

## DISCRETIONARY/Non-DISCRETIONARY INVESTMENT ADVISORY AGREEMENT

AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the undersigned party, \_\_\_\_\_ whose mailing address is \_\_\_\_\_ (hereinafter referred to as the “Client”), and Sullivan Financial Planning, LLC, a registered investment adviser, whose mailing address is 783 S. Downing St., Denver, CO 80209 (hereinafter referred to as the “Adviser”).

### 1. Scope of Engagement.

(a) The Client hereby appoints the Adviser as an Investment Adviser to perform the services hereinafter described, and the Adviser accepts such appointment. The Adviser shall be responsible for the investment and reinvestment of those assets of the Client designated by the Client to be subject to the Adviser’s management (which assets, together with all additions, substitutions and/or alterations thereto are hereinafter referred to as the “Assets” or “Account”);

\_\_\_\_\_ Initial (b) Discretionary Authority: **Without prior consultation**, the Client delegates to the Adviser all of its powers with regard to the investment and reinvestment of the Assets and appoints the Adviser as the Client’s attorney and agent in fact with full authority to buy, sell, or otherwise effect investment transactions involving the Assets in the Client’s name and for the Client’s Account. The Adviser will have Trading Authority on file with the Broker Dealer in order to place trades.

or

\_\_\_\_\_ Initial (c) Non-Discretionary Authority: **With prior consultation**, the Client delegates to the Adviser all of its powers with regard to the investment and reinvestment of the Assets and appoints the Adviser as the Client’s attorney and agent in fact with full authority to buy, sell, or otherwise effect investment transactions involving the Assets in the Client’s name and for the Client’s Account. Instructions from the Client to the Adviser are acceptable in the form of e-mail or live conversation. Instructions received over voice mail are not acceptable until verified by the Adviser to the Client via e-mail or live conversation. The Adviser will have Trading Authority on file with the Broker Dealer in order to place trades.

(d) The Client acknowledges that the Adviser may, in accordance with the Client’s investment objective(s), determine to allocate all of a portion of the Assets among various individual debt and/or equity securities and/or mutual funds.

(e) Mutual Fund Programs The following disclosure is specifically applicable to Adviser’s proprietary mutual fund asset management programs:

1. *Initial Interview* – at the opening of the Account, the Adviser shall obtain from the

Client information sufficient to determine the Client's financial situation and investment objectives;

2. *Individual Treatment* - the Account is managed on the basis of the Client's financial situation and investment objectives;

3. *Quarterly Notice* – at least quarterly the Adviser shall notify the Client to advise the Adviser whether the Client's financial situation or investment objectives have changed, or if the Client wants to impose and/or modify any reasonable restrictions on the management of his/her/its Account;

4. *Annual Contact* – at least annually, the Adviser shall contact the Client to determine whether the Client's financial situation or investment objectives have changed, or if the Client wants to impose and/or modify any reasonable restrictions on the management of the Account;

5. *Consultation Available* – the Adviser shall be reasonably available to consult with the Client relative to the status of the Account;

6. *Quarterly Report* - the Client shall be provided with a quarterly report for the Account for the preceding period;

7. *Ability to Impose Restrictions* – the Client shall have the ability to impose reasonable restrictions on the management of the Account, including the ability to instruct the Adviser not to purchase certain mutual funds;

8. *No Pooling* - the Client's beneficial interest in a security does not represent an undivided interest in all the securities held by the Custodian, but rather represents a direct and beneficial interest in the securities which comprise the Account;

9. *Separate Account* - a separate account is maintained for the Client with the Custodian;

10. *Ownership* - each Client retains indicia of ownership of the Account (e. g. right to withdraw securities or cash, exercise or delegate proxy voting, and receive transaction confirmations);

11. *Adviser's Fee* - the Adviser believes that its annual fee is reasonable in relation to: (1) the advisory services provided under this Agreement; and (2) the fees charged by other investment advisers offering similar services/programs. *However*, Adviser's annual investment management fee may be higher than that charged by other investment advisers offering similar services/programs. In addition to *Adviser Compensation* (see paragraph 2 below), the Client will also incur charges imposed at the mutual fund level (e.g., advisory fees and other fund expenses) and charges imposed by the Account custodian; and

12. *Tax Efficiency* - Client acknowledges and understands that Adviser's mutual fund asset management programs may involve above-average portfolio turnover which could negatively impact upon the net after-tax gain experienced by the Client in non-qualified accounts.

(f) The Client agrees to provide information and/or documentation requested by Adviser in furtherance of this Agreement as pertains to Client's investment objectives, needs and goals,

and to keep Adviser informed of any changes regarding same. The Client acknowledges that Adviser can not adequately perform its services for the Client unless the Client diligently performs his responsibilities under this Agreement. Adviser shall not be required to verify any information obtained from the Client, Client's attorney, accountant or other professionals, and is expressly authorized to rely thereon; and

(g) Client acknowledges and understands that the service to be provided by Adviser under this Agreement is limited to the management of the Assets and does not include financial planning or any other related or unrelated services.

## 2. Adviser Compensation.

(a) The Adviser's annual fee for investment management services provided under this Agreement shall be:

\_\_\_\_\_ 1% of assets under management for accounts \$100,000 or greater in value or  
Initial

\_\_\_\_\_ 1.5% of assets under management for accounts under \$100,000 in value  
Initial

This annual fee shall be prorated and paid quarterly, in arrears, based upon the retainer fee agreed upon by Client and Adviser. No increase in the annual fee shall be effective without prior written notification to the Client;

(b) Client pays the Adviser directly for its services (in which event Adviser's fee is due and payable upon receipt of Adviser's billing invoice).

(c) In addition to Adviser's annual investment management fee, the Client shall also incur, relative to all mutual fund purchases, charges imposed directly at the mutual fund level (e.g. advisory fees and other fund expenses; and

(d) No portion of *Adviser Compensation* shall be based on capital gains or capital appreciation of the Assets except as provided for under the Investment Advisers Act of 1940 or similar state statute.

3. Custodian. The Assets shall be held by an independent custodian, not the Adviser. The Adviser is authorized to give instructions to the custodian with respect to all investment decisions regarding the Assets and the custodian is hereby authorized and directed to effect transactions, and otherwise take such actions as the Adviser shall direct in connection with the performance of the Adviser's obligations in respect of the Assets. The custodial fees charged to the Client are exclusive of, and in addition to, *Adviser Compensation* as defined in paragraph 2 above.

4. Execution of Brokerage Transactions (when applicable). If requested, Adviser will arrange for the execution of securities brokerage transactions for the Account through Broker-Dealers that Adviser reasonably believes will provide "best execution". In seeking best execution, the determinative factor is not the lowest possible commission cost but whether the transaction represents the best qualitative execution, taking into consideration the full range of a Broker-Dealer's services including the value of research provided, execution capability, commission rates, and responsiveness. Accordingly, although Adviser will seek competitive commission rates, it may not necessarily obtain the lowest possible commission rates for Account transactions.

Consistent with obtaining best execution, transactions for the Account may be effected through

Broker-Dealers in return for research products and/or services which assist Adviser in its investment decision making process. Such research generally will be used to service all of Adviser's Clients, but brokerage commissions paid by Client may be used to pay for research that is not used in managing the Account. The Account may pay to a Broker-Dealer a commission greater than another qualified Broker-Dealer might charge to effect the same transaction where Adviser determines in good faith that the commission is reasonable in relation to the value of the brokerage and research services received.

Transactions for each Client account will be effected independently.

The Client may direct Adviser to use a particular Broker-Dealer to execute some or all transactions for the Account (subject to Adviser's right to decline and/or terminate the engagement). In such event, the Client will negotiate terms and arrangements for the Account with that Broker-Dealer, and Adviser will not seek better execution services or prices from other Broker-Dealers or be able to "batch" Client transactions for execution through other Broker-Dealers with orders for other accounts managed by Adviser. As a result, Client may pay higher commissions or other transaction costs or greater spreads, or receive less favorable net prices, on transactions for the Account than would otherwise be the case. In the event that the transactions for the Account are effected through a Broker-Dealer that refers investment management Clients to the Adviser, the potential for conflict of interest may arise.

#### 5. Account Transactions

- (a) The Client recognizes and agrees that in order for Adviser to discharge its responsibilities, it must engage in securities brokerage transactions described in paragraph 1 herein;
- (b) Commissions and/or transaction fees are generally charged for effecting securities transactions;
- (c) Adviser, in return for effecting securities brokerage transactions through certain broker-dealers, may receive from those broker-dealers certain investment research products and/or services which assist Adviser in its investment decision making process for the Client, all of which transactions shall be in compliance with state statutes; and
- (d) The brokerage commissions and/or transaction fees charged to Client for securities brokerage transactions are exclusive of, and in addition to, *Adviser Compensation* as defined in paragraph 2 hereof.

6. Risk Acknowledgment. Adviser does not guarantee the future performance of the Account or any specific level of performance, the success of any investment decision or strategy that Adviser may use, or the success of Adviser's overall management of the Account. Client understands that investment decisions made for the Account by Adviser are subject to various market, currency, economic, political and business risks, and that those investment decisions will not always be profitable.

7. Directions to the Adviser. All directions by the Client to the Adviser (including notices, instructions, directions relating to changes in the Client's investment objectives) shall be in writing. The Adviser shall be fully protected in relying upon any such direction, notice, or instruction until it has been duly advised in writing of changes therein.

8. Adviser Liability. Except as otherwise provided by federal or state securities laws, the Adviser, acting in good faith without negligence or malfeasance, shall not be liable for any action, omission, investment recommendation/decision, or loss in connection with this Agreement including, but not limited to, the investment of the Assets, or the acts and/or omissions of other professionals or third party service providers recommended to the Client by the Adviser, including a broker-dealer and/or custodian. If the Account contains only a portion of the Client's total assets, Adviser shall only be responsible for those assets that the Client has designated to be the subject of the Adviser's investment management services under this Agreement without consideration to those additional assets not so designated by the Client.

9. Proxies. Unless the Client directs otherwise in writing, the Client shall be responsible for: (1) directing the manner in which proxies solicited by issuers of securities beneficially owned by the Client shall be voted, and (2) making all elections relative to any mergers, acquisitions, tender offers, bankruptcy proceedings or other type events pertaining to the Assets. Adviser is authorized to instruct the Custodian to forward to Client copies of all proxies and shareholder communications relating to the Assets.

10. Reports. The Account Custodian shall provide the Client with periodic investment reports for the Account.

11. Termination. This Agreement will continue in effect until terminated by either party by written notice to the other (email notice will not suffice), which written notice must be signed by the terminating party and give 30-day notice. Termination of this Agreement will not affect (i) the validity of any action previously taken by Adviser under this Agreement; (ii) liabilities or obligations of the parties from transactions initiated before termination of this Agreement; or (iii) Client's obligation to pay advisory fees (prorated through the date of termination). Upon the termination of this Agreement, Adviser will have no obligation to recommend or take any action with regard to the securities, cash or other investments in the Account.

12. Assignment. This Agreement may not be assigned (within the meaning of the Advisers Act) by either the Client or the Adviser without the prior written consent of the other party. The Client acknowledges and agrees that transactions that do not result in a change of actual control or management of the Adviser shall not be considered an assignment pursuant to the Investment Advisor Act of 1940 or similar state statutes

13. Non-Exclusive Management. Adviser, its officers, employees, and agents, may have or take the same or similar positions in specific investments for their own accounts, or for the accounts of other Clients, as the Adviser does for the Account. Client expressly acknowledges and understands that Adviser shall be free to render investment advice to others and that Adviser does not make its investment management services available exclusively to Client. Nothing in this Agreement shall impose upon the Adviser any obligation to purchase or sell, or to recommend for purchase or sale, for the Account any security which the Adviser, its principals, affiliates or employees, may purchase or sell for their own accounts or for the account of any other Client, if in the reasonable opinion of the Adviser such investment would be unsuitable for the Account or if the Adviser determines in the best interest of the Account it would be impractical or undesirable. Adviser, its officers, employees,

and agents will give client's transactions priority over those in Adviser's et al accounts.

14. Death or Disability. The death, disability or incompetency of Client will not terminate or change the terms of this Agreement. However, Client's executor, guardian, attorney-in-fact or other authorized representative may terminate this Agreement by giving written notice to Adviser.

15. Arbitration. Subject to the conditions and exceptions noted below, and to the extent not inconsistent with applicable law, in the event of any dispute pertaining to Adviser's services under this Agreement, both Adviser and Client agree to submit the dispute to voluntary arbitration in accordance with the auspices and rules of the American Arbitration Association ("AAA"), provided that the AAA accepts jurisdiction. Client acknowledges and agrees that in the specific event of non-payment of any portion of *Adviser Compensation* pursuant to paragraph 2 of this Agreement, Adviser, in addition to the aforementioned arbitration remedy, shall be free to pursue all other legal remedies available to it under law, and shall be entitled to reimbursement of reasonable attorneys fees and other costs of collection. **It is clearly understood that agreement to voluntary arbitration does not constitute a waiver of the investor's rights under the Investor Advisers Act of 1940 or similar state statute.**

\_\_\_\_\_ As or on behalf of the Client, I understand that, unless otherwise provided above:  
Initial

1. Pre-arbitration discovery is generally more limited than and different from court proceedings:
2. The arbitrators' award is not required to include factual findings or legal reasoning, and any party's right to appeal or seek modification of rulings is strictly limited
3. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities or advisory industry.

16. Disclosure Statement. The Client hereby acknowledges prior receipt of a copy of the Disclosure Statement of the Adviser as same is set forth on Part II of Form ADV (Uniform Application for Investment Adviser Registration). Client further acknowledges that he has had a reasonable opportunity (i.e. at least 48 hours) to review said Disclosure Statement, and to discuss the contents of same with professionals of his choosing, prior to the execution of this Agreement. If the Client has not received a copy of the Adviser's Disclosure Statement at least 48 hours prior to execution of this Agreement, the Client shall have 5 business days from the date of execution of this Agreement to terminate Adviser's services without penalty.

17. Trade Errors. All Account trades are placed electronically or telephonically by Adviser. Adviser assumes responsibility for any Account losses for trading errors directly resulting from Adviser's failure to follow Adviser's trading procedures or from a lapse in Adviser's internal communications. In such instances, the Account(s) will be compensated for any such corresponding losses. However, the Client acknowledges that Adviser cannot and will not be responsible for Account errors and/or losses that occur where Adviser has used its best efforts (without direct failure on the part of Adviser) to execute trades in a timely and efficient manner. If a trade or some portion of a trade is not effected or an electronic "glitch" occurs which results in the Account not being traded at the same time or at the same price as others, and such occurrence is not a result of Adviser's failure to execute or follow its trade procedures, the resulting loss will not be considered a trading error for which Adviser is responsible. In addition, virtually all mutual funds, as disclosed in their

prospectuses, reserve the right to refuse to execute trades if, in a fund's sole judgment, the trade(s) would jeopardize the value of the fund. Adviser has no authority to change, alter, amend, or negotiate any provision set forth in a mutual fund prospectus. The Client further acknowledges that Adviser cannot and will not be responsible for trades that are not properly executed by any clearing firm, custodian, mutual fund, or insurance company, when an order has been properly submitted by the Adviser. Finally, Adviser cannot be responsible for a unilateral adverse decision by a mutual fund or insurance company to restrict and/or prohibit mutual fund asset management programs.

18. Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms or provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. Client Conflicts. If this Agreement is between the Adviser and related Clients (i.e. husband and wife, life partners, etc.), Adviser's services shall be based upon the joint goals communicated to the Adviser. Adviser shall be permitted to rely upon instructions from either party with respect to disposition of the Assets, unless and until such reliance is revoked in writing to the Adviser. The Adviser shall not be responsible for any claims or damages resulting from such reliance or from any change in the status of the relationship between the Clients.

20. Privacy Notice. The Client acknowledges prior receipt of the Adviser's *Privacy Notice*.

21. Applicable Law. This Agreement supersedes and replaces, in its entirety, all previous investment advisory agreement(s) between the parties. To the extent not inconsistent with applicable law, this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In addition, to the extent not inconsistent with applicable law, the venue (i.e. location) for the resolution of any dispute or controversy between Adviser and Client shall be the County of Denver, State of Colorado.

22. Authority. The Client acknowledges that he/she/they/it has (have) all requisite legal authority to execute this Agreement, and that there are no encumbrances on the Assets. The Client correspondingly agrees to immediately notify the Adviser, in writing, in the event that either of these representations should change.

IN WITNESS WHEREOF, the Client and Adviser have each executed this Agreement on the day, month and year first above written.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Client

\_\_\_\_\_  
Name of Adviser

By: \_\_\_\_\_

