

**LAST WILL AND TESTAMENT**  
**OF**  
**LESLIE ANN MANDEL**

I, **LESLIE ANN MANDEL**, currently residing at 4 East 81st Street, New York, New York, do hereby make, publish and declare this to be my Last Will and Testament.

**FIRST:** I revoke all Wills and Codicils heretofore made by me.

**SECOND:** I direct that my Executors, hereinafter named, pay all of my debts and expenses of my last illness as soon after my death as may be practicable. It is my wish that I be buried on my property located at 11 Town Line Road, Wainscott, New York, in the area of the scenic easement.

**THIRD:** I give, devise and bequeath my tangible personal property, including clothing, any car that I may own at my death, furniture, furnishings, books, other articles of household use and adornment and all other tangible personal property owned by me at my death of whatever nature and wherever located, together with all policies of property insurance with respect thereto, including any prepaid premiums thereon, to my husband, **ARTHUR HERZOG**, if he shall survive me. If my husband, **ARTHUR HERZOG**, shall not survive me, I direct my Executors to dispose of them by

sale or otherwise as my Executors, in their sole and absolute discretion, shall determine. The proceeds of any such sale shall form part of my residuary estate.

I direct that any expenses incurred in safeguarding and/or delivering such property be paid from my estate as an expense of the administration thereof.

**FOURTH:** I hereby give, devise and bequeath to my Trustee, hereinafter named, IN TRUST, the sum of One Hundred Thousand (\$100,000) Dollars funded from my tax free bonds or in cash or securities or other assets of my estate, to have and to hold, during the life of my birds, Wheetie, Port, Blackie, Zippy, Tara, Zara, Shasha, Pigeon, Victory, Alie, Zack 12, Dart, Cubby, Max, Baby, Ruthie, Pumpkin, Tattoo, Susie, Tracy, Margie, Sammy, Angel, Inky, Sara, Tundra, Tanteleah, Eva, Cody, Nicki, Avis and Dragon, my cat Kiki and dog, Frosty and those of them who survive me, provided that they continue to live in the aviary on the property at Town Line Road, or in a protected place, of similar size and dimension made of the same materials, without a cage, for the rest of their natural lives. During the lifetime of my birds, my dog and cat, my Trustee shall apply for their benefit, all of the net income of the trust, in quarterly or more frequent installments, as may be convenient to my Trustee and may at any time or from time to time pay or apply none, so much or all of the principal of the trust as my Trustee in his sole judgment and discretion, shall determine to or for the benefit of any one or more of the animals living from time to time for their respective health and maintenance, adding to the principal of such trust any net income not so paid or applied. It is my wish

that the birds be fed and the building cleaned each Monday and Thursday and their food shall be purchased from AVI Cakes, Carrots, water and popcorn,

I nominate, constitute and appoint my stepson, ~~MATTHEW HERZOG~~ to serve

as the Trustee of said trust created under this Paragraph **FOURTH**. If ~~MATTHEW~~

shall not survive me, or otherwise fail or cease to qualify hereunder for any reason, I

nominate, constitute and appoint ~~Matthew's wife, LINDA HERZOG~~, as his successor,

and if ~~LINDA~~ cannot or will not serve as Trustee then to her son, ~~ALEX HERZOG~~, and

if he cannot so serve, then ~~JOSEPHINE HERZOG OR JAMES HERZOG~~ as they

shall determine between them.

Upon the death of the last of my animals, my then Trustee shall pay and distribute

the remaining principal of this Trust as it shall then exist, outright and free of trust to

~~MATTHEW HERZOG~~, if he has survived them, and, if not to ~~LINDA, ALEX,~~

~~JOSEPHINE OR JAMES~~, as the case may be, in appreciation of the fulfillment of this provision.

**FIFTH:** I hereby give, devise and bequeath all of the stock in my solely

owned business, **LESLIE MANDEL ENTERPRISES, INC. d/b/a The RICH LIST**

**CO.**, to my husband, ~~ARTHUR HERZOG~~, should he survive me, to sell or, if he so

chooses, to maintain together with his son, ~~MATTHEW HERZOG~~. If ~~ARTHUR~~ shall

not survive me, then to ~~MATTHEW~~, to sell or maintain as he shall in his sole discretion determine.

SIXTH: I hereby give, devise and bequeath the shares of my company, MANDEL AIRPLANE FUNDING AND LEASING CORPORATION, to my husband, <sup>Avis Mandel (LMD)</sup> ~~ARTHUR HERZOG~~, to sell or to keep, as he may, in his sole discretion, determine.

SEVENTH: I give, devise and bequeath all the rest, residue and remainder of the property which I own at my death, also known as my residuary estate, as follows:

A. If my husband, ~~ARTHUR HERZOG~~, shall survive me, I give my residuary estate to my said husband, outright and free of trust. <sup>Sister Avis Mandel (LMD)</sup>

B. If my husband, ~~ARTHUR HERZOG~~, disclaims any property or interest in property otherwise passing as part of my residuary estate under SUBDIVISION "A" or otherwise, I give, devise and bequeath such disclaimed property, to my Trustees named in ARTICLE ELEVENTH of this Will, as a separate trust, to be held and administered as follows:

During the lifetime of my husband, ~~ARTHUR HERZOG~~, my Trustees shall pay to my <sup>Sister (LMD)</sup> ~~husband~~ or apply for his <sup>her (LMD)</sup> benefit, all of the net income of the trust, in quarterly or more frequent installments, as may be convenient to my Trustees.

In addition to the income, my Trustees may at any time or from time to time pay or apply none, so much or all of the principal of the trust as my Trustees, in their sole judgment and discretion, shall determine to or for the benefit of my <sup>Sister (LMD)</sup> ~~said husband~~ for his

health, support and maintenance, adding to the principal of such trust any net income not so paid or applied.

Any discretionary payment or application of net income or principal made by my Trustees pursuant to the preceding paragraph may be made to or for the benefit of my <sup>Sister (L.M.)</sup> husband as my Trustees, in their sole judgment and discretion, shall determine. I direct that my said Trustees' discretion shall be absolute and binding upon all persons interested or who may become interested in this trust, and upon making any such payment or application, my Trustees shall be fully released and discharged from further liability and accountability therefor. Any decision of my Trustees with respect to the exercise of the said discretionary powers, made in good faith, shall fully protect my Trustees, and shall be conclusive and binding upon all persons interested in my estate.

In addition, my <sup>Sister Aves Mendel (L.M.)</sup> husband, ~~ARTHUR HERZOG~~, shall have the noncumulative power to direct my Trustees to pay to <sup>her (L.M.)</sup> him or to apply for <sup>her (L.M.)</sup> his benefit out of the principal each year property not exceeding Five Thousand (\$5,000.00) Dollars in the aggregate, valued as of the date of the receipt of the related instrument of withdrawal, and if my <sup>Sister Aves Mendel (L.M.)</sup> husband, ~~ARTHUR HERZOG~~, shall be living on the last day of the year, to withdraw property having a value on that day equal to an amount, if any, by which five (5%) percent of the then market value of the principal (not reduced by any income taxes chargeable to principal) exceeds the value of the property previously withdrawn by my husband for such year. This power shall be exercised by an instrument in writing

subscribed by my <sup>sister Ance Mandel (no)</sup> husband, ~~ARTHUR HERZOG~~, or by his authorized agent and delivered to my Trustees. Distribution shall be made within ten (10) days after delivery to my Trustees of the instrument of withdrawal, except that distribution of a withdrawal as of the last day of a year shall be made within thirty (30) days after the close of the year. The determination by my Trustees of the value of property for purposes of this paragraph shall be conclusive on all beneficiaries of the trust.

So long as the principal of the trust includes my residence or an interest in my residence, my <sup>sister Ance Mandel (no)</sup> husband, ~~ARTHUR HERZOG~~, shall have the right to occupy such residence on a rent free basis during his lifetime; provided, however, that my <sup>sister (no)</sup> husband shall be responsible for all the taxes, insurance premiums, maintenance and ordinary repairs of such residence. Notwithstanding that it might not be of a character authorized by law for the investment of trust funds, my Trustees shall retain my residence or an interest in my residence for the use of my <sup>sister (no)</sup> husband unless and until my husband requests <sup>The house may be rented but not sold (no)</sup> that it be sold. Moreover, my Trustees shall, only if my husband so requests, sell my residence and invest the whole or any portion of the proceeds of such sale in a home or homes to serve as a dwelling place for my husband, which my husband shall select, which home or homes shall continue to be held by my Trustees as part of the principal of this trust. Any proceeds of sale which are not so reinvested shall continue to be held and disposed of as part of the principal of the trust under this ~~SUBDIVISION "B"~~. <sup>(no)</sup>

Upon the death of my <sup>sister</sup> husband, **ARTHUR HERZOG**, the then remaining principal of the trust fund shall be distributed to my <sup>sister Mrs Mandel (LM)</sup> husband's son **MATTHEW HERZOG**, and if <sup>she</sup> he shall predecease <sup>me</sup> my husband, I direct that the remaining principal of the trust fund be ~~divided into two equal shares, one share to his wife LINDA HERZOG, if she shall survive me, and the second share to be divided among the then living issue of MATTHEW, per stirpes, provided, however, that as to each of his issue who shall then be younger than thirty (30) years of age, his or her share of such property shall not be distributed to him or her outright but shall instead be held by my Trustees named in ARTICLE TENTH herein as a separate trust for his or her benefit upon the terms and conditions set forth in ARTICLE EIGHTH of this Will.~~ <sup>given to Harry Stern (LM)</sup>

C. If my <sup>sister Avo Mandel (LM)</sup> husband, **ARTHUR HERZOG** shall not survive me, I give, devise and bequeath my residuary estate to <sup>his son Harry Stern</sup> **MATTHEW HERZOG**. If

~~<sup>Harry</sup> MATTHEW shall not survive me, I direct that my residuary estate be divided into two equal shares, one share to MATTHEW'S wife, LINDA HERZOG, if she shall survive me, and the second share to be divided among the then living issue of MATTHEW, per stirpes, provided, however, that as to each of his issue who shall be younger than thirty (30) years of age on the date of my death, his or her share of such property shall not be distributed to him or her outright but shall instead be held by my Trustees named in ARTICLE TENTH herein as a separate trust for his or her benefit upon the terms and conditions set forth in ARTICLE EIGHTH of this Will.~~

D. If upon the happening of any contingency any portion of my residuary estate or of the principal of any trust created under this Will shall not otherwise be effectively disposed of by this Will, then I direct my Executor or my Trustees, as the case may be, to divide such property to effectuate the following dispositions:

To my husband's brother, **GREGORY HERZOG**, if he survive me, and if not, then to his then living issue, **per stirpes**, provided, however, that as to each of such persons who shall then be younger than thirty (30) years of age his or her share of such property shall not be distributed to him or her outright but shall instead be held by my Trustees named in **ARTICLE ELEVENTH** herein as a separate trust for his or her benefit upon the terms and conditions set forth in **ARTICLE EIGHTH** of this Will.

**EIGHTH:** The following are the terms and conditions of each of the separate trusts to be held under this **ARTICLE EIGHTH** for the respective benefit of each person who is younger than thirty (30) years of age:

My Trustees shall pay to or apply for the benefit of the beneficiary for whom such trust is held, until he or she attains the age of thirty (30) years, none, so much or all of the net income and principal of such trust as my Trustees shall deem advisable for the support, maintenance, health and education of the beneficiary, adding to the principal of such trust any net income not so paid or applied.



After the beneficiary attains the age of thirty (30) years, and until such time as the trust for his or her benefit terminates, my Trustees shall pay to the beneficiary or apply for his or her benefit the entire net income and none, so much or all of the principal of such trust as my Trustees shall deem advisable for the support, maintenance, health and education of the beneficiary.

In exercising their discretion regarding the application of net income and principal pursuant to the preceding paragraphs, my Trustees shall give primary consideration to the needs of said beneficiary for items such as uninsured medical expenses and premiums, educational expenses, the cost of a principal residence, funds required for a new business, and expenses for the care of said beneficiary's minor children.

In addition, my Trustees shall make the following distributions to the beneficiary: one-third (1/3) of the then remaining principal of such beneficiary's trust shall be distributed to the beneficiary when he or she attains the age of thirty (30) years, and the balance of such principal shall be distributed to the beneficiary when he or she attains the age of thirty five (35) years, at which time such trust shall terminate, unless sooner terminated as herein provided.

If a beneficiary shall die before attaining the age of thirty (35) years, then the trust for such beneficiary shall terminate upon his or her death and the then remaining principal and any accumulated income shall be distributed to such person's then living

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issue, **per stirpes**, or in default of such issue, to the then living issue, **per stirpes**, of such person's nearest ancestor who was a descendant of my husbands parents, who is then deceased leaving issue who shall then be living; provided, however, that as to each of such issue who shall then be younger than thirty five (35) years of age, such property shall not be distributed to him or her outright but shall instead be held by my Trustees named in **ARTICLE ELEVENTH** herein as a separate trust for his or her benefit upon the terms and conditions set forth in this **ARTICLE EIGHTH**.

If when any property is directed to be held in trust under this Article for any beneficiary and such beneficiary shall have attained an age at which he or she would have been entitled to receive a portion of the same, then such portion shall thereupon be distributed to such beneficiary.

If my Trustees shall determine that the size of a trust held under this Article does not warrant the cost of continuing the trust, or that the continuance of the trust is not in the best interest of the beneficiary, my Trustees, without the permission or order of any court, may terminate the same. Upon such termination, the entire balance remaining in the trust shall be distributed to the beneficiary entitled to the income at that time.

If at any time there shall be more than one separate trust directed to be held pursuant to the provisions of this Article for the benefit of any single person, then all such trusts for such person may be consolidated and held as a single trust.

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My Trustees shall have authority in their sole discretion to divide property in any trust being held under this Article with an inclusion ratio of neither one nor zero into two separate trusts (subject to the same terms and conditions) representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero.

My Trustees (other than the beneficiary to whom the power of appointment referred to below may be granted) shall have authority to grant to any beneficiary of any trust having an inclusion ratio greater than zero (the "donee") a lifetime or testamentary general power of appointment over all or any amount or portion of the principal of such trust if my Trustees deem such action to be in the best interests of the beneficiaries of the trust and the potential beneficiaries of the donee's estate taken as a group. My Trustees' decisions under this paragraph shall be absolutely binding on all beneficiaries of the trust and of the donee's estate and my Trustees shall incur no liability by reason of any adverse consequence of such decisions to any such beneficiary. Any such grant of a power of appointment shall be contained in an acknowledged written instrument delivered to the donee. Such instrument shall (i) specify the amount or portion of the trust to which the power shall apply (any such amount to be expressed either as a dollar amount or in terms of a formula), and (ii) contain such restrictions as to the scope of the power and the method of its exercise as my Trustees shall deem appropriate. Any power of appointment so conferred may be modified or revoked by my Trustees in an acknowledged written

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instrument of modification or revocation delivered to the donee prior to exercise of the power.

For purposes of this Article and any other provisions of this Will in which such term appears, the term "inclusion ratio" shall have the meaning assigned to such term by Chapter 13 of the Code.

**NINTH:** Any provision herein contained to the contrary notwithstanding, each trust held under this Will shall terminate, to the extent it shall not previously have terminated, twenty-one (21) years after the death of the last survivor of ~~my husband, all of the issue of my parents~~ <sup>my sister LM</sup> and all of the issue of my husband's parents living at my death and any property then held in any such trust shall be distributed to the then income beneficiary thereof.

If upon the termination of any trust created under this Will any property would otherwise vest free of trust in any person for whom another trust is then held hereunder, such property shall not be distributed to such person outright but shall instead be added to such trust and administered and disposed of as a part thereof.

Except as otherwise specifically provided in this Will, in exercising discretion as to any payment or accumulation of income or distribution of principal under any provision of this Will, my Trustees may but need not consider the assets and sources of income available to any person; provided, however, that it is my desire (but not my

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direction) that my Trustees shall exercise their discretion liberally in favor of making payments and distributions to my husband.

I authorize and empower my Executor prior to the establishment of any trust created under this Will and the turning over by my Executor to my Trustees of the money, securities and other property hereinbefore given, devised and bequeathed, in their sole and unreviewable discretion, to make advances from the undistributed income in their hands to or for the beneficiary or beneficiaries on account of the estimated net income of such trust.

Any provision contained in this Will to the contrary notwithstanding, no fiduciary serving hereunder shall at any time participate in any decision to make discretionary payments or applications of income or of principal to or for the benefit of himself or herself or for the support of any person whom that fiduciary shall then be obligated to support; provided, however, that the foregoing shall not prevent any other fiduciary from making such payment, application or allocation.

I direct that no assignment, pledge or other alienation, voluntary or involuntary, of the interest of any beneficiary in the income or principal of any trust created under this Will shall be valid. Such income and principal shall in all cases be paid directly to or applied for the benefit of the person or persons entitled to receive the same under the terms and provisions hereof, or be deposited for the account of any such person in a bank without regard to such alienation, and both the income and principal of any such

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trust while in the hands of the Trustees shall, to the full extent permitted by law, be exempt from attachment, trustee process, garnishment or other legal proceedings or process.

I direct that with respect to any proceeding brought with respect to this Will, including any probate proceeding or any proceeding brought for the settlement of the accounts of proceedings of my Executors or Trustees, and with respect to any instrument settling such accounts of proceedings, where a party to the proceeding or instrument has the same interest as a person under disability, it shall not be necessary to serve the person under disability or to make the person under disability a party to such instrument, and such person under disability shall be bound by such proceeding or instrument.

The terms "child", "children" and "issue" as used in this Will shall include any person born before or after the execution of this Will and shall also include any person who may have been adopted before or after the execution of this Will and the issue of any such adopted person. Unless otherwise expressly provided, all devises and bequests to issue made in this Will shall vest in such issue **per stirpes** and not **per capita** or **by representation**. A disposition to the issue of an individual **per stirpes** shall require a primary division into equal shares for the children of that individual (who are either living or represented by living issue) whether or not there actually is a living child of that

individual. Masculine terms shall where appropriate include the feminine and neuter; and plural terms shall where appropriate include the singular and vice versa.

The term "minor" wherever used throughout this Will shall be taken to mean any person who has not attained the age of twenty-one (21) years.

The term "the Code" wherever used throughout this Will shall be taken to mean the Internal Revenue Code of 1986, as amended from time to time.

**TENTH:** Anything hereinbefore contained to the contrary notwithstanding, if upon my death or upon the termination of any trust created hereunder any portion of my estate or of the principal of any trust shall vest in absolute ownership in a minor, I authorize my Executors and Trustees, if and to the extent they, in their sole and absolute judgment, determine to do so, to hold the property so vested in such person in a separate fund for the benefit of such person and to invest and reinvest the same, collect the income therefrom and, until such person attains majority, to apply so much or all of the net income and principal thereof as my Executors or Trustees may from time to time so determine for the health, support, maintenance or education of such person, without the intervention of any guardian, and even though any such distribution of principal may exhaust such fund, and to add the balance of said net income, if any, to the principal of such fund until such person attains majority, at which time any then remaining principal shall be paid over to such person. In addition, my Executors and Trustees are authorized to dispose of so much or all of such fund as they, in their sole and absolute judgment, may

from time to time determine in the manner provided in **PARAGRAPH "(u)"** of **ARTICLE TWELFTH** even though any such disposition may exhaust such fund. The authority conferred upon my Executors and Trustees by this Article shall be construed only as a power in trust during minority to manage property vested in an infant and shall not operate to suspend or prevent absolute vesting of any property in such person. With respect to any such property, my Executors and Trustees shall have and may exercise all of the powers hereinafter conferred upon them.

**ELEVENTH:** I nominate, constitute and appoint my <sup>sister</sup> ~~stepson,~~ <sup>Avis Mandel</sup> ~~MATTHEW HERZOG~~ and my brother-in-law, **GREGORY HERZOG**, to serve as the Co-Executors of this my Will. If either of them shall not survive me, or otherwise fails or ceases to qualify hereunder for any reason, I nominate and appoint <sup>Hung Stern</sup> ~~LINDA HERZOG~~ <sup>LM</sup> and my cousin, **REED MANDEL**, singly and in the order named, as substitute Co-Executor. Subject to the foregoing, the last serving Executor may, at any time, appoint an individual or a qualified bank or trust company as his or her successor to serve hereunder in his or her place and stead in the event of any vacancy in his or her office by a duly acknowledged instrument in writing which shall take effect upon the successor Executor qualifying according to law.

Except as expressly provided in Paragraph **THIRD** hereof, I nominate, constitute and appoint my <sup>sister Avis Mandel LM</sup> ~~stepson,~~ **MATTHEW HERZOG** and my brother-in-law, **GREGORY HERZOG**, to serve as the Trustees of any trust created under this Will. If



my brother-in-law or stepson shall not survive me, or otherwise fail or cease to qualify hereunder for any reason, I nominate, constitute and appoint <sup>Harry Stein, Esq.</sup> ~~LINDA HERZOG~~, as his successor. If at any time, anyone of them shall be the sole Trustee of any trust created under this Will, he/she shall appoint an individual or a qualified bank or trust company to serve with him/her as co-Trustee of such trust. Subject to the foregoing appointments, the last serving Trustee may, at any time, appoint an individual or a qualified bank or trust company as his or her successor to serve hereunder in his or her place and stead in the event of any vacancy in his or her office by a duly acknowledged instrument in writing which shall take effect upon the successor Trustee qualifying according to law.

Any Trustee at any time acting hereunder shall have the right to resign by an instrument in writing signed and acknowledged and delivered to any co-Trustee and to all beneficiaries to whom current trust income may or must then be distributed, or to the natural or legal guardians of such beneficiaries, provided, however, that the resignation of a corporate Trustee shall be effective only upon the written appointment and qualification of a successor corporate Trustee. All of the Trustee's fees and expenses (including reasonable attorney's fees) attributable to the appointment of a successor Trustee shall be paid by the Trust.

Any fiduciary acting herein shall have the power to employ, and to delegate any of its discretionary and nondiscretionary powers to agents, including, but not limited

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to, attorneys, investment advisors, appraisers or accountants as it deems necessary and proper and to pay for such services from the estate or trust property.

Any Executor or Trustee or his successor named herein (and any other fiduciary appointed or designated as provided herein) shall be entitled to receive compensation in the manner payable to Executors and Testamentary Trustees under the laws of the State of New York.

1. In the event that there is a vacancy which is not filled as hereinabove provided, then the remaining Executor or Trustee may appoint a successor to serve with him or her as co-Executor or co-Trustee. Pending such designation and qualification of a successor, there shall be no interruption of the powers, duties and discretion exercisable by any remaining Executor or Trustee.

2. An individual fiduciary hereunder shall become disqualified to serve in such capacity if, by reason of old age, disease, weakness of mind or any other cause, he/she is unable properly to discharge his/her fiduciary responsibilities.

3. All the powers and discretionary rights given hereunder to my Executors and Trustees shall be available to all alternate or successor Executors and Trustees. To the extent permitted by law, neither my Executors nor Trustees shall be liable for any loss resulting to my estate or any trust created hereunder, or to any beneficiary, by reason of his/her or their exercise or non-exercise of any duty, power or discretion, or for any error of judgment, or for any act or omission in the administration of my estate or of any trust created hereunder, not constituting gross negligence or fraud. Until my Executors and Trustees receive written notice of any birth, marriage, death or other event which affects beneficial interests hereunder, they shall incur no liability for actions taken in good faith in disregard of such event. No Executor or Trustee shall be liable for acts, omissions or defaults of any agent appointed with due care or of any other Executor or Trustee.

4. My Executors and Trustees, and each of them, are authorized to obtain and rely upon the opinion or advice of counsel selected with reasonable

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care, who may or may not be counsel for any beneficiary hereunder, concerning any questions arising under this Will or in any way relating to my estate or any trust established hereunder, or relating to his/her or their powers and duties in connection with my estate or any such trust, and no Executor or Trustee shall be liable for any act or omission which is in accordance with the opinion or advice of such counsel.

5. Except as otherwise provided herein, any Executor or Trustee acting hereunder is authorized at any time and from time to time, to the extent permitted by law, by an instrument in writing delivered to any remaining Executor or Trustee acting hereunder, to delegate to his/her co-Executor or co-Trustee or any of them any duty or power conferred upon him/her hereunder, whether any such delegation relates to a discretionary or to a ministerial power. Such delegation may, without limitation, relate to the transmission and execution of orders to any broker or dealer for the sale or purchase of securities, either outright or upon margin. Any revocation of any such delegation shall be in writing and shall be delivered to any other Executor or Trustee acting hereunder. A person who has received notice of a delegation shall be entitled to rely upon its continuing effectiveness until receipt of actual notice of revocation.

6. I direct that in this or any other jurisdiction, my Executors and Trustees, and their successors (including any successor appointed or designated as provided herein), shall not be required to furnish any bond or other security, whatsoever, for the faithful performance of their respective duties, or for the retention or payment of interim commissions, any provision of law to the contrary notwithstanding.

7. No Trustee at any time acting hereunder shall be required to file periodic accountings in the court in which this Will shall be admitted to probate, but such Trustee may do so at any time or times, if he shall deem the filing of any such account advisable.

8. Except as otherwise provided herein, the acts and decisions of a majority of my fiduciaries with respect to all matters pertaining to the administration of my estate or any trust created hereunder, whether such acts involve discretion or are merely administrative, shall have the same force and effect and be legally binding as if all of my fiduciaries had joined therein, and the dissenting fiduciary shall not be held liable for any action taken by a majority vote if he/she expressed his/her negative position with respect to such action in writing

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delivered to his/her co-fiduciaries before such action or within a reasonable time promptly after such action.

**TWELFTH:** I give and grant unto my Executors and Trustees, in respect of any and all property that I may own at the time of my death, or that shall at any time constitute any part of my estate or of any trust created hereunder, the following powers, authority, discretion, without limitation of the powers conferred upon them by law, all of which are to continue until the termination of any trust created hereunder and the final distribution thereof:

(a) To retain, and to invest and reinvest in, such common stocks, preferred stocks, bonds, other securities and other property, real or personal, including interests in investment trusts, common trust funds, limited partnerships and limited liability companies, as they deem advisable, whether or not any such property is diversified or is otherwise qualified by law for fiduciary investment.

(b) To sell such property at public or private sale and on such terms and conditions as they, in their discretion, shall determine to be advisable, or to convey, mortgage, pledge, lease or grant options for the sale of such property for such term as they may deem advisable, even though such term may exceed the period of the administration of my estate or any trust created hereunder or the period otherwise permitted by law; to release, exchange or in any other way to dispose of the whole or any part of my estate or any trust created hereunder upon such terms and conditions as to them may seem proper and desirable, and for such purpose to execute, acknowledge and deliver any and all instruments under seal or otherwise which may be required.

(c) To acquire by purchase or exchange in the United States or in any foreign country property of any character, real or personal, including, but without limiting the generality of the foregoing, bonds, notes, debentures, mortgages, certificates of deposit, common and preferred stocks, shares or interests in any investment trust or common trust fund, and any tangible or intangible personal property, without being limited to the class of securities in which trustees are authorized by law or any rule of court to invest trust funds.

(d) To collect and receive any and all sums and any and all property of whatsoever kind or nature due or owing or belonging to my estate or any trust created under this Will, and to give full discharge and acquittance therefor.

(e) To extend the time of payment of any obligation held by them and to compromise, settle or submit to arbitration upon such terms as to them may seem proper, or to release, any claim in favor of or against my estate or any trust created hereunder.

(f) To consent to and to participate in and to vote in person or by proxy upon any action affecting the corporate structure of any corporation in which my estate or any trust shall be interested in the same manner as an individual owner might or could do in his own right.

(g) To borrow money from or lend money to any person, firm, corporation or other entity, including any of my Executors or Trustees, for the purpose of meeting any and all charges against my estate or any trust created hereunder or for any other purpose connected with the administration, preservation, improvement or enhancement in value of my estate or any trust created under my Will, and in connection therewith, to pledge, mortgage or hypothecate any part or all of the assets held by them as security for repayment of sums borrowed.

(h) To apportion to two or more trusts under this Will an undivided interest in one or more properties or blocks of securities, including stocks.

(i) To hold property constituting any trust hereunder or property held under any power in trust hereunder in solido for convenience of investment and administration.

(j) To consolidate and commingle any property held in trust hereunder with any property held by them in trust under my spouse's Will for the same beneficiary on the same terms and conditions, provided, however, that no such holding shall defer the vesting in possession of any estate.

(k) To manage any real estate which may form a part of my estate at the time of my death or which may be acquired by my Executors or Trustees after my death, or to engage other persons, including any firm with which any Executor or

Trustee may be a member or with which any Executor or Trustee may be affiliated or associated, to manage the same for such compensation as my Executors or Trustees may deem advisable, and to pay such compensation without making application to any court.

(l) To continue to operate for such period of time as they deem advisable, including the entire term of any trust, any business in which I may be engaged at the time of my death, whether or not in corporate form, to invest additional money in, or make loans to, or sell any property to or buy any property from any such business; to reorganize or change the nature or capital structure thereof, or to sell or liquidate the same at such time and upon such terms and conditions as they may deem proper; to form new corporations or other entities; to include in their accountings merely the investment which the estate or trusts have in any such business at the relevant dates, and not the affairs or transactions of such business, notwithstanding the fact that by virtue of their own interests in such business in other than their capacity as Executors and Trustees, they may have control over the management of such business or the election of the board of directors or that they may be represented on such board of directors; and to act as or to select other persons (including any beneficiary hereunder) to act as directors, officers or other employees of any such business, the same to be compensated without regard to their being a fiduciary or beneficiary hereunder.

(m) To continue to hold as part of my estate any interest which I may have in any partnership, joint venture or limited liability company and to invest additional money in any such partnership, joint venture or limited liability company; to comply with all of the terms and provisions of any partnership, joint venture or limited liability company agreement to which I may be a party at the time of my death and to designate my successor; and to invest in and become a party to or a member of any other partnership, joint venture or limited liability company upon such terms and conditions as they may deem advisable.

(n) To cause any securities or other property held by them to be registered and held in the name of a nominee.

(o) To satisfy any general legacy or any part thereof, including any legacy to themselves as Trustees of any trust under this Will, by delivering property in kind, and in the division or distribution of my estate or any trust fund, or any part thereof, including any distribution to themselves as Trustees of any trust under this Will, to make partition, division or distribution of property in kind,

and to cause any share of such property to be composed of cash, property or undivided interests in property different in kind from any other share, without regard to or adjustment for the income tax basis of the property so divided or distributed.

(p) To allocate any receipt (including distributions by a corporation or association in the form of a stock split or a stock dividend, regardless of the rate thereof) and any expenditure between principal and income, or wholly to one or the other, in such manner as they see fit, the crediting or charging of any portion or all of any such receipt or expenditure to income or principal at any time and from time to time to be binding upon all persons interested in my estate or in any trust created under my Will.

(q) To execute and file joint income tax returns with my spouse and to pay the taxes thereon.

(r) To execute and file joint gift tax returns with my spouse with respect to any gifts made by my spouse and as to such gifts made before my death to consent that half were made by me, and to pay the taxes thereon.

(s) To allocate any available exemption, and to make any and all available elections, with respect to the generation-skipping transfer tax imposed under Chapter 13 of the Code, as they deem advisable, without adjustment for the effect of such allocations and elections upon the interests of any beneficiary under this Will.

(t) To elect to claim certain administration and other expenses as deductions either in the income tax returns of my estate or in the estate tax return when permitted by law, regardless of the effect of such elections upon the interests of any beneficiary under this Will and without adjustment therefor among such beneficiaries.

(u) To pay any sum or deliver any property, including income, which any minor shall either be entitled to receive or to have applied for his or her use or benefit under any provision of this Will, in the discretion of my Executor or Trustees, either to such minor, to a parent of such minor, to the guardian of the property of such minor, to an adult with whom such minor resides, or to a custodian for such minor under a uniform transfers to minors act, or similar statute, in which case they shall have power to designate as such custodian any person

including one or themselves and to elect to treat the age at which such property shall be required to be delivered to such minor as being the age of 21 years, and such parent, custodian or adult shall not be required to obtain letters of guardianship and such parent, guardian, custodian or adult shall not be required to give any bond or other security for any such payment or delivery and the receipt of such parent, guardian, custodian or adult for such payment or delivery shall be an absolute protection to my Executor and Trustees and a full, complete and final release and discharge from all further accountability in respect of any such payment or delivery.

(v) To employ and separately compensate such custodians, legal counsel, investment counsel, accountants, securities and real estate brokers, and such other persons as my Executors and Trustees deem proper, including any firm of which any Executor or Trustee may be a member or with which any Executor or Trustee may be affiliated or associated, to delegate authority (including discretionary investment authority) thereto, and to pay the reasonable expenses incurred in connection therewith from principal or income, or partly from principal and partly from income, with or without the approval of any court.

(w) To retain investment advisors (including those affiliated with any Executor or Trustee hereunder) and to pay the compensation and fees of such investment advisors from the trust fund, which compensation or fees shall not be charged against the compensation of any Executor or Trustee, and to delegate to investment advisors the authority to purchase and sell particular investments.

(x) In good faith and with reasonable care, to do all such acts, take all such proceedings and exercise all such rights and privileges, although not hereinbefore specifically mentioned, with relation to any such property as if the absolute owners thereof, and in connection therewith to enter into any covenants or agreements binding my estate or any trust created hereunder.

**THIRTEENTH:** I hereby authorize my Executors to allocate any aggregate increase in the basis of property owned by me at the time of my death as follows:

(a) My Executors may, in their sole and absolute discretion, allocate any aggregate basis increase allowed by Section 1022(b) of the Code first to property



passing to my surviving spouse, whether such property passes pursuant to the terms of this Will or otherwise, but only to the extent that any spousal property basis increase allowed by Section 1022(c) of the Code shall not be available to eliminate unrealized gain on such property.

(b) My Executors shall thereafter allocate any aggregate basis increase allowed by Section 1022(b) of the Code to property passing to non-spousal beneficiaries, whether such property passes pursuant to the terms of this Will or otherwise, pro-rata, based upon the ratio that the unrealized appreciation in each asset acquired from my estate bears to the unrealized appreciation in all assets acquired from my estate by non-spousal beneficiaries.

(c) It is my preference, but not my direction, that my Executors allocate any aggregate basis increase allowed by Section 1022(b) of the Code (to the extent that the basis increase allowed by Section 1022(c) of the Code shall not be available) first to my surviving spouse and thereafter to other estate beneficiaries as provided in SUBPARAGRAPHS "(a)" and "(b)" of this Article.

(d) My Executors shall allocate any spousal property basis increase allowed by Section 1022(c) of the Code to property transferred outright to my surviving spouse or to qualified terminable interest property passing to or for the benefit of my spouse, whether such property passes pursuant to the terms of this Will or otherwise.

(e) My Executors shall allocate basis without the necessity of making adjustments or reimbursements between principal and income and without the necessity of making adjustments or reimbursements among the property interests of the various beneficiaries of my estate upon final account, settlement and distribution.

(f) I exonerate My Executors from any liability arising from the claim of a beneficiary of my estate whose entitlement to receive property from my estate, under the terms of my Will or otherwise, has been diminished by my Executor's elections regarding the allocation of basis.

(g) I authorize my Executors to make the aforesaid allocation of basis even if property to which the allocation of basis is made is in the actual or constructive possession of another, is held in trust, passes by right of survivorship or otherwise passes outside the provisions of this Will.

**FOURTEENTH:** In case any beneficiary of this Will or any codicil thereto and I, or any income beneficiary and remainderman of any trust, shall die in such circumstances that there is no sufficient evidence that we or they died otherwise than simultaneously, it shall be conclusively deemed that such beneficiary predeceased me or that such remainderman predeceased such income beneficiary, as the case may be; provided, however, that if my husband and I shall die in such circumstances, then I direct that my husband shall be conclusively deemed to have survived me.

**FIFTEENTH:** I direct that all estate, inheritance, transfer, legacy, succession and other death taxes imposed upon my estate (together with any interest thereon and any penalty with respect thereto), whether with respect to the property passing under this Will or otherwise, shall be paid, if my husband survives me, first and to the fullest extent possible out of that portion of my residuary estate disposed of under **SUBDIVISION "B" of ARTICLE SIXTH** of this Will, and to the extent of any deficiency, out of that portion of my residuary estate disposed of under **SUBDIVISION "A" of ARTICLE SIXTH** of this Will, or if my <sup>Sister LMK</sup> husband shall not survive me, out of my residuary estate, as an expense of administration (excepting, however, any federal estate tax or any other death tax payable with respect to property in any trust created by my husband, whether *inter vivos* or testamentary, and excepting any generation-skipping transfer tax save only as may be specified elsewhere herein), and no part of said taxes shall be otherwise apportioned or prorated to any legatee, devisee, trustee or other

beneficiary under this Will or any person owning or receiving any property not passing under this Will. Anything herein to the contrary notwithstanding, no portion of such taxes shall be paid from any property passing under this Will that originated from a distribution from an individual retirement account or qualified plan.

IN WITNESS WHEREOF, I have subscribed my name to this, my Last Will and Testament, in the presence of the persons witnessing it at my request this ~~6<sup>th</sup>~~ <sup>7<sup>th</sup></sup> day of ~~January~~ <sup>December</sup>, 200~~6~~<sup>6</sup>, at Wainscott, New York.

  
LESLIE ANN MANDEL

The foregoing instrument, consisting of 27 pages, each identified by the initials or signature of the Testator was signed, sealed, published and declared by the above-named Testator, **LESLIE ANN MANDEL**, as and for her Last Will and Testament in the presence of the undersigned, who, at her request, in her presence and in the presence of each other, have hereunto subscribed our names as witnesses this ~~6<sup>th</sup>~~ <sup>7<sup>th</sup></sup> day of ~~January~~ <sup>December</sup>, 200~~6~~<sup>6</sup>, at Wainscott, New York.

Margarita Compoverde residing at 930 North Sea Rd  
Southampton N.Y 11968

Freddie Vazquez residing at 930 North Sea Rd  
Southampton N.Y 11968

Pamela Willoughby residing at 11 Town Line Rd  
Wainscott, NY. 11975

P.O. Box 2026  
Sag Harbor NY  
11963




2006 Will and for Objectants' appointment as permanent and preliminary fiduciaries under the 2006 Will.

6. That the dispositive provisions of the 2006 Will have not been obliterated.
7. That the 2006 Will has not been revoked.
8. That the 2006 Will be admitted to probate in its original form as executed without any later markings or lines having any effect.

WHEREFORE, the above-named Objectants pray that the Co-Petition for Letters of Administration and Temporary Administration dated June 30, 2015 be denied in its entirety and the within proceeding for Administration and Temporary Administration be dismissed and that this Court grant such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
July 20, 2015

  
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To: Brady Klein & Weissman, LLP  
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Tracy Mandel McHugh  
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New York, NY 10017

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In The Matter of The Estate of

LESLIE ANN MANDEL

a/k/a LESLIE ANN MANDEL-HERZOG and  
LESLIE MANDEL,

Deceased.

-----X

File No: 15-2-154

OBJECTIONS TO  
CO-PETITION FOR  
LETTERS OF  
ADMINISTRATION  
AND TEMPORARY  
ADMINISTRATION  
-----X

Respondents, Gregory Herzog and Matthew Herzog, persons interested in the above proceeding as their interests may appear, by their attorney, Jules Martin Haas, Esq., object to the Co-Petition For Letters of Administration and Temporary Administration of Avis Mandel and Tracy Mandel McHugh dated June 30, 2015 and allege, upon information and belief:

1. That decedent left an original valid Last Will and Testament dated January 6, 2006 (the "2006 Will").
2. That Co-Petitioners and their attorneys have failed to file original of the 2006 Will with the Court.
3. That Co-Petitioners and their attorneys are required to file the original of the 2006 Will with the Court.
4. That Objectants' interests in the 2006 Will are those of nominated primary executors, trustee and beneficiary.
5. That Objectants intend to petition this Court for the probate of the original