

502203

PROBATE COURT 2

LAST WILL AND TESTAMENT
OF
ROBERT DURST

I, ROBERT DURST, of the City of Houston, County of Harris and State of Texas do make, publish and declare this my Last Will and Testament, hereby revoking all former wills and codicils.

FIRST: Payment of Debts and Expenses. I direct that my funeral expenses, debts and inheritance taxes be paid by my Executor as soon after my death as may be practicable and desirable.

SECOND: Disposition of Tangible Personal Property. I give all my tangible personal property not otherwise specifically disposed of herein to my wife, DEBRAH LEE CHARATAN ("DEBRAH"), if she survives me, or, if she does not survive me, I give such tangible personal property to my friend, STEWART ALTMAN. In the event that STEWART ALTMAN is not surviving, my real property shall be added to and disposed of as part of my residuary estate.

THIRD: Disposition of Real Property. I give all my real property to my wife, DEBRAH, if surviving, and if not surviving, to my friend, STEWART ALTMAN. In the event that STEWART ALTMAN is not surviving, my real property shall be added to and disposed of as part of my residuary estate.

FOURTH: Exercise of Powers of Appointment.

(A) Pursuant to a testamentary power of appointment provided to me under Paragraph D of Article FIRST and Article EIGHTH of that certain trust agreement dated the 1st day of May, 1962 between Seymour B. Durst, as Grantor, and Royal H. Durst and Robert D. Steefel, as Trustees, for the benefit of ROBERT DURST (the "May 1962 Trust"), I hereby appoint the entire

PURPORTED WILL

remaining principal to my wife, DEBRAH, if surviving, outright and free of trust. In the event that DEBRAH is not then surviving, I appoint such property to my cousin, MARK DURST, if surviving, and if he is not then surviving, to his surviving issue, per stirpes, in either case, outright and free of trust.

(B) Pursuant to a testamentary power of appointment provided to me under Paragraph E of Article FIRST and Article EIGHTH of that certain trust agreement dated the 31st day of December, 1962 between Seymour B. Durst, as Grantor, and Royal H. Durst and Robert D. Steefel, as Trustees, for the benefit of ROBERT DURST (the "December 1962 Trust"), I hereby appoint the entire remaining principal to my wife, DEBRAH, if surviving, outright and free of trust. In the event that DEBRAH is not then surviving, I appoint such property to my cousin, MARK DURST, if surviving, and if he is not then surviving, to his surviving issue, per stirpes, in either case, outright and free of trust.

FIFTH: Credit Shelter Trust. If my wife, DEBRAH, survives me, I give to my trustees a sum equal to the largest amount that can pass free of federal estate tax under this Article by reason of the applicable federal credit but no other credit and after taking account of my adjusted taxable gifts and property disposed of by previous Articles of this will and property passing outside of this will which is includible in my gross estate and does not qualify for the marital or charitable deduction and after taking account of charges to principal that are not allowed as deductions in computing my federal estate tax. For the purpose of establishing the sum disposed of by this Article the values finally fixed in the federal estate tax proceeding relating to my estate shall be used. I recognize that no sum may be disposed of by this Article and that the sum so disposed of may be affected by the action of my executors in exercising certain tax elections. In the event that at the time of my death there is no federal estate tax in effect, this Article shall be inoperable except to the extent that my wife, DEBRAH, disclaims and renounces any property otherwise passing to her under this Will, by contract or operation of law.

My trustees shall hold said sum IN TRUST, to invest and reinvest the same and to pay the net

income to my wife, DEBRAH, at least quarter-annually during her life. My trustees may at any time or from time to time pay to my said wife and her son, BENNAT CHARATAN BERGER, so much of the principal, whether the whole or a lesser amount, as my trustees (other than my said wife) may in their sole discretion determine. In exercising this discretionary power, my trustees (other than my said wife) may, but need not consider any other resources of my said wife and shall give primary consideration to her needs and desires. Notwithstanding the foregoing, in any taxable year of the trust for federal income tax purposes, my wife shall have the right, in her absolute discretion, to withdraw from the principal of the trust, property not exceeding \$5,000 in the aggregate and, in addition, if my wife shall be living on the last day of such year, to withdraw property having a value on such date equal to an amount, if any, by which 5% of the then market value of the net principal of the trust (not reduced by any income taxes chargeable to principal) exceeds the value of the property previously withdrawn by my wife for such year valued as of the date of the receipt by the trustees of the instrument or instruments of withdrawal relating thereto. In the case of the exercise of the withdrawal right for a particular year, distribution shall be made within thirty days after delivery to the trustees of an instrument of withdrawal signed by my wife and, in the case of an exercise of such right as of the last day of such year, distribution shall be made within thirty days after the close of the taxable year after receipt of a similar instrument delivered to the trustees prior to such close. The total amount that may be withdrawn by my wife shall not be cumulative. The determination of the trustees (other than any beneficiary) of the value of property for purposes of this paragraph shall be conclusive on all beneficiaries of the trust.

Upon the death of my wife, DEBRAH, the remaining balance of this Trust shall be distributed to BENNAT CHARATAN BERGER. In the event that he is not then surviving, the remaining balance of this Trust shall be distributed to his issue, per stirpes. In the event that BENNAT CHARATAN BERGER is not then survived by his issue, I direct that the remaining balance of the Trust be distributed to STEWART ALTMAN, if surviving, and if he is not surviving, as per Article SEVENTH hereof.

SIXTH: Residuary Disposition. I give to my wife, DEBRAH, all the rest, residue and remainder of my property and estate, both real and personal of whatever nature and wherever situate, including any property hereinbefore mentioned but not effectually disposed of, all of which is called my "residuary estate". In the event that my wife, DEBRAH does not survive me, I give and bequeath my residuary estate to STEWART ALTMAN, if surviving, and if he is not surviving, as per Article SEVENTH hereof.

SEVENTH: Takers of Last Resort. My Executor shall distribute any property that is not otherwise disposed of under my Will to the DLCELC Foundation, a New York not for profit foundation.

EIGHTH: Disclaimer Provision for Spouse. Notwithstanding anything contained in this Will, if my wife, DEBRAH, shall renounce any interest in property passing to her under preceding provisions of this Will, or passing to her by contract, operation of law or otherwise on account of my death, I give, devise and bequeath the property so renounced to my Trustees hereinafter named, of the Trust created under Article FIFTH of this my Last Will and Testament.

NINTH: Payment of Taxes. All transfer, estate, inheritance, succession and other death taxes which shall become payable by reason of my death, whether in respect of property passing under this will or otherwise (exclusive of any tax imposed as a result of section 2041 or 2044 or Chapter 13 or a corresponding provision of state law), shall be paid out of my estate as an administration expense, without apportionment. If payment of taxes in accordance with the foregoing exhausts the share or shares of my probate estate that generate the tax, the balance of tax due shall be apportioned to property passing as part of my probate estate and outside of my estate, in accordance with the rules of tax apportionment rather than the rules of abatement.

TENTH: Appointment of Fiduciaries.

(A) Executor. I nominate, constitute and appoint my wife, DEBRAH, Executor, of this my Last Will and Testament. If my wife, DEBRAH, fails or ceases to

act as Executor for any reason, I appoint my friend, STEWART ALTMAN, as successor Executor. Each individual Executor (including successors) shall have the right to appoint a successor individual or corporate Executor by an instrument in writing, such appointment to take effect upon the death, resignation or incapacity of the appointing Executor in the event that there is no named Executor herein available and willing to serve as successor Executor. An appointment may be changed or revoked until it takes effect.

I direct that my Executor shall not at any time, or for any propose, including (without limitation) any proceeding for advance payment of commissions, be required to give any bond, and that if, notwithstanding this direction, any bond is required by any law, statute or rule of court, no sureties be required thereon. The term "Executor" shall, where applicable, apply to any substitute or successor Executor or Executrix as well.

(B) Trustees of Article FIFTH Trust. I appoint my wife, DEBRAH and ANDREW ALBSTEIN to be Trustees of the Trust created under Article FIFTH, hereof. In the event that my wife, DEBRAH is the only remaining Trustee, I direct that she appoint a suitable individual as successor co-trustee, or a suitable financial institution as successor co-trustee, if giving her the discretion to appoint a suitable individual as successor Trustee would cause the corpus of the Trust to be included in my wife, DEBRAH's taxable estate under the then current rulings and regulations of the Internal Revenue Code. I direct that no bond or other security shall at any time, or for any propose, including (without limitation) any proceeding for advance payment of commissions, be required of any Trustee hereunder in any jurisdiction and that none of them shall be required to render periodic accounts in any court.

(C) Exoneration. No Executor or Trustee shall be liable for the acts or defaults of another Executor or Co-Trustee. Each Executor and Trustee shall be deemed to have acted within the scope of his or her authority, to have exercised reasonable care, diligence and prudence, and to have acted impartially as to all persons interested, unless the contrary be proved by affirmative evidence, and in the absence of such proof shall not be liable for loss arising from

depreciation or shrinkage in value of any property herein authorized to be held or acquired. The provisions of this paragraph shall also apply to any person acting hereunder as Donee of a power in trust.

(D) Delegation. Any Executor or Trustee may, by revocable power of attorney, delegate to any co-Executor or co-Trustee then in office, the full exercise of all or any powers granted by any provision of this Will to my Executors and/or Trustees; provided, however, that no discretionary power may be delegated to a Trustee who is specifically precluded by law or by the provisions of this Will from participating in the exercise of such power.

(E) Ministerial Acts. Any one Executor or Trustee serving at any time may perform purely ministerial acts such as signing checks or instruments of transfer or giving instructions for the purchase or sale of securities on behalf of my estate or any trust hereunder.

(F) Accountings and Other Proceedings. My Executor shall act independently of any court, and I direct that no action shall be had in the county or other probate court in relation to the settlement of my estate other than the probating and recording of this, my Last Will and Testament, and the return of an inventory, appraisal and list of claims of my estate. Further, without limiting the foregoing, and so that I may have general provisions that may apply in states other than Texas, I direct that my estate be subject to independent administration with as little court supervision as the applicable state law allows. My Executor shall not be required to render to any court annual or other periodic accounts, or any inventory, appraisal, or other returns or reports, except as required by applicable state law. My Executor shall take such action for the settlement or approval of accounts at such times and before such courts or without court proceedings as my Executor shall determine. My Executor shall pay the costs and expenses of any such action or proceeding, including but not limited to the compensation and expenses of attorneys and guardians, out of the property of my estate.

(G) Additional Provisions Regarding Fiduciaries.

1. Individual Executors and Trustees shall receive compensation in accordance with the law of the State of New York in effect at the time of payment, unless the Executor or Trustee waives compensation. A corporate Executor or Trustee shall be compensated by agreement with the individual Executors or, in the absence of such agreement or if there are no individual Executors, in accordance with its fee schedule as in effect at the time of payment. I authorize a corporate Executor or Trustee to charge additional fees for services it provides to my estate that are not comprised within its duties as an Executor or Trustee; for example, a fee charged by a mutual fund it administers in which my estate invests, a fee for providing an appraisal or a fee for providing corporate finance or investment banking services. I also recognize that a corporate Executor or Trustee may charge separately for some services comprised within its duties as an Executor or Trustee; for example, a separate fee for investing cash balances or preparing tax returns. Such separate charges shall not be treated as improper or excessive merely because they are in addition to a basic fee in calculating total compensation for service as an Executor or Trustee. The collection by my Executor of insurance proceeds and retirement benefits payable to my estate shall not be subject to Executor's compensation.

2. The fact that an Executor or Trustee is active in the investment business shall not be deemed a conflict of interest, and purchases and sales of investments may be through a corporate Executor or Trustee or through any firm of which a corporate or individual Executor or Trustee is a partner, member, shareholder, proprietor, associate, employee, owner, subsidiary, affiliate or the like. Property of my estate or any trust created hereby may be invested in individual securities, mutual funds, partnerships, private placements or other forms of investment promoted, underwritten, managed or advised by an Executor or Trustee or such a firm.

3. My Executor and Trustees may employ and rely upon advice given by investment counsel, delegate discretionary investment authority over investments to investment counsel and pay investment counsel reasonable compensation in addition to fees otherwise payable

to my Executor or Trustees, notwithstanding any rule of law otherwise prohibiting such dual compensation. My Executor and Trustees shall not be under any duty to diversify investments, regardless of any rule of law requiring diversification, and any such duty is hereby waived. My Executor and Trustees may retain and acquire property that does not produce income, subject to any restrictions or qualifications of this power set forth elsewhere in this Will.

4. The fact that an Executor or Trustee (or a firm of which an Executor or Trustee is a member or with which an Executor or Trustee is otherwise affiliated) renders legal or other professional services to my estate or trust created hereby shall not be deemed a conflict of interest, and my Executor or Trustee may pay fees for such services to such Executor or Trustee or firm without prior approval of any court or any beneficiary, whether or not there is a Co-Executor or Co-Trustee to approve such payment. An attorney or other Executor or Trustee who also renders professional services shall receive full compensation for both services as an Executor or Trustee and the professional services rendered, except as specifically limited by law.

5. No state law restraint on acts of self-dealing by a fiduciary shall apply to an Executor or Trustee who is my Wife or a descendant of mine, except to the extent (but only to the extent) such restraint may not be waived under applicable local law by a governing instrument. Except when prohibited by another provision of this Will, such Executor or Trustee may enter into transactions on behalf of my estate or trust in which that Executor or Trustee is personally interested so long as the terms of such transaction are fair to my estate or trust. For example, such Executor or Trustee may purchase property from my estate or trust at its then fair market value without court approval.

ELEVENTH: Minor's Property Clause. If, pursuant to the provisions of this my Last Will and Testament, any property shall become payable to or vest in a minor (meaning a person under the age of twenty-one (21) years), I authorize and empower my Executor or my Executrix and my Trustees, in their sole discretion, to do any or all of the following:

(A) Accumulation. In the case of income from any trust, to accumulate and add

to principal such part or all of such income as they may deem not to be reasonably required for the support, maintenance, health, education or comfort of such minor.

(B) Payment to Parent. To pay over or deliver such property, whether income or principal, in whole or, from time to time, in part, to a parent or duly appointed guardian of such minor or to any person with whom such minor may reside for the use and benefit of such minor, and the receipt of such parent or guardian or other person shall be a complete discharge to my Executor or my Trustees, as the case may be.

(C) Power in Trust. In the case of principal, to permit my Executor or Executrix to receive or retain such property, and to hold the same in the capacity of Donee of a power in trust on behalf of such minor during his or her minority, and to deliver and pay over the same to such minor upon his or her attaining the age of twenty-one (21) years. While said property may be held by such Donee, they may exercise with respect thereto all the powers which a court-appointed guardian would have, specifically including the power to sell, lease or mortgage real property, and it is further empowered to pay out for the benefit of such minor such part or all of the income and principal of such property as to them shall seem proper for the support, maintenance, health, education or comfort of such minor. No bond or other security shall be required of the Donee acting hereunder, and no such Donee shall be required to render periodic accounts to any court.

TWELFTH: Fiduciary Powers. I authorize and empower my executors with respect to my estate and my trustees with respect to any trust hereby created to exercise from time to time in their sole discretion and without prior authority from any court, in respect of any property forming part of my estate or otherwise in their possession hereunder, all powers conferred by law upon executors and trustees, or expressed in this will, and I intend that such powers (including the following) be construed in the broadest possible manner:

- (1) Power to determine what property is covered by general descriptions contained in this will.
- (2) Power to pay my debts and funeral and burial expenses (including the expenses of my last illness, which I direct shall be paid out of my estate) as soon as the convenience of my estate will permit and without regard to any limitation in applicable law as to the amount of such expenses and without the necessity of securing prior court approval, and to pay or deliver any legacy without waiting the time prescribed by law.
- (3) Power to invest or reinvest in such securities or other property, real or personal (whether

within or without the United States), and to retain any property at any time received or held by them hereunder for such periods as they shall in their sole discretion determine, whether or not the same be income-producing (and any aspect of any diversification requirement that would otherwise apply is hereby negated).

- (4) Power to borrow in the name of my estate such sums for such periods and upon such terms as they shall deem necessary or convenient in the administration of my estate, and to secure any such loan by mortgage or pledge. No lender shall be bound to see to or be liable for the application of the proceeds; and no executor shall be personally liable, but each such loan shall be payable only out of assets of my estate.
- (5) Power to apply to the use of any person any property, whether principal or income, vesting in or payable to such person, and in the case of a minor (a) to do so without regard either to the duty of any person to furnish support for such minor or the availability of other funds for such purpose, or (b) to pay or deliver the same to such minor, or to a guardian or custodian under a gifts to minors act, including a custodian selected by my executors or trustees (who may select age 21 for termination of the custodianship), or to a parent of such minor, or to a person with whom such minor resides, or to any person authorized by this will to hold the same under a power during minority.
- (6) Power without the consent of any beneficiary to make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property allocated to any beneficiary and without making pro rata distributions of specific assets.
- (7) Power to sell any property, real or personal, at public or private sale for cash or upon credit or partly for cash and partly for credit and upon such terms as they shall deem proper. No purchaser shall be bound to see to or be liable for the application of the proceeds of any such sale.
- (8) Power to compromise and adjust all debts or claims due to or made against them.
- (9) Power to exchange any securities or property held by them for other securities or property,

or partly for such securities or property and partly for cash, and to exercise conversion, subscription, option and similar rights with respect to any securities held by them, and to participate in or consent to any voting trust, reorganization, dissolution, merger, or other action affecting any securities in their possession or the issuers thereof, and to make payments in connection therewith.

- (10) Power to employ as custodian a bank or trust company located within or without the United States, and to acquire, hold, register, or dispose of property in the name of such custodian or agent or a nominee thereof without designation of fiduciary capacity, and to employ investment counsel or other agents and to pay out of principal or income or both the charges and expenses of any such custodian, counsel or other agent.

THIRTEENTH: Survivorship. Any beneficiary hereunder who dies within ninety (90) days following the date of my death shall be deemed to have predeceased me for all purposes of this Will.

FOURTEENTH: Miscellaneous Provisions.

- (1) I direct that in any proceeding relating to my estate, service of process upon any person under a disability shall not be made when another person not under a disability is a party to the proceeding and has the same interest as the person under the disability. It is my intention by this subparagraph to satisfy the requirements of the applicable provisions of any state law regarding the representation of persons under a disability.
- (2) The terms "child", "issue" and "descendant" as used in this will are intended to include adopted persons and their issue.
- (3) As used in this my Last Will and Testament, the neuter gender shall be deemed to include the masculine or feminine wherever necessary or appropriate and the singular shall include the plural.

IN WITNESS WHEREOF, I have hereunto set my hand and seal upon this Will consisting

of twelve (12) pages this 11 day of August, in the year two thousand ten.

Robert Durst
(L.S.)
ROBERT DURST

SIGNED, SEALED, PUBLISHED and DECLARED by ROBERT DURST, the testator above named, as and for his Last Will and Testament, in our presence, and we at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the day and year last above written.

Andrew J. Whiff residing at 11 Riverside Drive
NY NY 10023

Eden C. Clinco residing at 3103 Grande Court
Wappingers Falls, NY 12590

Dora B. Slavit residing at 315 East 68th St, 1-S
New York, NY 10065

PURPORTED WILL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Each of the undersigned, individually and severally, being duly sworn, deposes and says:
The within will was subscribed in our presence and sight at the end thereof by ROBERT DURST, the within named testator, on the 11 day of August 2010, at the offices of Levy Holm Pellegrino & Drath LLP, 950 Third Avenue, New York, New York.

Said testator at the time of making such subscription declared the instrument so subscribed to be his last will.

Each of the undersigned thereupon signed his or her name as a witness at the end of said will, at the request of said testator and in his presence and sight and in the presence and sight of each other.

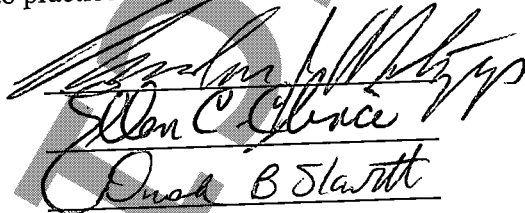
Said testator was, at the time of so executing said will, over the age of eighteen years, and, in the respective opinions of the undersigned, of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a will.

Said testator, in the respective opinions of the undersigned, could read, write and converse in the English language and was suffering from no defect of sight, hearing or speech, or from any other physical or mental impairment which would affect his capacity to make a valid will. The will was executed as a single, original instrument and was not executed in counterparts.

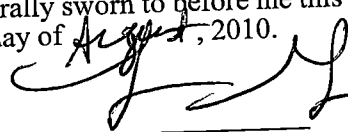
Each of the undersigned was acquainted with said testator at such time, and makes this affidavit at his request.

The within will was shown to the undersigned at the time this affidavit was made, and was examined by each of them as to the signatures of said testator and of the undersigned.

The foregoing instrument was executed in accordance with the statutory requirements of the Estate Powers and Trust Law by said testator and witnessed by each of the undersigned affiants under the supervision of Theodore J. Metzger, an attorney-at-law admitted to practice in the State of New York.



Severally sworn to before me this
11 day of August, 2010.



Notary Public

LINDA GARCIA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GA6125058
Qualified in Queens County
Commission Expires April 04, 2013

COPY

PURPORTED WILL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

I, ROBERT DURST, the testator, sign my name to this instrument this 11 day of August, 2010 and, being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Robert Durst
Testator

Theodore J. Metzger, Ellen C. Clineo, and Dinah B. Slavitt, the witnesses, being first duly sworn, do each hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly and that each of us states that, in the presences and hearing of the testator, we hereby sign this will as witness to the testator's signing and that to the best of our knowledge the testator is 18 years of age or older, of sound mind and under no constraint or undue influence.

Theodore J. Metzger
Witness
Ellen C. Clineo
Witness
Dinah B. Slavitt
Witness

Subscribed, sworn to and acknowledged before me by ROBERT DURST, the testator, and Theodore J. Metzger, Ellen Clineo and Dinah B. Slavitt, witnesses, this 11 day of August, 2010.

(SEAL)

[Signature]
Notary Public

LINDA GARCIA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GA6126066
Qualified in Queens County
Commission Expires April 04, 2013

FILED
2022 JAN 21 PM 4:10
COUNTY OF QUEENS

PURPORTED WILL

502203

Last Will

and

Testament

of

ROBERT DURST

LEVY HOLM PELLEGRINO & DRATH LLP
ATTORNEYS AT LAW
950 THIRD AVENUE 31ST FLOOR
NEW YORK, NEW YORK 10022
(212) 980-4200

PURPORTED WILL