**DISCLAIMER:** *This sample of a family constitution is intended to be a resource. It does not constitute and should not be treated as legal or tax advice from Meridian Associates, an affiliate, or the cited resource. You should consult with your own legal advisor before using any of this sample language or implementing a family constitution.*

SAMPLE FAMILY CONSTITUTION

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Family Constitution.

WHEREAS, each of the parties hereto acknowledges that [name of patriarch], who died on , was the benefactor of the family wealth through his lifelong hard work and success and, as such, also acknowledges that his views and philosophy with respect to the management of the family wealth shall continue to serve as the guiding principles for the investment, consumption and management thereof; and

WHEREAS, [the patriarch] believed that the benefits to be gained by each family member from realizing his or her full potential through self-accomplishment far outweigh the benefits of financial support from the family wealth; an

WHEREAS, [the patriarch] also believed that the initiative, industry and ambition of a person easily could be impaired if not prodded by financial necessity; and

WHEREAS, the parties hereto subscribe to such beliefs and, accordingly, each wishes to avoid the use of the family wealth in a manner that might impair the desire of a family member to become a self-sufficient, productive member of society; and

WHEREAS, each of the parties hereto wishes to preserve a sense of family identity among the respective families of [the patriarch’s] three surviving children, in order to provide a framework for the joint investment and management of the family wealth, and to impose certain limitations on the personal consumption and philanthropic or other uses of the family wealth; and

WHEREAS, in order to accomplish the foregoing objectives, each of the parties hereto desires to commit to the others to act in accordance with the provisions of this Constitution and the Family By-laws (hereinafter, as amended and restated from time to time, the “By-Laws”) promulgated pursuant hereto; and

WHEREAS, each of the parties hereto also desires to commit not to contest in a court proceeding or otherwise any action or omission taken or not taken in good faith by any fiduciary; whether acting as a trustee, investment adviser, general partner, director, officer, manager, business advisor or otherwise, with respect to any family trust, partnership, corporation, limited liability company, foundation or other entity, as the case may be, if such action or omission is taken or not taken in accordance with the provisions of this Constitution and the By-laws, and further desires to discharge, release and hold harmless any such fiduciary from and against any and all liability for any such action or omission; and

WHEREAS, each of the parties hereto, nonetheless, does not intend the provisions of this Constitution or the By-laws to limit in any way the authority or discretion granted to any such fiduciary pursuant to the provisions of the governing instrument of any such family trust, partnership, corporation, limited liability company, foundation or other entity, to make independent decisions regarding the investment, management or distribution of the assets thereof or any other matter thereunder.

NOW, THEREFORE, each of the parties hereto agrees that the following provisions shall apply with respect to the investment and management, personal consumption and philanthropic or other uses of the family wealth:

Section 1. Governance.

The Family Advisory Board, as described in Section 2 hereof, shall make all policies and guidelines regarding the investment and management, personal consumption and philanthropic or other uses of the family wealth. Specifically, subject to the further provisions of his Constitution, the Family Advisory Board shall adopt By-laws setting forth the following:

(a) The general principles by which the Family Advisory Board will be governed in establishing its policies and guidelines.

(b) The recommended policies and guidelines of the Family Advisory Board regarding the investment and management of the family wealth, including its recommendations with respect to the development and adoption of investment plans and strategies, the retention of outside investment professionals to assist in the development of such investment plans and strategies, and the periodic review thereof.

(c) The recommended policies and guidelines of the Family Advisory Board regarding the personal consumption of the family wealth, including its recommendations regarding the purposes and levels of such consumption and the periodic review thereof.

(d) The recommended policies and guidelines of the Family Advisory Board regarding the use of the family wealth for philanthropic purposes, including recommendations regarding the philanthropic purposes to which such wealth should be put and the levels of philanthropic support that are appropriate, and the periodic review thereof.

Section 2. Family Advisory Board.

(a) Composition of Members. The Family Advisory Board shall have three (3) voting members: the Executive Member, the Standing Member and the Family Representative, as follows:

EXECUTIVE MEMBER. The Executive Member shall be a person having at least ten (10) years of experience in management consulting, law, accounting, and/or commercial or investment banking, or three (3) years of experience as a senior executive of a business with annual gross revenues in excess of Fifty Million Dollars ($50,000,000). The Executive Member shall have one (1) vote on matters coming before the Family Advisory Board. currently is serving as the Executive Member.

STANDING MEMBER. The Standing Member shall be a practicing attorney having at least ten (10) years of experience counseling wealthy individuals and families with respect to estate and tax planning and trust administration matters.

The Standing Member shall have one (1) vote on matters coming before the Family Advisory Board. currently is serving as the Standing Member, Family Representative. The three Family Line Representatives (as defined in Section 2(b) below) shall serve jointly as the Family Representative, and in such capacity, they collectively shall have one (1) vote on matters coming before the Family Advisory Board, which vote shall be cast based on the wishes of a majority of them (or all thereof if there shall be less than three Family Line Representatives then acting). Absent written notice to the contrary delivered to the Family Advisory Board by a Family Line Representative who is a child of [the patriarch], the spouse of such Family Line Representative may vote on his or her behalf in the event he or she is unable to attend a meeting.

(B) FAMILY LINE REPRESENTATIVES. Each of the families of [the children of the patriarch] shall be represented by a Family Line Representative, and the current Family Line Representatives shall be [each living child of the patriarch]. If any of such persons dies, resigns or becomes incapacitated, unless he or she has directed to the contrary in a written instrument signed by him or her and filed with the Family Advisory Board, his or her spouse shall serve as his or her successor Family Line Representative until such spouse dies, resigns or becomes incapacitated. In the event a child of [the patriarch] has directed that his or her spouse shall not serve as his or her successor, or in the event of the death, resignation or incapacity of such spouse while serving as Family Line

Representative, then a majority of the descendants of such child who then have attained twenty-one (21) years of age shall appoint as successor Family Line Representative a descendant of such child who either has (i) attained twenty-one (21) years of age and has graduated from an accredited four-year college with a bachelor’s degree; or (ii) despite his or her lack of one or both of the above qualifications, has established to the satisfaction of the Family Advisory Board that he or she has demonstrated significant maturity and judgment that indicates he or she would perform responsibly in representing the members of his or her family line.

Any descendant appointed as a Family Line Representative shall serve consecutive one-year terms in such capacity until such descendant dies, resigns or becomes incapacitated, or another descendant of the same family line who then has attained twenty-one (21) years of age requests a vote regarding such appointment, which request shall be made in writing and delivered to the Family Advisory Board at least thirty (30) days prior to the end of the then current one-year term. In the event of such a request, a majority of the descendants of such family line who then have attained twenty-one (21) years of age shall either confirm the re-appointment of the descendant currently serving as Family Line Representative or appoint a new Family Line Representative who meets the qualifications of clauses (i) or (ii) above.

(C) NONVOTING MEMBER. The Family Advisory Board shall have one (1) nonvoting member known, as the Special Member, who shall perform only those functions that are hereinafter specifically described in this Constitution and the By-laws. currently is serving as the Special Member.

(D) MANNER OF VOTING. All decisions and actions to be taken by the Family Advisory Board shall be decided by a majority of its voting members.

Section 3. Tenure / Removal / Appointment Provisions.

(A) TENURE. Except as otherwise specifically provided in Section 2(b) above, a person serving as the Executive Member, the Standing Member, the Special Member or as a Family Line Representative shall serve in such capacity until his or her death, resignation, incapacity (as hereinafter defined) or removal.

(B) RESIGNATION. A person serving as the Executive Member, the Standing Member, the Special Member or as a Family Line Representative may resign at any time and for any reason by giving written notice thereof, specifying the effective date of his or her resignation, to each of the other then acting members of the Family Advisory Board.

(C) INCAPACIT Y. As used herein, a person shall be considered “incapacitated” if, because of mental illness or deterioration, developmental disability or physical incapacity, he or she is not fully able to manage his or her personal or financial affairs. A determination that a member of the Family Advisory Board is incapacitated shall be made by such physician or physicians as shall be designated by such member at any time and from time to time (or in the absence of such designation, then by the physician or physicians then attending to such member) by written instrument delivered to the other then acting members of the Family Advisory Board.

(D) REMOVAL OF EXECUTIVE MEMBER. The Executive Member may be removed by vote of both (i) the Standing Member and (ii) the Family Representative, if it is determined that reasonable cause exists for removal. Upon removal of the Executive Member, a successor Executive Member shall be appointed in accordance with the provisions of Section 3(h) hereof and, until such time as a successor is appointed, the Special Member shall serve on an interim basis in such capacity in accordance with the provisions of Section 3(g) hereof.

(E) REMOVAL OF STANDING MEMBER. The Standing Member may be removed by vote of both (i) the Executive Member and (ii) the Family Representative, if it is determined that reasonable cause exists for removal. Upon removal of the Standing Member, a successor Standing Member shall be appointed in accordance with the provisions of Section 3(h) hereof and, until such time as a successor is appointed, the Special Member shall serve on an interim basis in such capacity in accordance with the provisions of Section 3(g) hereof.

(F) REMOVAL OF SPECIAL MEMBER. The Special Member may be removed by majority vote of the voting members of the Family Advisory Board, if it is determined that reasonable cause exists for removal. Upon removal of the Special Member, a successor Special Member shall be appointed in accordance with the provisions of Section 3(h) hereof.

(G) INTERIM SUCCESSOR EXECUTIVE MEMBER OR STANDING MEMBER. Upon the death, resignation, incapacity or removal of the then acting Executive Member or Standing Member, the Special Member shall serve on an interim basis in such capacity until such time as a successor Executive Member or Standing Member, as the case may be, is appointed pursuant to Section 3(h) below.

(H) APPOINTMENT OF SUCCESSOR EXECUTIVE MEMBER, STANDING MEMBER OR SPECIAL MEMBER. Upon the death, resignation, incapacity or removal of the then acting Executive Member, Standing Member or Special Member, a majority of the then acting voting members of the Family Advisory Board (which shall include the Special Member in his or her capacity as interim successor Executive Member or Standing Member, as applicable) shall appoint a successor Executive Member, Standing Member or Special Member, as the case may be.

Section 4. Meetings.

(A) FAMILY ADVISORY BOARD. The Family Advisory Board shall meet at least once each year to review the financial and operating results for the prior year as well as strategic plans and investment policies for the next calendar year. In addition, a special meeting of the Family Advisory Board may be called at any time by any voting member of the Family Advisory Board. Written notice of each meeting of the Family Advisory Board must be given to each member thereof at least three (3) days in advance of such meeting, unless such notice is waived in writing by such member. Unless a Family Line Representative directs to the contrary in a written instrument signed by him or her and filed with the Family Advisory Board, the spouse of the child of [the patriarch] whose family is represented by such Family Line Representative, and all of such child’s descendants who then have attained twenty-one (21) years of age shall be entitled to attend all meetings of the Family Advisory Board. In addition, other persons may attend a meeting of the Family Advisory Board as invited guests if the Family Advisory Board determines that their presence will serve a useful purpose. Meetings of the Family Advisory Board may be attended either in person or by telephone.

(B) ACTION WITHOUT A MEETING. The Family Advisory Board at any time may take any action required or permitted to be taken under this Constitution without holding a meeting if an instrument setting forth the action to be taken is signed by a majority of the voting members of the Family Advisory Board. Any instrument executed pursuant to this subparagraph shall specify the date from which it is to be effective.

Section 5. Dissemination of Information. Upon request, the Executive Member shall provide to each member of the Family Advisory Board copies of all relevant reports, correspondence and other documents that are available to him relating to the investment and management, personal consumption, and philanthropic or other uses of the family wealth. Notwithstanding the foregoing provisions of this Section, however, the Executive Member may classify certain reports, correspondence or other documents as privileged and, as such, not subject to the foregoing dissemination requirement.

Section 6. Releases.

Each of the parties hereto, individually and, if applicable, as lawful guardian of his or her minor children, hereby (i) commits not to contest in a court proceeding or otherwise any action or omission taken or not taken in good faith by any fiduciary, whether acting as a trustee, investment adviser, general partner, director, officer, manager, business advisor or otherwise, with respect to any family trust, partnership, corporation, limited liability company, foundation or other entity, as the case may be, if such action or omission is taken or not taken in accordance with the provisions of this Constitution and the By-laws, and (ii) discharges, releases and holds harmless any such fiduciary from and against any and all liability, causes of action in law and/or equity, claims, suits, obligations, promises, demands, damages or losses of any kind whatsoever, whether known or unknown, fixed or contingent, arising directly or indirectly by reason of any such action or omission. Each of the parties hereto also acknowledges that the provisions of this Constitution and the By-laws shall not limit in any way the authority and/or discretion granted to any fiduciary pursuant to the provisions of the governing instrument of any family trust, partnership, corporation, limited liability company, foundation or other entity, to make independent decisions regarding the investment, management or distribution of the assets thereof or any other matter thereunder.

Section 7.

Amendments. The Family Advisory Board may take any action it deems appropriate with respect to the subject matter of this Constitution, including amending this Constitution or the By-laws, with the written consent of a majority of its then acting voting members.

Section 8.

Acknowledgment and Agreement. Upon amending this Constitution or the By-laws, the voting members of the Family Advisory Board shall provide two (2) copies of such amendment to the Special Member and each family member who then has attained, or who thereafter attains, eighteen (18) years of age, each of whom shall acknowledge his or her receipt of such amendment and agreement to the provisions thereof by signing and returning one (1) copy of such amendment to the Family Advisory Board. The failure of the Special Member or any family member to sign and return such amendment, however, shall not render such amendment ineffective.

Section 9. Counterparts.

This instrument may be executed in one or more counterparts, each deemed to be an original for all purposes, and shall together constitute one and the same instrument.IN WITNESS WHEREOF, the undersigned hereby set their hands as of [INSERT DATE].

[Signatures]

# Works Cited

Morgan Stanley Smith Barney LLC. (2017). *Family Constitutionand Family By-laws.* Retrieved from Morgan Stanley: https://advisor.morganstanley.com/michelle.ward/documents/field/w/wa/ward-sofia-michelle/Family\_Constitution\_and\_Family\_By\_Laws.pdf