

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
TENTH JUDICIAL DISTRICT
CIVIL DEPARTMENT

CHARLES G. KOCH and)
DAVID H. KOCH,)

Plaintiffs,)

v.)

Case No. _____
K.S.A. Chapter 60

KATHRYN WASHBURN,)
638 A Street S.E.)
Washington DC 20003,)
individually and as)
personal representative of the Estate of)
William A. Niskanen,)

EDWARD H. CRANE, III,)
3239 Jupiter Lane)
Falls Church, VA 22044-1610)

- and -)

CATO INSTITUTE)
6901 College Blvd, Suite 500)
Overland Park, Kansas 66211)

Defendants.)

PETITION

For its claim against Defendants, Plaintiffs hereby allege as follows:

PARTIES, VENUE, AND JURISDICTION

1. Plaintiff Charles G. Koch is an individual resident of Wichita, Kansas.
2. Plaintiff David H. Koch is an individual resident of New York City, New York.

3. Defendant Kathryn Washburn is a director of defendant Cato Institute (“Cato” or “the Corporation”), personal representative of the estate of the late Cato shareholder William Niskanen, and an individual resident of the District of Columbia.

4. Defendant Edward H. Crane III is a Cato shareholder, director, President, and an individual resident of the State of Virginia.

5. Defendant Cato Institute is a non-profit corporation organized under the laws of Kansas, with a registered office at 6901 College Boulevard, Suite 500, Overland Park, Kansas 66211.

6. This action seeks a declaratory judgment pursuant to K.S.A. 60-1701 *et seq.* Venue is proper under K.S.A. 60-604, 60-605, and 60-608. Defendant Washburn is subject to suit in Kansas pursuant to K.S.A. 60-308(b)(1)(F) because she serves as a director of a corporation organized and existing under the laws of the State of Kansas. Defendant Crane is subject to suit in Kansas pursuant to K.S.A. 60-308(b)(1)(E) as a person who entered into a contract with a resident of this state to be performed in whole or in part in this state, and is subject to suit in Kansas pursuant to K.S.A. 60-308(b)(1)(F) because he serves as an officer and director of a corporation organized and existing under the laws of the State of Kansas. All defendants are subject to suit pursuant to K.S.A. 60-308(b)(1)(L) and K.S.A. 60-308(c).

FACTS

7. The Corporation was formed on December 19, 1974 as a Kansas non-profit corporation under the name of “The Charles Koch Foundation, Inc.” On July 28, 1976, the name of the Corporation was changed to “Cato Institute.”

8. In 1977, the original shareholders of Cato signed a shareholders’ agreement (“the 1977 Agreement”) specifying rights and duties of Cato’s shareholders, including rights and

duties relating to the transfer of the Corporation's shares. A true and correct copy of the 1977 Agreement is attached hereto as Exhibit A.

9. In 1985, a revised version of the 1977 Agreement was agreed to by the four persons holding the Corporation's shares at that time ("the Shareholders' Agreement"). A true and correct copy of the executed Shareholders' Agreement is attached hereto as Exhibit B.

10. In 1985, the four persons owning the shares of Cato were Plaintiff Charles Koch, Defendant Crane, William A. Niskanen, and George Pearson. Each owned 16 shares of Cato's capital stock that he had purchased for \$1.00 per share.

11. Plaintiff David Koch became a shareholder of Cato in 1991 when Cato issued 16 shares of its capital stock to him. At that time, David Koch signed an agreement (a copy of which is attached hereto as Exhibit C) under which he agreed to be bound by the terms of the Shareholders' Agreement.

12. Section 3 of the Shareholders' Agreement, the text of which is identical to Section 5 of the 1977 Agreement, provides that "[n]o stockholder of the Corporation shall have the right or power to pledge, hypothecate, sell or otherwise dispose of, directly or indirectly, all or any part of his shares of stock without first offering to sell such shares as he desires to dispose of to the Corporation for a price equivalent to the price paid by such shareholder for such shares" Section 3 of the Shareholders Agreement then provides that the Board of Directors of Cato has 30 days in which to elect to purchase the stock for the prescribed price, and that upon payment or tender of the prescribed price, "the holder of such stock shall sell and transfer the same to the Corporation forthwith."

13. Section 3 of the Shareholders' Agreement goes on to provide that if "the rights granted hereunder to the Corporation be deemed inconsistent with its corporate purposes, then

the rights granted hereby shall be deemed to be granted to the shareholders of the Corporation, to be exercised by them in the same proportions as they hold all issued and outstanding shares of the Corporation exclusive of those shares held by the shareholder desiring to dispose of stock.”

14. Section 5 of the Shareholders Agreement provides that if:

[a]t any time any of the undersigned ceases to be a shareholder in the Corporation, such party, simultaneously with the delivery of share certificates evidencing the complete disposition of all shares owned by him in the Corporation, shall submit his written resignation as a Director of the Corporation.

15. Article VII, Section 3 of The Restated Bylaws of Cato Institute, dated March 9, 2007, as amended effective April 1, 2011 (the “Bylaws”), incorporates Section 3 of the Shareholders’ Agreement, by providing that:

Shares of the Corporation shall only be transferred on its books upon the surrender to the Corporation of the share certificates duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer. In that event, the surrendered certificates shall be canceled, new certificates issued to the person entitled to them, and the transaction recorded on the books of the Corporation; *provided, however, that no shares of the Corporation shall be transferred on the books of the Corporation except upon showing of strict compliance with the restrictions on transfer imposed by the provisions set out in that certain Shareholders Agreement dated January 26, 1977 [the 1977 Agreement], executed by all the then member [sic] of the Corporation.* (emphasis added).

16. K.S.A. 17-6426(a) provides, in relevant part, that:

“[a] written restriction on the transfer or registration of transfer of a security of a corporation . . . *may be enforced against the holder of the restricted security or . . . an executor . . . or other fiduciary entrusted with like responsibility for the person or estate of the holder.* (emphasis added)

17. In 2008, George Pearson ceased to be a shareholder of Cato when he tendered his 16 shares of capital stock to the Corporation and the Corporation purchased the stock for the \$16.00 that Pearson had originally paid for it.

18. After Cato's purchase of Pearson's shares of stock, four shareholders of Cato remained: Plaintiffs Charles Koch and David Koch, Defendant Crane, and William Niskanen. Mr. Niskanen's shares ("the Niskanen Shares"), like the shares of Plaintiff Charles Koch, the shares of Plaintiff David Koch, and the shares of Defendant Crane, constituted a 25% voting interest in the Corporation.

19. William Niskanen died in October 2011. Defendant Kathryn Washburn is his widow, and as noted above, is also the personal representative of his estate under Mr. Niskanen's will. Under the terms of that will, there is no specific bequest of the Niskanen Shares to Defendant Washburn and she is not the named legatee of the Niskanen Shares in the Corporation. A true and correct copy of Mr. Niskanen's will, which reflects that Defendant Washburn is not the named legatee of the Niskanen Shares in the Corporation, is attached hereto as Exhibit D.

20. Pursuant to Section 8 of the Shareholders Agreement, Defendant Washburn, in her capacity as "personal representative[] of whatever nature," is bound to comply with the restrictions on transfer set forth in the Shareholders' Agreement.

21. Pursuant to the plain language of K.S.A. 17-6426(a), and the restrictions on transfer set out in Paragraph 3 of the Shareholders' Agreement, Defendant Washburn is obligated to "offer[] to sell [the Niskanen Shares] to the Corporation." Shareholders Agreement (Exhibit B) § 3.

22. Almost four months after Niskanen's death, Defendant Washburn has not offered to sell the Niskanen Shares to the Corporation in accordance with the requirement of Section 3 of the Shareholders' Agreement.

23. Defendant Washburn has not delivered to the Corporation "share certificates evidencing the complete disposition of all shares owned by [Niskanen] in the Corporation," as provided in Section 5 of the Shareholders Agreement and made applicable to Defendant Washburn by K.S.A. 17-6426(a).

24. Section 3 of the Shareholders' Agreement provides that, in the event the Corporation does not elect to purchase the Niskanen Shares, the right to purchase the Niskanen Shares shall be deemed to be granted to the remaining shareholders in proportion to their shares in the Corporation. However, the Corporation has not advised Plaintiffs Charles and David Koch that their right to purchase proportionate shares of the Niskanen Shares has been deemed to have been granted to them in accordance with Section 3 of the Shareholders' Agreement.

25. To the contrary, Defendant Cato takes the position that it is not obligated to accept the offer of the Niskanen Shares required to be made by Defendant Washburn under Section 3 of the Shareholders' Agreement, and that, upon refusing the offer, Section 3 does not obligate Cato to treat the right to purchase the Niskanen Shares (as the Shareholders' Agreement expressly provides) as "deemed to be granted to the shareholders of the Corporation [Charles Koch, David Koch, and Edward Crane] to be exercised by them in the same proportions as they hold" their current shares exclusive of the Niskanen Shares.

REQUESTED RELIEF

WHEREFORE, pursuant to the Declaratory Judgments provisions of the Kansas Code of Civil Procedure, K.S.A. 60-1701, *et seq.*, the requirements of K.S.A. 17-6426(a), and the terms

of the Shareholders' Agreement, Plaintiffs respectfully request that the Court declare that (1) Defendant Washburn as personal representative is presently obligated to offer the Niskanen Shares to the Corporation; (2) that the Corporation has an obligation to its shareholders either to accept those shares for repurchase from Defendant Washburn as personal representative or, pursuant to the requirements of Section 3 of the Shareholders' Agreement, recognize that the right to purchase the Niskanen Shares conferred by Section 3 upon the remaining shareholders is "deemed to be granted to the [other] shareholders of the Corporation," including Plaintiffs Charles Koch and David Koch, in the event the Corporation does not repurchase the Niskanen Shares; (3) Defendant Washburn as personal representative may not transfer the Niskanen Shares directly to herself individually as legatee or otherwise, or to any other legatee, because to do so would be inconsistent with the requirements of the Shareholders Agreement; and (4) the Corporation may not issue shares to any person or recognize the transfer of shares to any person, including but not limited to Defendant Washburn individually, who has assumed ownership or the right to ownership of shares, or has purported to do so, in violation of the Shareholders' Agreement (referenced in the Corporate Bylaws).

Respectfully submitted,

STINSON MORRISON HECKER LLP

By: /s Daniel D. Crabtree

Daniel D. Crabtree, # 10903

Heather S. Woodson, # 13513

1201 Walnut, Suite 2900

Kansas City, Missouri 64106

Telephone: (816) 842-8600

Facsimile: (816) 412-9380

dcrabtree@stinson.com

hwoodson@stinson.com

ATTORNEYS FOR PLAINTIFFS

CHARLES G. KOCH AND DAVID H. KOCH

EXHIBIT A

SHAREHOLDERS AGREEMENT

The undersigned, being all the members of Cato Institute (hereinafter The Corporation), a non-profit corporation organized under the law of Kansas initially as a non-stock, membership organization but presently in the process of converting to a stock organization, hereby agree, each with the other, in consideration of the mutual promises made to one another herein, as follows:

1. That the initial issue of capital stock of The Corporation shall be limited to an aggregate of sixty (60) shares.

2. That each of the undersigned hereby subscribes for, and agrees to pay for twelve (12) shares of the initial issue of the capital stock of The Corporation at an aggregate purchase price of Twelve Dollars (\$12.00) within thirty (30) days after the Secretary of The Corporation issues a call on said subscription.

3. That each of the undersigned shall vote his stock in The Corporation so long as he is a stockholder in such a way as to assure that each of the undersigned is elected to the position of a Director on the Board of Directors of The Corporation.

4. That each of the undersigned, as a Director of The Corporation and before authorizing the issuance of any of the capital stock of The Corporation to a party who is not a signatory hereto, will require, as a condition to any such issuance of such stock, that the prospective new shareholder execute a counterpart copy of this Agreement and thereby become bound to the terms and provisions hereof in the exact same manner as the undersigned are bound.

5. No stockholder of The Corporation shall have the right or power to pledge, hypothecate, sell or otherwise

dispose of, directly or indirectly, all or any part of his shares of stock without first offering to sell such shares as he desires to dispose of to The Corporation for a price equivalent to the price paid by such shareholder for such shares by written instrument addressed and delivered to the Board of Directors of The Corporation. Following receipt of said written offer, said Board of Directors shall have a period of thirty (30) days in which to notify said offering shareholder of The Corporation's election to purchase such stock for such price. Upon payment or tender of such price by The Corporation within thirty (30) days of such election, the holder of such stock shall sell and transfer the same to The Corporation forthwith. Should the rights granted hereunder to The Corporation be deemed inconsistent with its corporate purposes, then the rights granted hereby shall be deemed to be granted to the shareholders of The Corporation, to be exercised by them in the same proportions as they hold all issued and outstanding shares of The Corporation exclusive of those shares held by the shareholder desiring to dispose of stock.


6. That at any time a majority, by number, of the undersigned (hereafter The Purchasers) desire to purchase all the stock in The Corporation owned by one or more of the undersigned (hereafter The Seller), The Seller, within ten (10) days after receiving written notice of The Purchasers' desire from the Secretary of The Corporation, shall deliver or cause to be delivered to The Purchasers share certificates representing all the stock in The Corporation owned by The Seller, duly endorsed for transfer, against payment by The Purchasers to the Seller of the amount paid for all such stock by The Seller. The

Purchasers shall acquire the stock of The Seller in the proportions that their respective stock holdings in The Corporation bear to the aggregate stock holdings of The Purchasers in The Corporation, and the price paid by them to The Seller shall, as between The Purchasers, be paid by them in the same proportions.

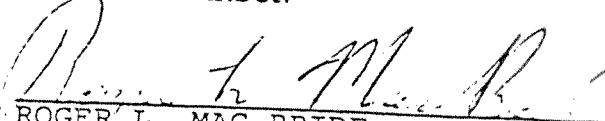
7. That at any time any of the undersigned ceases to be a shareholder in The Corporation, such party, simultaneously with the delivery of share certificates evidencing the complete disposition of all shares owned by him in The Corporation, shall submit his written resignation as a Director of The Corporation.


8. This Agreement shall be binding upon, and inure to the benefit of the undersigned parties and their respective heirs, legatees, and personal representatives of whatsoever nature.

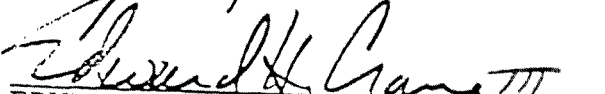
In witness whereof, the undersigned have hereunto set their hands this 26th day of January, 1977, intending to be bound hereby only at such time as all parties named hereunder have executed this instrument or an exact counterpart thereof.


CHARLES KOCH


GEORGE PEARSON


ROGER L. MAC BRIDE


MURRAY N. ROTHBARD


EDWARD H. CRANE, III

ALL OF THE DIRECTORS OF
CATO INSTITUTE

EXHIBIT B

SHAREHOLDERS AGREEMENT

The undersigned, being all of the stockholders of Cato Institute (hereinafter the "Corporation"), a nonprofit corporation organized under the laws of the State of Kansas, do hereby agree with each other as follows:

1. That each of the undersigned shall vote his stock in the Corporation so long as he is a stockholder in such a way as to assure that each of the undersigned is elected to the position of a Director on the Board of Directors of the Corporation.

2. That each of the undersigned, as a Director of the Corporation and before authorizing the issuance of any of the capital stock of the Corporation to a party who is not a signatory hereto, will require, as a condition to any such issuance of such stock, that the prospective new shareholder execute a counterpart copy of this Agreement and thereby become bound to the terms and provisions hereof in the exact same manner as the undersigned are bound.

3. No stockholder of the Corporation shall have the right or power to pledge, hypothecate, sell or otherwise dispose of, directly or indirectly, all or any part of his shares of stock without first offering to sell such shares as he desires to dispose of to the Corporation for a price equivalent to the price paid by such shareholder for such shares by written instrument addressed and delivered to the Board of Directors of the Corporation. Following receipt of said written offer, said Board of Directors shall have a

period of thirty (30) days in which to notify said offering shareholder of the Corporation's election to purchase such stock for such price. Upon payment or tender of such price by the Corporation within thirty (30) days of such election, the holder of such stock shall sell and transfer the same to the Corporation forthwith. Should the rights granted hereunder to the Corporation be deemed inconsistent with its corporate purposes, then the rights granted hereby shall be deemed to be granted to the shareholders of the Corporation, to be exercised by them in the same proportions as they hold all issued and outstanding shares of the Corporation exclusive of those shares held by the shareholder desiring to dispose of stock.

4. That at any time a majority, by number, of the undersigned (hereafter the "Purchasers") desire to purchase all the stock in the Corporation owned by one or more of the undersigned (hereafter the "Seller"), the Seller, within ten (10) days after receiving written notice of the Purchasers' desire from the Secretary of the Corporation, shall deliver or cause to be delivered to the Purchasers share certificates representing all the stock in the Corporation owned by the Seller, duly endorsed for transfer, against payment by the Purchasers to the Seller of the amount paid for all such stock by the Seller. The Purchasers shall acquire the stock of the Seller in the proportions that their respective stock holdings in the Corporation bear to the aggregate stock holdings of the Purchasers in the Corporation, and the price

paid by them to the Seller shall, as between the Purchasers, be paid by them in the same proportions.

5. That at any time any of the undersigned ceases to be a shareholder in the Corporation, such party, simultaneously with the delivery of share certificates evidencing the complete disposition of all shares owned by him in the Corporation, shall submit his written resignation as a Director of the Corporation.

8. This Agreement shall be binding upon, and inure to the benefit of the undersigned parties and their respective heirs, legatees, and personal representatives of whatsoever nature.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this _____ day of _____, 1985, intending to be bound hereby only at such time as all parties named hereunder have executed this instrument or an exact counterpart thereof.

Charles Koch

Charles Koch

George Pearson

George Pearson

Edward H. Crane, III

Edward H. Crane, III

William A. Miskanen

William A. Miskanen

ALL OF THE SHAREHOLDERS OF
CATO INSTITUTE

EXHIBIT C

AGREEMENT

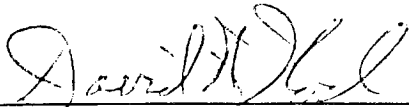
WHEREAS the undersigned has requested to become a shareholder of Cato Institute (hereinafter "The Corporation"), a non-profit corporation organized under the laws of the State of Kansas; and

WHEREAS, all of the shareholders ("Shareholders") of The Corporation are signatories to a Shareholder's Agreement whereby they are required, prior to authorizing the issuance of any capital stock of The Corporation, to require the party to receive such stock to agree to become bound by the terms and provisions of said Shareholder's Agreement; and

WHEREAS, the undersigned agrees as a condition precedent to the issuance of said stock to be so bound;

NOW THEREFORE, in consideration of the authorization by the Shareholders of The Corporation for its issuance to the undersigned of sixteen (16) shares of its capital stock, the undersigned hereby agrees to be and shall, upon the issuance of such stock, be bound by the terms and provisions of the Shareholder's Agreement executed by Charles Koch, George Pearson, Edward H. Crane, III and William A. Niskanen as though and to the same effect as if he had been an original signatory thereof. A copy of said Shareholders Agreement is attached hereto and made a part hereof by reference.

IN WITNESS WHEREOF I have set my hand this 15th day of July 1991.



David H. Koch

WITNESS:

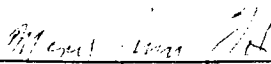


EXHIBIT D

FILED

NOV 02 2011

Register of Wills
Office of the Probate Division

DOCKETED

**LAST WILL AND TESTAMENT
OF
WILLIAM ARTHUR NISKANEN**

I, **WILLIAM ARTHUR NISKANEN**, domiciled in and a resident of Washington, D.C., do make, publish, and declare this to be my Last Will and Testament, hereby revoking all former wills and codicils made by me and intending hereby to dispose of all my probate estate.

FIRST

Funeral Provisions

I direct that the expenses of my last illness and of my funeral be paid; and it is my direction that the amount of my funeral expenses shall be within the discretion of my Personal Representative, notwithstanding any present or future limitation of law, and without the necessity of obtaining a court order authorizing such expenditure.

I further authorize my Personal Representative to contract with and pay the official of the cemetery association of the cemetery in which my remains shall be interred for the keeping of the gravesite in perpetual good condition.

SECOND

Payment on Debts and Expenses

I direct my Personal Representative to pay out of my residuary estate, as soon after my death as may be practicable, all of my just and enforceable debts. However, my Personal Representative does not need to pay any debt or expense secured by a mortgage, pledge or similar encumbrance on property owned by me at my death if, in the discretion of my Personal Representative, the underlying property may properly pass subject to such mortgage, pledge or

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William Arthur Niskanen

AKG

AKG

similar encumbrance. I further direct, however, that my Personal Representative may cause any such secured debt to be carried, renewed, or refinanced from time to time upon such terms and conditions as my Personal Representative may deem advisable, taking into consideration the best interests of my estate and beneficiaries.

THIRD

Payment of Taxes

I hereby direct my Personal Representative to pay out of my residuary estate, and as a part of the expense of administering my estate, all inheritance, estate, transfer, and succession taxes (including, in the discretion of my Personal Representative, interest and penalties thereon) which may be assessed by reason of my death on any property or interest included in my gross estate for tax purposes, whether or not such property or interest is part of my administrable estate. I hereby waive on behalf of my estate any right to recover from any person any part of such inheritance or estate taxes so paid.

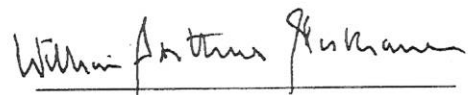
FOURTH

Personal Representative

I appoint my surviving spouse, **KATHRYN WASHBURN**, as Personal Representative of this my Last Will and Testament. If for any reason my spouse fails to qualify or ceases to act as Personal Representative hereunder, I appoint **PAUL NISKANEN** of Portland, Oregon, as successor Personal Representative with all the rights and powers as if originally named. The Personal Representative shall be reimbursed for all reasonable expenses incurred during the performance of his or her duties even if the Personal Representative receives a commission.

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FIFTH

Title to Property

I hereby confirm that if I have established title to any property, real or personal, tangible or intangible (including joint checking or savings accounts in any bank or savings and loan association) in the name of myself and any member of my family (excluding any tenancy in common), as joint tenants or tenants with right of survivorship or any variation thereof, such property shall pass by right of survivorship or operation of law outside the terms of this Last Will and Testament to such person, if he or she survives me. To the extent that any rule or law should hold otherwise, I give, devise, and bequeath all such jointly held property to such other family member or members who were joint owners of such property with me.

SIXTH

Specific Bequests

I give and bequeath Seven Hundred Fifty Thousand Dollars (\$750,000.00) to be distributed in equal shares to my daughters, **JAIME NISKANEN**, **LIA A. NISKANEN** and **PAM NISKANEN**, per stirpes.

SEVENTH

Residuary Estate

My Personal Representative shall distribute the rest and remainder of my estate as follows:

I. In the event our dog, **WINSTON**, is living at the time of my death, Two Thousand Dollars (\$2,000.00) shall be distributed to **DAVE** and **CARLA SMULLENS** of Westover, Maryland, for his care or to find a suitable home for him.

II. In the event **DAVE** and **CARLA SMULLENS** of Westover, Maryland, are working for me at the time of my death, Two Thousand Dollars (\$2,000.00) multiplied by the years they have worked for me after 2007 shall be distributed to them, or the survivor thereof. If they are no longer employed by me or in the event they are both deceased, this distribution shall lapse.

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William Arthur Niskanen

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III. One third (1/3) of my estate shall be distributed to my spouse, **KATHRYN WASHBURN**, if living; if not, then to **SALISBURY UNIVERSITY FOUNDATION, INC.**, located at 11101 Camden Avenue, Salisbury, Maryland, for scholarships for students of Washington High School in Somerset County, Maryland, or its successors.

IV. One third (1/3) of my estate shall be distributed to **CATO INSTITUTE** located at 1000 Massachusetts Avenue, N.W., Washington, D.C.

V. The rest and remainder shall be distributed to **INSITITUTE FOR JUSTICE** located at 1717 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C.

EIGHTH

General Trust For Those Under The Age Of Thirty (30)

If upon my death or upon the termination (in whole or in part) of a trust herein created, any person (except my daughters) entitled to be paid any portion of my residuary estate has not yet attained the age of thirty (30) years, such payment shall be held in further trust by **GERALD K. GIMMEL**, as Trustee, as provided below:

I. The Trustee shall pay over to or for the benefit of such person from the net income or from the principal thereof such amounts as in its sole and absolute discretion the Trustee shall deem to be necessary, reasonable or desirable for the health, education, maintenance and support of such person. Any net income not so applied shall be accumulated and added to principal.

II. When such person shall attain the age of thirty (30) years, the Trustee shall pay over and distribute the principal and income thereof then in its hands, absolutely and free of trust to such person.

NINTH

Gifts Are Not Advancements

Unless otherwise specifically provided for in this Last Will and Testament, any gifts of real or personal property which I have made during my life, before or after the execution of this

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Last Will and Testament of William Arthur Niskanen

Page 4 of 8

William Arthur Niskanen

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Will, to any person, shall not be deemed to be advancements, and shall not be taken into account in distributing my estate.

TENTH

No Bond Required

I direct that no bond be required of any Personal Representative named in this Will, and if, notwithstanding this direction, any bond is required by law, that no surety be required on such bond.

ELEVENTH

Miscellaneous Provisions

Adopted children shall have the same rights as natural born children under this Will. Throughout this Will, the use of any gender shall be deemed to include any other gender or lack of gender as the context may require. If any person named in this Will should die within thirty (30) days after my death, any bequest or devise for such person shall lapse and shall be treated as if such person predeceased me.

TWELFTH

Powers of Personal Representative

I give unto my Personal Representative full power and authority, without any order of court, to do all things necessary to probate my estate, including, but not limited to, the following:

- I. To file joint income or gift tax returns without incurring any personal liability whatsoever for so doing, any and all such personal liability being hereby waived;
- II. To borrow money and give security therefor;
- III. To sell, mortgage, pledge, exchange, or otherwise deal with or dispose of the property, real or personal, comprising my estate, upon such terms as the Personal Representative shall deem best;

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William Arthur Niskanen

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IV. To settle, compromise, contest, or otherwise deal with any and all claims in favor of or against my estate;

V. To settle any and all federal estate, state estate, or state inheritance taxes;

VI. To compromise the valuations of any properties in connection with the adjustment of any so-called death taxes; and,

VII. The decision of my Personal Representative respecting any such settlement or claims in favor of or against my estate or respecting the compromise of any income or gift taxes or any federal estate, state estate, or state inheritance taxes, or valuations of property in connection therewith shall be subject to question by no one.

VIII. For any of the foregoing purposes, I expressly authorize and empower my Personal Representative to make, execute, and deliver any and all deeds, contracts, mortgages, bills of sale, or other instruments necessary and desirable therefor.

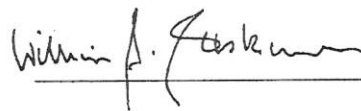
In the event my Personal Representative is required to allocate step-up basis among my assets and/or my beneficiaries, my Personal Representative is directed to allocate the step-up basis among all assets which are capable of receiving a step-up basis on a pro rata basis based upon the total value of all assets subject to receiving step-up basis. My Personal Representative is specifically relieved of all liability for such decisions as to the allocation of step-up basis and should any beneficiary challenge in Court such allocation, the Personal Representative is directed to defend such challenge and to charge all costs of such defense to the inheritance left to such challenger.

If, at the time of distribution of any part of my Estate, my Personal Representative, in its sole and absolute discretion, determines that a beneficiary is or would be unable to properly manage such amounts by reason of illness, mental or physical disability, advanced age, addiction, or otherwise, then such amounts may be paid out by the Personal Representative in such of the following ways as it deems best:

I. To the natural or legally appointed guardian or conservator of such beneficiary.

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GK6 AW

II. To some relative or friend for the care, support and education of such beneficiary.

III. By asking the Court to establish a trust for the benefit of the beneficiary to which such funds can be paid.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my Last Will and Testament, consisting of eight (8) typewritten pages, on the bottom, right-hand margin of each page of which I have affixed my signature for identification this 16 day of

June, 2010.

William Arthur Niskanen (SEAL)
WILLIAM ARTHUR NISKANEN

We, the undersigned, hereby certify that the foregoing instrument was signed, sealed, published, and declared on the date stated by the said **WILLIAM ARTHUR NISKANEN**, in our presence, as his Last Will and Testament; and we have, at his request, in his presence, and in the presence of each other, hereunto subscribed our names as attesting witnesses.

Gerald K. Gimmel
GERALD K. GIMMEL

4 Professional Drive, Suite 145
Gaithersburg, Maryland 20879

Mary A. Vaught-Spencer
MARY A. VAUGHT-SPENCER

4 Professional Drive, Suite 145
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William Arthur Niskanen

OKB AW

AFFIDAVIT FOR SELF-PROVING WILL

STATE OF MARYLAND

COUNTY OF MONTGOMERY

Before me, the undersigned authority, on this day personally appeared **WILLIAM ARTHUR NISKANEN, GERALD K. GIMMEL, and MARY A. VAUGHT-SPENCER**, known to me to be the testator and the witnesses, respectively, whose names are signed to the foregoing instrument and, all of these persons being by me first duly sworn, **WILLIAM ARTHUR NISKANEN**, the testator, declared to me and to the witnesses in my presence that said instrument is his Last Will and Testament and that he willingly signed and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his Last Will and Testament in the presence of said witnesses who in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

William Arthur Niskanen

WILLIAM ARTHUR NISKANEN

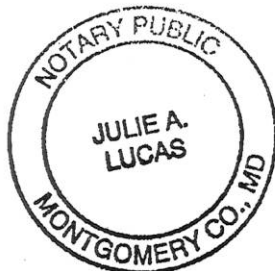
Gerald K. Gimmel

GERALD K. GIMMEL

Mary A. Vaught-Spencer

MARY A. VAUGHT-SPENCER

Subscribed, sworn and acknowledged before me by **WILLIAM ARTHUR NISKANEN**, the testator, subscribed and sworn before me by **GERALD K. GIMMEL** and **MARY A. VAUGHT-SPENCER**, witnesses, this 16th day of June, 2010.



(Signed) *Julie A. Lucas*
Notary

My commission expires 6/22/13

William Arthur Niskanen

6/6 *AW*

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