

# Fidelity Personal Trust Company, FSB

## Special Provisions

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These Special Provisions have been prepared to help you and your attorney draft trust documents in which you name Fidelity Personal Trust Company, FSB (“FPT”) as a current or future Trustee. There may be significant estate tax or estate planning issues arising from your use of these Special Provisions. The Special Provisions should not be viewed as a substitute for proper estate planning, and you are advised against incorporating these provisions into your Trust without consulting your attorney.

The Special Provisions are not intended to be, and should not be construed as, (i) a recommendation, (ii) legal or tax advice, or (iii) a legal opinion. FPT does not provide legal or tax advice. Laws of a particular state or laws that may be applicable to a particular situation may impact the applicability, accuracy, or completeness of the Special Provisions. Federal and state laws and regulations are complex and are subject to change. Always consult an attorney or tax professional regarding your specific legal or tax situation.

FPT makes no warranties with regard to the Special Provisions or results obtained by their use. FPT disclaims any liability arising out of your use of, or any tax position taken in reliance on this document or its contents.

**The following Special Provisions may have significant implications for your Trust and should be reviewed by your attorney. You are advised against incorporating these provisions without consulting your attorney.**

# Fidelity Personal Trust Company, FSB

## Special Provisions

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The Grantor hereby adds the following provisions to the Trust:

### **SPECIAL PROVISIONS FOR FIDELITY PERSONAL TRUST COMPANY, FSB.**

Notwithstanding anything to the contrary elsewhere in this instrument and in addition to all other powers granted by law or provided in the Trust, during any period in which Fidelity Personal Trust Company, FSB, or any other corporate Trustee (hereinafter collectively referred to as "FPT"), acts as a Trustee under this Trust, FPT shall have the following powers and exercise the same in its sole and absolute discretion without court order or approval:

#### **A. ENTITIES**

FPT may engage and pay any person, corporation, or other entity that may or may not be affiliated with FPT ("Entity") (i) to provide services to any Trust hereunder, including acting as investment manager or advisor, custodian, transfer agent, registrar, sponsor, underwriter, and/or distributor, and to pay for any such services from the Trust property; and (ii) to invest in shares of one or more open-ended investment companies (so-called mutual funds or money market funds), or exchange-traded funds, for which an Entity may render such services and for which FPT and/or the Entity may receive compensation, even if said Entity is affiliated with FPT.

#### **B. COMPENSATION**

FPT shall receive compensation for services rendered in accordance with its published fee schedule in effect at the time such compensation becomes payable, without reduction for any other compensation paid to FPT, an affiliate of FPT, or any person, Trustee, or entity, unless otherwise noted on its fee schedule; and any entity affiliated with FPT may receive compensation without reduction for any other compensation paid to FPT, another affiliate of FPT, or any person, Trustee, or entity.

#### **C. INVESTMENT RESPONSIBILITY**

FPT shall have sole responsibility for the supervision and character of the investments held in any Trust of which it is acting as Trustee, and for all decisions as to the retention, disposition, distribution, investment, reinvestment or other administration of such Trust assets.

#### **D. RESIGNATION, APPOINTMENT, AND REMOVAL OF TRUSTEES**

FPT may resign at any time without court approval by written notice to another Trustee, if any, and, if none, to the then competent income beneficiaries. Unless otherwise provided in the Trust, in the event of a vacancy in the office of Trustee or Special Trustee, a Successor Trustee shall be appointed by the then competent income beneficiaries, if any, or, if none, by FPT, and each person or entity so appointed shall become Trustee upon written acceptance of said office. Each additional or Successor Trustee shall have the same powers, authority, and discretion given to the Trustees originally named. No bond shall ever be required of FPT or, if a bond is required by law, then no surety shall be required thereon. The Special Trustee may be removed by written instrument signed by the then competent income beneficiaries, if any, or, if none, by FPT, and delivered or mailed to such Special Trustee.

#### **E. DELEGATION OF AUTHORITY**

A Trustee (including a Special Trustee) may delegate any part or all of such Trustee's powers to another Trustee, or any person, to the extent specified in an instrument signed by the delegating Trustee and delivered or mailed to the delegatee, provided, however, that this provision shall not authorize any Trustee or person to participate by delegation in the exercise of a power which the Trustee or person would otherwise be prohibited from holding.

## **F. INCAPACITY**

Unless otherwise provided in the Trust, if FPT is notified in writing by a licensed physician who is not related to the Grantor that the Grantor is not capable of managing his or her affairs, FPT may pay to the Grantor for the Grantor's benefit or for the benefit of the Grantor's spouse and/or issue, if any, as much income or principal of the Trust (and in such proportions among such persons) as FPT deems advisable for the health, education, maintenance or support of the Grantor, the Grantor's spouse and/or the Grantor's issue. Any net income not so paid shall be added from time to time to principal. A representation by a physician that he or she is not related to the Grantor shall be conclusive evidence of a lack of a relationship.

FPT shall be entitled to rely conclusively upon, and shall incur no liability to any person for any action or non-action taken in good faith in reliance upon any instructions or directions of an authorized agent ("Agent"). "Agent" means the person or persons authorized by me in any written document, including but not limited to a Durable Power of Attorney. FPT shall have no duty to question the authority of any such Agent.

## **G. LIABILITY**

Neither FPT nor any of its directors, officers, employees, or affiliates shall be liable to the Grantor, the Grantor's successors or assigns, or any other current or future beneficiary of this Trust for any good faith acts or omissions, including any liability or expense incurred as a result of a violation of any environmental law or regulation with respect to any real property owned by the Trust. FPT shall have no duty or responsibility to inquire into the actions or accounts of any predecessor Trustee, nor shall it have any liability for the actions or omissions of its predecessor.

## **H. TANGIBLE PERSONAL PROPERTY**

Unless FPT has physical custody of any tangible personal property held in Trust, FPT's sole responsibility with regard to tangible personal property shall be limited to holding bare legal title to such property. FPT shall have no responsibility or liability for the management, care, and/or protection of such property whatsoever.

## **I. ACCOUNTING**

The Trustee shall provide periodic accounts to the then competent income beneficiaries and to the parent or guardian of any then incompetent income beneficiary (collectively referred to as "income beneficiaries"). The Grantor expressly waives, to the extent permitted by law, the delivery of accounts to any beneficiary other than the income beneficiaries. Unless otherwise prohibited by law, each of the then income beneficiaries will be deemed to have acquiesced to any such account unless FPT has received a written objection within 90 days after the mailing of such account.

## **J. SPECIAL ASSET TRUST**

Unless otherwise assented to by written instrument, FPT will not accept any asset that does not meet its current standards for acceptance. Any property owned by the Trust but not accepted by FPT shall be held and administered under the terms of the Trust by a Special Trustee, who may receive compensation for its services, in a separate Trust referred to as the "Special Asset Trust" followed by the name of the Trust. The provisions relating to the appointment and removal of Trustees in the Trust shall govern the appointment and removal of the Special Trustee. FPT and the Special Trustee may, in their sole discretion, pay, loan, or advance funds to the other, and neither shall have a duty to inquire into the use of any such transferred funds, nor to oversee their application. The Special Trustee shall from time to time transfer acceptable assets of the Special Asset Trust to FPT, which are not necessary for the proper administration of the Special Asset Trust, including rent, royalties, interest, dividends, and other income.

#### **K. RESIDENTIAL REAL PROPERTY**

During the Grantor's lifetime, FPT's sole responsibility with regard to any residential real property held in Trust shall be to hold bare legal title to such property. Notwithstanding the foregoing, if (i) the Grantor requests by written instrument that FPT shall assume responsibility with respect to such property; (ii) FPT has actual notice or knowledge of the Grantor's incompetence; or (iii) the Grantor has died, FPT shall assume responsibility by written instrument for the management, care, and protection of any such property, including the payment of all expenses to maintain or sell the property, such as mortgage payments, utilities, real estate taxes, and assessments, insurance (casualty and liability), repairs, association fees, brokerage fees, lawyers' fees, and all other similar costs, and take any action that FPT deems necessary to prevent or respond to any violation or potential violation of any environmental law or regulation applicable to such property, including employing agents, consultants, and legal counsel to assist with such action. FPT shall have no liability for any loss or depreciation in the value of any such real estate. Unless stated otherwise in this instrument, FPT, in its absolute and uncontrolled discretion, may permit any one or more of the beneficiaries to possess, use, and enjoy any such residential real estate, the unequal treatment of one or more of the beneficiaries being hereby expressly authorized.

#### **L. GOVERNING LAW AND SITUS**

Unless otherwise provided in the Trust, the Trust shall be determined and construed in accordance with the laws of the Trust's place of execution if the Grantor is living or, if the Grantor is deceased, in accordance with the laws of the Grantor's domicile at death. Unless otherwise prohibited by law, FPT, acting from time to time and without court approval, may transfer the situs of any trust to any jurisdiction within the United States.

#### **M. DE MINIMUS TERMINATION**

Notwithstanding anything to the contrary elsewhere in this instrument, FPT may, in its sole discretion, terminate any Trust or separate Trust estate if the principal of such Trust or separate Trust estate is less than \$75,000, or if FPT deems the continued administration of such Trust to be inadvisable.

#### **N. CAPITAL AND SURPLUS**

Notwithstanding any provision to the contrary in this instrument, any Corporate Trustee specifically named herein shall not be prohibited from acting as a Trustee or Co-Trustee because its capital and surplus presently is or later declines below any capital and surplus minimum required in this instrument.

#### **O. SPECIAL NEEDS TRUSTS**

Notwithstanding any provision to the contrary in this Trust, if the Corporate Trustee is granted the authority to make discretionary distributions of income and/or principal for the special needs of a beneficiary that is not otherwise provided by government financial assistance and benefits, FPT may appoint a Co-Trustee (hereinafter referred to as the "Individual Co-Trustee") if one is not currently serving and there are no other provisions in the document authorizing such appointment, wherever FPT, in its sole and absolute discretion, deems it necessary, and the following provisions shall apply:

- 1) The Individual Co-Trustee shall have sole responsibility for ensuring that distributions to or on behalf of one or more beneficiaries do not render the beneficiary ineligible for Medicaid, Social Security Income, or any other governmental or private benefits that the beneficiary otherwise may be entitled to receive;
- 2) The Individual Co-Trustee shall have sole responsibility for directing FPT as to the timing, amount, and frequency of all discretionary distributions to or on behalf of the beneficiary, and FPT has no duty to inquire into the appropriateness of any such distributions;
- 3) The Individual Co-Trustee shall have sole responsibility for determining whether

the beneficiary is eligible to participate in any public or private programs and/or receive any benefits from such programs, and for taking whatever action is necessary to participate in such programs and/or receive such benefits;

4) The Individual Co-Trustee may retain a person or entity to assist the Individual Co-Trustee with his or her responsibilities as set forth above, and such person or entity may be paid reasonable compensation for providing such service from the Trust assets, the payment of which shall not reduce the compensation any Trustee is otherwise entitled to receive;

5) FPT shall be entitled to rely absolutely upon any direction (whether verbal, written, or electronic) given to FPT by the Individual Co-Trustee or any person or entity retained to assist the Individual Co-Trustee, and FPT shall have no duty to inquire into the accuracy or appropriateness of any such direction. FPT shall have no liability for any action taken or omitted pursuant to such direction whether or not such direction results in the loss of benefits or the failure to obtain all possible benefits;

6) Whenever there is no Individual Co-Trustee serving with FPT, FPT is authorized to retain a person or entity to assist FPT with its responsibilities that would otherwise be the responsibilities of the Individual Co-Trustee as set forth above. FPT shall be entitled to rely absolutely upon any direction by such person or entity and shall have no duty to inquire into the accuracy or appropriateness of any such direction. FPT shall have no liability for any action taken or omitted pursuant to such direction whether or not such direction results in the loss of benefits or the failure to obtain all possible benefits. Such person or entity may be paid reasonable compensation for providing such service from the Trust assets, the payment of which shall not reduce the compensation any Trustee or affiliate of any Trustee is otherwise entitled to receive.

Except as amended by the foregoing provisions of this Trustee Amendment, the Grantor confirms the Trust in all respects.

## Fidelity Personal Trust Company, FSB



Fidelity Personal Trust Company, FSB, a Fidelity Investments company, is a federal savings bank. Nondeposit investment products offered through Fidelity Personal Trust Company, FSB, and its affiliates are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency, are not obligations of any bank, and are subject to risk, including possible loss of principal. **This service provides discretionary money management for a fee.**

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