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# DECLARATION OF TRUST

## *Charming Living Trust*

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This DECLARATION OF TRUST (this “**Declaration**”) is made and executed on the date below by and between the herein-named grantors and trustees. This trust created herein will be known as The **Charming Living Trust** (the “**Trust**”).

**WITNESSETH:**

## **Section 1. Family**

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At the time of executing the Trust, the grantors, **Sarah White Charming**, also known as **Snow White**, and **Florian Charming**, also known as **Prince Charming**, (the “**Grantors**”), are married and do not have children.

## **Section 2. Trust Property**

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- a) **Funding of Trust.** The Grantors declare that they have set aside and caused the transfer of all of their right, title, and interest in and to the property described in Schedule A, Schedule B, and Schedule C (collectively, and together with any other property added to the Trust, the “**Trust Property**”) to the trustees of the Trust, to be held, administered, and distributed in accordance with the terms of this Trust. At any time hereafter, the Grantors may transfer any other real or personal property to the Trust. The Trust may also receive property from any other source, including pursuant to either Grantor's last will and testament. The Trust Property will be held, administered, and distributed as set forth in this Trust and any subsequent amendments to it.
- b) **Character of Property.** While both Grantors are alive, property transferred into the Trust, including any income that it generates, will retain its original character (unless gifted from one Grantor to the other). The Grantors' joint property contributed to the Trust includes, but is not limited to, that property set forth in Schedule A. The separate property of **Sarah White Charming** contributed to the Trust includes, but is not limited to, that property set forth in Schedule B. The separate property of **Florian Charming** contributed to the Trust includes, but is not limited to, that property set forth in Schedule C. Each schedule may be amended and revised from time to time to reflect the contribution of additional property or the reallocation or redistribution of property. If this Trust is revoked, the trustee shall distribute the Trust Property to the Grantors based on the ownership rights they had before that property was transferred into the Trust.

## **Section 3. Authority, Power, and Rights of Grantor**

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- (a) **Amend and Revoke.** Each Grantor has the authority, power, and right to revoke the Trust. While both Grantors are alive, the Grantors may jointly amend or modify any provision of this Trust. Subject to the execution by the surviving Grantor of a disclaimer as set forth in Section 9 below, if one Grantor is deceased, the surviving Grantor alone may amend or modify any provision of

this Trust, including the Survivor's Trust created herein. Any amendment, revocation, notice, or other document and instrument affecting or furthering the purposes of this Trust must be in a signed writing, delivered to the trustee.

Upon the death of the Surviving Grantor, all trusts created under this Declaration are irrevocable. The Grantor's Social Security number may no longer be used to identify the trust. My Trustee may need to apply for a separate Taxpayer Identification Number for the trust.

- (b) **Appointment of Trustee.** The Grantors, or the survivor of them, may at any time appoint, substitute, or otherwise change the person designated to act as trustee or successor trustee hereunder. The Grantors are not required to give notice to or obtain the consent of any such trustee, successor trustee, or beneficiary before making such changes.
- (c) **Right to Income and Principal.** During their lifetimes, the Grantors will be exclusively entitled to all net income and as much principal from the Trust Property listed on [Schedule A](#) as the trustee determines is necessary for the Grantors' health, education, maintenance, support, comfort, and welfare, and these amounts will be distributed at least annually. During such Grantor's lifetime, **Sarah White Charming** will be exclusively entitled to all net income and as much principal from the Trust Property listed on [Schedule B](#) as the trustee determines is necessary for such Grantor's health, education, maintenance, support, comfort, and welfare and these amounts will be distributed at least annually. During such Grantor's lifetime, **Florian Charming** will be exclusively entitled to all net income and as much principal from the Trust Property listed on [Schedule C](#) as the trustee determines is necessary for such Grantor's health, education, maintenance, support, comfort, and welfare and these amounts will be distributed at least annually. If a Grantor is incapacitated, as defined in Section 4(d) below, the trustee shall pay to the other Grantor, or for the benefit of the incapacitated Grantor, as much of the net income and principal of the Trust Property contributed by the incapacitated Grantor as is necessary, in the trustee's sole discretion, for the incapacitated Grantor's health, education, maintenance, support, comfort, and welfare.
- (d) **Homestead.** The Grantors reserve the right to reside in any residential real property conveyed or transferred to the Trust rent-free and without charge (except for mortgage payments, taxes, insurance, maintenance, and other related expenses) during each Grantor's lifetime, it being the intent of this provision to preserve the requisite beneficial interest and possessory right of each Grantor in and to such real property in accordance with the applicable provisions of state homestead or similar laws, and to ensure that the Grantors, or either of them, does not lose eligibility for a state homestead tax exemption for which either Grantor otherwise qualifies.

#### Section 4. Appointment of Trustee

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- (a) **Sarah White Charming** and **Florian Charming** are the initial trustees of the Trust and each subtrust of the Trust (if any), with all of the rights, privileges, and responsibilities set forth herein. If an initial co-trustee resigns, or cannot continue to serve due to death, disability, or incapacity, the other initial trustee shall continue as sole trustee, with full authority to exercise all of the powers and rights accorded to a trustee under this Trust. revocation, notice, or other document and instrument affecting or furthering the purposes of this Trust must be in a signed writing, delivered to the trustee. Upon the death of the Surviving Grantor, all trusts created under this Declaration are irrevocable.
- (b) If at any time both **Sarah White Charming** and **Florian Charming** decline to serve, or cannot serve due to death, disability, or incapacity, **Donald "Doc" Smith** will be the successor trustee. If such nominee is unable or unwilling to serve for any reason, **Aurora Rose** will be the successor trustee. The successor trustee will assume the active administration of the Trust in accordance with the provisions set forth herein. Any successor trustee will have all of the powers, duties, authority, and discretion herein and by law granted to the initial trustees. Subject to the terms of Paragraph 5(c), if there are two co-trustees serving, they shall act by unanimous agreement. Subject to the terms of Paragraph 5(c), if there are more than two co- trustees serving, they shall act in accordance with the decision made by the majority of the co-trustees.
- (c) **Additional Successor Trustees.** If at any time after the Grantor's Incapacity or death there is no appointed or acting Trustee of any trust established hereunder, the named beneficiaries of the Trust, by unanimous written consent, may appoint an individual or corporate trustee to serve as Successor Trustee. If the beneficiaries cannot unanimously agree on a Successor Trustee within sixty (30) days of the last trustee's inability to serve a court of competent jurisdiction may appoint a Successor Trustee.
- Any trustee appointed under this provision shall have all the powers, duties, responsibilities, and discretion granted under this Declaration of Trust to any other trustee, and shall serve under the same terms and conditions as set forth herein for other trustees.
- (d) A successor trustee's authority and power may be subsequently terminated by any Grantor without the consent of, or prior notice to, that successor trustee, if any initial trustee has sufficiently recovered from any physical or mental impairment that prevented the initial trustee from being able to fully and competently administer the Trust.
- (e) As used in this Trust, the singular term "trustee" includes its plural.
- (f) In addition, the terms "disability" and "incapacity" refer to a person's physical or mental inability to properly manage his or her own financial affairs, as established by any of the following circumstances:

- 1) **The Opinion of Two Licensed Physicians.** whenever two licensed physicians give the written opinion that the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age; illness; use of prescription medications, drugs, or other substances; or any other cause. If an individual whose capacity is in question refuses to provide necessary documentation or otherwise submit to examination by licensed physicians, that individual will be considered incapacitated.

An individual is considered restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

- 2) **Court Determination.** An individual is considered incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent, or legally incapacitated.
- 3) **Detention, Disappearance, or Absence.** An individual is considered to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of my Trustee, or by the affidavit of any beneficiary if no Trustee is then serving. The affidavit must describe the circumstances of the individual's disappearance, absence, or detention, and may be relied upon by any third party dealing in good faith with my Trustee.

- (g) Any healthcare provider is authorized to disclose to the successor trustee any pertinent individually identifiable health information sufficient to determine whether the trustee is physically or mentally capable of managing his or her own financial affairs. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and all other applicable state and federal law, and each successor trustee constitutes a trustee's "personal representative" as defined by HIPAA.

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## Section 5. Powers and Duties of Trustee

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- (a) **General Powers and Duties.** Each trustee of this Trust will have all powers necessary and appropriate to administer the Trust, including all powers granted under California law, subject to the trustee's fiduciary duties to the Grantors and beneficiaries and any restrictions or limits set forth under California law.
- (b) **Specific Powers.** In furtherance of subsection (a) above, the powers of the trustee include, but are not limited to, the powers to:
- 1) Collect, hold, maintain, manage, and administer the Trust Property as if the trustee were the absolute owner of it;
  - 2) Sell, trade, deal, encumber, mortgage, pledge, option, lease, lend, or improve the Trust Property;
  - 3) Invest, reinvest, and make purchases with the income and principal of the Trust in every kind of property, asset, and investment;
  - 4) Borrow money from the Trust for trust purposes;
  - 5) Employ and pay reasonable fees to attorneys, accountants, financial advisors, and any other professionals deemed necessary or advisable for the proper administration of the Trust;
  - 6) Enter into contracts and otherwise execute any instruments on behalf of the Trust;
  - 7) Establish bank, brokerage, and other financial and nonfinancial accounts for and on behalf of the Trust, and execute any and all documents on the Trust's behalf in relation thereto, including any resolutions, certifications, or certificates required for such accounts;
  - 8) Distribute or divide the Trust Property in accordance with this Declaration (subject to any restrictions or limits set forth under California law), and execute any documents necessary to administer any trust or subtrust created by this Declaration;
  - 9) Receive additional property into the Trust;
  - 10) Continue, operate, expand, manage, and sell any business that is part of the Trust;
  - 11) Commence, defend, arbitrate, and settle legal claims or actions concerning the Trust or the Trust Property;
  - 12) Exercise voting rights, give proxies, and enter into voting agreements with respect to stock and other business ownership interests held by the Trust;

- 13) Prepare tax returns and take any necessary or desirable actions with governmental agencies;
- 14) Purchase and modify insurance;
- 15) Pay or disburse such sums from the assets of the Trust as may be required, necessary, or desirable to maintain the comfort and welfare of a Grantor if the Grantor is unable to actively and competently exercise judgment over financial matters by reason of a medical illness or mental impairment;
- 16) Except as otherwise provided within this Declaration, to take any and all actions necessary to maintain the customary standard of living of any and all pets and animals supported by the Grantors, including, but not limited to, providing and paying for shelter, food, and veterinary care;
- 17) On the death of either Grantor, pay any just debts and expenses of the Grantor; and
- 18) Divide any trust created under this Trust into two (2) or more separate trusts having the same dispositive provisions.
- 19) Authority to access, modify, control, archive, transfer, and delete digital assets of either Grantor.
  - i. Digital assets include sent and received emails, email accounts, digital music, digital photographs, digital videos, gaming accounts, software licenses, social-network accounts, file-sharing accounts, financial accounts, domain registrations, Domain Name System (DNS) service accounts, blogs, listservs, web-hosting accounts, tax-preparation service accounts, online stores and auction sites, online accounts, and any similar digital asset that currently exists or may be developed as technology advances.
  - ii. Digital assets may be stored in the cloud or on personal digital devices. The Trustee may access, use, and control digital devices in order to access, modify, control, archive, transfer, and delete digital assets—this power is essential for access to digital assets that are only accessible through digital devices. Digital devices include desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar hardware that currently exists or may be developed as technology advances.

(c) **Power of Co-Trustee to Act Individually.** Notwithstanding any provisions to the contrary in this Trust, or any subtrust created herein, if co-trustees are serving, a single co-trustee (with written consent of the other co-trustee) shall have the right and power to act on behalf of this Trust alone, including (1) the right to buy and sell trust securities and other assets, (2) the right to execute documents including trust income tax returns, and (3) the right to open, deposit and

withdraw from bank savings and checking accounts, savings and loan accounts, and money market funds, all for trust purposes. However, the power to act alone with regard to item (3) within this paragraph shall apply only where both co-trustees have signed the signature card of the financial institution or money market fund agreeing that only one signature is required.

- (d) **Compensation.** The trustee may receive reasonable compensation for services rendered as Trustee.
- (e) **Resignation.** Any trustee may resign by providing 30 days' written notice to the beneficiaries and any co-trustees then serving.

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## Section 6. Death of Grantor

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(a) **Definitions.** For purposes of this Trust, the following definitions apply:

**"Property of Sarah White Charming"** includes, but is not limited to:

- 1) the Trust Property owned by **Sarah White Charming** at the time it was contributed to the Trust;
- 2) all property transferred by **Florian Charming** to **Sarah White Charming**, either by gift or through the provisions of this Trust; and
- 3) all accumulated income on the foregoing property. The Property of **Sarah White Charming** includes, but is not limited to, the Trust Property listed on Schedule B and **Sarah White Charming's** share of the Trust Property listed on Schedule A.

**"Property of Florian Charming"** includes, but is not limited to:

- 1) the Trust Property owned by **Florian Charming** at the time it was contributed to the Trust;
- 2) all property transferred by **Sarah White Charming** to **Florian Charming**, either by gift or through the provisions of this Trust; and
- 3) all accumulated income on the foregoing property. The Property of **Florian Charming** includes, but is not limited to, the Trust Property listed on Schedule C and **Florian Charming's** share of the Trust Property listed on Schedule A.

**"Deceased Grantor"** refers to the first Grantor to die.

**"Surviving Grantor"** refers to the remaining Grantor after one is deceased.

**"Property of the Deceased Grantor"** means either **"Property of Sarah White Charming"** or **"Property of Florian Charming,"** depending on which Grantor dies first.

(b) **Payment of Debts.** Upon the death of Deceased Grantor, the trustee shall pay from the Property of the Deceased Grantor all of the Deceased Grantor's just debts, funeral expenses, estate administration expenses, and estate taxes, if any.

(c) **Distribution of Trust Property on Deceased Grantor's Death.** Subject to the execution by the Surviving Grantor of a disclaimer as set forth in Section 9 below, on the death of the Deceased Grantor, the trustee shall distribute the Property of the Deceased Grantor in accordance with the terms of Section 7 below. The Surviving Grantor's Trust Property will remain in trust. The trust holding the Surviving Grantor's property will be called the Survivor's Trust, and will continue to be held, administered, and distributed in accordance with the terms of this Trust. Subject to the execution of a disclaimer by the Surviving Grantor as set forth in Section 9 below, any property of the Deceased Grantor left to the Surviving Grantor will remain in trust and be added to the Survivor's Trust.

- (d) **Death of the Surviving Grantor.** On the death of the Surviving Grantor, the trustee shall pay from the Property of the Surviving Grantor all of the Surviving Grantor's just debts, funeral expenses, estate administration expenses, and estate taxes, if any. The rest and remainder of the Trust Property will be distributed as set forth in Section 7 below.
- (e) **Simultaneous Death of Grantors.** If both Grantors die in or as a result of a common accident or disaster, or under such circumstances that the order of their deaths cannot be established by proof, for purposes of this Trust the provisions of the applicable Uniform Simultaneous Death Act, as amended, or any substantially similar successor act effective on the date of the Grantors' deaths, will apply.

## Section 7. Beneficiaries

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### (a) Specific Bequests.

- 1) Subject to the creation of any subtrusts, on the death of **Sarah White Charming**, the trustee shall distribute the following specific bequests from the Property of **Sarah White Charming**:
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- 2) Subject to the creation of any subtrusts, on the death of **Florian Charming**, the trustee shall distribute the following specific bequests from the Property of **Florian Charming**: None

### (b) Residual Assets.

- 1) After all specific bequests have been made, if **Florian Charming** is then living, subject to the execution by **Florian Charming** of a disclaimer as set forth in Section 9 below, the trustee shall hold, administer, and distribute the remaining Property of **Sarah White Charming**, in trust for the benefit of **Florian Charming** to be added to the Property of **Florian Charming**. The combined property will be identified as the Survivor's Trust, as referenced above. During the lifetime of **Florian Charming**, the trustee shall distribute the net income of the Survivor's Trust in convenient installments, at least annually. The trustee shall distribute so much of the remaining principal balance of the Survivor's Trust as is necessary for **Florian Charming**'s health, education, maintenance, support, comfort, and welfare. On the death of **Florian Charming**, the remaining balance of the Survivor's Trust will be distributed in accordance with Section 7(b)3) below. If **Florian Charming** is not living on **Sarah White Charming**'s death, then the remaining Property of **Sarah White Charming** will be distributed in accordance with Section 7(b)3) below.
- 2) After all specific bequests have been made, if **Sarah White Charming** is then living, subject to the execution by **Sarah White Charming** of a disclaimer as set forth in Section 9 below, the trustee shall hold, administer, and distribute the remaining Property of **Florian Charming**, in trust for the benefit of **Sarah**

**White Charming** to be added to the Property of **Sarah White Charming**. The combined property will be identified as the Survivor's Trust, as referenced above. During the lifetime of **Sarah White Charming**, the trustee shall distribute the net income of the Survivor's Trust in convenient installments, at least annually. The trustee shall distribute so much of the remaining principal balance of the Survivor's Trust as is necessary for **Sarah White Charming's** health, education, maintenance, support, comfort, and welfare. On the death of **Sarah White Charming**, the remaining balance of the Survivor's Trust will be distributed in accordance with Section 7(b)3) below. If **Sarah White Charming** is not living on **Florian Charming's** death, then the remaining Property of **Florian Charming** will be distributed in accordance with Section 7(b)3) below.

- 3) Subject to the creation of any subtrusts, on the death of the survivor of **Sarah White Charming** and **Florian Charming**, the trustee shall distribute all of the remaining Trust Property to the beneficiaries named below, after the payment of any just debts, funeral expenses, estate administration expenses, estate taxes and specific bequests:
  - i. Name: **Rose Charming** Percentage: 50%. If such beneficiary is not then living, that share of the Trust Property that would have been given to such beneficiary will be distributed to **Leo Charming**.
  - ii. Name: **Leo Charming** Percentage: 50%. If such beneficiary is not then living, that share of the Trust Property that would have been given to such beneficiary will be distributed to **Rose Charming**.

### **Section 7.1 Distribution of Tangible Personal Property by Memorandum**

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The Grantors may dispose of items of tangible personal property by a signed written memorandum executed after signing this instrument. The memorandum must refer to this trust and must reasonably identify the items and the beneficiary designated to receive each item. If Grantors execute a memorandum, the Trustee shall incorporate the memorandum by reference into this instrument to the extent permitted by law.

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

If the memorandum with the most recent date conflicts with a provision of this instrument as to the specific distribution of any item of tangible personal

property, the provisions of the memorandum with the most recent date will control as to those items that are in conflict.

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

## **Section 8. Distribution If No Living Beneficiaries**

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If at any time before full distribution of the Trust Property all of the beneficiaries are deceased and this instrument directs no other disposition of the Trust Property, the remaining portion of the Grantors' joint Trust Property will then be distributed 50% to **Rose Charming's** heirs and 50% to **Leo Charming's** heirs, determined according to the laws of intestate succession. Any remaining separate Property of **Sarah White Charming** will be distributed to **Rose Charming's** heirs, determined according to the laws of intestate succession. Any remaining separate Property of **Florian Charming** will be distributed to **Leo Charming's** heirs, determined according to the laws of intestate succession.

## **Section 9. Disclaimer Provisions**

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- (a) The Surviving Grantor has the right to disclaim all or a portion of any property or other interests left to him or her by the Deceased Grantor under this Trust, provided that he or she does so within the qualifying time limit for the disclaimer pursuant to Section 2518 of the Internal Revenue Code of 1986, as amended from time to time (the "**Code**"), or a corresponding provision in any successor statute. If the Surviving Grantor makes any such disclaimer, all disclaimed property or interests will be distributed in trust to the then acting trustee, as trustee of the bypass trust (the "**Bypass Trust**").
- (b) If a Bypass Trust is created by a disclaimer, it is irrevocable as of the death of the Deceased Grantor. Further, the Property of the Deceased Grantor given to the Surviving Grantor that is not disclaimed by the Surviving Grantor will be held in the Survivor's Trust, the terms of which are set forth in Sections 6(c) and 7 above (the "**Survivor's Trust**"). The Survivor's Trust will remain revocable and amendable by the Surviving Grantor.
- (c) During the Surviving Grantor's lifetime, the trustee shall distribute net income and principal of the Bypass Trust in accordance with the following provisions:
  - 1) The trustee shall pay to the Surviving Grantor or apply for his or her benefit all of the net income of the Bypass Trust, with such payments to be made at regular intervals as determined in the trustee's sole discretion, except that the trustee shall make payments at least annually.

- 2) The trustee may also pay to or apply for the benefit of the Surviving Grantor from time to time so much of the principal as the trustee determines is necessary for the Surviving Grantor's health, education, support and maintenance.
  - 3) In making any such discretionary distributions, the trustee shall take into consideration all relevant circumstances, including but not limited to the Surviving Grantor's accustomed standard of living and other assets and sources of income or support available to the Surviving Grantor and known to the trustee.
- (d) On the death of the Surviving Grantor, the remaining Bypass Trust assets will be distributed in accordance with the provisions of this Trust, as if the Deceased Grantor had died on the date of the Surviving Grantor's death and the Surviving Grantor had not survived the Deceased Grantor.

## **Section 10. Establishment of Pet Trust**

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Upon the death of the surviving grantor, the Trustee shall distribute the sum of \$10,000.00 dollars in cash and the Grantors' pets or other animals to **Aurora Rose** as a trustee and caretaker pursuant to the probate laws of the state of California, as applicable to the establishment of a trust for the care and maintenance of pets or other animals owned by the Grantors and living upon the Grantors' death (the "**Pet Trust**"). Should such law not exist, the Trustee shall distribute the aforementioned sum and pets to the trustee named in this section to be held in an honorary or other trust established according to the laws of the state of California.

If **Aurora Rose** is unable or unwilling to serve, then **Merryweather Foster** shall serve as caretaker and trustee of the Pet Trust created under this section. If **Merryweather Foster** is unable or unwilling to accept my animals, my Executor shall select an appropriate person to serve as caretaker and trustee of the Pet Trust created under this section.

The trustee shall apply as much of the net income and principal of the Pet Trust created as the trustee determines in his or her sole discretion to be necessary and appropriate for the lifetime care and maintenance of any animals then living that Grantors own at the time of the Grantors' death.

After the death of all such animals, or at such time as the Pet Trust terminates or fails for any reason, any property remaining in this Pet Trust shall be distributed to the Grantors remainder beneficiaries under this Trust, as if both Grantors had then died. If the Grantors have no living pets at the Grantors' death, this Section shall be of no force and effect.

## Section 11. Nonliability of Third Parties

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- (a) The Trust is created with the express interest and understanding that any third parties, including but not limited to agents, employees, or vendors, who, on the written request of the Grantors or under the color of authority granted to the trustee in this Trust, perform any duties or render any services in furtherance of the purposes and intents of this Trust, absent any showing of fraud or bad faith, will be under no liability for the proper administration of any assets or properties being the subject of that third party's acts.
- (b) This limitation of liability gives specific protection to any third party who acts, performs, or renders any services pursuant to any notice, instrument, or document believed (and represented) to be genuine, and to have been signed and presented by the proper parties.
- (c) It is further the express intent of the Grantors that the nonliability of all third parties be given broad and prospective application. In particular, a depository, custodial agent, financial institution, or any other person or entity acting in a fiduciary capacity with regards to any Trust Property will suffer no liability and will incur no express or implied obligations when acting in the capacity of a transferor, on proper request, of any assets or property either sought to be or constructively comprising the Trust Property.

## Section 12. Miscellaneous

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- (a) **Physical Segregation of Trust Shares Not Required.** If more than one trust is created under this Declaration, the trustee is not required to physically segregate or divide the assets of the various trusts, except if physical segregation or division is required on the termination of any of the trusts. Notwithstanding the foregoing, (i) the trustee shall maintain separate books and records for each separate trust and (ii) the preceding portion of this subsection (a) will not apply to any trust created hereunder qualifying for a federal or state estate tax marital deduction, the assets of which will constitute a separate trust and will not be commingled with any other trust created hereunder.
- (b) **Distribution Authority.** If the trustee is required by this Declaration to divide any Trust Property into parts or shares, for the purpose of distribution or otherwise, the trustee is authorized, in the trustee's sole discretion, to make that division and distribution in identical interests, in kind, or partly in kind or partly in money, pro rata or non pro rata. For this purpose, the trustee may sell such Trust Property not specifically devised as the trustee deems necessary.
- (c) **Liability for Estate Taxes.** Any estate, inheritance, and succession taxes, including any interest and penalties thereon, imposed by the federal government or any state, district, or territory, attributable to Trust Property includible in the Grantors' estate, will be apportioned among the persons interested in the Trust in accordance with applicable state and federal law. The trustee is authorized and

directed to seek reimbursement from the beneficiaries of the Trust of any taxes paid by the trustee to the extent allowed by law. If the trustee cannot collect from any person interested in the Trust the amount of tax apportioned to that person, the amount not recoverable will be equitably apportioned among the other persons interested in the Trust who are subject to apportionment. If a person is charged with or required to pay tax in an amount greater than his or her prorated amount because another person does not pay his or her prorated amount, the person charged with or required to pay the greater amount has a right of reimbursement against the other person.

- (d) **Spendthrift Provision.** No interest in the principal or income of any trust created under this Declaration may be anticipated, assigned, encumbered, or subjected to a creditor's claims or legal process until it is actually received by the beneficiary. This spendthrift provision constitutes one of the material purposes of the trusts created hereunder.
- (e) **Payments to Minor Beneficiaries.** The trustee may make distributions of a minor's trust share, up to the whole thereof, to the guardian of the minor's person or a custodian for the minor under state law, or may apply distributions directly for the minor's benefit.
- (f) **Qualified Subchapter S Trust Provision.** It is the Grantors' intent that any trust created herein holding stock in a qualified subchapter S corporation for any beneficiary qualify as a qualified subchapter S trust ("**QSST**"). The current income beneficiary of said trust is directed to file the required election with the Internal Revenue Service to qualify as a QSST. The trust will have only one current income beneficiary. The income of that trust will be distributed at least annually to only the income beneficiary. The income interest of the income beneficiary will end at the earlier of the QSST termination or the death of the income beneficiary. If the QSST ends during the life of the income beneficiary all of the assets in the QSST must be distributed to the income beneficiary.

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

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



- (h) **Governing Law.** This Trust will be construed and enforced in accordance with the laws of the state of California.
- (i) **Severability.** If a court of competent jurisdiction at any time invalidates or finds unenforceable any provision of this Trust, such invalidation will not invalidate the whole of this Trust. All of the remaining provisions will be undisturbed as to their legal force and effect. If a court finds that an invalidated or unenforceable provision would become valid if it were limited, then such provision will be written, deemed, construed, and enforced as so limited.
- (j) **Perpetuities Savings.** Despite any other provision of this Trust to the contrary, the Trust will terminate no later than 21 years after the death of the last surviving beneficiary who is living at the time of the first of the Grantors to die.
- (k) **No-Contest Clause.** If any beneficiary of a trust created hereunder in any manner files, without probable cause, a direct contest alleging the invalidity of this Declaration or of any instrument, beneficiary designation, contract or other agreement executed by the Grantor and pertaining to the disposition of any of the Grantor's assets, or any gift made by the Grantor, or any part thereof, then all benefits provided for such beneficiary are revoked and shall pass as if that contesting beneficiary had failed to survive the Grantor. The provisions of this paragraph shall also be enforced against a beneficiary who challenges the transfer of property hereunder on the grounds the Grantor did not own such property at the time of the transfer. Furthermore, the provisions of this paragraph shall be enforced against a beneficiary who files a creditor's claim against the Grantor's estate or a trust created hereunder. Each benefit conferred herein is made on the condition precedent that the beneficiary receiving such benefit shall accept and agree to all the provisions of this Declaration, and the provisions of this paragraph are an essential part of each and every benefit. The Trustee shall be reimbursed for the reasonable costs and expenses, including attorneys' fees, incurred in connection with the defense of any such contest.

## Signatures

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

\_\_\_\_\_  
Signature of **Sarah White Charming**, as Grantor

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

\_\_\_\_\_  
Signature of **Florian Charming**, as Grantor

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



## Notary Acknowledgement

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_,

personally appeared **Sarah White Charming** and **Florian Charming**, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## Attestation and Declaration of Witnesses

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

\_\_\_\_\_  
Signature of Witness #1

\_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
Signature of Witness #1

\_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)