

## DISCRETIONARY INVESTMENT ADVISORY AGREEMENT

This Discretionary Investment Advisory Agreement (this "Agreement") is between \_\_\_\_\_ (the "Client") and **LEONARD L. GOLDBERG d/b/a GOLDBERG CAPITAL MANAGEMENT**, a sole proprietorship with an office located at 27 Stagecoach Road, Avon, Connecticut 06001 (the "Adviser"). This Agreement shall become effective upon the last date set forth below.

### RECITALS

A. The Adviser is an investment adviser registered with the State of Connecticut, Department of Banking.

B. The Client desires to appoint the Adviser as investment manager of certain assets of the Client maintained in designated accounts and the Adviser desires to accept such appointment, all as more specifically set forth in this Agreement.

The parties agree as follows:

**1. Account Management.** The initial account(s) to be managed by the Adviser are listed on Schedule A (the "Account"). The Adviser will make investment decisions for the Account according to the investment objectives and financial circumstances described by Client to the Adviser. Client's financial circumstances, investment objectives and any special instructions or limits that Client wishes the Adviser to follow in advising Client are described on Schedule B. Client agrees to notify the Adviser promptly of any significant change in the information provided by the Client on Schedule B or any other significant change in Client's financial circumstances or investment objectives that might affect the manner in which the Account is managed.

**2. Discretionary Authority.** In order to accomplish the Client's investment objectives, the Client hereby authorizes the Adviser and grants the Adviser a limited power of attorney to (a) subject to the limitations set forth on Schedule B, buy, sell, or otherwise trade securities or other investments in the Account on the Client's behalf without discussing the transactions with the Client in advance; (b) authorize the transfer of funds on the Client's behalf from the Custodian (as defined below) to the Client; provided, however, that in no event may the Client's funds be transferred to the Adviser nor may the Adviser cause the transfer of the Client's funds other than the direct deduction of advisory fees pursuant to Section 7 or as otherwise specifically directed or approved by the Client; (c) receive duplicate trade confirmations and account statements from the broker of record; and (d) take such other action as may be necessary or desirable to carry out the purposes of this Agreement.

**3. Term.** The term of this Agreement shall commence on the date hereof and shall remain in effect until terminated by either party upon written notice to the other. Termination of this Agreement shall not, in any case, affect or preclude the consummation of any transaction initiated prior to such termination. The Client hereby consents to the performance by the Adviser of such administrative and other services as may be necessary and appropriate for the orderly

termination and transfer of the Account. On the termination of this Agreement, the Adviser will have no obligation to recommend or take any action with regard to the securities, cash or other investments in the Account.

**4. Custody of Account.** The Account shall be held in custody at Charles Schwab & Co., Inc. (the "Custodian") pursuant to the terms of an agreement between the Client and the Custodian. The Client shall give to the Custodian (and a copy to the Adviser) written instructions to accept and carry out the instructions of the Adviser. The fees and charges of the Custodian will be paid by the Client as agreed by the Client and the Custodian.

**5. Responsibilities of Custodian.** The Custodian shall have sole custodial responsibility with respect to the Account including, without limitation, responsibility for the receipt, safekeeping and delivery of cash and securities, the collection of dividends and interest, and the receipt and delivery of proxies, notices of subscription rights, calls and all other communications to holders of securities in the Account, including reports of all transactions and portfolio appraisals. The parties agree that the Adviser shall have no responsibility or liability for the foregoing, and that the Client will indemnify and hold harmless the Adviser with respect to any liability, including expenses and attorney's fees, that may arise from the Custodian's acts or failures to act.

**6. Transaction Procedures and Costs.** The Adviser, in its sole and absolute discretion, shall select one or more brokerage firms to effect transactions for the Account, in such manner and at such time and upon such terms as the Adviser shall deem appropriate. In selecting a brokerage firm, the Adviser shall use its best efforts in seeking the combination of best price, execution, and investment services. All commissions and other charges with respect to transactions for the Account shall be payable by the Client. It is understood that the Adviser may take investment action on behalf of other clients that is similar to or differs from investment action taken on behalf of the Account. If the purchase or sale of securities for the Account and for one or more such other clients is considered at or about the same time, the transaction orders for such securities may be placed on a combined basis and will be allocated among the several clients in a manner deemed equitable by the Adviser.

**7. Advisory Fees.** The Account will be charged a quarterly investment advisory fee (the "Fee"). The specific fee schedule applicable to the Account is set forth in Schedule C to this Agreement.

**a. Payment.** The Fee will be payable quarterly in advance. For new accounts, billing will commence upon the deposit of any funds or securities in the Account. The first payment will be prorated to cover the period from the date the Account is opened through the end of the next full calendar quarter. Thereafter, the fee will be based on the Account value on the last business day of the preceding calendar quarter and will be due the following business day and payable within thirty (30) business days.

**b. Additions and Withdrawals.** Client may make additions to the Account at any time, subject to Adviser's right to terminate an Account that falls below the

minimum Account size. Additional assets received into the Account after it is opened may be charged a *pro rata* fee based upon the number of days remaining in the quarter. Client may withdraw Assets from the Account upon notice to the Adviser, subject to the usual and customary securities settlement procedures. No fee adjustments will be made for partial withdrawals or for Account appreciation or depreciation within a billing period. A *pro rata* refund of fees charged will be made if the Account is closed within a billing period. Adviser will impose no start-up, closing, or penalty fees in connection with the Account.

**c. Payment Method.** Adviser is authorized to invoice the Custodian directly for its fees, although it will simultaneously send a copy of its bill to Client. While Adviser is responsible for the accurate calculation of the fee, the Client will be responsible for verifying the accuracy of the fee calculation -- the Custodian will not determine whether the fee is calculated properly. Client agrees to instruct Custodian to pay such fees directly to Adviser.

**d. Other Fees and Charges.** Client will be solely responsible for all transaction charges by the broker-dealer and/or Custodian and any charge relating to the custody of securities in the Account.

**8. Minimum Account Size.** Adviser requires a minimum of \$1,500,000 in assets under management for new advisory clients. This minimum account size may be negotiated or waived at the Adviser's sole discretion.

**9. Reports.** As soon as reasonably practicable after the end of each calendar quarter, the Adviser will furnish to the Client a report of the value of the Account as of the close of the preceding calendar quarter.

**10. Valuation.** The Adviser will value securities in the Account that are listed on a national securities exchange or on NASDAQ at the closing price, on the valuation date, on the principal market where the securities are traded. Other securities or investments in the Account will be valued in a manner determined in good faith by the Adviser to reflect fair market value.

**11. Risk Acknowledgment.** The 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 the Adviser may use, or the success of the Adviser's overall management of the Account. The Client understands that investment decisions made for the Account by the Adviser are subject to various market, currency, economic, political and business risks, and that those investment decisions will not always be profitable. The Adviser will provide advice only with respect to the securities, cash and other investments held in the Account and, in making recommendations with respect to the Account, the Adviser will not consider any other securities, cash or other investments owned by the Client. Except as may otherwise be provided by law, the Adviser will not be liable to the Client for (a) any loss that the Client may suffer by reason of any investment decision made or other action taken or omitted in good faith by the Adviser with that degree of care, skill, prudence, and diligence under the circumstances that a prudent person acting in a fiduciary capacity would use; (b) any loss arising from the Adviser's adherence to the Client's written or oral instructions; or (c) any act or failure to act by the Custodian, any broker or dealer

to which the Adviser directs transactions for the Account, or by any other third party. THE FEDERAL AND STATE SECURITIES LAWS IMPOSE LIABILITIES UNDER CERTAIN CIRCUMSTANCES ON PERSONS WHO ACT IN GOOD FAITH, AND THEREFORE NOTHING IN THIS AGREEMENT WILL WAIVE OR LIMIT ANY RIGHTS THAT THE CLIENT MAY HAVE UNDER THOSE LAWS.

**12. Legal Proceedings.** Client agrees that the Adviser will not advise or act for the Client in any legal proceedings, including bankruptcies or class actions, involving securities held or previously held by the Account or the issuers of these securities.

**13. Confidentiality.** All information provided to and action for the benefit of the Client by the Adviser under this Agreement shall be treated as confidential by the Client. The Adviser shall treat all non-public information concerning the affairs of the Client with the same degree of care as the Adviser exercises with respect to the Adviser's own proprietary information.

**14. ERISA.** This Section 15 applies if the Account is for a (a) pension or other employee benefit plan (including a 401(k) plan) governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); (b) tax-qualified retirement plan (including a Keogh plan) under section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and not covered by ERISA; or (c) an individual retirement account ("IRA") under Section 408 of the Code. If the Account is for a plan subject to ERISA, the Client appoints the Adviser, and the Adviser acknowledges that it is a "fiduciary" within the meaning of Section 3(21) of ERISA and Section 4975(e)(3) of the Code. The Adviser represents that it is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act") or under the laws of any State. The Client represents that the Adviser has been furnished true and complete copies of all documents establishing and governing the plan and evidencing the Client's authority to retain the Adviser. The Client will furnish promptly to the Adviser any amendments to the plan, and the Client agrees that, if any amendment affects the rights or obligations of the Adviser, such amendment will be binding on the Adviser only when agreed to by the Adviser in writing. If the Account contains only a part of the assets of the plan, Client understands that the Adviser will have no responsibility for the diversification of all of the plan's investments, and that Adviser will have no duty, responsibility or liability for the Client assets that are not in the Account. If ERISA or other applicable law requires bonding with respect to the assets in the Account, the Client will obtain and maintain at its expense bonding that satisfies this requirement and covers the Adviser.

**15. Voting Rights.** Unless otherwise specified in writing, the Adviser shall not be required to take any action, nor render any advice, with respect to the voting of proxies.

**16. Non-Exclusive Relationship.** The Client acknowledges and agrees that the Adviser may act as an investment adviser to other clients and receive fees for such services. The advice given and the actions taken with respect to such clients and the Adviser's own account

may differ from advice given or the timing and nature of action taken with respect to the Account. The Client further recognizes that transactions in a specific security may not be accomplished for all clients' accounts at the same time or at the same price. The Client also acknowledges that in managing the Account, the Adviser may purchase or sell securities in which the Adviser or the Adviser's family, directly or indirectly, have or may acquire a position or interest. Conflicts of interest may arise in the allocation of investment opportunities among accounts that the Adviser advises. The Adviser will seek to allocate investment opportunities believed appropriate for the Account and other accounts advised by the Adviser among such accounts equitably and in a manner consistent with the best interests of all accounts involved but, there can be no assurance that a particular investment opportunity that comes to the attention of the Adviser will be allocated in any particular manner. The Adviser may obtain material, nonpublic or other confidential information that, if disclosed, might affect an investor's decision to buy, sell or hold a security. Under applicable law, the Adviser cannot improperly disclose or use this information for their personal benefit or for the benefit of any person, including clients of the Adviser. If the Adviser obtains nonpublic or other confidential information about any issuer, the Adviser will have no obligation to disclose the information to Client or use it for Client's benefit.

**17. Notices.** All notices, instructions and advice with respect to security transactions, or any other matters contemplated by this Agreement, shall be deemed duly given if transmitted by first-class mail or hand delivered, with written acknowledgment of such hand delivery by the Adviser or the Client, to the Adviser at the Adviser's address appearing below, and to the Client at the Client's address appearing below, and to the Custodian at such address as it may specify to the Adviser in writing, or at such address or addresses as shall be specified, in each case, in a notice similarly given.

**18. Binding Effect of Agreement.** This Agreement will bind and be for the benefit of the parties to the Agreement and their successors and permitted assigns, except that this Agreement may not be assigned (within the meaning of the Advisers Act or applicable state securities law) by either party without the consent of the other party to and their respective personal representatives, successors and assigns.

**19. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Connecticut without giving effect to any conflict or choice of law provisions of that State, provided that nothing in this Agreement will be construed in any manner inconsistent with the Connecticut Uniform Securities Act, the Advisers Act, any rule or order of the State of Connecticut under the Connecticut Uniform Securities Act, the U.S. Securities and Exchange Commission under Advisers Act and, if applicable to the Account, ERISA and any rule or order of the Department of Labor under ERISA.

**20. Form ADV.** Client has received and reviewed a copy of Part 2A of Adviser's Form ADV, as well as a copy of this Agreement. The Client has the right to terminate this agreement without penalty within five business days after entering into the agreement.

**21. Client to Provide Certain Information.** Client is responsible for notifying the Adviser of the names of subsidiaries, affiliates and other entities in which investment by the Account may be restricted or prohibited. Unless the Adviser has been so notified in writing, it shall be conclusively presumed by the Adviser that no such relationships exist.

**22. Client Authority.** If the Client is a corporation, partnership or limited liability company, the person signing this Agreement for the Client represents that he or she has been authorized to do so by appropriate action. If this Agreement is entered into by a trustee or other fiduciary, the trustee or fiduciary represents that the Adviser's investment management strategies, allocation procedures, and investment advisory services are authorized under the applicable plan, trust, or law and that the person signing this Agreement has the authority to negotiate and enter into this Agreement. The Client will inform the Adviser of any event that might affect this authority or the propriety of this Agreement.

**23. Consent to Email Communication.** The Client acknowledges that the Client can effectively access information transmitted electronically and hereby consents to the Adviser transmitting required reports, privacy notices, disclosure documents and other communications via email.

**24. Entire Agreement.** This Agreement, together with the Exhibits referenced herein, sets forth the entire agreement between the parties and may not be amended, modified, or altered except by written agreement signed by both the Client and the Adviser.

**25. Agreement to Mediate Disputes.** In the event that any dispute arises between the parties in relation to this Agreement, or out of this Agreement, and the dispute is not resolved by negotiation, the parties agree to submit the dispute to mediation. The parties further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute. Any party to the dispute may give written notice to the other party of his or her desire to commence mediation, and a mediation session must take place within thirty (30) days after the date that such notice is given. The parties must jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator within seven (7) days after a party has given notice of a desire to mediate the dispute, any party may apply to an organization or person agreed to by the parties in writing, for appointment of a mediator. The parties further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

**[Signature Page to Follow]**



**Schedule A**

**ACCOUNTS**

The assets to be managed under this Agreement will be held in the following custodial account(s) established by you with Charles Schwab & Co.:


**Schedule B**

**INVESTMENT RESTRICTIONS AND GUIDELINES**

The investment restrictions and guidelines to be followed by **GOLDBERG CAPITAL MANAGEMENT** in managing your account are set forth below. (Please describe investment restrictions and guidelines below or attach a separate statement.)

Client's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Client's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Adviser's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Leonard L. Goldberg

**Schedule C**  
**FEE SCHEDULE**

<u>Assets Under Management</u>	<u>Annual Fee</u>
First \$2 Million	1.15%
Next \$1 Million	1.00%
Excess Over \$3 Million	.90%