

THOMPSON COBURN

Thompson Coburn LLP

Memorandum

From: Steven B. Gorin

RE: BENEFITS LANGUAGE IN MARITAL, CREDIT SHELTER & LIFE TRUSTS

Marital Trust

SECTION 0.1 RECEIPT AND ALLOCATION OF DISTRIBUTION FROM BENEFIT PLAN.

If the Marital Trust is the beneficiary of all or any portion of a Benefit Plan subject to Code section 401(a)(9) or comparable provisions (the “Minimum Distribution Rules”) the following provisions shall apply:

(a) the trustee shall withdraw from the Benefit Plan the greater of (1) the Marital Trust’s portion of the income earned by the Benefit Plan for the calendar year, or (2) the Marital Trust’s portion of the amount required to be withdrawn from the Benefit Plan under the Minimum Distribution Rules;

(b) the trustee shall distribute directly to my spouse each such withdrawal from a Benefit Plan as directed in subsection (a); and

(c) the trustee may withdraw such additional amounts from the Benefit Plan as is authorized in the preceding provisions of this Article, and shall distribute directly to my spouse such additional amounts so withdrawn.

ALTERNATIVE VERSION FOR MARITAL TRUST [INCLUDES OTHER PROVISIONS FOR REFERENCE

PURPOSES]

BEWARE IF YOU PICK THIS OPTION AND THE SPOUSE DOES NOT HAVE POWER OF APPOINTMENT

SECTION 7.2 **DISTRIBUTION OF INCOME.**

The trustee shall distribute all of the income of the Marital Trust from and after my death to my spouse in regular installments, not less frequently than quarter-annually, for and during the remainder of my spouse's life.

SECTION 7.3 **DISTRIBUTION OF PRINCIPAL.**

(a) The trustee may encroach upon the principal of the Marital Trust for my spouse's support.

(b) In addition to the distributions authorized by subsection (a), the trustee shall distribute to my spouse so much of the principal of the trust as my spouse may from time to time request, not exceeding in any one calendar year, on a noncumulative basis, five percent (5%) of the sum of (1) the aggregate value, as of the time of such request by my spouse, of the principal of the trust, and (2) the aggregate value, as of the time of each such withdrawal, of all such previous withdrawals, if any, during such year; however, this power may be exercised only during the last two (2) weeks of any calendar year.

SECTION 7.4 **RECEIPT AND ALLOCATION OF DISTRIBUTION FROM BENEFIT PLAN.**

If the Marital Trust is the beneficiary of any portion of a Benefit Plan subject to Code section 401(a)(9) or comparable provisions (the "Minimum Distribution Rules"), the following provisions shall apply:

(a) the trustee shall withdraw from the Benefit Plan the Marital Trust's portion of the amount required to be withdrawn from the Benefit Plan under the Minimum Distribution Rules and shall distribute to my spouse the portion of such withdrawal constituting the Marital Trust's portion of the income earned by the Benefit Plan;

(b) if the Marital Trust's portion of the income earned by the Benefit Plan for a calendar year exceeds the distributions from such Benefit Plan in subsection (a) to the Marital Trust, the trustee shall, upon the demand of my spouse, withdraw such excess income from the Benefit Plan and distribute such excess income directly to my spouse, this withdrawal right being intended to qualify the Marital Trust's portion of the Benefit Plan for the Estate Tax marital deduction;

(c) the trustee may withdraw such additional amounts from the Benefit Plan as is authorized in Section 7.3, and shall distribute directly to my spouse such additional amounts so withdrawn; and

(d) if and to the extent necessary to enable the Benefit Plan to recalculate my spouse's life expectancy for purposes of applying the Minimum Distribution Rules without considering the identity or life expectancy of any other beneficiary (whether current or future, vested or contingent) of the trust, the trustee shall distribute directly to my spouse each withdrawal from a Benefit Plan under the preceding subsections, whether or not such withdrawal is required under the Minimum Distribution Rules.

Unified Credit Trust

SECTION 0.3 **DISTRIBUTION OF INCOME AND PRINCIPAL.**

(a) Generally. The trustee may distribute so much of the income and principal of the Unified Credit Trust as the trustee shall deem appropriate for the support of any one or more of my spouse and my descendants; provided, however, that (a) the support of my spouse shall be the primary concern of the trustee, and (b) any distributions to my descendants, within the limits of the support standard, may be equal or unequal, and any such distribution shall be charged against the trust as a whole and not against the ultimate distributive share of any person.

(b) Benefit Plan. If the Unified Credit Trust is the beneficiary of any portion of a Benefit Plan subject to Code section 401(a)(9) or comparable provisions (the “Minimum Distribution Rules”), the following provisions shall apply:

(1) The trustee shall withdraw from the Unified Credit Trust’s portion of the Benefit Plan the amount required under the Minimum Distribution Rules;

(2) The amount withdrawn under the Minimum Distribution Rules shall be distributed in the following priority:

(A) for the support of my spouse as the trustee deems appropriate;

(B) for the support of my descendants as the trustee deems appropriate; and

(C) to my then living descendants, per stirpes, with respect to exempt assets; otherwise to my spouse.

(3) The trustee may withdraw such additional amounts from the Benefit Plan as the trustee shall deem appropriate for the purposes described in subsection (a), and shall distribute directly or use and apply such additional amounts so withdrawn for such purposes.

(4). If and to the extent necessary to enable the Benefit Plan to use the oldest Permissible Distributee’s life expectancy, the trustee shall distribute the withdrawals described in this subsection directly to the beneficiary or beneficiaries to or for whom that withdrawal is being made.

Life Trust for Descendants, etc.

SECTION 0.2 DISTRIBUTION OF INCOME AND PRINCIPAL.

(a) To the Beneficiary. The trustee is authorized to distribute to the beneficiary the income, principal or both from the trust to provide for the beneficiary's support and welfare (subject to *[Upjohn Clause for GST-exempt trust]*). Without intending to limit or expand the discretion granted to the trustee by this subsection (a), I desire that the trustee be liberal in the exercise of the trustee's discretion with respect to distributions to the beneficiary.

(b) To Others. To the extent that any part or all of the income, principal or both of the trust are not distributed pursuant to subsection (a), the trustee may make the distributions described in this subsection. The trustee is authorized to distribute to the beneficiary's descendants all or any part of the income, principal or both of the trust to provide for such person's reasonable support and comfort. Notwithstanding the foregoing, the trustee should consider the generation-skipping transfer tax consequences of making any distributions for a descendant of the beneficiary from a nonexempt trust other than distributions made on behalf of such descendant in direct payment to the service provider of such descendant's tuition or medical care (as defined in Code section 213(d)). Any distributions made pursuant to this subsection need not be equal, and the trustee is authorized, within the limits of the foregoing standards, to pay all of such income, principal or both to any one or more of such persons to the complete exclusion of any other. Any such distribution(s) shall be charged against the trust as a whole and not against the ultimate distributive share of any person.

(c) Benefit Plans. If the trust is the beneficiary of any Benefit Plan subject to Code section 401(a)(9) or comparable provisions (the "Minimum Distribution Rules"), the trustee shall withdraw from the Benefit Plan the amount required under the Minimum

Distribution Rules and may make additional withdrawals for the purposes set forth in subsection (a). If and to the extent necessary to enable the Benefit Plan to use the beneficiary's life expectancy for purposes of applying the Minimum Distribution Rules without considering the identity or life expectancy of any other beneficiary (whether current or future, vested or contingent) of the trust, the trustee shall distribute directly to the beneficiary each withdrawal from a Benefit Plan, whether or not such withdrawal is required under the Minimum Distribution Rules.

[Alternative to (c) above]

(c) Distribution from Benefit Plans. If the trust is the beneficiary of any Benefit Plan subject to Code section 401(a)(9) or comparable provisions (the "Minimum Distribution Rules"), the trustee shall withdraw from the Life Trust's portion of the Benefit Plan the amount required under the Minimum Distribution Rules, and such amounts withdrawn shall be distributed in the following priority:

(1) as described in subsection (a);

(2) as described in subsection (b); and

(3) any amount not distributed under paragraphs (1) or (2) shall be distributed to the beneficiary.

The trustee may withdraw such additional amounts from the Benefit Plan as the trustee shall deem appropriate for the purposes described in subsections (a) and (b). If and to the extent necessary to enable the Benefit Plan to use the beneficiary's life expectancy for purposes of applying the Minimum Distribution Rules without considering the identity or life expectancy of any other beneficiary (whether current or future, vested or contingent) of the trust, the trustee shall distribute directly to the individual(s) to or for whom that withdrawal is being

made each withdrawal from a Benefit Plan, whether or not such withdrawal is required under the Minimum Distribution Rules.

SECTION 0.3 **SPECIAL POWER OF APPOINTMENT WHILE LIVING.**

The beneficiary, while at least _____ years of age, in his or her individual capacity, shall have the continuing discretionary power to Appoint all or any part of the income, principal, or both of the trust to or for the benefit of any person, but may not increase the authority, if any, to make distributions to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate; however, no interest in a Benefit Plan or that Benefit Plan's proceeds may be Appointed in a manner that would change the identity of the individual whose life expectancy would otherwise apply under the Minimum Distribution Rules. Any such Appointment may be exercised either to effect immediate distribution to the appointee or to take effect upon the occurrence of a future event, such as the beneficiary's death.

Definitions

SECTION 0.4 **BENEFIT PLAN.**

The term "Benefit Plan" means any qualified retirement plan (including a pension, profit sharing, stock bonus or other retirement plan) under Code sections 401(a) or 403(b) or an individual retirement account or annuity under Code section 408 (including 408A).