C. It is my will and desire and I hereby direct that in the administration of my estate, my Independent Executor, my Literary Trustees or any successor shall not be required to furnish any bond of any kind and that no action shall be had in any court in the administration of my estate other than the probating of this my Last Will and Testament, and the filing of any Inventory, Appraisement and List of Claims of my estate that may be required.

ELEVENTH: No interest of any beneficiary in the corpus or income of my estate shall be subject to assignment, alienation, pledge, attachment or claims of creditors of such beneficiary and may not otherwise be alienated or encumbered by such beneficiary, except as may be otherwise expressly provided herein.

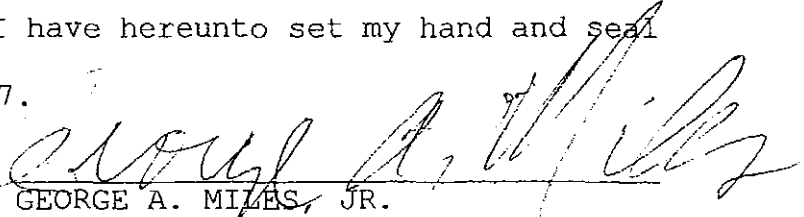
TWELFTH: If any beneficiary under this Will shall in any manner contest or attack the Will or any of its provisions, any share or interest in my estate given to such contesting beneficiary under this Will is hereby revoked and shall be disposed of as part of the residue of my estate.

THIRTEENTH: This Will shall be probated in accordance with the laws of Texas, and should any provisions of the same be held unenforceable or invalid for any reason, the unenforceability or invalidity of said provision shall not affect the enforceability or validity of any other part of this Will.

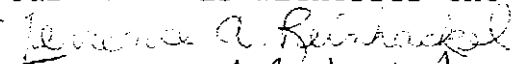
FOURTEENTH: Wherever necessary or appropriate, the use herein of any gender shall be deemed to include the other genders and the use herein of either the singular or the plural shall be

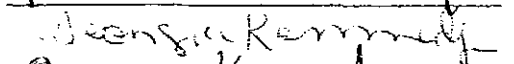
deemed to include the other.

IN WITNESS WHEREOF, I have hereunto set my hand and seal  
this 20 day of December 2007.

  
\_\_\_\_\_  
GEORGE A. MILES, JR.  
(a/k/a BUDDY MILES)

THE FOREGOING INSTRUMENT, consisting of fifteen (15) pages, including this page, was signed, sealed, published and declared by the above named Testator, GEORGE A. MILES, JR. (a/k/a BUDDY MILES), as and for his Last Will and Testament, in the presence of us, who were all present at the same time and who, in his presence, at his request and in the presence of each other, have hereunto subscribed our names as witnesses the day and year last above written.

  
Terrence A. Reinhackel residing at PO 1806 Gonzales, TX 78629

  
Georgia Kennedy residing at PO 1806 Gonzales, TX 78629

none residing at \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF

Before me, the undersigned authority, on this day personally appeared GEORGE A. MILES, JR. (a/k/a BUDDY MILES), Georgia Kennedy, Terrence Reinhackel and none, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said GEORGE A. MILES, JR. (a/k/a BUDDY MILES), Testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said Testator, that the said Testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testator and at his request; that he was at that time eighteen years of age or over and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Georgia Kennedy  
Witness

George A. Miles, Jr.  
GEORGE A. MILES, JR.  
(a/k/a BUDDY MILES)

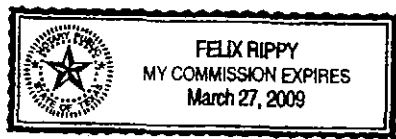
Terrence A. Reinhackel  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the said GEORGE A. MILES, JR. (a/k/a BUDDY MILES), Testator, and by the said Terrence Reinhackel, Georgia Kennedy, and none, witnesses, this 20 day of December, 2007.

SIGNED:

Felix Rippe



\_\_\_\_\_  
(Official Capacity of Officer)

**Form 3701—General Information**  
**(Registration of Claim for Use of Deceased Individual's Name,  
Voice, Signature, Photograph, or Likeness)**

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

**Commentary**

Chapter 26 of the Texas Property Code and the secretary of state's administrative rules found in title 1, chapter 76 of the Texas Administrative Code govern the use of a deceased individual's property rights, including the deceased individual's name, voice, signature, photograph, or likeness. A person who claims to own a property right of a deceased individual may register that claim with the secretary of state. Registration of a claim is prima facie evidence of the claim's validity, and a registered claim is generally superior to a conflicting, unregistered claim. Tex. Prop. Code § 26.007.

Registration with the secretary of state prior to exercising a property right of a deceased individual is optional, except during the first year following the individual's death. For the first year following the death of the individual, an owner of a property right may exercise that right only if the owner registers a valid claim with the secretary of state. Section 26.006 sets forth the requirements for a registration of claim.

A registration of claim is effective the date the completed registration and filing fee are received by the secretary of state.

**Instructions for Form**

- **Claimant Information:** The registration of claim must set forth the claimant's name, address, and a statement of the basis of the claim.

A document on file with the secretary of state is a public record subject to public access and disclosure. When providing address information for owners, use a business or post office box address rather than a residence address if privacy concerns are an issue.

- **Property Rights Claimed:** Include the name and date of death of the deceased individual and state the percentage interest in the property rights claimed, such as 100%, 50%, 25%, or some other interest. Select either A or B to indicate whether the stated percentage interest is claimed in all property rights of the deceased individual or limited rights. If B is selected, describe the limited rights that are claimed.
- **Execution:** The claimant must sign and date the registration statement before a notary public or other official who has authority to administer an oath.
- **Payment and Delivery Instructions:** The filing fee for a registration of claim is **\$25**. Fees may be paid by personal checks, money orders, LegalEase debit cards or MasterCard, Visa, and Discover credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

The completed form, along with the filing fee, may be mailed to P.O. Box 13550, Austin, Texas 78711-3550 or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701.



Form #3701 Rev. 07/2009

This space reserved for office use

Submit to:  
SECRETARY OF STATE  
Statutory Documents Section  
P O Box 13550  
Austin, TX 78711-3550  
512-475-0775  
512-475-2815 - Fax  
Filing Fee: \$25



**REGISTRATION OF CLAIM  
FOR USE OF  
DECEASED INDIVIDUAL'S  
NAME, VOICE, SIGNATURE,  
PHOTOGRAPH, OR LIKENESS**

**Claimant Information**

Name: Ken Pajak, Independent Executor of the Estate of Mary Lynn Munro

Address: 123 Diamond Drive Austin TX 78704  
*Street City State Zip*

Complete one of the following to state the basis for the claim:

- A. Claimant has been appointed by a court for the benefit of the estate of the deceased individual.  
Select title:  independent executor  executor  independent administrator  
 temporary or permanent administrator  temporary or permanent guardian
- B. Claimant is a surviving relative of the deceased individual.  
Select relationship:  spouse  child  grandchild  parent
- C. Claimant has been transferred the property rights of the deceased individual.  
Select method of transfer:  contract  trust  will

**Property Rights Claimed**

Name of deceased individual: Mary Lynn Munro

Date of death: October 7, 2010 Percentage of property rights claimed: 100%

Complete one of the following to state the type of rights in which the above percentage is claimed:

- A. All types of property rights of the deceased individual are claimed.
- B. Limited rights are claimed as follows: \_\_\_\_\_

**Execution**

Date: October 8, 2010

\_\_\_\_\_  
Signature of Claimant  
Ken Pajak, Independent Executor  
Printed or typed name of Claimant

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(seal)

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

