

**EXHIBIT E**

**LAST WILL AND TESTAMENT OF  
THEA C. SPYER**

I, **THEA C. SPYER**, of New York, New York, declare this to be my last will and testament and hereby revoke all wills and codicils heretofore made by me.

**FIRST:** A) I appoint my dear friend, **EDITH S. WINDSOR** (herein called Edie), or if she shall fail or cease to serve, my friends, **ELLEN BIALO** and **KAREN SAUVIGNE**, as executors of this will, and I appoint my said friends as trustees of any trust created hereunder. If either of these friends shall fail or cease to serve as trustees, I appoint my friend, **ROCHELLE NUDELL**, as successor trustee.

B) To the full extent that I can effectively do so, I relieve each individual serving in any fiduciary capacity under this will from any obligation, in any jurisdiction, to furnish any bond or other security, to file and inventory, to render any annual or other periodic accountings or to obtain the approval of any court before applying.

C) At any time the trustee or trustees of any trust hereunder may appoint any individual as an additional or successor trustee of such trust; provided that there shall not at any time be more than three individuals in office as trustees of any trust hereunder.

**SECOND:** I anticipate that at the time of my death the property that I shall own or in which I shall be beneficially interested will be non-probate property and that it will be unlikely that there will be any need to offer this will for probate. Most of my property will be held in trust under an agreement dated October 27, 1999 as amended December 8, 1999 and September 7, 2004, between me, as settlor, and me and Edith S. Windsor, as trustees (my Trust Agreement), and property will not be available in my estate to provide for the satisfaction of my funeral expenses, debts, the expenses of administering my estate and estate, inheritance and succession taxes which shall be payable by reason of my death (my Estate Charges).

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I, Barbara A. [Signature] A MEMBER OF  
THE BAR OF THE STATE OF NEW YORK  
CERTIFY THAT THIS IS A TRUE COPY OF THE  
ORIGINAL THEREOF. [Signature]

Accordingly, I direct that all my Estate Charges shall be paid by the trustees under my Trust Agreement in accordance with the terms of my Trust Agreement. If the trusts under my Trust Agreement shall have been revoked prior to my death, my Estate Charges shall be paid by my executor as an expense of administering my estate without apportionment against any legatee.

**THIRD:** If the trusts under my Trust Agreement shall be in existence at my death, I bequeath, devise and appoint all the property which I shall own at the time of my death and which shall be subject to disposition under my will to the trustees under my Trust Agreement to be dealt with by them as part of the trust estate thereunder.

**FOURTH:** If the trusts under my Trust Agreement shall have been revoked prior to my death, my Residuary Estate shall be dealt with on my death as provided in the following Articles of this will and I bequeath, devise and appoint it accordingly.

**FIFTH:** A) If Edie shall survive me, my Residuary Estate shall be distributed to the trustees of the ESW Revocable Trust under an agreement dated October, 27, 1999 as amended September 7, 2004, or, if such trust shall not then be in existence, to Edie outright.

B) If Edie shall not survive me, my executrix shall, in her absolute discretion, sell any items of tangible personal property owned by me at my death and add the proceeds of sale to my estate or donate any items of such property to charity or abandon any such items they deem of little value.

**SIXTH:** If Edie shall not survive me, the sum of One Hundred Thousand Dollars (\$100,000.00) shall be distributed to each of the following friends of mine as follows:

- 1) To **DICK SPYER** and **HELEN SPYER**, in equal shares if both of them shall survive me, or all to the survivor of them if only one of them shall survive me, or to

their daughters, **PATSY SPYER** and **GINNY SPYER** in equal shares if neither Dick nor Helen shall survive me.

- 2) To **ELLEN BIALO** and **JEANNETTE DOWNS** in equal shares if both of them shall survive me, or all to the survivor of them if only one of them shall survive me;
- 3) To **DEBORAH BUXBAUM** and **ROCHELLE NUDELL**, in equal shares if both of them shall survive me, or all to the survivor of them if only one of them shall survive me;
- 4) To **KAREN SAUVIGNE** and **MARTHA STARK**, in equal shares if both of them shall survive me, or all to the survivor of them if only one of them shall survive me.

**SEVENTH:** If Edie shall not survive me, the sum of Fifty Thousand Dollars (\$50,000.00) shall be distributed to each of the following friends of mine as follows:

- 1) To **SUNNIE FREEMAN** if she shall survive me, or to her children, in equal subshares per stirpes;
- 2) To **AMANDA BETH RIEDER** if she shall survive me, or if she shall not survive me to her children in equal subshares per stirpes.
- 3) To **PATSY SPYER** if she shall survive me, or if she shall not survive me to her heirs in equal subshares.
- 4) To **GINNY SPYER** if she shall survive me, or if she shall not survive me to her children in equal subshares.
- 5) To **BENJAMIN FREEMAN** if he shall survive me.
- 6) To **MAYA FREEMAN** if she shall survive me.

**EIGHTH:** If Edie shall not survive me, the sum of Twenty-Five Thousand Dollars (\$25,000.00) shall be distributed to each of the following friends of mine as follows:

- 1) To **DALIA ZELMANOVICH** and **JUDITH WINKLER**, in equal shares if both of them shall survive me, or all to the survivor of them if only one of them shall survive me.
- 2) To **ORITE MARGOLITE** and **ILANA GREIR**, in equal shares if both of them shall survive me, or all to the survivor of them if only one of them shall survive me;
- 3) To **VIRGINIA MOROWEK**, if she shall survive me;
- 4) To **BEATRICE LAUREL**, if she shall survive me;
- 5) To **DONNA COUSINEAU**, if she shall survive me;

**NINTH:** If Edie shall not survive me, the sum of Ten Thousand Dollars (\$10,000.00) shall be distributed to each of the following friends of mine as follows:

- 1) To **AGNES MASIEH**, if she shall survive me;
- 2) To **MARY SHEA**, if she shall survive me;
- 3) To **SUZANNE SHAIR**, if she shall survive me;
- 4) To **JEFFREY SILVERMAN**, if he shall survive me;
- 5) To **BOB LAWRENCE** and **KATHY LAWRENCE**, or if they shall have both predeceased me to their children, **SHARON** and **MICHAEL** in equal subparts if they shall survive me.

**TENTH:** If Edie shall not survive me, my Residuary Estate remaining after the foregoing distributions (Hereinafter referred to as the "trust fund") shall be held by my trustees in trust exclusively for charitable, scientific and educational purposes set forth in, and in accordance with, the provisions of Sections 501© (3) and 2055 of the Internal Revenue Code of 1986, as amended (the "Code").

1) My trustees shall invest and reinvest the trust fund as the principal of a trust, to be named the **EDIE WINDSOR AND THEA SPYER FOUNDATION**. My trustees shall collect the income therefrom and, until the termination of such trust, shall distribute from time to time during each year so much of the principal and income of the trust, including all, as my trustees, in their absolute discretion, shall determine, provided that my trustees shall distribute the income of the trust for each taxable year in such manner as not to subject the trust to tax under Section 4942 of the Code. Any income not so distributed shall be added to the principal of such trust.

2) My trustees shall make the distributions provided for in paragraph (1) of this Article Tenth solely to such one or more "Qualified Charities" selected by my trustees in their discretion. It is my desire that distributions be made to lesbian-oriented and supportive charitable organizations. Such organizations should include but are not limited to Sage, Lambda Legal Defense, National Gay & Lesbian Task Force, New York City GLBT Community Center, Open Meadows, In The Life, Lesbian Herstory Archives and other "Qualified Charities" that may be established in the future.

3) My trustees are authorized to terminate the trust hereunder at any time without further accountability to anyone, provided that the then remaining principal of such trust and any undistributed income shall be distributed to such one or more "Qualified Charities" which agree to establish a permanent endowment to be called "The Edie Windsor & Thea Spyer Marriage Fund", and in such shares, as my trustees in their absolute discretion select. Without imposing any legal obligation on them, I suggest that such organizations be lesbian-oriented and supportive and that my trustees terminate the trust at any time when the trust fund shall have a value of less than \$250,000.

4) The trust hereunder is intended to qualify as a charitable trust which is exempt from

taxation under Section 501 © (3) of the Code. Notwithstanding any other provisions of this will, my trustees are subject to the following administrative provisions:

5) My trustees may amend the trust in any way that from time to time may be necessary or desirable, but not in any way that would cause the income therefrom to cease to be exempt from federal and state income taxation, and may amend it in any way that may be required in order to obtain a ruling that the trust is an exempt organization under Section 501 © (3) of the Code (or any similar provision) from the date of its inception. Any such amendment shall be by an instrument in writing signed by my trustees.

6) My trustees may form a corporation in any jurisdiction which is an exempt organization under Section 501 © (3) of the Code (or any similar provision) and distribute all or part of the assets of the trust to such corporation.

7) As used herein, a "Qualified Charity" shall be a corporation, trust or community chest, fund or foundation which at the time of distribution is an organization described in and organized and operated exclusively for the purposes described in Section 501© (3) and 2055 of the Code, a bequest to which would be deductible under Section 2055 of the Code if made by the will of a citizen or resident of the United States.

**ELEVENTH:** If any beneficiary under this Will other than Edie shall die simultaneously with me or in such circumstances as to render it impossible to determine who predeceased the other, I direct that I shall be deemed to have survived such beneficiary and that the provisions of this Will shall be construed upon that assumption.

**TWELFTH:** A) In addition to, and without in any way limiting, any powers or authority which my executrix would have in the absence of this Article, my executrix is hereby

authorized, subject to the provisions of Article TENTH hereof, from time to time and in her absolute discretion, and until distribution of all funds held by her:

- 1) to retain, and invest and reinvest in any property, including real property located in the United States or in any foreign country, stocks of any class, secured or unsecured obligations, certificates of deposit, interests in investment trusts, discretionary common trust funds and mutual funds, all without regard to diversification and without regard for any law prescribing or limiting the investment powers of fiduciaries;
- 2) to sell, at public or private sale and for cash or on credit, with or without security, to exchange, to grant options upon, or to abandon or otherwise dispose of, any property upon such terms as my executor shall deem advisable;
- 3) to manage any real property as if the absolute owner thereof, including but not by way of limitation, the power to lease, or grant options to lease, such property for any term or terms, without regard for any limitation imposed by law or for the probable duration of the administration of the trust hereunder, without application to any court, and to enter into any covenants or agreements relating to the property so leased or any improvements which may then or thereafter be erected thereon;
- 4) to borrow money from any person (including any individual serving in a fiduciary capacity hereunder) for the purpose of buying securities on margin and for such other purposes, as my executor, in my executor's absolute discretion deems desirable, and to execute promissory notes or other obligations for amount so borrowed and to secure the payment of such amounts by a security interest in or mortgage or pledge of any property, upon such terms and conditions as my executor may determine;
- 5) to settle or compromise any claim in favor of or against the fund held hereunder;



- 6) to vote in person or by proxy, or to refrain from voting, in respect of any securities, and to enter into any voting trust or similar agreement;
- 7) with respect to any securities, to consent, or object to any action or non-action of any corporation, or of the directors, officers or stockholders of any corporation; and to deposit any securities under any reorganization or other agreement or with any committee, depositary, agent or trustee, and to pay fees, assessments and expenses relative thereto;
- 8) to enter into a partnership as a limited partner for the purpose of investing or carrying on any trade or business;
- 9) to employ legal counsel, accountants, investment advisers, brokers and other agents or employees, and to pay to them reasonable compensation and to delegate discretion to any investment adviser;
- 10) to register securities in the name of any nominee, with or without indication of the capacity in which the securities shall be held, or to hold securities in bearer form;
- 11) to make any payment, division or distribution in kind or in money or partly in each, and in any case in which division or partition of such property into shares or parts is required, to allot specific securities or other property, or an undivided interest therein, to any share or part;
- 12) to pay any amount of income or principal which under the provisions of this will could be paid or distributed to any individual under the age of 18 years (a) to such individual notwithstanding his minority, (b) to any person acting in any jurisdiction as guardian of the person or property of such individual, (c) to any person acting in any jurisdiction as custodian for such individual under the Uniform Gifts to Minors Act or any similar statute or (d) to any adult with whom such individual shall reside, in any case without requiring the recipient to

qualify in any jurisdiction as donee of a power in trust or in any capacity or to post any bond or other security;

13) to apply for the benefit of any individual any amount, whether of income or of principal, which under any provisions of this will could be paid directly to him; and

14) generally to exercise in respect of any property any power which an absolute owner of such property would have.

(B) In addition to, and without any way limiting, any powers or authority which my trustees would have in the absence of this Article, I authorize my trustees in respect of any funds held under this will from time to time and in absolute discretion of my trustees, to exercise all the powers, including discretionary powers, which are granted by Subdivision (A) of this Article in respect of my estate; and my trustees may exercise such powers after the principal of any fund shall have become distributable and the entire net income therefrom and principal thereof shall be distributed.

IN WITNESS WHEREOF, I have subscribed this will under my seal this

7<sup>th</sup> day of September, 2004.

Thea C. Spyer [L.S.]

THEA C SPYER

SIGNED, SEALED, SUBSCRIBED and DECLARED by THEA C. SPYER to be her last will and testament and we at her request and in her presence and in the presence of each other have signed our names as witnesses below.

Albra Lobel residing at Redacted  
East Hampton NY 11937

Bonny Dash residing at Redacted  
East Hampton, NY 11937

STATE OF NEW YORK)  
COUNTY OF SUFFOLK) SS:

Each of the undersigned, individually and severally being sworn, deposes and says that:  
The within will was subscribed in our presence and sight at the end thereof by THEA C. SPYER the within named Testatrix, on the 7<sup>th</sup> day of September, 2004 at East Hampton, New York. Said will was executed under the supervision of Debra Lobel, an attorney at law duly admitted to practice in the State of New York.

Said Testatrix at the time of making such subscription declared the instrument so subscribed to be her Last Will and Testament.

Each of the undersigned thereupon signed her name as a witness at the end of said Will at the request of said Testatrix and in her presence and sight and in the presence and sight of each other.

Said Testatrix was, at the time of so executing said Will, more than eighteen (18) years of age, 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 Testatrix, 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 Testatrix at such time and make this affidavit at her 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 signature of said Testatrix and the undersigned.

Debra Lobel

Beverly Dast

Sworn to before me this 7<sup>th</sup> day of September, 2004

Arlene Hallock

Notary Public

ARLENE HALLOCK  
Notary Public, State of New York  
No. 4881528  
Qualified in Suffolk County  
Commission Expires Dec 22, 2006