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ESTATE PLANNING MEMORANDUM

This memorandum contains a brief explanation of estate planning techniques which may be applicable in your situation. Under the current federal unified estate and gift tax system, the estates of each of you and your spouse will be entitled to a credit against federal estate and gift taxes on transfers made by you to anyone during life and after death. This credit translates into an exemption that will protect transfers of assets with values of $5,000,000 from federal estate and gift taxes.

You could avoid the imposition of federal estate taxes on your estate by leaving your entire estate to your surviving spouse and taking advantage of the unlimited marital deduction. However, this technique would add the assets of the first of you to die to the assets of the survivor of you, and you would not be fully using the exemptions that are available to you. This means that the assets that will eventually be transferred to your descendants will be reduced by payment of estate taxes that could be avoided.

By “carving out” and preserving the exemption available in the estate of the first of you to die, you will decrease the amount of tax that will be payable upon the death of the survivor. The usual method used to accomplish this “carve out” is a combination of a marital deduction gift and family trust. The marital deduction gift is designed to qualify for the marital deduction available in the estate of the first to die. The marital deduction gift may be made either outright or in trust for the benefit of the surviving spouse. The family trust is designed to hold the amount of exemption available to the estate of the first to die in a manner that will not cause it to be taxed on the death of the survivor. The family trust is usually designed to give the survivor broad rights to income and principal during the survivor's life. Upon the death of the surviving spouse, only the amount of the marital deduction gift will be added to his or her estate.

If either of you were to die first with an estate plan such as that outlined above, no estate tax would be due upon your death because of the combination of the exemption and the marital deduction. The survivor would receive, outright, any jointly-owned property, retirement plans, and any additional assets owned by you above the exemption equivalent amount. Up to $5,000,000 of your estate would be placed in the family trust. Upon the survivor's death after your death, his or her taxable estate would not include the value of that trust. Taxes on the survivor's death would be substantially reduced over that which would be payable if you were to leave all of your assets to your spouse.