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PET
THE RUSHFORTH FIRM, LTD.
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DISTRICT COURT

CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972,

A non-testamentary trust.

Case No. P-09-066425-T
Department XXVI, RJC

PETITION FOR CONSTRUCTION AND EFFECT OF PROBATE COURT ORDER

Date of Hearing:
Time of Hearing: 9 A.M.

JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby respectfully seeks this Court's determination as to the construction and effect of the Probate Court Order titled "Order Assuming Jurisdiction Over Trust; Confirm Trustee; and For Construction of and Reform of Trust Instrument", which was signed on September 4,

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Docket 66231 Document 2015-35650

2009 by the Honorable T. Arthur Ritchie, Jr., relating to the "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972 (the "Trust"). Jacqueline respectfully declares as follows:

A. Background Facts

A.1 ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, in her capacity as the trustee of the Trust, by and through her counsel of Mark A. Solomon, Esq. of the law firm of Solomon Dwiggins & Freer, Ltd., filed her "Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust" ("Petition") on August 17, 2009. A copy of the Petition is attached hereto as Exhibit "A" and is hereby incorporated by this reference.

A.2 As noted above, an order titled "Order Assuming Jurisdiction Over Trust; Confirm Trustee; and For Construction of and Reform of Trust Instrument" ("Order") was signed on September 4, 2009 by the Honorable T. Arthur Ritchie, Jr. A copy of the Order is attached hereto as Exhibit "B" and is hereby incorporated by this reference.

A.3 The Petition was granted without any oral argument or further presentation as it was placed on the "approved list" in accordance with EDCR 4.14.

A.4 The Order reflects that the requested relief in the "Prayer" section (although there was not a heading titled "Prayer") of the Petition was granted in its entirety.

B. Request for Confirmation of Construction and Effect of Petition

B.1 Paragraph 37 of the Petition explains the limited and specific purpose for the Petition and states as follows:

> *The reformation of the Trust, pursuant to this Petition, will not change the substantive rights of the Petitioner during her lifetime. The sole purposes of the reformation are: (1) to clarify the dispositive provisions of Trust No.*

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2 after the death of the Petitioner; and (2) to forestall the requirement of petitioning the Court upon the death of the Petitioner to determine the successor Trustee.

B.2 The effective "Prayer" of the Petition requests an order in line with the specified purpose of the Petition as stated in paragraph 37. The Prayer makes no request for a determination that Ms. Ahern is entitled to 100% of all income received by the Trust. As expressly declared in paragraph 37, the Petition was not intended to change the substantive rights of the Petitioner, Ms. Ahern. The Prayer begins on page 13 of the Petition and concludes on page 18 of the Petition, and states as follows:

> ***WHEREFORE**, Petitioner requests that this Petition be set for hearing, and that after hearing the matters of this Petition, this Court find that notice of the time and place of such hearing has been given in the manner required by law, and that this Court make and enter its Orders and Decrees pursuant to NRS 153.031 (e) and (n), 164.010 and 164.015:*
>
> *1. That this Court assume jurisdiction over THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, as a proceeding in rem;*
>
> *2. That ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN be confirmed as the Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, with the exception of any trust in which the assets of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 were appointed by MARJORIE T. CONNELL;*
>
> *3. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to provide that it was the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No. 2 created thereunder to ELEANOR C. AHERN's heirs upon her death; and (2) that the Trust is to be reformed in accordance with such intent;*
>
> *4. That this Court order the Trust to be reformed to add new Sections "E," "F," "G," and "H" to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, as follows:*
>
> *E. <u>Distribution Upon Death of both the Survivor and the Residual</u>*

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Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance of Trust No. 2 into two equal shares, as follows:

1. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said equal share shall be distributed to JACQUELINE M. MONTOYA's then living issue, by right of representation. Each share created pursuant to this Section E(1) of Article Fourth for the benefit of the issue of JACQUELINE M. MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

2. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal share shall be distributed to KATHRYN A. BOUVIER's then living issue, by right of representation. Each share created pursuant to this Section E(2) of Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

3. In the event that both JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having failed to exercise the testamentary power of appointment pursuant to Section (F) below, then the balance shall be distributed in accordance with Article Eleventh herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's equal share to or in trust for such one or more persons or organizations and in such manner and proportions as such beneficiary may appoint by her will or revocable trust making specific reference to this general power of appointment.

G. Management of Beneficiary's Shares. Until a Beneficiary has attained the age of twenty-one (21) years, the Trustee may distribute to or apply for the benefit of such Beneficiary so much of the income or principal from such Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion, is necessary to provide for his or her health, education, maintenance, and support. In addition, the Trustee may make the following discretionary distributions:

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1. Investment in Business. The Trustee may, in the Trustee's sole discretion, apply the principal or income of such Beneficiary's Share for the purpose of investing in a business or profession operated by, or to be operated by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustees sole discretion, apply the income and principal of such Beneficiary's Share for the purpose of purchasing one or more residences to be owned by the Beneficiary's Share and used and occupied by such Beneficiary and his or her family, including a primary residence, seasonal residence or otherwise. In the case of any residence owned by the Beneficiary's Share, and in the Trustee's sole discretion, such Beneficiary may occupy and use such residence without rent or any other financial obligation for the payment of the taxes, insurance payments, maintenance costs and other expenses required in order to keep such residences in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole discretion, may grant such Beneficiary the right to the use, possession and enjoyment of all of the tangible personal property held by such Beneficiary's Share, without financial obligation for the use of such property.

4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining the age of twenty-one (21), the Trustee shall distribute to him or her, outright and free of trust, the remaining principal and accumulated income of that Beneficiary's Share. If the Beneficiary has already reached the age of twenty-one (21) at the time of the creation of the Beneficiary's Share, then the Trustee shall, upon making the division, distribute, outright and free of trust, to the Beneficiary the balance of such Beneficiary's Share.

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall die prior to the complete distribution of such Beneficiary's Share, then all of the remaining assets in such Beneficiary's Share shall be distributed to or in trust for such one or more persons or organizations and in such manner and proportions as such Beneficiary may appoint by his or her will or revocable trust making specific reference to this general power of appointment. To the extent that the Beneficiary does not exercise this general power of appointment, the remainder of such Beneficiary's Share shall be distributed to the issue of such Beneficiary in equal shares by right of representation and each such share shall be held, managed and further distributed by the Trustee as a Beneficiary's Share under Section G of Article Fourth. If the Beneficiary shall die failing to exercise this general power of appointment without leaving issue, then the Beneficiary's Share shall be distributed pro rata to the other Beneficiary's Shares then being administered by the Trustee hereunder, and if none, then to the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

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6. Distributions to or for the Benefit or Minors or Persons Under Disability. Whenever the Trustee is given the power or discretion to make distributions to or for the benefit of a minor or other beneficiary under a disability, the Trustee, in the Trustee's sole discretion, may make distributions to a minor or other person under disability by making distributions to the guardian or conservator of his or her estate and/or person, as the Trustee shall determine, or to any suitable person with whom he or she resides, or the Trustee may apply distributions directly for such beneficiary's benefit, or the Trustee may make distributions to any duly established custodian for any minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State. Any custodian acting on behalf of a minor beneficiary shall have the power to bind the beneficiary with respect to all matters concerning the Trust. The Trustee, in its sole discretion, may also make distributions directly to a minor if, in the Trustee's judgment, such minor is of sufficient age and maturity to receive such distribution and spend the money properly. The previous language of this paragraph 6 notwithstanding, if a beneficiary is, or would be eligible for need-based government benefits, the Trustee shall hold the funds for such beneficiary in a "special needs trust" as that term is understood for need-based government planning. By "special needs trust" is meant that the Trustee shall have the sole and absolute discretion to make distributions for the benefit of such beneficiary in a manner that improves the qualify of life for the beneficiary but will not make the beneficiary ineligible for need-based government benefits. The provisions of the Paragraph 6 are intended to supplant need-based government benefits, but not to replace them and all terms of this Paragraph 6 shall be so interpreted for all purposes.

H. Maximum Term for Trusts. Notwithstanding any other provision of this Trust, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities, or similar applicable rule. At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive distributions of income hereunder.

5. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18,1972, to provide that the intent of W. N. CONNELL and MARJORIE T. CONNELL was to appoint the beneficiaries of the Trust to serve as Trustees thereof; and (2) that the Trust is to be reformed in accordance with such intent;

6. That this Court order the Trust to be reformed by modifying Article Twelfth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18,

1972, to read as follows:

Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint JACQUELINE M. MONTOYA to serve in the said capacity. In the event that JACQUELINE M. MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN A. BOUVIER shall act as successor Trustee. No successor Trustee shall have any responsibility for the acts or omissions of any prior trustees and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.

In the event that none of the trustees named in this Article Twelfth are able or willing to serve, then the majority of adult income beneficiaries of the Trust shall select a successor Trustee.

7. For such other and further relief as the Court deems proper.

B.3 As can be seen, nowhere within the "Prayer" is there any request for a determination that Ms. Ahern is entitled to 100% of all income received by the Trust. Furthermore, as expressly declared in paragraph 37 of the Petition, the Petition was not intended to change the substantive rights of the Petitioner, Ms. Ahern, in the Trust, but rather was only being brought for the two limited purposes, which were to: *"(1) to clarify the dispositive provisions of Trust No. 2 after the death of the Petitioner; and (2) to forestall the requirement of petitioning the Court upon the death of the Petitioner to determine the successor Trustee."*

B.4 When drafting pleadings, the requirements of NRCP Rule 8, titled "General Rules of Pleading," must be followed. NRCP Rule 8(a), titled "Claims for Relief", provides for the following:

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> *a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim,* ***shall contain*** *(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2)* ***a demand for judgment for the relief the pleader seeks****. Relief in the alternative or of several different types may be demanded. Where a claimant seeks damages of more than $10,000, the demand shall be for damages "in excess of $10,000" without further specification of amount.* [Emphasis Added]

B.5 As shown, nowhere in the "Prayer" of the Petition is relief sought for the declaration that the Petitioner, Ms. Ahern, was entitled to 100% of the income received by the Trust.

B.6 Therefore, given that relief must be affirmatively requested and plead, and given that Nevada is a notice pleading jurisdiction thus requiring proper and fair notice to an adverse or potentially adverse party, there can be absolutely no basis or justification for any assertion that the Petition sought and received a declaration establishing that Ms. Ahern was entitled to 100% of the income from the Trust, which would clearly go to a substantive right. The Petition explicitly stated that it was being brought to address and clear up only two issues: 1) the beneficiaries of Trust No. 2 after Ms. Ahern's passing, and 2) establishment of the successor trustees after Ms. Ahern's passing or incapacity.

B.7 As such, Jacqueline seeks a ruling from this Court that the relief sought by the Petition was only to address, and in turn sought only to add provisions clarifying, the beneficiaries of Trust No. 2 after the death of Ms. Ahern and the successor trustees of the Trust following Ms. Ahern's death/incapacity and did not seek or request that the Court declare that Ms. Ahern was entitled to 100% of the income of the Trust, meaning the parent trust, or Trust No. 1.

C. REQUEST FOR CONFIRMATION OF CONSTRUCTION AND EFFECT OF ORDER

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C.1 As established above, the Petition did not seek any ruling from the Court declaring that Ms. Ahern was entitled to 100% of the income from the Trust, the parent trust, and affirmatively stated that it was not seeking to change any substantive rights and instead was brought to deal with and address two specific issues.

C.2 Therefore, as the Petition was approved without oral argument and placed on the "approved list", it was clear that the Court had no problem with the relief that was expressly plead in the Petition and in turn granted such relief. Furthermore, as is clear in the Order, the relief granted by the Court was limited to the relief sought in the Petition.

C.3 The Order contains 6 (six) "orders" or "rulings" from the Court, beginning on page two of the Order and ending on page six.

C.4 The first of the six "orders" provides for the following:

> ***IT IS HEREBY ORDERED*** *that this Court hereby assumes jurisdiction over the THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 19, 1972, and any and all subtrusts created thereunder, as a proceeding in rem;*

C.5 The second of the six "orders" provides for the following:

> ***IT IS HEREBY FURTHER ORDERED*** *that ELEANOR C. AHERN,f/k/a ELEANOR MARGUERITE CONNELL HARTMAN be, and hereby is, confirmed and appointed as Successor Trustee of THE W.N. CONNELL AND MAJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, with the exception of an trust in which the assets of Trust No. 3 of THE W.N. CONNELL AND MAJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 were appointed by MARJORIE T. CONNELL; and*

C.6 The third of the six "orders" provides for the following:

> ***IT IS HEREBY FURTHER ORDERED*** *that the dispositive provisions of Trust No. 2 created under THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18. 1972, are hereby reformed and construed to provide that upon the death of ELEANOR C. AHERN the residue of Trust No. 2 created under THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18. 1972, shall be distributed to the heirs of ELEANOR C. AHERN;*

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C.7 The fourth of the six "orders" provides for the following:

IT IS HEREBY FURTHER ORDERED *that it is approved and granted that Sections "E," "F," "G," and "H" to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, is hereby reformed as follows:*

E. Distribution Upon Death of both the Survivor and the Residual Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance of Trust No. 2 into two equal shares, as follows:

1. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said equal share shall be distributed to JACQUELINE M. MONTOYA's then living issue, by right of representation. Each share created pursuant to this Section E(1) of Article Fourth for the benefit of the issue of JACQUELINE M. MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

2. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal share shall be distributed to KATHRYN A. BOUVIER's then living issue, by right of representation. Each share created pursuant to this Section E(2) of Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

3. In the event that both JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having failed to exercise the testamentary power of appointment pursuant to Section (F) below, then the balance shall be distributed in accordance with Article Eleventh herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's equal share to or in trust for such one or more persons or organizations and in such manner and proportions as such beneficiary may appoint by her will or

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revocable trust making specific reference to this general power of appointment.

G. Management of Beneficiary's Shares. Until a Beneficiary has attained the age of twenty-one (21) years, the Trustee may distribute to or apply for the benefit of such Beneficiary so much of the income or principal from such Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion, is necessary to provide for his or her health, education, maintenance, and support. In addition, the Trustee may make the following discretionary distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole discretion, apply the principal or income of such Beneficiary's Share for the purpose of investing in a business or profession operated by, or to be operated by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustees sole discretion, apply the income and principal of such Beneficiary's Share for the purpose of purchasing one or more residences to be owned by the Beneficiary's Share and used and occupied by such Beneficiary and his or her family, including a primary residence, seasonal residence or otherwise. In the case of any residence owned by the Beneficiary's Share, and in the Trustee's sole discretion, such Beneficiary may occupy and use such residence without rent or any other financial obligation for the payment of the taxes, insurance payments, maintenance costs and other expenses required in order to keep such residences in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole discretion, may grant such Beneficiary the right to the use, possession and enjoyment of all of the tangible personal property held by such Beneficiary's Share, without financial obligation for the use of such property.

4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining the age of twenty-one (21), the Trustee shall distribute to him or her, outright and free of trust, the remaining principal and accumulated income of that Beneficiary's Share. If the Beneficiary has already reached the age of twenty-one (21) at the time of the creation of the Beneficiary's Share, then the Trustee shall, upon making the division, distribute, outright and free of trust, to the Beneficiary the balance of such Beneficiary's Share.

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall die prior to the complete distribution of such Beneficiary's Share, then all of the remaining assets in such Beneficiary's Share shall be distributed to or in trust for such one or more persons or organizations and in such manner and proportions as such Beneficiary may appoint by his or her will or revocable trust making specific reference to this general power of appointment. To the extent that the Beneficiary does not exercise this

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general power of appointment, the remainder of such Beneficiary's Share shall be distributed to the issue of such Beneficiary in equal shares by right of representation and each such share shall be held, managed and further distributed by the Trustee as a Beneficiary's Share under Section G of Article Fourth. If the Beneficiary shall die failing to exercise this general power of appointment without leaving issue, then the Beneficiary's Share shall be distributed pro rata to the other Beneficiary's Shares then being administered by the Trustee hereunder, and if none, then to the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

6. Distributions to or for the Benefit or Minors or Persons Under Disability. Whenever the Trustee is given the power or discretion to make distributions to or for the benefit of a minor or other beneficiary under a disability, the Trustee, in the Trustee's sole discretion, may make distributions to a minor or other person under disability by making distributions to the guardian or conservator of his or her estate and/or person, as the Trustee shall determine, or to any suitable person with whom he or she resides, or the Trustee may apply distributions directly for such beneficiary's benefit, or the Trustee may make distributions to any duly established custodian for any minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State. Any custodian acting on behalf of a minor beneficiary shall have the power to bind the beneficiary with respect to all matters concerning the Trust. The Trustee, in its sole discretion, may also make distributions directly to a minor if, in the Trustee's judgment, such minor is of sufficient age and maturity to receive such distribution and spend the money properly. The previous language of this paragraph 6 notwithstanding, if a beneficiary is, or would be eligible for need-based government benefits, the Trustee shall hold the funds for such beneficiary in a "special needs trust" as that term is understood for need-based government planning. By "special needs trust" is meant that the Trustee shall have the sole and absolute discretion to make distributions for the benefit of such beneficiary in a manner that improves the qualify of life for the beneficiary but will not make the beneficiary ineligible for need-based government benefits. The provisions of the Paragraph 6 are intended to supplant need-based government benefits, but not to replace them and all terms of this Paragraph 6 shall be so interpreted for all purposes.

H. Maximum Term for Trusts. Notwithstanding any other provision of this Trust, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities, or similar applicable rule. At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive distributions of income hereunder.

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C.8 The fifth of the six "orders" provides for the following:

IT IS HEREBY FURTHER ORDERED *that THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, is hereby reformed and construed to provide that the beneficiaries of the Trust shall serve as Successor Trustees upon the death, incapacity, or resignation of ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN; and*

C.9 The last of the six "orders" provides for the following:

IT IS HEREBY FURTHER ORDERED *that it is approved and granted that Article Twelfth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, is hereby reformed as follows:*

> *Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint JACQUELINE M. MONTOYA to serve in the said capacity. In the event that JACQUELINE M. MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN A. BOUVIER shall act as successor Trustee. No successor Trustee shall have any responsibility for the acts or omissions of any prior trustees and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.*
>
> *In the event that none of the trustees named in this Article Twelfth are able or willing to serve, then the majority of adult income beneficiaries of the Trust shall select a successor Trustee.*

C.10 As is abundantly self evident from a review of the rulings contained in the Order, there is absolutely no determination whatsoever stating that Ms. Ahern is entitled to 100% of the income generated from the Trust, the parent trust. Furthermore, there is no ruling which even remotely discusses anything of the sort. The rulings are a verbatim repetition of the "Prayer" section of the Petition.

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C.11 Based on the above, Jacqueline seeks a ruling from this Court that the relief granted in the Order, and therefore the limited effect of such Order, was only to add provisions to the Trust which had the affect of clarifying and solidifying the beneficiaries of Trust No. 2 after the death of Ms. Ahern and also adding provisions to the Trust which identified and confirmed the successor trustees of the Trust following Ms. Ahern's death or incapacity.

C.12 Additionally, Jacqueline seeks a ruling from this Court that the relief granted in the Order did not address, and in turn had no bearing on, the substantive rights of Ms. Ahern under the Trust and as such there was no ruling in which the Court declared that Ms. Ahern was entitled to 100% of the income of the Trust, meaning the parent trust, or Trust No. 1.

D. PRAYER

JACQUELINE M. MONTOYA hereby prays for an Order of this Court:

D.1 Declaring that the relief sought by the "Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust", filed on August 17, 2009, was only to address, and in turn sought only to add provisions clarifying, the beneficiaries of Trust No. 2 of the "W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, after the death of Eleanor C. Ahern and the successor trustees of "W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, following Ms. Ahern's death or incapacity;

D.2 Declaring that the "Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust", filed on August 17, 2009, did not seek or request that the Court declare that Eleanor C. Ahern was entitled to 100% of the income of the

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"W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972 , meaning the parent trust, or Trust No. 1;

D.3 Declaring that the relief granted in the "Order Assuming Jurisdiction Over Trust; Confirm Trustee; and For Construction of and Reform of Trust Instrument", signed on September 4, 2009 , and therefore the limited effect of such Order, was only to add provisions to the "W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972 which had the affect of clarifying and solidifying the beneficiaries of Trust No. 2 after the death of Eleanor C. Ahern and also adding provisions to the "W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, which identified and confirmed the successor trustees of the "W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972 following Ms. Ahern's death or incapacity; and

D.4 Declaring that the relief granted in the "Order Assuming Jurisdiction Over Trust; Confirm Trustee; and For Construction of and Reform of Trust Instrument", signed on September 4, 2009, did not address, and in turn had no bearing on, the substantive rights of Eleanor C. Ahern and as such there was no ruling in which the Court declared that Ms. Ahern was entitled to 100% of the income of the "W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972 , meaning the parent trust, or Trust No. 1.

Respectfully submitted,

THE RUSHFORTH FIRM, LTD.

JOSEPH J. POWELL
State Bar No. 8875

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EXHIBIT A

EXHIBIT A

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CLERK OF THE COURT

CLERK OF THE COURT

PET
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
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Attorneys for ELEANOR C. AHERN, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the	)	Case No. ~~P-09~~ P-09-066425-T
	)	PC1 H
THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972	)	
	)	**Date of Hearing: September 4, 2009**
An Intervivos Irrevocable Trust.	)	**Time of Hearing: 9:30 a.m.**
	)	

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PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND CONSTRUE AND REFORM TRUST

Petitioner, ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN ("Petitioner"), as successor Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust"), by and through counsel Mark A. Solomon, Esq., of the law firm of SOLOMON DWIGGINS & FREER, LTD., hereby respectfully petitions this Court to assume jurisdiction over the Trust, to confirm the Petitioner as Trustee of the Trust and any and all sub-trusts created under the Trust, to construe the Trust, and for an order reforming the distributions to the beneficiaries after the death of the Petitioner and the provisions appointing the successor Trustee. Pursuant to Nevada Revised Statutes ("NRS") 153.031(b), (e), and (n), 155.140, 164.050, 164.010, and

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164.015, Petitioner alleges as follows:

I.
PETITION TO ASSUME JURISDICTION OVER TRUST AND CONFIRM THE APPOINTMENT OF PETITIONER AS TRUSTEE

1. W. N. CONNELL and MARJORIE T. CONNELL ("MARJORIE"), husband and wife, as the grantors ("Grantors") and initial trustees, established the Trust on May 18, 1972, a copy of which is attached to this Petition as **Exhibit "1."**

2. W. N. CONNELL died on November 24, 1979, and was survived by his wife, MARJORIE. A copy of W. N. CONNELL's death certificate[1] is attached hereto as **Exhibit "2."**

3. The Petitioner is W. N. CONNELL's only surviving child. MARJORIE had no children during her lifetime, but formally adopted the Petitioner.

4. Pursuant to Article Twelfth, upon W. N. CONNELL's death, MARJORIE was named as the successor Trustee. *See*, Trust, Ex. 1, at pg. 13.

5. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death, the Trust was divided between Trust No. 2 and Trust No. 3. MARJORIE served as successor Trustee of the Trust, including Trust No. 2 and Trust No. 3, until her death.

6. On May 6, 1980, the Petitioner was named as Co-Trustee of the Trust, as is indicated in the Substitution of Trustee, attached hereto as **Exhibit "3."** The Petitioner served as Co-Trustee until the death of MARJORIE.

7. MARJORIE died on May 1, 2009. A copy of MARJORIE's death certificate[2] is attached hereto as **Exhibit "4."**

8. Pursuant to Article Twelfth, upon the death or incapacity of both W. N. CONNELL and

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[1] The social security number has been redacted.

[2] The social security number has been redacted.

MARJORIE, the Petitioner is to serve as successor Trustee. *See*, Trust, Ex. 1, at pg. 13. The Petitioner is currently serving as sole Trustee of the Trust, including Trust No. 2 and Trust No. 3.

9. The Petitioner is currently residing in Clark County, Nevada. The Trust is currently being administered in Clark County, Nevada.

10. Section F of Article Eighth states as follows:

> F. Applicable Law. This Trust Agreement is executed under the laws of the State of Nevada and shall in all respects be governed by the laws of the State of Nevada.

11. NRS 164.010(1) and (2) provides in pertinent part as follows:

> 1. Upon the petition of any person appointed as trustee of an express trust by any instrument other than a will . . . the district court of the county in which the trustee resides or conducts business, or in which the trust has been domiciled, shall consider the application to confirm the appointment of the trustee and specify the manner in which the trustee must qualify. Thereafter the court has jurisdiction of the trust as a proceeding in rem.
>
> 2. If the court grants the petition, it may consider at the same time any petition for instructions filed with the petition for confirmation.

12. It is appropriate for this Court to confirm Petitioner as Trustee since the Trust designates her to serve as successor Trustee upon the death of both W. N. CONNELL and MARJORIE death.

13. Further, *in rem* jurisdiction over the Trust is proper since the Trust is domiciled and being administered in Nevada.

14. Therefore, this Court should confirm the appointment of the Petitioner as Trustee of the Trust and exercise *in rem* jurisdiction over the Trust.

II.
PETITION TO CONSTRUE AND REFORM TRUST

15. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death, MARJORIE, as the Trustee, allocated to Trust No. 3: (1) MARJORIE's separate interest in the trust estate; (2) MARJORIE's one-half (½) interest in the community property of the trust estate; and (3) an

amount of property which qualified for the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code ("IRC") as federal estate tax credits. MARJORIE allocated to Trust No. 2 the balance of the Trust assets. *See*, Trust, Ex. 1, at pgs. 2 and 3.

16. The division of the Trust into Trust No. 2 and Trust No. 3 is similar to a type of trust commonly known as an "AB" trust, where upon the death of the first settlor, an amount equal to the federal estate tax exemption is allocated to a credit shelter type trust with the remaining assets allocated to a trust for the surviving spouse. In a standard AB trust, the assets allocated to the credit shelter trust are for the benefit of the deceased spouse's beneficiaries while the remaining assets are for the benefit of the surviving spouse.

17. Indeed, Trust No. 2 was drafted in such a manner as to benefit both the Petitioner and MARJORIE, who would typically be W. N. CONNELL's beneficiaries. Additionally, Trust No. 3 was for MARJORIE's benefit during her lifetime, and, more importantly, MARJORIE retained the testamentary power to appoint the balance of Trust No. 3 to her estate or to any person or persons. See, Trust, Ex. 1, at pg. 6.[3]

18. As of the death of MARJORIE, Trust No. 2 owned land and oil and gas shares in reserves and income located in Upton County, Texas (the "Oil Assets"). The Oil Assets have not been valued for some time, but are estimated to be worth approximately $700,000.

19. Pursuant to Article Fourth, which Article governs the administration of Trust No. 2, all income from the Oil Assets is to be paid to the Petitioner as the "Residual Beneficiary" during her

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[3] MARJORIE exercised this power of appointment prior to her death as indicated in Article Four of the Last Will and Testament of MARJORIE, dated January 7, 2008. A copy of MARJORIE's Last Will and Testament is attached hereto as **Exhibit "5."** The beneficiary of the exercise of the power of appointment was the MTC Living Trust, which contains provisions for the benefit of the Petitioner's issue.

lifetime.[4] Such income has been paid to the Petitioner since the creation of Trust No. 2 after W. N. CONNELL's death.

20. Section B of Article Fourth, governing Trust No. 2, provides as follows:

> B. Income. . . . In the event that the [Petitioner] predeceases [MARJORIE], the [Petitioner's] right to receive income hereunder shall be paid to or for the benefit of her living children and the issue of any deceased child by right of representation; or in the event she dies without leaving issue, her income rights hereunder shall become those of [MARJORIE].

See, Trust, Ex. 1, at pg. 4.

21. Although Trust No. 2 provides for a contingent distribution of the income from Trust No. 2 in the event that the Petitioner predeceased MARJORIE, no provision is made as to the final distribution of Trust No. 2 after the death of the Petitioner, in the event that MARJORIE predeceased the Petitioner.

22. Upon assuming jurisdiction of a trust, this Court "has exclusive jurisdiction" over proceedings to construe the terms of the trust and declare the rights of the parties, including "any appropriate relief provided for with regards to a testamentary trust in NRS 153.031." *See*, NRS 164.015(1). NRS 153.031 provides, in pertinent part:

> 1. A trustee or beneficiary may petition the court regarding any aspect of the affairs of the trust, including:
>
> (b) Determining the construction of the trust instrument;
>
> ***
>
> (e) Ascertaining beneficiaries and determining to whom property is to pass or be delivered upon final or partial termination of the trust, to the extent not provided in the trust instrument;

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[4] Section B of Article Fourth also states that all income received by Trust No. 2, other than that received from the Oil Assets, is to be paid to MARJORIE. However, as the sole asset of Trust No. 2 consists of the Oil Assets, this provision is inapplicable. Additionally, Trust No. 2 granted to MARJORIE the power to appoint and/or invade the principal of Trust No. 2 during her lifetime. *See*, Trust, Ex. 1, at pg. 5. Petitioner is informed and believes that MARJORIE did not exercise her power of appointment nor was the principal invaded for her benefit during her lifetime.

***

(n) Approving or directing the modification or termination of the trust[.]

23. A trust instrument may be reformed to conform with the settlor's intent, which may be ascertained from the trust instrument as a whole. *See, Sheinkopf v. Bornstein*, 823 N.E.2d 372 (Mass. 2005); *see also, Dassori v. Patterson*, 440 Mass. 1039, 802 N.E.2d 553 (2004) (A trust instrument may be reformed to conform with the settlor's intent.) The equitable power of the court to modify or reform a trust extends to situations where trust instrument contains some expression of trustor's intention, but drafting error renders that expression ambiguous. *See, Ike v. Doolittle*, 61 Cal. App. 4th 51, 70 Cal. Rptr. 2d 887 (4th Dist. 1998) (Recognizing the common law equitable power and the statutory authority of the court to alter administrative or distributive provisions of trust where necessary to accomplish purpose of trust).

24. On the application of the trustee or one or more beneficiaries, the court possesses and frequently exercises the power to modify the terms of the trust in order to effectuate the accomplishment of the purposes of the settlor. See generally, *Bogert on Trusts and Trustees*, §994; Restatement, Third, Trusts, §62. The court has equitable power to order reformation of a trust; and, once the court acquires jurisdiction, it is authorized to administer full, complete, and final relief. *See, Schroeder v. Gebhart*, 825 So. 2d 442 (Fla. Dist. Ct. App. 5th Dist. 2002), review denied, 845 So. 2d 892 (Fla. 2003).

25. If, due to a mistake, the trust does not contain the terms that were intended by the settlor, the settlor or other interested party may maintain a suit in equity to have the instrument reformed so that it will contain the terms that were actually agreed upon or that reflect the settlor's actual intent. *See*, Restatement, Second, Trusts, §333. *See also*, Restatement, Third, Trusts, §62.

26. The Petitioner is informed and believes that the failure to provide for distribution upon Petitioner's death is an omission due to scrivener error. Indeed, the Trust as a whole appears to be an

"AB" type trust whereby each spouse designates the beneficiaries they intend to receive such spouse's share, but, in the case of the Trust, the final dispositive provisions of Trust No. 2 were omitted.

27. Indeed, Article Fourth of the Trust, governing Trust No. 2 makes adequate provision for numerous other contingencies for the disposition of Trust No. 2, but appears to omit a provision for alternate disposition in the current situation - where MARJORIE predeceased the Petitioner. *See*, Trust, Ex. 1, at pgs. 4 and 5.

28. The Grantors' intent as to the final disposition of Trust No. 2 after the death of the Petitioner can be derived from the contingent dispositions of Trust No. 2 and the dispositve terms of Trust No. 3.

29. Section B of Article Fourth, governing Trust No. 2, provides that the income from Trust No. 2 is to be distributed to the Petitioner's issue if the Petitioner predeceased MARJORIE. Additionally, Trust No. 2 provides that, if the Petitioner predeceased MARJORIE leaving no issue, that MARJORIE be entitled to the income from the Oil Asset. These provisions show the Grantors had an overall dispositive model for Trust No. 2 in mind, which included not only the Petitioner, but the Petitioner's issue.

30. As outlined in Section D of Article Fifth, governing Trust No. 3, adequate provisions are made in for Trust No. 3 for the contingency of MARJORIE predeceasing the Petitioner, as follows:

> D. Death of Survivor. Upon the death of the Survivor, the Trustee shall distribute the trust estate in accordance with and to the extent provided by the Survivor's exercise of his or her power of appointment.
>
> If, and to the extent that the Survivor shall fail to effectively exercise the foregoing power of appointment, the principal and undistributed income of Trust No. 3 shall, upon his or her death, be distributed to the Residual Beneficiary, or to the heirs of her body if she is not then living.

See, Trust, Ex. 1, at pg. 6.

31. Moreover, Section D of Article Fifth, governing Trust No. 3, provides that, upon the death of both W. N. CONNELL and MARJORIE, the balance of Trust No. 3, if not otherwise appointed, is to

be distributed to the Petitioner or, if she is not living, then to her heirs. This provision clearly shows the Grantors' overall intent that the assets be vested in remainder beneficiaries, in particular the Petitioner and her heirs.

32. Bringing together the dispositive provisions of Trust No. 2 and Trust No. 3, the Grantors' intentions can be derived as follows: that, upon the death of the Petitioner, the balance of Trust No. 2 is to vest in the Petitioner's heirs.

33. Based on the terms of the Trust, the Petitioner requests that this Court: (1) construe the Trust to provide that it is the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No. 2 to ELEANOR C. AHERN's heirs upon her death;[5] and (2) reform Trust No. 2 in accordance with such intention by adding new Sections "E," "F," "G," and "H" to Article Fourth as follows:

> *E. <u>Distribution Upon Death of both the Survivor and the Residual Beneficiary</u>. Upon the death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance of Trust No. 2 into two equal shares, as follows:*
>
> *1. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said equal share shall be distributed to JACQUELINE M. MONTOYA's then living issue, by right of representation. Each share created pursuant to this Section E(1) of Article Fourth for the benefit of the issue of JACQUELINE M. MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.*
>
> *2. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal*

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[5] The Petitioner's heirs as of the date of this Petition are her two (2) daughters, JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER.

share shall be distributed to KATHRYN A. BOUVIER's then living issue, by right of representation. Each share created pursuant to this Section E(2) of Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

3. In the event that both JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having failed to exercise the testamentary power of appointment pursuant to Section (F) below, then the balance shall be distributed in accordance with Article Eleventh herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's equal share to or in trust for such one or more persons or organizations and in such manner and proportions as such beneficiary may appoint by her will or revocable trust making specific reference to this general power of appointment.

G. Management of Beneficiary's Shares. Until a Beneficiary has attained the age of twenty-one (21) years, the Trustee may distribute to or apply for the benefit of such Beneficiary so much of the income or principal from such Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion, is necessary to provide for his or her health, education, maintenance, and support. In addition, the Trustee may make the following discretionary distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole discretion, apply the principal or income of such Beneficiary's Share for the purpose of investing in a business or profession operated by, or to be operated by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole discretion, apply the income and principal of such Beneficiary's Share for the purpose of purchasing one or more residences to be owned by the Beneficiary's Share and used and occupied by such Beneficiary and his or her family, including a primary residence, seasonal residence or otherwise. In the case of any residence owned by the Beneficiary's Share, and in the Trustee's sole discretion, such Beneficiary may occupy and use such residence without rent or any other financial obligation for the payment of the taxes, insurance payments, maintenance costs and other expenses required in order to keep such residences in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole discretion, may grant such Beneficiary the right to the use, possession and

enjoyment of all of the tangible personal property held by such Beneficiary's Share, without financial obligation for the use of such property.

4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining the age of twenty-one (21), the Trustee shall distribute to him or her, outright and free of trust, the remaining principal and accumulated income of that Beneficiary's Share. If the Beneficiary has already reached the age of twenty-one (21) at the time of the creation of the Beneficiary's Share, then the Trustee shall, upon making the division, distribute, outright and free of trust, to the Beneficiary the balance of such Beneficiary's Share.

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall die prior to the complete distribution of such Beneficiary's Share, then all of the remaining assets in such Beneficiary's Share shall be distributed to or in trust for such one or more persons or organizations and in such manner and proportions as such Beneficiary may appoint by his or her will or revocable trust making specific reference to this general power of appointment. To the extent that the Beneficiary does not exercise this general power of appointment, the remainder of such Beneficiary's Share shall be distributed to the issue of such Beneficiary in equal shares by right of representation and each such share shall be held, managed and further distributed by the Trustee as a Beneficiary's Share under Section G of Article Fourth. If the Beneficiary shall die failing to exercise this general power of appointment without leaving issue, then the Beneficiary's Share shall be distributed pro rata to the other Beneficiary's Shares then being administered by the Trustee hereunder, and if none, then to the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

6. Distributions to or for the Benefit of Minors or Persons Under Disability. Whenever the Trustee is given the power or discretion to make distributions to or for the benefit of a minor or other beneficiary under a disability, the Trustee, in the Trustee's sole discretion, may make distributions to a minor or other person under disability by making distributions to the guardian or conservator of his or her estate and/or person, as the Trustee shall determine, or to any suitable person with whom he or she resides, or the Trustee may apply distributions directly for such beneficiary's benefit, or the Trustee may make distributions to any duly established custodian for any minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State. Any custodian acting on behalf of a minor beneficiary shall have the power to bind the beneficiary with respect to all matters concerning the Trust. The Trustee, in its sole discretion, may also make distributions directly to a minor if, in the Trustee's judgment, such minor is of sufficient age and maturity to receive such distribution and spend the money properly. The previous language of this paragraph 6 notwithstanding, if a beneficiary is, or would be eligible for need-based government benefits, the Trustee shall hold the funds for such beneficiary in a "special needs trust" as that term is understood for need-based government planning. By "special needs

trust" is meant that the Trustee shall have the sole and absolute discretion to make distributions for the benefit of such beneficiary in a manner that improves the qualify of life for the beneficiary but will not make the beneficiary ineligible for need-based government benefits. The provisions of the Paragraph 6 are intended to supplant need-based government benefits, but not to replace them and all terms of this Paragraph 6 shall be so interpreted for all purposes.

H. Maximum Term for Trusts. Notwithstanding any other provision of this Trust, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities, or similar applicable rule. At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive distributions of income hereunder.

34. Article Twelfth of the Trust states, in pertinent part, as follows:

> Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor. the Grantors then nominate and appoint [the Petitioner] as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint the FIRST NATIONAL BANK OF NEVADA to serve in the said capacity.

35. In 2008, the FIRST NATIONAL BANK OF NEVADA failed, and is no longer in existence. As outlined in Article Twelfth, W. N. CONNELL and MARJORIE entrusted the beneficiaries (first being MARJORIE and, upon MARJORIE's death, the Petitioner) of the Trust to act as Trustees.

36. The Petitioner requests that, due to the failure of the successor Trustee named by the Grantors, this Court: (1) construe the Trust to provide that the intent of W. N. CONNELL and MARJORIE is to appoint the beneficiaries of the Trust to serve as Trustees thereof; and (2) to reform the Trust in accordance with such intention by modifying Article Twelfth as follows:

> *Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint JACQUELINE M.*

MONTOYA to serve in the said capacity. In the event that JACQUELINE M. MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN A. BOUVIER shall act as successor Trustee. No successor Trustee shall have any responsibility for the acts or omissions of any prior trustees and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.

In the event that none of the trustees named in this Article Twelfth are able or willing to serve, then the majority of adult income beneficiaries of the Trust shall select a successor Trustee.

37. The reformation of the Trust, pursuant to this Petition, will not change the substantive rights of the Petitioner during her lifetime. The sole purposes of the reformation are: (1) to clarify the dispositive provisions of Trust No. 2 after the death of the Petitioner; and (2) to forestall the requirement of petitioning the Court upon the death of the Petitioner to determine the successor Trustee.

38. The names, ages, residences, and relationships of the persons interested in the Trust, so far as known to Petitioner, are as follows:

NAME	AGE	RELATIONSHIP	ADDRESS
ELEANOR C. AHERN	Adult	Residual Beneficiary	6105 Elton Ave Las Vegas, NV 89107
JACQUELINE M. MONTOYA	Adult	Daughter of ELEANOR C. AHERN	3385 Maverick Street Las Vegas, NV 89108
KATHRYN A. BOUVIER	Adult	Daughter of ELEANOR C. AHERN	8461 Purple Sage Road Middleton, ID 83644
SHRINERS HOSPITALS FOR CHILDREN	N/A		Attn: Legal Department P.O. Box 31356 Tampa, FL 33631-3356

39. JACQUELINE M .MONTOYA and KATHRYN A. BOUVIER have consented in writing to the proposed reformation, as outlined in herein, and to this Court entering an order to assume jurisdiction over the Trust, the appointment of the Petitioner as the Trustee, and the reformation of the Trust as provided in this Petition. Said consents are attached hereto as **Exhibits "6" and "7,"**

respectively.

40. The interests of JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER and their respective issue in Trust No. 2 are substantially identical, and JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER are able to adequately represent the interests of their respective issue, including any minor and unborn issue without the necessity of the appointment of a guardian ad litem. *See*, NRS 155.140 and 164.005.

WHEREFORE, Petitioner requests that this Petition be set for hearing, and that after hearing the matters of this Petition, this Court find that notice of the time and place of such hearing has been given in the manner required by law, and that this Court make and enter its Orders and Decrees pursuant to NRS 153.031 (e) and (n), 164.010 and 164.015:

1. That this Court assume jurisdiction over THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, as a proceeding *in rem*;

2. That ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN be confirmed as the Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, with the exception of any trust in which the assets of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 were appointed by MARJORIE T. CONNELL;

3. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to provide that it was the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No. 2 created thereunder to ELEANOR C. AHERN's heirs upon her death; and (2) that the Trust is to be reformed in accordance with such intent;

4. That this Court order the Trust to be reformed to add new Sections "E," "F," "G," and "H" to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, as follows:

E. Distribution Upon Death of both the Survivor and the Residual Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance of Trust No. 2 into two equal shares, as follows:

1. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said equal share shall be distributed to JACQUELINE M. MONTOYA's then living issue, by right of representation. Each share created pursuant to this Section E(1) of Article Fourth for the benefit of the issue of JACQUELINE M. MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

2. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal share shall be distributed to KATHRYN A. BOUVIER's then living issue, by right of representation. Each share created pursuant to this Section E(2) of Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

3. In the event that both JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having failed to exercise the testamentary power of appointment pursuant to Section (F) below, then the balance shall be distributed in accordance with Article Eleventh herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's equal share to or in trust for such one or more persons or organizations and in such manner and proportions as such beneficiary may appoint by her will or revocable trust making specific reference to this general power of appointment.

G. Management of Beneficiary's Shares. Until a Beneficiary has attained the age of twenty-one (21) years, the Trustee may distribute to or apply for the benefit of such Beneficiary so much of the income or principal from such Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion, is necessary to provide for his or her health, education, maintenance, and support. In addition, the Trustee may make the following discretionary distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole discretion, apply the principal or income of such Beneficiary's Share for the purpose of investing in a business or profession operated by, or to be operated by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole discretion, apply the income and principal of such Beneficiary's Share for the purpose of purchasing one or more residences to be owned by the Beneficiary's Share and used and occupied by such Beneficiary and his or her family, including a primary residence, seasonal residence or otherwise. In the case of any residence owned by the Beneficiary's Share, and in the Trustee's sole discretion, such Beneficiary may occupy and use such residence without rent or any other financial obligation for the payment of the taxes, insurance payments, maintenance costs and other expenses required in order to keep such residences in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole discretion, may grant such Beneficiary the right to the use, possession and enjoyment of all of the tangible personal property held by such Beneficiary's Share, without financial obligation for the use of such property.

4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining the age of twenty-one (21), the Trustee shall distribute to him or her, outright and free of trust, the remaining principal and accumulated income of that Beneficiary's Share. If the Beneficiary has already reached the age of twenty-one (21) at the time of the creation of the Beneficiary's Share, then the Trustee shall, upon making the division, distribute, outright and free of trust, to the Beneficiary the balance of such Beneficiary's Share.

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall die prior to the complete distribution of such Beneficiary's Share, then all of the remaining assets in such Beneficiary's Share shall be distributed to or in trust for such one or more persons or organizations and in such manner and proportions as such Beneficiary may appoint by his or her will or revocable trust making specific reference to this general power of appointment. To the extent that the Beneficiary does not exercise this general power of appointment, the remainder of such Beneficiary's Share shall be distributed to the issue of such Beneficiary in equal shares by right of representation and each such share

shall be held, managed and further distributed by the Trustee as a Beneficiary's Share under Section G of Article Fourth. If the Beneficiary shall die failing to exercise this general power of appointment without leaving issue, then the Beneficiary's Share shall be distributed pro rata to the other Beneficiary's Shares then being administered by the Trustee hereunder, and if none, then to the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

6. Distributions to or for the Benefit of Minors or Persons Under Disability. Whenever the Trustee is given the power or discretion to make distributions to or for the benefit of a minor or other beneficiary under a disability, the Trustee, in the Trustee's sole discretion, may make distributions to a minor or other person under disability by making distributions to the guardian or conservator of his or her estate and/or person, as the Trustee shall determine, or to any suitable person with whom he or she resides, or the Trustee may apply distributions directly for such beneficiary's benefit, or the Trustee may make distributions to any duly established custodian for any minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State. Any custodian acting on behalf of a minor beneficiary shall have the power to bind the beneficiary with respect to all matters concerning the Trust. The Trustee, in its sole discretion, may also make distributions directly to a minor if, in the Trustee's judgment, such minor is of sufficient age and maturity to receive such distribution and spend the money properly. The previous language of this paragraph 6 notwithstanding, if a beneficiary is, or would be eligible for need-based government benefits, the Trustee shall hold the funds for such beneficiary in a "special needs trust" as that term is understood for need-based government planning. By "special needs trust" is meant that the Trustee shall have the sole and absolute discretion to make distributions for the benefit of such beneficiary in a manner that improves the qualify of life for the beneficiary but will not make the beneficiary ineligible for need-based government benefits. The provisions of the Paragraph 6 are intended to supplant need-based government benefits, but not to replace them and all terms of this Paragraph 6 shall be so interpreted for all purposes.

H. Maximum Term for Trusts. Notwithstanding any other provision of this Trust, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities, or similar applicable rule. At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive distributions of income hereunder.

5. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to provide that the intent of W. N. CONNELL and MARJORIE T. CONNELL was to appoint the beneficiaries of the Trust to serve as Trustees thereof; and

(2) that the Trust is to be reformed in accordance with such intent;

6. That this Court order the Trust to be reformed by modifying Article Twelfth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to read as follows:

> *Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint JACQUELINE M. MONTOYA to serve in the said capacity. In the event that JACQUELINE M. MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN A. BOUVIER shall act as successor Trustee. No successor Trustee shall have any responsibility for the acts or omissions of any prior trustees and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.*
>
> *In the event that none of the trustees named in this Article Twelfth are able or willing to serve, then the majority of adult income beneficiaries of the Trust shall select a successor Trustee.*

7. For such other and further relief as the Court deems proper.

DATED this 14 day of August, 2009.

Respectfully submitted,
SOLOMON DWIGGINS & FREER, LTD.

By _____
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
BRIAN K. STEADMAN
Nevada State Bar No. 10771
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483

Attorneys for Eleanor C. Ahern, Petitioner

VERIFICATION

ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, whose address is 6105 Elton Ave, Las Vegas, NV 89107, declares under penalties of perjury of the State of Nevada:

That she is the Petitioner who makes the foregoing Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust; that she has read said petition and know the contents thereof, and that the same is true of her own knowledge except for those matters stated on information and belief, and that as to such matters she believes it to be true.

DATED this 3rd day of August, 2009.

Eleanor C Ahern

ELEANOR C. AHERN f/k/a ELEANOR MARGUERITE CONNELL HARTMAN

ORDR
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
BRIAN K. STEADMAN, ESQ.
Nevada State Bar No. 10771
SOLOMON DWIGGINS & FREER, LTD.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for ELEANOR C. AHERN, Petitioner

FILED
2009 SEP -4 P 4:50
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the	)	Case No. P-09-066425-T
	)	PC1
THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972	)	
	)	**Date of Hearing: September 4, 2009**
An Intervivos Irrevocable Trust.	)	**Time of Hearing: 9:30 a.m.**
	)	

ORDER ASSUMING JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND FOR CONSTRUCTION OF AND REFORM OF TRUST INSTRUMENT

The verified Petition of ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN to assume jurisdiction over THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust"), and any and all sub-trusts created thereunder, to confirm ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN as the Successor Trustee of said trust; and for construction and reform of trust instrument, having come on regularly for hearing the 4th day of September, 2009; BRIAN K. STEADMAN, ESQ., of the law firm SOLOMON DWIGGINS & FREER, LTD. appeared as counsel for the Petitioner; the Court finds that due and legal notice of the time and place of hearing of said Petition has been given in the manner required by law; and good cause appearing therefor,

IT IS HEREBY ORDERED that this Court hereby assumes jurisdiction over THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, as a proceeding *in rem*;

IT IS HEREBY FURTHER ORDERED that ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN be, and hereby is, confirmed and appointed as Successor Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, with the exception of any trust in which the assets of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 were appointed by MARJORIE T. CONNELL; and

IT IS HEREBY FURTHER ORDERED that the dispositive provisions of Trust No. 2 created under THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, are hereby reformed and construed to provide that upon the death of ELEANOR C. AHERN the residue of Trust No. 2 created under THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, shall be distributed to the heirs of ELEANOR C. AHERN;

IT IS HEREBY FURTHER ORDERED that it is approved and granted that Sections "E," "F," "G," and "H" to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, is hereby reformed as follows:

E. <u>Distribution Upon Death of both the Survivor and the Residual Beneficiary</u>. Upon the death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance of Trust No. 2 into two equal shares, as follows:

1. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said equal share shall be distributed to JACQUELINE M. MONTOYA's then living issue, by right of representation. Each share created pursuant to this Section E(1) of Article Fourth for the benefit of the issue of JACQUELINE M. MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the

benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

2. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal share shall be distributed to KATHRYN A. BOUVIER's then living issue, by right of representation. Each share created pursuant to this Section E(2) of Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

3. In the event that both JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having failed to exercise the testamentary power of appointment pursuant to Section (F) below, then the balance shall be distributed in accordance with Article Eleventh herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's equal share to or in trust for such one or more persons or organizations and in such manner and proportions as such beneficiary may appoint by her will or revocable trust making specific reference to this general power of appointment.

G. Management of Beneficiary's Shares. Until a Beneficiary has attained the age of twenty-one (21) years, the Trustee may distribute to or apply for the benefit of such Beneficiary so much of the income or principal from such Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion, is necessary to provide for his or her health, education, maintenance, and support. In addition, the Trustee may make the following discretionary distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole discretion, apply the principal or income of such Beneficiary's Share for the purpose of investing in a business or profession operated by, or to be operated by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole discretion, apply the income and principal of such Beneficiary's Share for the purpose of purchasing one or more residences to be owned by the Beneficiary's Share and used and occupied by such Beneficiary and his or her family, including a primary residence, seasonal residence or otherwise. In the case of any residence owned by the Beneficiary's Share, and in the Trustee's sole

discretion, such Beneficiary may occupy and use such residence without rent or any other financial obligation for the payment of the taxes, insurance payments, maintenance costs and other expenses required in order to keep such residences in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole discretion, may grant such Beneficiary the right to the use, possession and enjoyment of all of the tangible personal property held by such Beneficiary's Share, without financial obligation for the use of such property.

4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining the age of twenty-one (21), the Trustee shall distribute to him or her, outright and free of trust, the remaining principal and accumulated income of that Beneficiary's Share. If the Beneficiary has already reached the age of twenty-one (21) at the time of the creation of the Beneficiary's Share, then the Trustee shall, upon making the division, distribute, outright and free of trust, to the Beneficiary the balance of such Beneficiary's Share.

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall die prior to the complete distribution of such Beneficiary's Share, then all of the remaining assets in such Beneficiary's Share shall be distributed to or in trust for such one or more persons or organizations and in such manner and proportions as such Beneficiary may appoint by his or her will or revocable trust making specific reference to this general power of appointment. To the extent that the Beneficiary does not exercise this general power of appointment, the remainder of such Beneficiary's Share shall be distributed to the issue of such Beneficiary in equal shares by right of representation and each such share shall be held, managed and further distributed by the Trustee as a Beneficiary's Share under Section G of Article Fourth. If the Beneficiary shall die failing to exercise this general power of appointment without leaving issue, then the Beneficiary's Share shall be distributed pro rata to the other Beneficiary's Shares then being administered by the Trustee hereunder, and if none, then to the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

6. Distributions to or for the Benefit of Minors or Persons Under Disability. Whenever the Trustee is given the power or discretion to make distributions to or for the benefit of a minor or other beneficiary under a disability, the Trustee, in the Trustee's sole discretion, may make distributions to a minor or other person under disability by making distributions to the guardian or conservator of his or her estate and/or person, as the Trustee shall determine, or to any suitable person with whom he or she resides, or the Trustee may apply distributions directly for such beneficiary's benefit, or the Trustee may make distributions to any duly established custodian for any minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State. Any custodian acting on behalf of a minor beneficiary shall have the power to bind the beneficiary with respect to all matters

concerning the Trust. The Trustee, in its sole discretion, may also make distributions directly to a minor if, in the Trustee's judgment, such minor is of sufficient age and maturity to receive such distribution and spend the money properly. The previous language of this paragraph 6 notwithstanding, if a beneficiary is, or would be eligible for need-based government benefits, the Trustee shall hold the funds for such beneficiary in a "special needs trust" as that term is understood for need-based government planning. By "special needs trust" is meant that the Trustee shall have the sole and absolute discretion to make distributions for the benefit of such beneficiary in a manner that improves the qualify of life for the beneficiary but will not make the beneficiary ineligible for need-based government benefits. The provisions of the Paragraph 6 are intended to supplant need-based government benefits, but not to replace them and all terms of this Paragraph 6 shall be so interpreted for all purposes.

H. Maximum Term for Trusts. Notwithstanding any other provision of this Trust, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities, or similar applicable rule. At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive distributions of income hereunder.

IT IS HEREBY FURTHER ORDERED that THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, is hereby reformed and construed to provide that the beneficiaries of the Trust shall serve as Successor Trustees upon the death, incapacity, or resignation of ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN; and

IT IS HEREBY FURTHER ORDERED that it is approved and granted that Article Twelfth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, is hereby reformed as follows:

Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint JACQUELINE M. MONTOYA to serve in the said capacity. In the event that JACQUELINE M. MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN A. BOUVIER shall act as successor Trustee. No successor Trustee shall have

any responsibility for the acts or omissions of any prior trustees and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.

In the event that none of the trustees named in this Article Twelfth are able or willing to serve, then the majority of adult income beneficiaries of the Trust shall select a successor Trustee.

DATED this 4th day of September, 2009.

[redacted] RITCHIE JR.

DISTRICT COURT JUDGE

JB

Respectfully submitted,

SOLOMON DWIGGINS & FREER, LTD.

By _____

MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
BRIAN K. STEADMAN, ESQ.
Nevada State Bar No. 10771
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129

Attorneys for Eleanor C. Ahern, Trustee

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DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

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CLERK OF THE COURT

VERF
THE RUSHFORTH FIRM, LTD.
JOSEPH J. POWELL
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Telephone (702) 255-4552
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e-mail: probate@rushforthfirm.com
Attorneys for Jacqueline M. Montoya

DISTRICT COURT

CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972,

A non-testamentary trust.

Case No. P-09-066425-T
Department XXVI, RJC

VERIFICATION FOR PETITION FOR CONSTRUCTION AND EFFECT OF PROBATE COURT ORDER

Date of Hearing:
Time of Hearing:

I, the undersigned, under penalties of perjury, hereby declare that:

1. I hereby submit the foregoing "Petition for Construction and Effect of Probate Court Order."

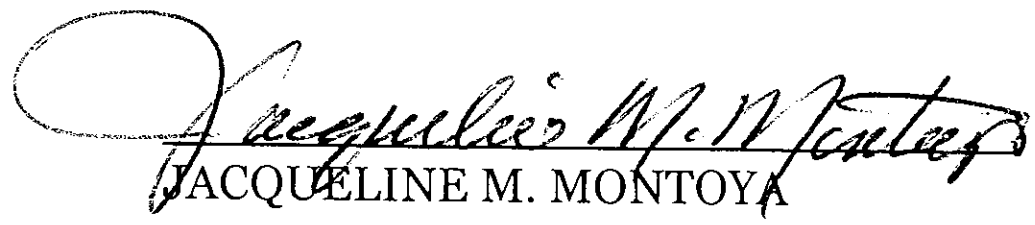
//

//

//

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

2. I know the contents of the Petition, which I know to be true of my own knowledge, except as to those matters stated on information and belief, which I believe to be true.



JACQUELINE M. MONTOYA

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CLERK OF THE COURT

PET
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Attorneys for Jacqueline M. Montoya

DISTRICT COURT

CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T
Department: XXVI, RJC

PETITION FOR DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2

Date of Hearing:
Time of Hearing: 9 A.M.

JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby respectfully seeks this Court's determination as to the construction and interpretation of the references to "this Trust" found in Article Fourth, specifically section B, under the heading of "Trust No. 2" found in "The W.N. Connell and Marjorie T. Connell

THE RUSHFORTH FIRM, LTD.
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Las Vegas, Nevada 89134-0514

Living Trust", dated May 18, 1972. Jacqueline respectfully declares as follows:

A. Overview

It appears that ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, both individually and in her capacity as the trustee of "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972 ("Trust"), is of the belief and opinion that the references to "this Trust" found in Article Fourth of the Trust, and specifically to the references found in Section B of Article Fourth are not references to the subtrust No. 2, but are instead references to Trust No. 1, or the "parent" trust. Jacqueline believes that such interpretation and construction is entirely unfounded, erroneous, illogical, and patently incorrect. As such, Jacqueline requests that this Court make a determination and conclusive construction as to what the references to "this Trust" refer to as found in Article Fourth.

B. Article Fourth

B.1 Article Fourth of the Trust, titled "TRUST NO. 2" states a follows:

> *FOURTH: TRUST NO. 2. The Trustee shall hold, manage, invest and reinvest the estate of* ***Trust No. 2*** *and shall collect the income thereof and dispose of the net income and principal as follows:*
>
> *A. Death of Decedent. Upon the death of the Decedent, the Trustee shall pay from the income or principal of* ***this trust****, the death taxes, probate and legal expenses, and the expenses of the last illness and funeral of the Decedent, provided, however, that no funds received by the Trustee as proceeds from a retirement plan qualified under the Internal Revenue Code shall be available for these purposes unless there are no other assets in the Survivor's estate, in which event funds from a qualified plan can be used, but only to the extent of these actual expenses.*
>
> *B. Income. All income received by* ***this Trust*** *from the separate property of the Decedent shall be paid to the Residual Beneficiary. In the event any of the real property located in Upton County, Texas, as listed on the original Schedule "A"attached hereto, forms a part of the corpus of* ***this Trust****, the*

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Las Vegas, Nevada 89134-0514

Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of ***this Trust****, equal to all of the income received by* ***this Trust*** *from the real property located in Upton County, Texas. However, the provisions relating to the additional payment, shall be noncumulative, and in any calendar year in which the income received from the said community property is not sufficient to make full payment hereunder, the Trustee is directed to pay only the income which has been received by* ***this Trust*** *during that year, and not to carry forward any deficiency in payment to the next calendar year's income. In the event the Residual Beneficiary predeceases the Survivor, the Residual Beneficiary's rights to receive income hereunder shall be paid to or for the benefit of her living children and the issue of any deceased child by right of representation; or in the event she dies without living issue, her income rights hereunder shall become those of the Survivor.*

All other income received by ***this Trust*** *shall be distributed to the Survivor.*

All payments as provided in this Section shall be made at frequent intervals, but at least semi-annually.

C. Principal. The Trustee shall pay over and distribute the principal of the estate of Trust No. 2 as follows:

1. Power to make gifts. The Survivor shall have the discretionary power during his or her lifetime to direct the Trustee to pay over and distribute trust principal of the separate property in trust from the Decedent's ***Trust*** *to or for the benefit of the Residual Beneficiary or any of her living issue such power may be exercised by delivering to the Trustee a writing duly executed and acknowledged, wherein he or she specifies the amount of principal that should be paid over and distributed to the particular issue and in what proportions such principal shall be paid over and distributed. It is the Grantors' intent hereby to convey upon the Survivor a sprinkling power; said power is limited, however, to appointments made to and among the Residual Beneficiary or her living issue.*

2. Power of invasion. If, in the opinion of the Trustee, the income from all sources of which the Trustee has knowledge shall not be sufficient to support, maintain, educate and provide for the Survivor or Residual Beneficiary or any issue of the Residual Beneficiary in their accustomed manner of living, or in the event of any emergency befalling these said parties, such as illness, accident or other distress, the Trustee is authorized to use and expend such part of the trust principal of Decedent's separate property in ***trust****, as the Trustee may deem necessary or desirable to meet such needs or emergencies. The decision of the Trustee as to what shall*

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constitute an emergency or the necessity or desirability of encroachment upon principal shall be conclusive upon all parties and the Trustee shall be relieved and exonerated hereunder if the Trustee acts in good faith in making such determination.

3. Sale of real property from Decedent's separate property. The Survivor is directed that in the event any additional money is needed for payment of funeral, last illness or other costs to settle any claims made against Decedent's estate, or in the event that the sale of Decedent's separate property is contemplated at any time, only the separate property of Decedent situated in Las Vegas, Clark County, Nevada, shall be sold to satisfy this obligation.

4. Sale of real property. In the event that any real property which is listed on Schedule "A" attached hereto as the Decedent's separate property, and, is a part of the corpus of ***Trust*** *No. 2 is sold, the Grantors direct the Trustee to distribute the net proceeds from such sale, less any applicable income tax due because of such sale, to the Residual Beneficiary, free of trust. In the event the Residual Beneficiary is not living at the time of the said sale, the proceeds therefrom shall remain in* ***this Trust****, and shall be subject to all of the provisions as herein contained.*

D. Definition of real property. The term "real property" as used in this Article FOURTH shall not include the mineral, oil and gas interests in Upton County, Texas, if the same are separately listed on Schedule "A" hereto.

[For the sake of this Petition, all references to "trust" or "this trust" are bolded]

B.2 The last sentence of Article Third, titled "Marital Deduction" provides for the following:

> *This distribution is being made without regard to death taxes payable by reason of the Decedent's death, which taxes shall be paid from Trust No. 2 only.*

B.3 In multiple pleadings in this matter, Ms. Ahern has asserted that the language contained in the Trust provides that she is and always has been entitled to 100% of the income generated from the real property located in Upton County, Texas and specifically the oil, gas, and mineral leases associated with such real property (the "Texas Property").

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Specifically, Ms. Ahern has quoted the language contained in section B of Article Fourth. Again, Article Fourth is titled "Trust No. 2" and section B is titled "Income".

B.4 Ms. Ahern has quoted, with emphasis, the following portion of section B:

> *All income received by this Trust from the separate property of the Decedent shall be paid to the Residual Beneficiary. In the event any of the real property located in Upton County, Texas, as listed on the original Schedule "A"attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of this Trust, equal to all of the income received by this Trust from the real property located in Upton County, Texas.*

B.5 It is clear to Jacqueline that in order to come to the conclusion that Ms. Ahern is entitled to 100% of the Texas Property income, Ms. Ahern has to incorrectly and erroneously come to the strained and false conclusion that the references to "this Trust" found in Article Fourth, including section B, must be a reference to Trust No. 1, or the parent trust. Without this intentional misreading of the references to the "this Trust", Ms. Ahern's argument that the language of the Trust required that all of the Texas Property was required to be allocated to Trust No. 2 completely falls apart.

B.6 Ms. Ahern's misinterpretation of section B of Article Fourth is due to the fact that she has read section B completely out of context. A proper, in context, reading of the numerous references to "this Trust" contained in Article Fourth can only logically lead to the conclusion that the references to "this Trust" are to Trust No. 2 and do not refer to Trust No. 1, the parent trust.

B.7 As noted above, the language found in Article Third expressly requires that all death taxes resulting from the Decedent's death must be paid from Trust No. 2 only. Further, section A of Article Fourth provides in relevant part for the following:

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> *Upon the death of the Decedent, the Trustee shall pay from the income or principal of* ***this trust****, the death taxes, probate and legal expenses, and the expenses of the last illness and funeral of the Decedent, ...* [Emphasis added]

B.8 In light of the mandate found in Article Third, the Trust would be contradictory if "this Trust" referred to Trust no. 1. Such a conclusion would mean that the death taxes would be paid from Trust No.1. This cannot be as Article Third has unambiguously declared that the death taxes "shall be paid from **Trust No. 2 only**." [emphasis added]. In applying the terms of the Trust, it would be absolutely irrational to conclude that the reference to "this Trust" found in Article Fourth is anything but a reference to Trust No. 2.

B.9 In this same respect, the heading of Article Fourth is "Trust No. 2". Similarly, Article Fifth is titled "Trust No. 3". Logically, because of the headings used for each of these Articles and the fact that each of them provides instructions and guidelines as to the administration of each of the two subtrusts, all references to "this Trust" found in Article Fourth must certainly only be to subtrust No. 2 and not to any other trust, be it to Trust No. 1, the parent trust, or Trust No. 3.

B.10 Language found in testamentary documents, which would include trusts and wills, is to be given its plain meaning and ordinary usage. Furthermore, language is intended to be read and applied in context. These concepts are axiomatic, as reflected in the following passages from various court opinions from throughout the U.S.:

> From *Eckels v. Davis*, 111 S.W.3d 687 (2003), Court of Appeals of Texas, Fort Worth:
>
> *The rules of construction of wills and trusts are well settled. Hurley v. Moody Nat'l Bank of Galveston, 98 S.W.3d 307, 310 (Tex.App.-Houston [1st Dist.] 2003, no pet.). The construction of a will or a trust instrument is a question of law for the trial court. Id. (citing Nowlin v. Frost Nat'l Bank, 908 S.W.2d 283, 286*

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(Tex.App.-Houston [1st Dist.] 1995, no writ)). A court must construe both wills and trusts to ascertain the intent of the maker. Id. (citing Jewett v. Capital Nat'l Bank, 618 S.W.2d 109, 112 (Tex.Civ.App.-Waco 1981, writ ref'd n.r.e.)). The intent of the settlor must be ascertained from the language used within the four corners of the instrument. See Shriner's Hosp. for Crippled Children of Tex. v. Stahl, 610 S.W.2d 147, 151 (Tex.1980) (applying this concept to construe a will). ***All terms must be harmonized to properly give effect to all parts****. Hutton v. Methodist Home, 615 S.W.2d 289, 292 (Tex.Civ.App.-Fort Worth 1981, writ ref'd n.r.e.).* ***If possible, the court should construe the instrument to give effect to all provisions so that no provision is rendered meaningless****. Myrick v. Moody, 802 S.W.2d 735, 738 (Tex.App.-Houston [14th Dist.] 1990, writ denied). If the language of a trust is unambiguous and expresses the intent of the settlor, it is unnecessary to construe the instrument because it speaks for itself. Hurley, 98 S.W.3d at 310 (citing Jewett, 618 S.W.2d at 112).* [Emphasis Added] 111 S.W.3d 687, 694

From *Hurley v. Moody Nat. Bank of Galveston*, 98 S.W.3d 307 (2003), Court of Appeals of Texas, Houston (1st Dist.):

A court should give effect to every part of the instrument if the language is reasonably susceptible to a ***harmonious construction****. O'Malley v. Stratton, 831 S.W.2d 35, 37 (Tex.App.-El Paso 1992, no writ).* [Emphasis Added] 98 S.W.3d 307 , 310

From *Epworth Children's Home v. Beasley*, 616 S.E.2d 710 (2005), Supreme Court of South Carolina:

The cardinal rule of will construction is to determine and give effect to the testator's intent from ***a reading of the will as a whole****. Matter of Clark, 308 S.C. 328, 330, 417 S.E.2d 856, 857 (1992); May v. Riley, 279 S.C. 248, 250, 305 S.E.2d 77, 78 (1983); Albergotti v. Summers, 205 S.C. 179, 182, 31 S.E.2d 129, 130 (1944). In construing the language of a will, the appellate court must give words their ordinary, plain meaning unless it is clear the testator intended a different sense, or unless such a meaning would lead to an inconsistency with the testator's declared intention. Buist v. Walton, 104 S.C. 95, 88 S.E. 357 (1916); In re Estate of Fabian, 326 S.C. 349, 353, 483 S.E.2d 474, 476 (Ct.App.1997).* ***A will must be read in the ordinary and grammatical sense of the words employed, unless some obvious absurdity, repugnancy, or inconsistency with the declared intention of the testator, as abstracted from the whole will, would follow from such construction.*** *Clark, 308 S.C. at 330, 417 S.E.2d at 857; Love v. Love, 208 S.C. 363, 369, 38 S.E.2d 231, 233 (1946).*

A court may not consider the will piecemeal, but must give due weight to all its language and provisions, giving effect to every part when, under a reasonable interpretation, all the provisions may be harmonized with each other and with the will as a whole*. King v. S.C. Tax*

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Commn., 253 S.C. 646, 649, 173 S.E.2d 92, 93 (1970) ; Wise v. Poston, 281 S.C. 574, 578, 316 S.E.2d 412, 414 (Ct.App.1984). The rules of construction are of secondary importance to the need to ascertain what the testator meant by the terms used in the written instrument itself, and ***each item of a will must be considered in relation to other portions****. Allison v. Wilson, 306 S.C. 274, 278, 411 S.E.2d 433, 435 (1991). An interpretation that fits into the whole scheme or plan of the will is most likely to be the correct interpretation of the intent of the testator. Lemmon v. Wilson, 204 S.C. 50, 69, 28 S.E.2d 792, 800 (1944).*

As with a will, the primary consideration in construing a trust is to discern the settlor's intent. Bowles v. Bradley, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995). In fact, the law relating to discerning the drafter's intent is identical for wills and trusts. [Emphasis Added] 616 S.E.2d 710, 714 - 715

From *In re Halas*, 470 N.E.2d 960 (1984), Supreme Court of Illinois:

"The purpose of judicial construction of a trust instrument is to ascertain the intent of the settlor and carry it out [citation] and in so doing ***the instrument must be considered as a whole****." (American Rubber & Plastic Corp. v. First National Bank (1971), 50 Ill.2d 172, 174, 277 N.E.2d 840.)* ***The provisions of the instrument are not to be read in isolation*** *(Vournazos v. Vournazos (1979), 71 Ill.App.3d 672, 676, 28 Ill.Dec. 37, 390 N.E.2d 19), and in ascertaining intent,* ***a court must not limit its consideration to the language of a particular paragraph, phrase, sentence or clause*** *(First National Bank v. Canton Council of Campfire Girls, Inc. (1981), 85 Ill.2d 507.* [Emphasis Added]

*"****The rules of construction which apply to the interpretation of contracts apply to the construction of trust instruments as well****." (Northern Trust Co. v. Tarre (1981), 86 Ill.2d 441, 450, 56 Ill.Dec. 671, 427 N.E.2d 1217.)* ***It is fundamental in contract construction that, if possible, effect must be given to all of the language so that provisions which appear to be conflicting or inconsistent may be reconciled and harmonized****. (St. Paul Fire & Marine Insurance Co. v. Frankart (1977), 69 Ill.2d 209, 216, 13 Ill.Dec. 31, 370 N.E.2d 1058; First National Bank v. Baker (1976), 35 Ill.App.3d 676, 681, 342 N.E.2d 337.)* [Emphasis Added] 470 N.E.2d 960, 964

From *Eckes v. Richland County Social Services Eyeglasses*, 621 N.W.2d 851 (2001) Supreme Court of North Dakota:

When a term in an instrument is undefined, we usually look to the clear ordinary meaning which a non-law-trained person would attach to the term.

In construing a will, a court ***must harmonize all parts of the will****, if possible, so each word and phrase is given effect, because every word and phrase is presumed to have meaning. Neshem, 1998 ND 57, ¶ 7, 574 N.W.2d 883. If two*

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interpretations of the language of a will are possible, one disregarding a word or phrase and one giving effect to the language of the will as a whole, ***the construction giving effect to the will as a whole must be adopted.*** [Emphasis Added] 621 N.W.2d 851, 858-859

From *In re Weiss' Will*, 124 N.Y.S. 129 (1925), Surrogate's Court, Bronx County, New York:

Three well-established rules in the construction of wills must be borne in mind in considering the language of this instrument: (1) The intent of the testator must be given effect if ascertainable. Matter of Silsby, 229 N. Y. 396, 402, 128 N. E. 212; Matter of Buechner, 226 N. Y. 440, 123 N. E. 741; Eidt v. Eidt, 203 N. Y. 325, 328, 96 N. E. 729. (2) ***A bequest or devise made in clear and unambiguous language in one part of a will, cannot be cut down by subsequent language unless the same tending to do so is equally clear****. Banzer v. Banzer, 156 N. Y. 429, 51 N. E. 291; Goodwin v. Coddington, 154 N. Y. 283, 48 N. E. 729; Washbon v. Cope, 144 N. Y. 287, 39 N. E. 388. (3)* ***All parts of the will must, if possible, be harmonized and given effect****. Matter of Title Guarantee & Trust Co., 195 N. Y. 339, 88 N. E. 375; Roe v. Vingut, 117 N. Y. 204, 22 N. E. 933.* [Emphasis Added] 124 N.Y.S. 129, 132-133

From *Isbrandtsen v. North Branch Corp.*, 556 A.2d 81 (1988), Supreme Court of Vermont:

While the language of the restrictive clause is somewhat awkward, that in itself does not render it ambiguous. "If a contract, though inartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." Allstate Ins. Co. v. Goldwater, 163 Mich.App. 646, 648, 415 N.W.2d 2, 4 (1987). Likewise, the fact that a dispute has arisen as to proper interpretation does not automatically render the language ambiguous. Such an approach would merely invite court interference any time a litigant alleged a dispute as to a contractual term. 556 A.2d 81, 85

B.11 In these same respects, the construction and interpretation of provisions in a trust is no different from the construction of statutes and even the Nevada Constitution. This fundamental concept is well articulated in the following passage from the 2008 Nevada Supreme Court opinion of *We the People Nevada ex. Rel. Angle v. Miller* (124 Nev. 874)(2008):

> *UNLESS AMBIGUOUS, A statute's language is applied in accordance with its plain meaning. When the Legislature's intent is clear from the plain language, this*

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> *court will give effect to such intention and construe the statute's language to effectuate rather than nullify its manifest purpose. This court has recognized that "[t]he Nevada Constitution should be read as a whole, so as to give effect to and harmonize each provision." Thus, when possible,* ***the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results.*** [Footnote citations have been omitted] [Emphasis Added] 124 Nev. 874, 881

B.12 To have a heading of "Trust No. 2", yet determine that the references thereunder to "this Trust" are somehow references to the administration of a trust other than Trust No. 2 is simply illogical. Likewise, to pick and choose and conclude that the reference to"this Trust" is used inconsistently and does not only refer to Trust No. 2 in Article Fourth is also absurd. "This Trust" is not a defined term. The Trust Agreement deals with a minimum of three Trusts, Trust No. 1, Trust No. 2, and Trust No. 3. Because "this Trust" is not defined to only refer to one of the three trusts, "this Trust" must refer to the trust that is the topic of the Article. Trust No. 2 is the topic of Article Fourth and therefore "this Trust" must refer only to Trust No. 2 when used in Article Fourth.

B.13 Trusts like other legal documents, including contracts, are generally drafted and organized in a systematical and chronological order. Therefore, in as much as specific topics are addressed in a trust, it is commonplace that sections are given headings and broken down into articles to deal with specific topics.

B.14 The Trust does not deviate from these same principles. After naming the Trust, the Trust first discusses how it is to be administered during the joint lifetimes of the Grantors, Mr. and Mrs. Connell (Article Second, titled "Trust No. 1"). This Article discusses the division into two subtrusts that shall occur at the first death of the Grantors, thereafter referring to the Grantors as the "Decedent" and "Survivor". Next, the Trust then proceeds to discuss the Marital Deduction in Article Third. Article Fourth and Article Fifth set the

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terms for administration of the two subtrusts, Trust No. 2 and Trust No. 3 respectively.

B.15 In reading Article Fourth in its entirety, it is abundantly clear that all references to "this Trust" are references to Trust No. 2 and there is not even the slightest hint that there exists any ambiguity in the usage of that term. Article Fourth is titled "Trust No. 2"; it follows logic then that unless otherwise defined, references to "this Trust" in Article Fourth would refer to the Trust to which the Article is addressing, Trust No. 2. Further, if references to the parent trust were intended, then the term "Trust No. 1" would have been used because Article First specifically declares that references to the parent trust would be referred to as Trust No. 1. Article First states, "*This Trust shall be known and identified as the 'W. N. Connell and Marjorie T. Connell Living Trust', and, for purposes of convenience, shall hereinafter be referred to as* ***Trust No. 1***." [emphasis added]. In an article dealing with the terms of Trust No. 2, it is illogical to conclude that "this Trust" refers to Trust No. 1 when the Trust specifically states that Trust No. 1 shall be referred to as "Trust No. 1".

B.16 Based on the foregoing, the references to "this Trust" in the following passage can and must only be reasonably be determined to be references to Trust No. 2, a subtrust, and not Trust No. 1, or the parent trust:

> *All income received by this Trust from the separate property of the Decedent shall be paid to the Residual Beneficiary. In the event any of the real property located in Upton County, Texas, as listed on the original Schedule "A"attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of this Trust, equal to all of the income received by this Trust from the real property located in Upton County, Texas.*

In light of the mandate found in Article Third to pay all "death" taxes only from Trust No.

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2, and in light of this reiteration under section A of Article Fourth, there cannot be any legitimate dispute as to what the reference to "this Trust" refers to.

B.17 Therefore, the income that was to be generated from the Texas Property which was allocated to Trust No. 2 (35%), as reflected by the allocation done on the Form 706, the federal estate tax return, and as reflected by the Texas estate tax return, was and is the amount to which Ms. Ahern is currently entitled to. There is absolutely no language found within the Trust instrument which provides that all of the Texas Property is to be allocated to Trust No. 2, thus entitling Ms. Ahern to 100% of the income generated by the Texas Property.

C. ACTUAL LANGUAGE IN ARTICLE FOURTH AND RELATION BACK TO PRECEDING LANGUAGE

C.1 As Jacqueline has set forth in her "Petition for Declaratory Judgment regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(a)Petition for Declaratory Judgment", pursuant to the allocation of the Texas Property between Trust No. 2 and Trust No. 3, Ms. Ahern has always been entitled to only 35% of the income generated from the Texas Property.

C.2 Assuming that Ms. Ahern will most certainly attempt to spin the actual language found in Article Fourth and play a "pick and choose" game, it is worthwhile to further examine the additional provisions found therein and their relation back to prior language found in the Trust.

C.3 Ms. Ahern's assertion is that "this Trust" found in section B of article Fourth are references to Trust No. 1, or the parent trust. In turn, her logic has to be that if any portion of the Texas Property was ever held by Trust No. 1, meaning prior to the death of

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the first Trustor, Mr. Connell, then Trust No. 2 was required to receive 100% of the Texas Property and all of the income generated from it, including the oil, gas, and mineral rights. As expressed above, this logic is entirely faulty and illogical, but the absurdity can be further illustrated.

C.4 For this conclusion to be reached one would have to assume that the reference to "this Trust" was not in the context of Trust No. 2 and it would have to be further assumed that there was some possibility that the Texas Property would not become a part of the Trust No. 1, the parent trust. Given that Schedule "A" was executed on precisely the same day as the Trust was executed, May 18, 1972, it is ridiculous to assume that there was any possibility whatsoever that the Texas Property would not be declared to be an asset of the Trust, Trust No. 1.

C.5 Article Fourth, section B provides in part:

> *In the event any of the real property located in Upton County, Texas, as listed on the original Schedule "A"attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid . . . . . .*

The only rational interpretation of this passage is that if the Trustee determined that it was proper to allocate any of the Texas Property to Trust No. 2 in light of the mandate found under Article Third to max out the marital deduction, with the marital deduction component belonging to Trust No. 3, then Ms. Ahern would be paid an additional income amount based on the formula approach set forth in section B of Article Fourth.

C.6 In no way, shape, or form can any language found in Article Fourth, or any other portion of the Trust, be interpreted to mandate an allocation of 100% of the Texas Property and in turn 100% of the income generated therefrom to belong to Trust No. 2.

C.7 The first sentence in section B of Article Fourth provides that "*All income*

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received by this Trust from the separate property of the Decedent shall be paid to the Residual Beneficiary." The reference to the "separate property" is in regard to the proportion of the separate property that would actually be allocated to Trust No. 2 and viewed in context as opposed to the Decedent's community property interest. The possibility and scenario of the proportion of the Decedent's community property interest is discussed after this first sentence--------"*the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of* ***this Trust,*** *. . . . . .*" .[Emphasis added]

C.8 Again, all of the language must be read in its proper context and in sequential order. Referring back to the preceding language of prior Articles of the Trust, specifically Article Second and Article Third, it is clear that the mandate to the Trustee is to maximize the marital deduction at all costs and there is no limitation or restriction on how this mandate is accomplished. By Ms. Ahern's own admission, the Trust mandated that the marital deduction be maximized.

C.9 In Ms. Ahern's "Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust" ("Petition to Reform"), which she filed on August 17, 2009, she made the following statement:

> *15. Pursuant to Section C of Article Second and Article Third, upon W.N. CONNELL's death, MARJORIE, as the Trustee, allocated to Trust No. 3: (1) MARJORIE's separate interest in the trust estate; (2) MARJORIE's one-half (½) interest in the community property of the trust estate; and (3)* ***an amount of property which qualified for the maximum marital deduction allowed for federal estate purposes****, reduced by the total of any other amount under the Internal Revenue Code ("IRC") as federal estate tax credits. MARJORIE allocated to Trust No. 2 the balance of the Trust assets. See Trust, Ex. 1, at pgs. 2 and 3.* [Emphasis added]

C.10 Paragraph 3 of Section C of Article Second expressly states that "*The Trustee*

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shall allocate to Trust No. 3 from the Decedent's separate property an amount as determined in Article THIRD hereof." Paragraph 4 of Section C of Article Second then states that whatever is not allocated to Trust No. 3 shall be allocated to Trust No. 2, which would include any separate property of the Decedent not otherwise allocated to Trust No. 3. Trust No. 3 had a higher priority in the division of the Trust's assets; Trust No. 2 only received the "left-overs".

C.11 As indicated by Ms. Ahern's above statement as reflected in the Petition to Reform, the allocation was done in accordance with what the terms of the Trust provided, and the explicit requirement to maximize the marital deduction.

C.12 Circling back around to the construction of Article Fourth, at the Decedent's death, the mandate to the Trustee is to take the following action in the following order:

1. Divide the corpus of the Trust (Trust No. 1) into two subtrusts (Trust No. 2 and Trust No. 3) (Paragraph 1 of section C of Article Second);

2. Allocate all of the separate property of the Survivor and one half of the community property to Trust No. 3 (Paragraph 2 of section C of Article Second);

3. Allocate to Trust No. 3 so much of the Decedent's separate property as is determined to be appropriate by the Trustee to maximize the marital deduction as required by Article Third (Paragraph 3 of section C of Article Second);

4. Allocate to Trust No. 2 the remainder of all assets not allocated to Trust No. 3 (Paragraph 3 of section C of Article Second);

5. Max out the Marital Deduction (Article Third);

6. "Death taxes" resulting from the Decedent's Trust must only be paid from Trust No. 2 (Article Third);

7. The Trustee shall pay all taxes, expenses, and costs triggered by the Decedent's death from the assets of Trust No. 2 (Section A of Article Fourth);

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8. The Trustee shall pay income derived from the separate property belonging to Trust No. 2 to Ms. Ahern (Section B of Article Fourth);

9. To the extent that any of the Texas real property is allocated to Trust No. 2, then there would be the possibility of additional income payments being made to Ms. Ahern, with such income derived from the portion of the Decedent's community property allocated to Trust No. 2 interest to Ms. Ahern (Section B of Article Fourth); and

10. All remaining income from Trust No. 2 to the Survivor (Section B of Article Fourth).

C.13 To further illustrate how the reference to "this Trust" in Article Fourth must only be a reference to those assets actually allocated to Trust No. 2, it is prudent to examine the statement regarding the remainder income to the Survivor. There is a mandate in Article Fourth, that any income not otherwise required to be distributed to Ms. Ahern is to be distributed to the Survivor. The mandate states that "*All other income received by* ***this Trust*** *shall be distributed to the Survivor*". [Emphasis added]

C.14 Given that in Article Second the Trust expressly provides that all of the Survivor's assets shall be allocated to Trust No. 3, and based on the fact that Trust No. 3 was fully revocable and amendable during the Survivor's lifetime, it is completely absurd to believe that the reference to "this Trust" in the above quoted passage would be a reference to anything but the corpus of Trust No. 2. as it would make no sense in the general scheme of estate tax planning which requires that a decedent's trust be irrevocable if the decedent's federal estate tax exemption is to be applied.

C.15 For the foregoing reasons and logic, it is abundantly clear that all of the references to "this Trust" contained in Article Fourth are and were intended to be references only to Trust No. 2 and not to Trust No. 1, the parent trust. Therefore, Jacqueline respectfully requests that this Court declare that the proper construction of the term "this

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Trust" contained in Article Fourth of the Trust are only references to Trust No. 2.

D. PRAYER

For the foregoing reasons and logic set forth herein, it is abundantly clear that all of the references to"this Trust" contained in Article Fourth are and were intended to be references only to Trust No. 2 and not to Trust No. 1 or the parent trust. Therefore, Jacqueline respectfully requests that this Court declare that the proper construction of the term"this Trust" contained in Article Fourth, titled "Trust No. 2", of the Trust are only references to Trust No. 2.

Respectfully submitted,

THE RUSHFORTH FIRM, LTD.

JOSEPH J. POWELL
State Bar No. 8875

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CLERK OF THE COURT

VERF
THE RUSHFORTH FIRM, LTD.
JOSEPH J. POWELL
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Attorneys for Jacqueline M. Montoya

DISTRICT COURT

CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972,

A non-testamentary trust.

Case No. P-09-066425-T
Department XXVI, RJC

VERIFICATION FOR PETITION FOR DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2

Date of Hearing:
Time of Hearing: 9 A.M.

I, the undersigned, under penalties of perjury, hereby declare that:

1. I hereby submit the foregoing "Petition for Determination of Construction and Interpretation of Language Relating to Trust No. 2."

//

//

//

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2. I know the contents of the Petition, which I know to be true of my own knowledge, except as to those matters stated on information and belief, which I believe to be true.

JACQUELINE M. MONTOYA

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CLERK OF THE COURT

CERT
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Attorneys for Jacqueline M. Montoya

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate

of

THE W. N. CONNELL and **MARJORIE T. CONNELL LIVING TRUST**, dated May 18, 1972,

A non-testamentary trust.

Case No. P-09-066425-T
Department XXVI, RJC

CERTIFICATE OF MAILING

Date of Hearing: May 13, 2014
Time of Hearing: 9:00 a.m.

I, the undersigned, hereby certify that on March 28, 2014, I sent a copy of the "*Petition for Construction and Effect of Probate Court Order*" that has been filed in this proceeding, to each person named below by first-class mail, addressed as follows:

Eleanor C. Ahern
c/o John R. Mugan, Esq.
Jeffrey Burr, Ltd.
2600 Paseo Verde Parkway, Suite 200
Henderson, NV 89074

Kathryn A. Bouvier
4221 A Surf Drive
Galveston, TX 77554

Certificate of Mailing

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Jacqueline M. Montoya
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Diane L. DeWalt

Diane L. DeWalt, an employee of
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate

of

THE W. N. CONNELL and **MARJORIE T. CONNELL LIVING TRUST**, dated May 18, 1972,

A non-testamentary trust.

Case No. P-09-066425-T
Department XXVI, RJC

CERTIFICATE OF MAILING

Date of Hearing: May 27, 2014
Time of Hearing: 9:00 a.m.

I, the undersigned, hereby certify that on March 31, 2014, I sent a copy of the "*Petition for Determination of Construction and Interpretation of Language Relating to Trust No. 2*" that has been filed in this proceeding, to each person named below by first-class mail, addressed as follows:

Eleanor C. Ahern
c/o John R. Mugan, Esq.
Jeffrey Burr, Ltd.
2600 Paseo Verde Parkway, Suite 200
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CLERK OF THE COURT

ERR
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Telephone: (702) 433-4455
Facsimile: (702) 451-1853
Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972 An Inter Vivos Irrevocable Trust.	Case No. P-09-066425-T Dept. No. XXVI (26) Date of Hearing: May 13, 2014 Time of Hearing: 9:00 a.m.

ERRATA TO OBJECTION OF TRUSTEE ELEANOR C. AHERN TO JACQUELINE M. MONTOYA'S PETITION AND ADDENDUM TO PETITION TO COMPEL TRUSTEE TO DISTRIBUTE ACCRUED INCOME AND FUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERAL LEASES AND DECLARATION OF THE APPLICABILITY OF THE DOCTRINE OF LACHES

COMES NOW ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN ("ELEANOR"), as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 (the "TRUST"), by and through her counsel of record, JOHN R. MUGAN, Esquire, and MICHAEL D. LUM, Esquire, of the law firm of JEFFREY BURR, LTD., and hereby submits this Errata To Objection To Jacqueline M. Montoya's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches, and in support thereof states:

1. An Objection to Jacqueline M. Montoya's Petition And Addendum To Petition To

Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches was filed herein on March 13, 2014 (the "Objection").

2. As noted in the Objection, Petitioner JACQUELINE M. MONTOYA alleges that an injunction is necessary to "[p]revent further, severe, financial damages ..." However, Petitioner JACQUELINE M. MONTOYA does not set forth what these specific damages are, the necessity for distribution of the disputed funds at this time, and what immediate and irreparable injury, loss or damage she and her sister will suffer if the disputed funds are not distributed at this time.

3. As noted in the Objection, Petitioner JACQUELINE M. MONTOYA and her sister, KATHRYN A. BOUVIER, received a bequest of approximately Three Million Five Hundred Thousand Dollars ($3,500,000) from MARJORIE T. CONNELL when she died on May 1, 2009 via THE MTC LIVING TRUST dated December 6, 1995 as restated on January 7, 2008 ("THE MTC LIVING TRUST") as compared to a specific bequest of Three Hundred Thousand Dollars ($300,000.00) to ELEANOR.

4. With the continuance of the original trial date and the opportunity to conduct timely discovery, a First Set Of Interrogatories was sent to Petitioner JACQUELINE M MONTOYA by ELEANOR, which Interrogatories in part inquired as to the inheritance and distributions from the MARJORIE T. CONNELL Estate and THE MTC LIVING TRUST to Petitioner JACQUELINE M MONTOYA and her sister. Petitioner JACQUELINE M MONTOYA responded to the Interrogatories on the required timeframe, namely May 5, 2014 at 5:24 p.m. It is significant that Petitioner JACQUELINE M MONTOYA objected to such interrogatories and refused to furnish any information regarding her and her sister's inheritance and distributions from the MARJORIE T. CONNELL Estate and THE MTC LIVING TRUST. The reason for her refusal is self-evident, namely she and her sister received a significant inheritance of several million dollars and there is no "[s]evere, financial damages." A copy of the Responses of Petitioner JACQUELINE M MONTOYA to Interrogatories No. 11-No. 17, inclusive, is attached hereto as Exhibit M.

5. As noted in the Objection, Petitioner JACQUELINE M. MONTOYA in her pleading alleges that the additional injunctive relief is necessary in order to return to the alleged "[s]tatus quo" (even though that is not the legal standard for injunctive relief). What in fact was the "status

quo"? It is undisputed that from the date of death of W. N. CONNELL on November 24, 1979 until the death of MARJORIE T. CONNELL on May 2, 2009, a period of over thirty-one (31) years, Petitioner JACQUELINE M. MONTOYA and her sister were not beneficiaries of the TRUST. Even though Petitioner JACQUELINE M. MONTOYA and her sister inherited several million dollars upon the death of MARJORIE T. CONNELL on May 2, 2009, they began to receive distributions from the TRUST after the death of MARJORIE T. CONNELL for approximately three (3) years. Why? Because as noted in the Objection, upon the death of MARJORIE T. CONNELL, Petitioner JACQUELINE M. MONTOYA wrongfully assumed complete control of the TRUST, receipt of the rent and oil royalties, and the distributions of the royalties and rent therefrom even though she was not the Trustee of the TRUST. This included wrongful distributions by Petitioner JACQUELINE M. MONTOYA to herself and her sister. ELEANOR was denied access to and control of the funds of the TRUST by Petitioner JACQUELINE M. MONTOYA until July 4, 2012 despite repeated requests for the same. This is confirmed by Petitioner JACQUELINE M. MONTOYA in her Response to Interrogatory No., which states in relevant part as follows:

> "RESPONSE TO INTEROGATORY NO. 6:
> The sole and lone financial account that JACQUELINE MONTOYA was on in relation to the Upton County, Texas Oil rights was a Wells Fargo account, with an account number of #083-242-151. JACQUELINE MONTOYA was placed on the account sometime around 1999/2000 by MARJORIE T. CONNELL. To the best of her knowledge, JACQUELINE MONTOYA was removed from the account on approximately July 4, 2012 by ELEANOR C. AHERN. The account was initially established in 1980 by MARJORIE T. CONNELL and ELEANOR C. AHERN. In approximately 2005, MARJORIE T. CONNELL asked JACQUELINE MONTOYA to write the distribution checks related to the oil and gas income out based on the appropriate percent to her and ELEANOR C. AHERN. This same process continued after MARJORIE T. CONNELL's death …"

Accordingly, the only reason such distributions were made to Petitioner JACQUELINE M MONTOYA was the wrongful conduct of Petitioner JACQUELINE M. MONTOYA.

6. Furthermore, ELEANOR was denied any of the TRUST records by Petitioner JACQUELINE M. MONTOYA until October 27, 2012–November of 2013. This is confirmed by

Petitioner JACQUELINE M. MONTOYA in her Response to Interrogatory No. 7, which states in relevant part as follows:

> "RESPONSE TO INTEROGATORY NO. 7:
> [T]o the best of JACQUELINE MONTOYA's current recollection, she turned over all documents and information that she had regarding the Upton County, Texas Oil rights to ELEANOR C. AHERN's prior counsel, SHAUNA BRENNA, Esq., on or about October 27, 2012. Furthermore, documents were turned over to ELEANOR C. AHERN's current counsel located in Texas, JEFFREY JOHNSTON, Esq., in approximately November of 2013 …"

WHEREFORE, ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, prays as follows:

1. For this Court to deny Petitioner JACQUELINE M. MONTOYA's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases, which Petition in reality is a request for preliminary injunction;
2. For this Court to deny Petitioner JACQUELINE M. MONTOYA's request to apply the doctrine of laches against ELEANOR;
3. For this Court to apply the doctrine of laches against Petitioner JACQUELINE M. MONTOYA, and
4. For any other relief as this Court deems appropriate.

DATED: May 7, 2014.

JEFFREY BURR, LTD.

By: _____
JOHN R. MUGAN, ESQUIRE
Nevada Bar No. 10690
MICHAEL D. LUM, ESQUIRE
Nevada Bar No. 12997
2600 Paseo Verde Parkway, Suite 200
Henderson, Nevada 89074
Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

VERIFICATION

STATE OF NEVADA)
): ss
COUNTY OFCLARK)

ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, being first duly sworn, deposes and says: That I am the Defendant herein; that I have read the above and foregoing Errata To Objection to Jacqueline M. Montoya's Petition and Addendum to Petition to Compel Trustee To Distribute Accrued Income and Future Income Received From Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches, that the same is true of my own knowledge, except for matters therein stated on information and belief, and as for those matters, I believe it to be true.

Eleanor Connell Hartman Ahern
ELEANOR CONNELL HARTMAN AHERN

SUBSCRIBED and SWORN to before me

this 7 day of May, 2014.

NOTARY PUBLIC

KARI A. LOMPREY
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 11-5388-1
MY APPT. EXPIRES JULY 14, 2015

CERTIFICATE OF MAILING

I hereby certify that on the 8 day of May, 2014, I did email to JOSEPH J. POWELL, Esquire, as indicated below, and I did email and deposit in the U.S. Post Office at Las Vegas, Nevada, postage prepaid, a copy of the above and foregoing Errata To Objection To Jacqueline M. Montoya's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches, to each person as indicated below, addressed as follows:

Joseph J. Powell
The Rushforth Firm, Ltd.
P.O. Box 371655
Las Vegas, NV 89137-1655
probate@rushforthfirm.com

An employee of JEFFREY BURR, LTD.

INDEX OF EXHIBITS

Exhibit	Description	Pages
M	Responses of Petitioner JACQUELINE M MONTOYA to Interrogatories No. 11-No. 17, inclusive,	8

EXHIBIT M

Responses of Petitioner JACQUELINE M MONTOYA to Interrogatories No. 11-No. 17, inclusive.

INTERROGATORY NO. 11: Itemize by date received, description and amount any and all bequests, devises and distributions you and/or BOUVIER received from the MARJORIE T. CONNELL Estate.

RESPONSE TO INTERROGATORY NO. 11:

Objection. Irrelevant. ELEANOR C. AHERN's Interrogatory No. 11 is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. As such, JACQUELINE objects that such request seeks information irrelevant to this proceeding and seeks information beyond the scope of this matter.

Objection. Protected by Right of Privacy. The financial information of JACQUELINE MONTOYA and KATHRYN BOUVIER related to the Estate of MARJORIE T. CONNELL and what was received or not received from the Estate of MARJORIE T. CONNELL are protected by the right of privacy that JACQUELINE and KATHRYN have and as such this information is private and not discoverable.

INTERROGATORY NO. 12: Itemize by date received, description and amount any and all bequests, devises, and distributions you and/or BOUVIER received from THE MTC LIVING TRUST from the date of its creation to the present date.

RESPONSE TO INTERROGATORY NO. 12:

Objection. Irrelevant. ELEANOR C. AHERN's Interrogatory No. 12 is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. As such, JACQUELINE objects that such request seeks information irrelevant to this proceeding and seeks information beyond the scope of this matter.

Objection. Protected by Right of Privacy. The financial information of JACQUELINE MONTOYA and KATHRYN BOUVIER related to the MTC Living Trust and what was received or not received

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from the MTC Living Trust are protected by the right of privacy that JACQUELINE and KATHRYN have and as such this information is private and not discoverable.

INTERROGATORY NO. 13: Itemize by date received, description and amount any and all gifts and/or compensation you and/or BOUVIER received from MARJORIE T. CONNELL from January 1, 1999 to the present date.

RESPONSE TO INTERROGATORY NO. 13:

Objection. Irrelevant. ELEANOR C. AHERN's Interrogatory No. 13 is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. As such, JACQUELINE objects that such request seeks information irrelevant to this proceeding and seeks information beyond the scope of this matter.

Objection. Protected by Right of Privacy. The financial information of JACQUELINE MONTOYA and KATHRYN BOUVIER relating to gifts or compensation received from MARJORIE T. CONNELL and what was received or not received from MARJORIE T. CONNELL are protected by the right of privacy that JACQUELINE and KATHRYN have and as such this information is private and not discoverable.

INTERROGATORY NO. 14: Itemize by date received, description and amount any and all loans you and/or BOUVIER received from MARJORIE T. CONNELL and/or THE MTC LIVING TRUST from January 1, 1999 to date.

RESPONSE TO INTERROGATORY NO. 14:

Objection. Irrelevant. ELEANOR C. AHERN's Interrogatory No. 14 is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. As such, JACQUELINE objects that such request seeks information irrelevant to this proceeding and seeks information beyond the scope of this matter.

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Objection. Protected by Right of Privacy. The financial information of JACQUELINE MONTOYA and KATHRYN BOUVIER related to the MTC Living Trust and MARJORIE T. CONNELL and what was received or not received from the MTC Living Trust and/or MARJORIE T. CONNELL are protected by the right of privacy that JACQUELINE and KATHRYN have and as such this information is private and not discoverable.

INTERROGATORY NO. 15: Items by date received, description and amount any and all trustee fees, reimbursement for expenses and compensation you have received from THE MTC LIVING TRUST for acting as trustee of such trust.

RESPONSE TO INTERROGATORY NO. 15:

Objection. Irrelevant. ELEANOR C. AHERN's Interrogatory No. 15 is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. As such, JACQUELINE objects that such request seeks information irrelevant to this proceeding and seeks information beyond the scope of this matter.

Objection. Protected by Right of Privacy. The finances of JACQUELINE MONTOYA related to the MTC Living Trust and what was received or not received are protected by the right of privacy that JACQUELINE has and as such this information need not be produced.

INTERROGATORY NO. 16: Itemize by date received, description and amount any and all fees, reimbursement for expenses and compensation you have received from the MARJORIE T. CONNELL Estate as personal representative of such Estate.

RESPONSE TO INTERROGATORY NO. 16:

Objection. Irrelevant. ELEANOR C. AHERN's Interrogatory No. 16 is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. As such, JACQUELINE objects that such request seeks information irrelevant to this proceeding and seeks information beyond the scope of this matter.

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Objection. Protected by Right of Privacy. The finances of JACQUELINE MONTOYA related to the the Estate of MARJORIE T. CONNELL and what was received or not received from the Estate of MARJORIE T. CONNELL are protected by the right of privacy that JACQUELINE has and as such this information need not be produced.

INTERROGATORY NO. 17: Do you possess an accounting, including all receipts and disbursements, and an inventory of assets held or otherwise owned by THE MTC LIVING TRUST during the time period beginning on the date of MARJORIE T. CONNELL's death to the present? If your answer is yes, for each item, state the following:

a. Its description, form, name, or other means of general identification;

b. The date on which it was made, prepared, or taken; and

c. The name, address and job title of each person who has possession of the original and/or a copy of it.

RESPONSE TO INTERROGATORY NO. 17:

Objection. Irrelevant. ELEANOR C. AHERN's Interrogatory No. 17 is irrelevant to the subject matter of this matter, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. As such, JACQUELINE MONTOYA objects that such request seeks information irrelevant to this proceeding and seeks information beyond the scope of this matter.

Notwithstanding this Objection, Yes, JACQUELINE MONTOYA does possess an inventory of assets belonging to the MTC Living Trust.

INTERROGATORY NO. 18: What are the name(s), address(es), email address(es), and phone number(s) of all persons and/or entities that prepared

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OIL AND GAS LEASE

STATE OF TEXAS §
§
COUNTY OF UPTON §

THIS AGREEMENT, made and entered into as of the 4th day of April, 2012, by and between the undersigned party or parties designated as Lessor on the signature page of this Lease (such party or parties hereinafter called "Lessor") and the undersigned party or parties designated as Lessee on the signature page of this Lease (such party or parties hereinafter called "Lessee").

1. Definitions. As used in this Lease, the following words and phrases shall have the meaning set forth below:

A. "commence a well", "commencement of a well", "commence actual drilling operations", "commencement of actual drilling operations", "actual drilling" or "actual drilling of a well" shall be deemed to occur at such time as there has been erected on the leased premises at the location for the well, a derrick, a rig and machinery capable of drilling to the base of the objective formation, the well has been "spudded-in" and the machinery for drilling is rotating under power.

B. "completion" or "completion of a well" shall be deemed to occur on (i) the date which is ninety (90) days after the production casing and/or liner has been run in the hole, (ii) the date which is ninety (90) days after total depth of the well in question has been reached, or (iii) the date indicated in the completion report for the well which is filed with the Railroad Commission, whichever is the earliest date.

C. The date of abandonment of a dry hole is the date indicated on the Texas Railroad Commission plugging report for the well or thirty (30) days after total depth is reached, whichever is the earlier date.

D. "production", "producing", "production in paying quantities", "commercial production", "production in commercial quantities", "producing in paying quantities" and "producing in commercial quantities" shall have the same meaning for purposes of this Lease, namely production in quantities sufficient to yield a return to the holders of the working interest excluding severance taxes, in excess of operating expenses, royalties and expenses of equipment beyond the wellhead and costs including depreciation of assets ("depreciation of assets" shall be the actual loss of fair market value of salvable equipment on the leased premises during the relevant period), even though drilling costs may never be recouped by working interest owners. The review period for purposes of determining whether production is in paying or commercial quantities shall be one hundred twenty (120) consecutive days. There shall be no review period when production ceases. Production in less than paying or commercial quantities shall never be considered as production for purposes of this Lease.

E. "operations for reworking", "reworking operations", "commencement of reworking operations", "commence reworking operations", "commence reworking operations" and "actual reworking operations" shall have the same meaning being the actual re-entry into an existing wellbore with a drilling or workover rig capable of re-entering and reworking such well and the timely prosecution of such actual reworking operations in good faith and with reasonable diligence and without cessation of more than sixty (60) days, toward the re-establishment of commercial production of oil or gas from such previously producing zone or zones.

F. "Producing Unit" means the following:

(i) With respect to vertical wells:

[a] A tract of land designated in writing by Lessee, as provided in this Lease,

containing no more than 80 acres on which Lessee has drilled and completed an oil well pursuant to the terms of this Lease and which is producing in paying quantities (provided that if the field rules of the Texas Railroad Commission applicable to wells which are completed in each of the Wolfcamp, Dean and Spraberry formations are modified or amended after the date of this Lease to provide that the standard proration unit for such wells shall be 40 acres, then and in that event, each Producing Unit for oil wells drilled by Lessee after the effective date of such modification or amendment of the applicable field rules shall contain no more than 40 acres, plus a tolerance of ten percent);

[b] A tract of land designated in writing by Lessee as provided in this Lease containing no more than 320 acres on which Lessee has drilled a gas well pursuant to the terms of this Lease and which is producing in paying quantities.

(ii) With respect to horizontal wells:

[a] As to horizontal wells, which are not drilled or produced pursuant to a pooled unit created under the terms of this Lease, a tract of land designated in writing by Lessee containing no more than the lesser of:

[I] Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

[II] 320 acres.

[b] As to horizontal wells which are located within a valid pooled unit created under the terms of this Lease, the Producing Unit for purposes of this Lease shall be the portion of the leased premises comprising a part of such pooled unit.

A Producing Unit, whether for a vertical well or for a horizontal well, shall include only those depths and horizons from one hundred feet (100') above the top of the shallowest formation producing in the well for such Producing Unit down to one hundred feet (100') below the base of the deepest producing formation in such well.

G. "Surface Owner" shall mean the record owner of the fee interest in the surface estate of the tract of land described in Section 2 of this Lease.

H. "Disposition" shall mean when used in reference to Lessee's handling of production; the transaction, place and point in time whereby Lessee and its Affiliates finally and fully relinquish any beneficial ownership, rights or enjoyment of any substance produced under the terms of this Lease.

I. "Affiliate" or "affiliate" as used herein means and shall include each and every one of the following:

(i) each individual, corporation, joint venture, trust, estate, partnership, limited liability company or other entity that owns or controls more than one percent (1%) of the outstanding voting securities or interest of Lessee; and

(ii) each corporation, joint venture, trust, partnership, limited liability company or other entity in which Lessee or any current or past officer or director of Lessee owns or controls more than one percent (1%) of the outstanding voting

securities or interest.

2. Grant of Interest/Description.

A. Lessor, in consideration of a cash bonus in hand paid, of the royalties herein provided, and of the agreements of Lessee hereinafter contained, hereby grants, leases, and lets unto Lessee for the sole purpose of exploring for, drilling, operating, and producing oil and/or gas and of laying pipelines, temporarily storing oil, building one or more tank batteries, power lines, and roads thereon necessary to produce, save, care for, treat and transport the oil and/or gas produced from the land leased hereunder, the following described land situated in Upton County, Texas, (sometimes referred to hereinafter as the "leased premises") to wit:

Tract A: NE/4 of Section 38, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract B: All depths from the surface down to a depth of 7100 feet below the surface and all depths lying below a depth of 8500 feet below the surface in the NW/4 and the S/2 of Section 38, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract C: All depths lying below a depth of 9000 feet below the surface in Section 48, Block 39, T-5-S, T&P Ry. Co. Survey.

B. This Lease is made subject to any and all easements, rights of way and other encumbrances burdening any part of the leased premises as shown of record in Upton County, Texas or apparent from a reasonable inspection of the leased premises.

C. By this Lease, Lessee acquires no right to construct, operate or maintain any treating or processing plant, dwelling house, lease house, camp, pipe yard, equipment yard, warehouse or similar structure on the leased premises and acquires no easement, express or implied, with respect to any land other than the leased premises.

D. Lessee specifically covenants and agrees that with respect to its performance of obligations (both express and implied) and exercise of rights and privileges arising under this Lease that Lessee shall conduct itself with respect to Lessor and the Surface Owners with the utmost good faith and fair dealing. Lessee further covenants and agrees to comply with all applicable local, state and federal laws, rules, and regulations.

3. Term. Subject to the provisions contained herein, this Lease shall be for a term of three (3) years from this date (called "primary term"), and for so long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased premises.

4. Surface Use Agreement. Lessee's rights to utilize the surface estate in the leased premises as elsewhere described in this Oil and Gas Lease are expressly made subject to that certain Surface Use Agreement dated April 4, 2012, entered into by and between Eleanor C. Hartman, as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972, as Owner, and Apache Corporation, as Operator. It is understood and agreed that the execution and delivery of this Oil and Gas Lease is made conditional upon the execution and delivery of the Surface Use Agreement.

5. Reservations. There is EXCEPTED from this Lease and Lessor RESERVES unto Lessor and Lessor's heirs, successors, administrators and assigns:

A. all minerals except oil, gas and other liquid and gaseous substances and sulphur that are necessarily produced with such oil or gas;

B. equal and concurrent rights of occupancy, use and possession of the surface estate by

(1) Lessor, (2) the Surface Owner and (3) Lessor's or the Surface Owner's other mineral, surface, grazing, agricultural and recreational lessees or assignees, together with the right of ingress to and egress from the leased premises for all purposes including exploring, developing and operating said leased premises for oil, gas and other minerals of whatever nature which are not covered by this Lease or which may hereafter be released from this Lease and, the sole and exclusive right, as between Lessor and Lessee, to complete water source wells on the leased premises and in any reservoir not productive of oil or gas for the purpose of obtaining water for domestic and agricultural use and consumption and for the exploration, development and operation of Lessor's reserved rights; provided, however, Lessor and Surface Owner agree not to use the surface of the premises affected hereby in any manner that will interfere unduly with any of Lessee's rights in exploring, developing, producing, transporting, and marketing oil, gas and other hydrocarbons under leased premises. As between mineral, surface, and agricultural lessees, access to the surface shall be based on the principle of first-in-time, first-in-right, but as between Lessee herein and subsequent mineral lessees, the leasehold estate created by this Lease shall be considered dominant;

C. all rights granted to Lessee in this Lease shall be limited to the leased premises and depths described and covered by this Lease together with such ingress to and egress from leased premises as designated by Lessor and shall not extend to and Lessor expressly reserves all rights, privileges and usage which relate to land not described herein or which may be released herefrom. It is understood and agreed that to the extent Lessee establishes roads, flowlines, pipelines or power lines across the leased premises in accordance with the terms and provisions of the Surface Use Agreement to service its operations on any of the following described tracts of land (the "Jointly Operated Acreage"), prior to any partial or total termination of this Lease, then and in that event, Lessee may nevertheless continue to use such established roads, flowlines, pipelines and power lines as originally configured for as long as any of the existing oil and gas leases (including this Lease and any oil and gas leases executed by Lessor to Lessee within (30) days from and after the date of this Lease) covering any portion of the Jointly Operated Acreage remains in force and effect; provided however it is expressly understood and agreed that Lessee's limited right to use the surface estate of the leased premises for roads, flowlines, pipelines and power lines across the leased premises for the benefit of Lessee's other leasehold operations on the Jointly Operated Acreage shall never be extended or construed to extend or be utilized by Lessee for the use or benefit of or as a convenience to Lessee in operating on lands not within the Jointly Operated Acreage, regardless of whether such lands not included within the Jointly Operated Acreage are owned by Lessor or any one or more of the Surface Owner or third parties:

(i) Section 38, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(ii) Section 48, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

6. <u>Partial Termination; Continuous Development; Retained Acreage and Depths</u>.

A. At the later to occur of the following: (i) the expiration of the primary term of this Lease, or (ii) the conclusion of the Lessee's continuous development program undertaken and prosecuted in accordance with the provisions of this Lease; this Lease shall terminate as to all of the leased premises not theretofore released, save and except the acreage and depths included in the Producing Unit(s) established by Lessee.

B. Each Producing Unit shall be in the form of a square or rectangle as nearly as is practicable with the well at a legal location on such Producing Unit and as nearly as possible in the center of such Producing Unit.

C. Lessee shall designate each Producing Unit in recordable form with such designation containing a metes and bounds description or other sufficient legal description of the Producing Unit's exterior boundaries and relevant depth limitations. Lessee shall place each designation of a Producing Unit of record in Upton County, Texas within sixty (60) days after the completion of the well for such Producing Unit and promptly provide to Lessor a certified copy of such recorded designation of Producing Unit; provided, however that during the existence (if any) of Lessee's continuous development program, Lessee may defer filing such designations until the continuous development program has been concluded at which time Lessee may file a single instrument which

identifies and designates each Producing Unit situated on the leased premises.

D. Lessee shall, within sixty (60) days after termination of this Lease, as to any part of the leased premises, execute and furnish to Lessor a recordable release describing the acreage and/or depths as to which this Lease has terminated.

E. Subject to the provisions of Section 6.G. below, if at the expiration of the primary term of this Lease, Lessee is then engaged in drilling a well on the leased premises or if Lessee has completed a well as a commercial producer on the leased premises and such well is then still producing in paying quantities upon the expiration of the primary term of this Lease, Lessee shall have the right and option (but not obligation) to engage in a continuous development program on the leased premises by conducting a program of continuous drilling of new wells on the leased premises allowing no more than one hundred eighty (180) days to elapse between (i) the completion of one well as a well producing in paying quantities or as a dry hole, and (ii) the commencement of actual drilling operations on the next succeeding well. If a continuous development program is undertaken by the Lessee it shall be deemed to have been concluded on the earlier to occur of the following: (x) at such time as Lessee allows more than one hundred eighty (180) days to pass from the most recent completion of a new well on the leased premises without having commenced actual drilling operations on another new well; or (y) upon the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expired. It is understood and agreed that commencement of reworking operations or drilling, side tracking or deepening operations on a well previously completed pursuant to this Lease shall not constitute "commencement of actual drilling on the next succeeding well" so as to constitute continuous development.

F. If after the expiration of the primary term of this Lease or the conclusion of Lessee's continuous development program, whichever occurs later, any Producing Unit shall cease to produce in paying quantities this Lease shall terminate as to such Producing Unit unless Lessee, within sixty (60) days after such cessation of production in paying quantities, commences reworking operations or commences actual drilling operations and thereafter diligently prosecutes the same or different reworking or actual drilling operations on such Producing Unit with no cessation of more than thirty (30) days until production in paying quantities is restored.

G. Notwithstanding anything herein to the contrary, on the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expires, this Lease shall terminate as to all acreage not then located within a Producing Unit.

H. Although this Lease may have terminated in part or may have been partially released, Lessee shall have and retain easements over and across the terminated portion or portions of the surface of the leased premises as shall be reasonably necessary for ingress and egress so as to enable Lessee to develop and operate the portion or portions of the leased premises as to which this Lease continues in effect and Lessee shall not be required to relocate any pipelines or roads solely because of the partial termination or partial release of this Lease.

7. Royalties. As royalty, Lessee covenants and agrees:

A. Oil. To deliver free of cost to Lessor at the location of the disposition of Lessee's oil and liquid hydrocarbons or to the credit of Lessor at the pipelines to which the wells may be connected, one-fourth (1/4) of all oil and other liquid hydrocarbons (recovered or separated on the leased premises) produced and saved from the leased premises; or, at the Lessor's option, which may be exercised from time to time, Lessee shall pay to Lessor the same percentage of the market value at the point of Lessee's disposition of its oil and liquid hydrocarbons for such oil and other liquid hydrocarbons of like grade and gravity prevailing in the area on the day such oil and other hydrocarbons are run; provided, however, there shall be no deduction from the value of Lessor's royalty by reason of any processing, treatment, trucking, transportation or other cost to market such oil and other liquid hydrocarbons. If Lessee or any Affiliate of Lessee engages in any "downstream marketing" of oil or other liquid hydrocarbons, from the leased premises, including receiving payments for aggregating such substances with oil or liquid hydrocarbons produced from other tracts of land, then and in that event, Lessee shall fully disclose any such contractual or other marketing arrangements and shall include in its payment of royalties on oil the share of the payments or value

of any other consideration received in connection with or for such arrangements on the basis that the production from and attributable to this lease bears to the total volume of production the disposition for which Lessee or any of its Affiliates received any "bonuses", "marketing fees", "aggregation fees" or the like.

B. Gas. To pay the Lessor:

(i) On gas produced from the leased premises which is processed in a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive the higher of (a) one-fourth (1/4) of the market value of such gas at the inlet to the processing plant, or (b) one-fourth (1/4) of the market value of all processed liquids saved from said gas at the point of disposition for Lessee's share of processed liquids, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(ii) On gas produced from the leased premises, which is processed in facilities other than a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive one-fourth (1/4) of the market value at the point of disposition of Lessee's liquids of all processed liquids credited to the account of Lessee and attributable to such gas, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(iii) On all gas produced from the leased premises, and sold by Lessee or used on or off the leased premises, and to which the preceding subparagraphs (i) and (ii) above do not apply, Lessor shall receive one-fourth (1/4) of the market value at the point of use or other disposition of all such gas.

C. The market value of all gas shall be determined at the specified location and by reference to the gross heating value (measured in British thermal units) and quality of the gas. The market value used in the calculation of all royalty under this Lease shall never be less than the total proceeds received by Lessee in connection with the sale, use or other disposition of oil or gas produced or sold from the leased premises. If Lessee receives from a purchaser of oil or gas any reimbursement for all or any part of severance or production taxes, the proportionate part of such reimbursement amount shall be added to the total proceeds received by Lessee for purposes of this subsection. If Lessee realizes proceeds of production after deduction of any expenses of production, gathering, dehydration, separation, compression, transportation, treatment, processing, storage or marketing, then the proportionate part of such deductions shall be added to the total proceeds received by Lessee for purposes of this Section 7.C.

D. Notwithstanding anything to the contrary, Lessor's royalty shall never bear, either directly or indirectly, any part of the costs or expenses of production, separation, gathering, dehydration, compression, transportation, trucking, processing, treatment, storage or marketing of the oil or gas produced from the leased premises, nor any part of the costs of construction, operation or depreciation of any plant or other facilities or equipment used in the handling of oil or gas produced from the leased premises. Royalty shall be payable on oil, gas and other products produced from the leased premises and consumed by Lessee on the leased premises, whether for compression, dehydration, fuel or other uses. It is understood and agreed that as to gas volumes produced from the leased premises which are reinjected by Lessee into a producing formation in the leased premises for the purpose of pressure maintenance or re-pressuring such formation with Lessee having the good faith belief that such re-injection will result in the enhancement of the overall recovery of royalty-bearing hydrocarbons from this Lease, then and in that event Lessee shall not be required to pay royalties on such re-injected gas volumes.

E. If the gas produced from the leased premises is sold by Lessee pursuant to an arms-length contract with a purchaser which is not an affiliate of Lessee, and the contract provides for (i) net proceeds to be paid to Lessee which equal or exceed the market value of the gas at the point of delivery to such purchaser at the time such contract is entered into, and (ii) a term no longer than that which is usual and customary in the industry at the time the contract is made and such contract provides for redetermination of price to reflect increases in the market value of natural gas not less frequently than annually, then the market value of the gas sold pursuant to such contract shall be the

total proceeds received by Lessee in such sale, subject to the provisions of Section 7.C. and 7.D. above.

8. Payment of Royalties. With respect to each well on the leased premises, initial royalty payments for oil and/or gas shall be made on or before the end of the fourth (4th) calendar month following the month of first production. Thereafter, all royalties which are required to be paid hereunder to Lessor shall be due and payable in the following manner: Royalty on oil shall be due and payable on or before the fifth (5th) day of the second (2nd) calendar month following the month production is sold, and royalty on gas shall be due and payable on or before the fifteenth (15th) of the third (3rd) calendar month following the month of production. Each royalty payment shall be accompanied by a check stub, schedule, summary or remittance advice identifying the Lease and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas. A copy of all contracts under which gas is sold or processed and all subsequent agreements and amendments to such contracts shall be delivered to Lessor within thirty (30) days after entering into or making such contracts, agreements or amendments. The books, accounts and all other records pertaining to production, transportation, sale and marketing of oil or gas from the leased premises shall at any time during normal business hours be subject to inspection and examination by Lessor. If payments to be made by Lessee to Lessor are not made when due for whatever reason, the unpaid portion shall bear interest at the lower of Twelve Percent per annum (12%) or the highest rate allowed by law. If Lessee is in default hereunder and this matter is turned over to an attorney for collection, or is collected by suit, Lessee agrees to pay all reasonable attorney's fees and litigation expenses incurred by Lessor. Payments may be remitted to Lessor annually for the aggregate of up to twelve (12) months' accumulation of proceeds if the total amount owed is $25.00 or less.

9. Limitation of Oil and Gas. This Lease is intended to cover only oil and gas, but some other substances (including helium and sulphur) may be produced necessarily with and incidental to the production of oil or gas from the leased premises; and, in such event, this Lease shall also cover all such other substances so produced. On all such substances produced under and by virtue of the terms of this Lease, Lessor shall receive a royalty of one-fourth (1/4) of all such substances so produced and saved, same to be delivered to Lessor, free of all costs; or, at Lessor's election, Lessor's one-fourth (1/4) of such substances shall be sold by Lessee with Lessee's portion of such substances and at the same price realized by Lessee in its disposition of its portion of such substances.

10. Gas Contracts; Contracts for Sale or Other Disposition of Production.

A. Each and every contract or agreement entered into by Lessee for or relating to the sale, processing or other disposition of production from or attributable to this Lease shall contain provisions sufficient to accommodate the Lessor's full exercise of its rights and privileges with respect to its royalty share of production including, but not limited to, those set forth in Section 12 of this Lease.

B. In the event Lessee enters into a contract for the sale of gas produced from or attributable to this Lease (including the Lessor's royalty share of gas) which contract contains what is commonly referred to as a "take or pay provision" (such provision meaning that the gas purchaser agrees to take delivery of a specified minimum volume or quantity of gas over a specified term at a specified price or to make minimum periodic payments to the producer for gas not taken by purchaser) and the purchaser under such gas purchase contract makes payments to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of gas, then Lessor shall be entitled to one-fourth (1/4) of all sums paid to producer under the provisions of such contract. Such royalty payments shall be due and owing to Lessor within sixty (60) days after Lessee's receipt of such payments from its purchaser. Any royalty payments made to Lessor under the "pay" obligation of any "take or pay" gas contract shall be applied as a credit toward Lessee's minimum royalty obligation. If the gas purchaser which has made any such "take or pay" payments to Lessee is entitled to and does "make-up" volumes of gas within the recoupment period called for in the gas contract and Lessee is required to give such purchaser a credit for those volumes of gas previously paid for but not taken, then Lessor shall not be entitled to royalty on such "make-up" gas, except to the extent necessary for Lessor to receive its full royalty share of the market value of such gas in accordance with Section 7.

C. To the extent Lessor's royalty share of oil, gas, natural gas liquids or any other substance produced and saved from the leased premises is covered or included by Lessee in any contract for the sale, processing or other disposition of production from or attributable to this Lease, Lessor shall be an intended third-party beneficiary of any such contract regardless of any provision of such contract(s) to the contrary. Further, Lessor shall be entitled to one-fourth (1/4) of the value of any benefits obtained by or granted to Lessee in connection with the Lessee's execution, amendment, modification, extension, cancellation, waiver, or settlement of any such contract.

11. Separation of Liquids. All gas produced from the leased premises shall, before the same is sold or used for any purpose or is transported from the leased premises be passed through a mechanical separator system situated on the leased premises designed and operated to effect the maximum economical recovery of liquid hydrocarbons therefrom. All condensate, distillate, natural gasoline, kerosene and all other liquid hydrocarbons and mixtures thereof produced with gas from the leased premises and separated from such shall be considered oil for all purposes of Section 7.A. above.

12. Right to Take Production in Kind. Lessor shall always have the right, at any time and from time to time, upon reasonable written notice to Lessee, to take Lessor's share of oil, gas and processed liquids in kind. Lessor may elect to take Lessor's gas in kind at the well, or at the point of delivery where Lessee delivers Lessee's gas to any third party. If gas is processed, Lessor may elect to take Lessor's share of residue gas attributable to production from the leased premises, at the same point of delivery where Lessee receives its share of residue gas or has its share of residue gas delivered to a third party. Lessor may elect to have its royalty share of processed liquids stored in tanks at the plant or delivered into pipelines on the same basis as Lessee's share of liquids is stored or delivered. Lessor shall reimburse Lessee for all reasonable costs incurred by Lessee in operating or maintaining additional facilities necessary for Lessor's royalty gas and processed liquids to be separately metered, accounted for, and delivered to a third party, but Lessor shall not be charged for any expense in the production, gathering, dehydration, separation, compression, transportation, treatment, processing or storage of Lessor's share of gas and processed liquids along with Lessee's share of gas and processed liquids.

13. Shut-in Gas Well Payments. If after the expiration of the primary term there is a gas well on the leased premises capable of producing in paying quantities but the production thereof is shut-in, shut-down or suspended for lack of a market, available pipelines, or because of government restrictions or, if it is economically inadvisable for both the Lessor and Lessee to sell gas for a time as evidenced by a written agreement signed by both parties, then, and in any such event, Lessee may pay as shut-in royalty on or before sixty (60) days after the date on which (a) production from any such well is shut-in, shut-down or suspended; or (b) this Lease is no longer maintained by compliance with one of the other preservation provisions hereof, whichever is the later date and thereafter at annual intervals the sum of Twenty Five Dollars ($25.00) per net mineral acre per Producing Unit per well, or Five Hundred Dollars ($500.00) per well which ever is greater, for each and every shut-in, shut-down or suspended well. If such payment is made in accordance with the terms hereof, this Lease shall not terminate, but shall continue in force for a period of one (1) year from the date of making such shut-in payment (subject to the exceptions set out hereafter) and it will be considered that gas is being produced from the leased premises in paying quantities within the meaning of each pertinent provision of this Lease. Provided, however, in no event shall shut-in well payments maintain this Lease in force for any single period exceeding two (2) years nor shall Lessee be entitled to utilize shut-in gas well payments to maintain any part of this Lease if this Lease has theretofore been maintained in whole or in part by the payment of shut-in gas well payments for a cumulative length of time exceeding four (4) years. Any shut-in royalty payment shall not be a credit against production nor be credited with prior production royalty. In the event that production is begun or resumed during the year following the payment of a shut-in royalty payment and is subsequently shut-in, during such year the second annual shut-in payment shall be due and payable on the anniversary date of the first payment. If there is production on such first anniversary date and the well is subsequently shut-in, shut-down or suspended, then the second shut-in payment shall be made on or before sixty (60) days after such new shut-in date or the Lease shall terminate. Notwithstanding anything to the contrary set out above, a proper shut-in gas well payment will maintain the rights granted by this Lease only to the Producing Unit(s) of such gas well(s) as if they were producing gas in paying quantities pursuant to Section 2 above. Should such shut-in gas well payments not be made

in a timely manner as provided for above, then, in that event, it shall be considered for all purposes that there is no production of gas from any such well or wells and, unless this Lease is being maintained by another preservation provision hereof, this Lease shall terminate automatically at midnight on the last day provided for the payment of such shut-in royalties, and Lessee shall thereupon furnish to Lessor a release of all of its interest in and to the Producing Units containing a shut-in gas well.

14. Pooling.

Vertical Wells. Unless Lessee obtains the prior written consent of Lessor, Lessee shall have no authority under this Lease to pool all or any portion of the leased premises with other acreage, tracts, interests or leases for the purposes of drilling or producing from a vertical well.

Horizontal Wells. Lessee, at its option, is granted the right and power to pool or combine Lessor's interest in the leased premises, or any portion thereof, as to oil and gas, or either of them, with other contiguous land, lease or leases, to form a pooled unit for a horizontal well, when in Lessee's judgment it is necessary or advisable to do so in order to properly explore, develop and operate the leased premises in compliance with the spacing and density rules of the Railroad Commission of Texas, or other lawful authority, or when to do so would, in the judgment of Lessee, promote the conservation of the oil and/or gas in and under and that may be produced from the portion of the leased premises to be included in such a pooled unit for a horizontal well.

A pooled unit created for a horizontal well under this Lease may contain no more than the lesser of:

(a) Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

(b) 320 acres.

Lessee shall execute in writing an instrument identifying and describing the pooled acreage, the leases and interests so pooled, the zones, substances, formations and depths covered by the pooled unit and record such instrument in the county or counties in which the pooled land is situated. The pooled unit shall be effective on the date such instrument is filed of record. A copy of such recorded instrument, and all amendments thereof, shall be furnished to Lessor within thirty (30) days from and after the respective effective date of such instrument(s).

Production from or drilling or reworking operations on any horizontal well on such pooled unit shall be treated as production from or drilling or reworking operations on the portion of the leased premises included in such pooled unit, provided, however, notwithstanding anything else in this Lease to the contrary, production from or drilling or reworking operations on any pooled unit established hereunder shall not be treated as or constitute production from, or drilling or reworking operations on any portion of the leased premises not included within such pooled unit. This Lease may be continued in force and effect as to portions of the leased premises not included in a pooled unit only as provided elsewhere in this Oil and Gas Lease.

Unless otherwise stated herein, there shall be allocated to this Oil and Gas Lease the proportion of the total production from the pooled unit that the number of surface acres covered by this Oil and Gas Lease and included in the pooled unit bears to the total number of surface acres in such pooled unit; and royalties shall be paid hereunder only upon that portion of total pooled unit production so allocated.

Any pooled unit designated by Lessee in accordance with the provisions of this Lease shall automatically terminate upon the completion of a dry hole on the pooled unit or upon the cessation of production in commercial quantities from said pooled unit unless Lessee commences additional operations or restores production on the pooled unit within the applicable time period required for

operations provided in Section 6.F. of this Lease. Lessee may dissolve a pooled unit designated in accordance with this Lease at any time after the completion of a dry hole or cessation of production in commercial quantities from such pooled unit.

15. Assignability. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof extend to the heirs, executors, administrators, successors and assigns of the parties hereto; provided, however, that any such assignment by Lessee shall require the prior written consent of Lessor, provided further, however that such consent shall not be unreasonably withheld. Lessor's consent to any assignment shall not constitute consent to any other assignment. Lessee shall furnish Lessor a copy of any assignment made pursuant to this section, with the recording data reflected thereon (if recorded). Assignment of this Lease or any part thereof shall not relieve Lessee, its assignees, or any subassignees of any obligations hereunder, theretofore accrued or to accrue in the future; and any assignee of Lessee shall, by acceptance of such assignment, be bound by all terms and provisions hereof. The term "assignment" as used herein, shall include, without limitation, any sublease, farmout, or any other agreement by which any share of the operating rights granted by this Lease are assigned or conveyed, or agreed to be assigned or conveyed, to any other party.

No change or division in ownership of the leased premises, rentals or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of Lessee, nor shall any such change or division be binding upon Lessee for any purpose until the person acquiring any interest has furnished Lessee with a true and correct copy of the instrument or instruments constituting his chain of title from Lessor.

16. Duty to Develop. The drilling of a well or wells within the broad language of this Lease shall not be construed as an agreement or construction on the part of Lessor that such drilling would constitute reasonable development of the leased premises, or such portion or portions thereof as may be in force from time to time, as may be necessary to reasonably explore and develop the same for the production of oil and gas. In the event a well or wells producing oil or gas should be brought in on adjacent land and draining the leased premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances. If oil and/or gas are discovered on the land covered by this Lease, Lessee agrees to further develop said land covered by this Lease as a reasonable prudent operator would under the same or similar circumstances.

17. Surface Damages and Restoration. Lessee's obligations with respect to its use of the surface estate in the leased premises is governed by that certain Surface Use Agreement between Lessee and the Surface Owner of even date herewith which is incorporated herein by reference for all purposes.

18. Water. Lessee's rights and interests to utilize potable ground water from the acreage covered by this Lease shall be restricted to those rights and interests more fully described in the Surface Use Agreement; otherwise by this Lease, Lessee does not (expressly or by implication or by operation of law) acquire any title to or right to use for any purpose, any water located in, on or under the leased premises.

19. Division Orders. Division orders or transfer orders, if executed, shall be solely for the convenience of the parties for the purpose of confirming the extent of Lessor's interest in production of oil and gas from the leased premises. No term or provision of this Lease shall be altered, amended, extended or ratified by any division order or transfer order. Any amendment, alteration, extension or ratification of this Lease or of any term or provision of this Lease shall be made by an instrument in writing clearly denominated as to its purpose and effect, describing the specific terms or provisions of the Lease affected and the proposed change or modification, and executed by the party against whom the amendment, alteration, extension, or ratification is to be enforced, any amendment, alteration, extension or ratification not so drafted and executed shall be of no force or effect.

20. Information Requirements.

A. Lessee shall furnish to the designated representative of Lessor (such representative initially designated to be Jacqueline Montoya of Las Vegas, Nevada, at or within the times indicated, a true and correct copy of each of the following:

(i) Any contract under which gas is sold or processed and any amendment to contract, within thirty (30) days after entering into the contract or amendment.

(ii) Each week, the daily drilling reports covering each well being drilled on the leased premises during the preceding week.

(iii) Simultaneously with its filing, any document affecting the leased premises and which is filed by Lessee with the Texas Railroad Commission or any other regulatory agency.

(iv) As soon as completed, final prints of all driller's logs, electrical logs and surveys obtained in drilling any well on the leased premises, any core analysis and test results obtained from any well on the leased premises, and Lessee's interpretation of all data obtained in Lessee's exploration operations on the leased premises.

(v) As soon as obtained by or on behalf of or made available to Lessee, any title opinion covering all or any part of the leased premises and obtained by or on behalf of or made available to Lessee while this Lease is in effect.

(vi) As soon as entered into, any permitted farm out agreement which is not filed for record.

(vii) With each royalty payment, a check stub, schedule, summary or other remittance advice showing the production period covered by the payment, gross production for the period, the amounts of any deductions and the amount of royalty being paid.

B. Lessee shall furnish to Lessor, as soon as the recording data is available for inclusion, a true and correct photocopy of this Lease, any release of this Lease in whole or in part, any permitted farm out agreement which is filed for record and any permitted assignment of this Lease in whole or in part. In each case where such instruments are to be recorded, the copy provided to Lessor shall reflect the recording data for such instrument.

C. Lessor, at Lessor's risk, shall have access to the derrick floor and all other areas at all times during any operations conducted by Lessee on the land. Lessee shall advise Lessor of the size of chokes installed on all producing wells on the leased premises at all times, together with appropriate pressure information to permit Lessor to check the rate of production from the wells. Lessor shall have the right to strap all storage tanks and read and check all meters and charts affixed to any producing well at reasonable times without previous notice to Lessee, and Lessor may, at Lessor's expense, install check meters on or otherwise check any producing well or wells located on the leased premises.

D. During Lessee's regular office hours, Lessor shall have access to and may inspect and copy all information concerning the drilling, coring, testing and completing of all wells, including the driller's log and all electrical logs and surveys, and all accounting books and records, production charts, records and information, concerning the production, transportation and marketing of oil and gas from the leased premises, and during and for five (5) years after expiration of the primary term of this Lease, all of the following data obtained as a result of Lessee's operations under this lease: all seismic, gravity meter and similar exploration data obtained by Lessee in its exploration of the leased premises so as to permit Lessor to make its own evaluation and interpretation of the data.

E. Lessee shall notify Lessor at least thirty (30) days in advance (exclusive of Saturdays, Sundays and legal holidays) of the time and date of the proposed plugging of any well which has produced, so as to allow Lessor to observe and inspect the plugging operations.

21. <u>INDEMNIFICATION</u>. LESSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, FINES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) (COLLECTIVELY "CLAIMS") RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH OPERATIONS OF OR FOR LESSEE, ITS AGENTS, CONTRACTORS, OR

SUBCONTRACTORS HEREUNDER, INCLUDING CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE PROVIDED HOWEVER, THAT THE LESSEE'S OBLIGATIONS UNDER THIS SECTION 21 SHALL NOT APPLY TO CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

22. Special Warranty of Title. Lessor warrants title to the undivided fractional mineral fee interest it owns of record as of the date of this Lease and which is covered by this Lease subject to the reservations, exceptions and other provisions hereof, unto Lessee from and against the claims of persons claiming or to claim the same or any part thereof during the term of this Lease by, through and under Lessor, but not otherwise. Lessor agrees that Lessee, at its option after Lessee has given Lessor sixty (60) days' written notice, may discharge any tax, mortgage or other lien upon Lessor's interest in the lease premises, either in whole or in part, and in the event Lessee does so, it shall be subrogated to such lien with right to enforce same, subject to any defenses of Lessor, and apply royalties accruing hereunder toward satisfying same.

23. Proportionate Reduction for less than Entire Interest. It is agreed that if Lessor owns an interest in oil and gas in and under any of the leased premises which is less than the entire oil and gas fee simple estate, then the royalties on production shall each be reduced by the proportion thereof which the mineral fee estate of Lessor in such land bears to the entire mineral fee estate, provided that in no event shall there by any refund of any amounts previously paid to Lessor as bonus, or shut-in gas well payments.

24. **COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS. LESSEE, ITS SUCCESSORS AND ASSIGNS, BY ITS ACCEPTANCE OF THIS LEASE, HEREBY AGREES TO COMPLY WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS AND HEREBY ASSUMES FULL RESPONSIBILITY FOR, AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS, LESSOR FROM AND AGAINST ANY LOSS, LIABILITY, CLAIM, FINE, EXPENSE AND COSTS (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) AND CAUSE OF ACTION (COLLECTIVELY "ENVIRONMENTAL CLAIMS") CAUSED BY OR ARISING OUT OF THE VIOLATION (OR DEFENSE OF THE ALLEGED VIOLATION) OF ANY FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS APPLICABLE TO ANY WASTE MATERIAL, DRILLING MATTER OR FLUID OR ANY HAZARDOUS OR TOXIC SUBSTANCES RELEASED OR CAUSED TO BE RELEASED BY LESSEE OR LESSEE'S AGENTS, OR INDEPENDENT CONTRACTORS FROM THE LEASED PREMISES HEREUNDER INTO THE ATMOSPHERE OR INTO OR UPON THE LEASED PREMISES OR ANY WATER COURSE OR BODY OF WATER, INCLUDING GROUND WATER, INCLUDING ENVIRONMENTAL CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT LESSEE'S OBLIGATIONS UNDER THIS SECTION 24 DO NOT APPLY TO ENVIRONMENTAL CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ADDITIONALLY, UPON RECEIVING ANY NOTICE REGARDING ANY ENVIRONMENTAL, POLLUTION OR CONTAMINATION PROBLEM OR VIOLATION OF ANY LAW, RULE OR REGULATION, LESSEE WILL FORWARD A COPY TO LESSOR BY CERTIFIED MAIL. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE, AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.**

25. No Salt Water or Waste Injection Wells. Lessee shall not be permitted to dispose of salt water or produced wastes or wastes of any kind into any formation or strata on this Lease, provided however Lessee may inject salt water produced from the leased premises into a well located thereon that has been drilled by Lessee or an existing wellbore that Lessee has converted into a disposal well, provided that Lessor's written consent is first obtained (such consent not to be unreasonably withheld). If and when requested by Lessor, Lessee shall demonstrate to Lessor's reasonable satisfaction that any such disposal or injection well is in compliance with all relevant laws and regulations concerning protection of ground water resources.

26. Timely Plugging and Abandonment of Wells. Without prior written consent of the Lessor, Lessee shall not allow any well located on the leased premises to remain in a shut-in, temporarily abandoned or otherwise non-productive state for a period of more than twelve (12) months without beginning plugging and abandonment operations with respect to the well and restoring the location, and providing that these procedures must be completed within two (2) months of their initiation. The only exception to this shall be gas wells capable of production which are shut-in pursuant to the provisions above regarding shut-in gas well payments, and for which shut-in gas well payments are being made in accordance with those same provisions. The obligations of Lessee, (and the concomitant rights of the Lessor), under this provision concerning the proper plugging and abandonment of wells and restoration of the surface of the leased premises shall survive the termination of this Lease, and shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of Lessor and Lessee.

27. Alteration/Modification. The terms of this Lease cannot be altered or amended except by a written instrument clearly demonstrating such purpose and effect, and executed by both parties to this Lease. The written instrument shall describe the specific terms or provisions being altered and the proposed modification or change thereto. Any notation or legend attached to a royalty check shall be null and void and without legal significance for the purpose of altering this Lease.

28. Recording Memorandum. It is understood and agreed that Lessee may, if it so chooses, file a Memorandum of this Lease in the real property records of Upton County, Texas, such Memorandum to describe the Leased Premises and identify the primary term and Lessor(s) and Lessee(s) who execute this Lease. Such a recording Memorandum will be executed and acknowledged by each of the parties hereto and shall disclose the existence of the continuous development program called for in this Lease.

29. Counterparts. This Lease may be executed in multiple counterparts each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

30. GOVERNING LAW; VENUE. THIS LEASE SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. THE VENUE FOR ANY ACTION TO ENFORCE OR CONSTRUE THE TERMS AND PROVISIONS OF THIS LEASE SHALL BE IN THE STATE COURTS OF UPTON COUNTY, TEXAS.

31. Separate Tracts/No Communitization. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts in intended or shall be implied, or result from, the inclusion of such separate tracts within this Lease. As used in this paragraph, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to the parties or amounts, from that as to any other part of the leased premises. Lessor has included multiple tracts under this Lease for the convenience of Lessor and Lessee, with the express agreement and stipulation that this Lease is not a "community lease" and that no communitization of royalty interest shall occur and that each separate tract shall be, for purposes of calculating and paying of royalty interest, considered a separate lease.

32. Lease Bonus for Excess Acreage. In the event during the primary term of this Lease it is discovered by Lessor or Lessee that this Lease actually covers more net mineral acres in the leased premises than such parties believed to be covered by this Lease at the time of its execution and delivery, and Lessor provides reasonable documentary proof of the existence of such excess net mineral acreage, then and in that event Lessee agrees to pay to Lessor an additional lease bonus consideration equal to the sum arrived at by multiplying the number of excess net mineral acres times the agreed per acre lease bonus consideration paid at the time of the execution and delivery of this Lease.

33. Notices. Any notice permitted or required under the terms and provisions of this Lease shall be in writing signed by or on behalf of the party giving notice and properly addressed and delivered to the recipient party utilizing the following address and contact information. Each notice under this Lease shall be sent by certified mail, return receipt requested, by facsimile transmission (fax), or by commercial overnight courier. A notice sent by mail shall be deemed to have been received (if

properly addressed, with postage prepaid) no later than three (3) Business Days after it is postmarked, while notices sent by commercial overnight courier shall be deemed to have been delivered when actually received.

Notices to the Lessor(s) and Lessee(s) respectively, shall be addressed as follows:

If to Lessor:
Eleanor C. Hartman, Individually and as
Trustee of the W. N. Connell and
Marjorie T. Connell Living Trust
Agreement dated May 18, 1972
P.O. Box 710
Las Vegas, Nevada 89125-0710

If to Lessee:
Apache Corporation
303 Veterans Airpark Lane, Suite 3000
Midland, Texas 79705

IN WITNESS WHEREOF, this instrument is dated as of the date first written above.

LESSOR

By: Eleanor C Hartman Individually and as Trustee
Eleanor C. Hartman, Individually and as
Trustee of the W. N. Connell and Marjorie
T. Connell Living Trust under Trust
Agreement dated May 18, 1972

LESSEE

APACHE CORPORATION

By: Timothy R. Custer
Printed Name: TIMOTHY R. CUSTER
Title: ATTORNEY IN FACT

THE STATE OF NEVADA §
§
COUNTY OF CLARK §

The foregoing instrument was acknowledged before me this 4th day of April, 2012, by Eleanor C. Hartman, Individually and as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972.

[SEAL]

STEPHEN MILLER
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 10-20-15
Certificate No: 11-6077-1

Notary Public in and for the State of Texas Nevada
Printed Name of Notary: Stephen Miller
My commission Expires: 10-20-15

THE STATE OF TEXAS §
§
COUNTY OF Midland §

The foregoing instrument was acknowledged before me this 11th day of April, 2012, by Timothy R Cusack Attorney in Fact of Apache Corporation, a Delaware corporation, on behalf of said corporation.

[SEAL]

KATHRINE RENEE JOHNSON
Notary Public
STATE OF TEXAS
My Comm. Exp. Aug 12, 2014

Kathrine Renee Johnson
Notary Public in and for the State of Texas
Printed Name of Notary: Kathrine Renee Johnson
My commission Expires: Aug 12, 2014

ADDENDUM TO:
OIL AND GAS LEASE

Replace addresses in paragraph 33 **Notices** on Page 14.
SIGNED 4-4-2012

Notices to Lessor and Lessee(s), respectfully, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as Trustee of the
W. N. Connell and Marjorie T. Connell
Living Trust under Trust Agreement dated May 18, 1972
8635 West Sahara Avenue, #549
The Lakes, Nevada 89117-5858

If to Lessee:

Apache Corporation 303 Veterans Airpark Lane, Suite 3000 Midland, Texas 79705

LESSEE
APACHE CORPORATION
BY: Timothy R. Custer
NAME: TIMOTHY R. CUSTER
Title: ATTORNEY IN FACT

LESSOR

BY: Eleanor C Hartman, Individually and as Trustee

Eleanor C. Hartman, Individually and as Trustee of the
W. N. Connell and Marjorie T. Connell
Living Trust Agreement dated May 18, 1972
8635 West Sahara Avenue, #549
The Lakes, Nevada 89117-5858

State of TEXAS
County of MIDLAND

The foregoing instrument was acknowledged before me this 10th day of July, 2012, by Timothy R. Custer, Attorney In Fact of Apache Corporation, a Delaware corporation, on behalf of said corporation.

Melissa L. Dimit
Notary Public in and for the State of Texas
Printed Name of Notary: Melissa L. Dimit
My commission expires: 9/9/2013

MELISSA L. DIMIT
Notary Public
STATE OF TEXAS
My Comm. Exp. Sep. 09, 2013

NOTARY Nevada
State of Nevada
County of Clark
This Document was Acknowledged before me this May 23rd 2012, by Eleanor C. Hartman
Notary Public

DENNIS HANSON
Notary Public State of Nevada
No. 00-60668-1
My appt. exp. March 1, 2016

EXHIBIT H

Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust and Certificate Of Mailing in the matter of the W. N. Connell And Marjorie T. Connell Living Trust dated May 18, 1972 in the District Court of Clark County, Nevada, Case No. P-09-066425-T

329198
P-09-066425-T

FILED
AUG 17 12 21 AM '09
CLERK OF THE COURT

FILED
AUG 17 2009
CLERK OF THE COURT

PET
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
BRIAN K. STEADMAN, ESQ.
Nevada State Bar No. 10771
SOLOMON DWIGGINS & FREER, LTD.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for ELEANOR C. AHERN, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972 An Intervivos Irrevocable Trust.	Case No. ~~P-09~~ P-09-066425-T PCI H **Date of Hearing: September 4, 2009** **Time of Hearing: 9:30 a.m.**

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PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND CONSTRUE AND REFORM TRUST

Petitioner, ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN ("Petitioner"), as successor Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust"), by and through counsel Mark A. Solomon, Esq., of the law firm of SOLOMON DWIGGINS & FREER, LTD., hereby respectfully petitions this Court to assume jurisdiction over the Trust, to confirm the Petitioner as Trustee of the Trust and any and all sub-trusts created under the Trust, to construe the Trust, and for an order reforming the distributions to the beneficiaries after the death of the Petitioner and the provisions appointing the successor Trustee. Pursuant to Nevada Revised Statutes ("NRS") 153.031(b), (e), and (n), 155.140, 164.050, 164.010, and

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164.015, Petitioner alleges as follows:

I.
PETITION TO ASSUME JURISDICTION OVER TRUST AND CONFIRM THE APPOINTMENT OF PETITIONER AS TRUSTEE

1. W. N. CONNELL and MARJORIE T. CONNELL ("MARJORIE"), husband and wife, as the grantors ("Grantors") and initial trustees, established the Trust on May 18, 1972, a copy of which is attached to this Petition as **Exhibit "1."**

2. W. N. CONNELL died on November 24, 1979, and was survived by his wife, MARJORIE. A copy of W. N. CONNELL's death certificate[1] is attached hereto as **Exhibit "2."**

3. The Petitioner is W. N. CONNELL's only surviving child. MARJORIE had no children during her lifetime, but formally adopted the Petitioner.

4. Pursuant to Article Twelfth, upon W. N. CONNELL's death, MARJORIE was named as the successor Trustee. *See*, Trust, Ex. 1, at pg. 13.

5. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death, the Trust was divided between Trust No. 2 and Trust No. 3. MARJORIE served as successor Trustee of the Trust, including Trust No. 2 and Trust No. 3, until her death.

6. On May 6, 1980, the Petitioner was named as Co-Trustee of the Trust, as is indicated in the Substitution of Trustee, attached hereto as **Exhibit "3."** The Petitioner served as Co-Trustee until the death of MARJORIE.

7. MARJORIE died on May 1, 2009. A copy of MARJORIE's death certificate[2] is attached hereto as **Exhibit "4."**

8. Pursuant to Article Twelfth, upon the death or incapacity of both W. N. CONNELL and

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[1] The social security number has been redacted.

[2] The social security number has been redacted.

MARJORIE, the Petitioner is to serve as successor Trustee. *See*, Trust, Ex. 1, at pg. 13. The Petitioner is currently serving as sole Trustee of the Trust, including Trust No. 2 and Trust No. 3.

9. The Petitioner is currently residing in Clark County, Nevada. The Trust is currently being administered in Clark County, Nevada.

10. Section F of Article Eighth states as follows:

> F. Applicable Law. This Trust Agreement is executed under the laws of the State of Nevada and shall in all respects be governed by the laws of the State of Nevada.

11. NRS 164.010(1) and (2) provides in pertinent part as follows:

> 1. Upon the petition of any person appointed as trustee of an express trust by any instrument other than a will . . . the district court of the county in which the trustee resides or conducts business, or in which the trust has been domiciled, shall consider the application to confirm the appointment of the trustee and specify the manner in which the trustee must qualify. Thereafter the court has jurisdiction of the trust as a proceeding in rem.
>
> 2. If the court grants the petition, it may consider at the same time any petition for instructions filed with the petition for confirmation.

12. It is appropriate for this Court to confirm Petitioner as Trustee since the Trust designates her to serve as successor Trustee upon the death of both W. N. CONNELL and MARJORIE death.

13. Further, *in rem* jurisdiction over the Trust is proper since the Trust is domiciled and being administered in Nevada.

14. Therefore, this Court should confirm the appointment of the Petitioner as Trustee of the Trust and exercise *in rem* jurisdiction over the Trust.

II.
PETITION TO CONSTRUE AND REFORM TRUST

15. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death, MARJORIE, as the Trustee, allocated to Trust No. 3: (1) MARJORIE's separate interest in the trust estate; (2) MARJORIE's one-half (½) interest in the community property of the trust estate; and (3) an

amount of property which qualified for the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code ("IRC") as federal estate tax credits. MARJORIE allocated to Trust No. 2 the balance of the Trust assets. *See*, Trust, Ex. 1, at pgs. 2 and 3.

16. The division of the Trust into Trust No. 2 and Trust No. 3 is similar to a type of trust commonly known as an "AB" trust, where upon the death of the first settlor, an amount equal to the federal estate tax exemption is allocated to a credit shelter type trust with the remaining assets allocated to a trust for the surviving spouse. In a standard AB trust, the assets allocated to the credit shelter trust are for the benefit of the deceased spouse's beneficiaries while the remaining assets are for the benefit of the surviving spouse.

17. Indeed, Trust No. 2 was drafted in such a manner as to benefit both the Petitioner and MARJORIE, who would typically be W. N. CONNELL's beneficiaries. Additionally, Trust No. 3 was for MARJORIE's benefit during her lifetime, and, more importantly, MARJORIE retained the testamentary power to appoint the balance of Trust No. 3 to her estate or to any person or persons. See, Trust, Ex. 1, at pg. 6.[3]

18. As of the death of MARJORIE, Trust No. 2 owned land and oil and gas shares in reserves and income located in Upton County, Texas (the "Oil Assets"). The Oil Assets have not been valued for some time, but are estimated to be worth approximately $700,000.

19. Pursuant to Article Fourth, which Article governs the administration of Trust No. 2, all income from the Oil Assets is to be paid to the Petitioner as the "Residual Beneficiary" during her

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[3] MARJORIE exercised this power of appointment prior to her death as indicated in Article Four of the Last Will and Testament of MARJORIE, dated January 7, 2008. A copy of MARJORIE's Last Will and Testament is attached hereto as **Exhibit "5."** The beneficiary of the exercise of the power of appointment was the MTC Living Trust, which contains provisions for the benefit of the Petitioner's issue.

lifetime.[4] Such income has been paid to the Petitioner since the creation of Trust No. 2 after W. N. CONNELL's death.

20. Section B of Article Fourth, governing Trust No. 2, provides as follows:

> B. Income. . . . In the event that the [Petitioner] predeceases [MARJORIE], the [Petitioner's] right to receive income hereunder shall be paid to or for the benefit of her living children and the issue of any deceased child by right of representation; or in the event she dies without leaving issue, her income rights hereunder shall become those of [MARJORIE].

See, Trust, Ex. 1, at pg. 4.

21. Although Trust No. 2 provides for a contingent distribution of the income from Trust No. 2 in the event that the Petitioner predeceased MARJORIE, no provision is made as to the final distribution of Trust No. 2 after the death of the Petitioner, in the event that MARJORIE predeceased the Petitioner.

22. Upon assuming jurisdiction of a trust, this Court "has exclusive jurisdiction" over proceedings to construe the terms of the trust and declare the rights of the parties, including "any appropriate relief provided for with regards to a testamentary trust in NRS 153.031." *See*, NRS 164.015(1). NRS 153.031 provides, in pertinent part:

> 1. A trustee or beneficiary may petition the court regarding any aspect of the affairs of the trust, including:
>
> (b) Determining the construction of the trust instrument;
>
> ***
>
> (e) Ascertaining beneficiaries and determining to whom property is to pass or be delivered upon final or partial termination of the trust, to the extent not provided in the trust instrument;

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[4] Section B of Article Fourth also states that all income received by Trust No. 2, other than that received from the Oil Assets, is to be paid to MARJORIE. However, as the sole asset of Trust No. 2 consists of the Oil Assets, this provision is inapplicable. Additionally, Trust No. 2 granted to MARJORIE the power to appoint and/or invade the principal of Trust No. 2 during her lifetime. *See*, Trust, Ex. 1, at pg. 5. Petitioner is informed and believes that MARJORIE did not exercise her power of appointment nor was the principal invaded for her benefit during her lifetime.

***

(n) Approving or directing the modification or termination of the trust[.]

23. A trust instrument may be reformed to conform with the settlor's intent, which may be ascertained from the trust instrument as a whole. *See, Sheinkopf v. Bornstein*, 823 N.E.2d 372 (Mass. 2005); *see also, Dassori v. Patterson*, 440 Mass. 1039, 802 N.E.2d 553 (2004) (A trust instrument may be reformed to conform with the settlor's intent.) The equitable power of the court to modify or reform a trust extends to situations where trust instrument contains some expression of trustor's intention, but drafting error renders that expression ambiguous. *See, Ike v. Doolittle*, 61 Cal. App. 4th 51, 70 Cal. Rptr. 2d 887 (4th Dist. 1998) (Recognizing the common law equitable power and the statutory authority of the court to alter administrative or distributive provisions of trust where necessary to accomplish purpose of trust).

24. On the application of the trustee or one or more beneficiaries, the court possesses and frequently exercises the power to modify the terms of the trust in order to effectuate the accomplishment of the purposes of the settlor. See generally, *Bogert on Trusts and Trustees*, §994; Restatement, Third, Trusts, §62. The court has equitable power to order reformation of a trust; and, once the court acquires jurisdiction, it is authorized to administer full, complete, and final relief. *See, Schroeder v. Gebhart*, 825 So. 2d 442 (Fla. Dist. Ct. App. 5th Dist. 2002), review denied, 845 So. 2d 892 (Fla. 2003).

25. If, due to a mistake, the trust does not contain the terms that were intended by the settlor, the settlor or other interested party may maintain a suit in equity to have the instrument reformed so that it will contain the terms that were actually agreed upon or that reflect the settlor's actual intent. *See*, Restatement, Second, Trusts, §333. *See also*, Restatement, Third, Trusts, §62.

26. The Petitioner is informed and believes that the failure to provide for distribution upon Petitioner's death is an omission due to scrivener error. Indeed, the Trust as a whole appears to be an

"AB" type trust whereby each spouse designates the beneficiaries they intend to receive such spouse's share, but, in the case of the Trust, the final dispositive provisions of Trust No. 2 were omitted.

27. Indeed, Article Fourth of the Trust, governing Trust No. 2 makes adequate provision for numerous other contingencies for the disposition of Trust No. 2, but appears to omit a provision for alternate disposition in the current situation - where MARJORIE predeceased the Petitioner. *See*, Trust, Ex. 1, at pgs. 4 and 5.

28. The Grantors' intent as to the final disposition of Trust No. 2 after the death of the Petitioner can be derived from the contingent dispositions of Trust No. 2 and the dispositve terms of Trust No. 3.

29. Section B of Article Fourth, governing Trust No. 2, provides that the income from Trust No. 2 is to be distributed to the Petitioner's issue if the Petitioner predeceased MARJORIE. Additionally, Trust No. 2 provides that, if the Petitioner predeceased MARJORIE leaving no issue, that MARJORIE be entitled to the income from the Oil Asset. These provisions show the Grantors had an overall dispositive model for Trust No. 2 in mind, which included not only the Petitioner, but the Petitioner's issue.

30. As outlined in Section D of Article Fifth, governing Trust No. 3, adequate provisions are made in for Trust No. 3 for the contingency of MARJORIE predeceasing the Petitioner, as follows:

> D. Death of Survivor. Upon the death of the Survivor, the Trustee shall distribute the trust estate in accordance with and to the extent provided by the Survivor's exercise of his or her power of appointment.
>
> If, and to the extent that the Survivor shall fail to effectively exercise the foregoing power of appointment, the principal and undistributed income of Trust No. 3 shall, upon his or her death, be distributed to the Residual Beneficiary, or to the heirs of her body if she is not then living.

See, Trust, Ex. 1, at pg. 6.

31. Moreover, Section D of Article Fifth, governing Trust No. 3, provides that, upon the death of both W. N. CONNELL and MARJORIE, the balance of Trust No. 3, if not otherwise appointed, is to

be distributed to the Petitioner or, if she is not living, then to her heirs. This provision clearly shows the Grantors' overall intent that the assets be vested in remainder beneficiaries, in particular the Petitioner and her heirs.

32. Bringing together the dispositive provisions of Trust No. 2 and Trust No. 3, the Grantors' intentions can be derived as follows: that, upon the death of the Petitioner, the balance of Trust No. 2 is to vest in the Petitioner's heirs.

33. Based on the terms of the Trust, the Petitioner requests that this Court: (1) construe the Trust to provide that it is the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No. 2 to ELEANOR C. AHERN's heirs upon her death;[5] and (2) reform Trust No. 2 in accordance with such intention by adding new Sections "E," "F," "G," and "H" to Article Fourth as follows:

> *E. Distribution Upon Death of both the Survivor and the Residual Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance of Trust No. 2 into two equal shares, as follows:*
>
> *1. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said equal share shall be distributed to JACQUELINE M. MONTOYA's then living issue, by right of representation. Each share created pursuant to this Section E(1) of Article Fourth for the benefit of the issue of JACQUELINE M. MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.*
>
> *2. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal*

---

[5] The Petitioner's heirs as of the date of this Petition are her two (2) daughters, JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER.

share shall be distributed to KATHRYN A. BOUVIER's then living issue, by right of representation. Each share created pursuant to this Section E(2) of Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

3. In the event that both JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having failed to exercise the testamentary power of appointment pursuant to Section (F) below, then the balance shall be distributed in accordance with Article Eleventh herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's equal share to or in trust for such one or more persons or organizations and in such manner and proportions as such beneficiary may appoint by her will or revocable trust making specific reference to this general power of appointment.

G. Management of Beneficiary's Shares. Until a Beneficiary has attained the age of twenty-one (21) years, the Trustee may distribute to or apply for the benefit of such Beneficiary so much of the income or principal from such Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion, is necessary to provide for his or her health, education, maintenance, and support. In addition, the Trustee may make the following discretionary distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole discretion, apply the principal or income of such Beneficiary's Share for the purpose of investing in a business or profession operated by, or to be operated by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole discretion, apply the income and principal of such Beneficiary's Share for the purpose of purchasing one or more residences to be owned by the Beneficiary's Share and used and occupied by such Beneficiary and his or her family, including a primary residence, seasonal residence or otherwise. In the case of any residence owned by the Beneficiary's Share, and in the Trustee's sole discretion, such Beneficiary may occupy and use such residence without rent or any other financial obligation for the payment of the taxes, insurance payments, maintenance costs and other expenses required in order to keep such residences in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole discretion, may grant such Beneficiary the right to the use, possession and

enjoyment of all of the tangible personal property held by such Beneficiary's Share, without financial obligation for the use of such property.

4. Distribution of Beneficiary's Share. *Upon a Beneficiary attaining the age of twenty-one (21), the Trustee shall distribute to him or her, outright and free of trust, the remaining principal and accumulated income of that Beneficiary's Share. If the Beneficiary has already reached the age of twenty-one (21) at the time of the creation of the Beneficiary's Share, then the Trustee shall, upon making the division, distribute, outright and free of trust, to the Beneficiary the balance of such Beneficiary's Share.*

5. Distribution Upon Death of Beneficiary. *If any Beneficiary shall die prior to the complete distribution of such Beneficiary's Share, then all of the remaining assets in such Beneficiary's Share shall be distributed to or in trust for such one or more persons or organizations and in such manner and proportions as such Beneficiary may appoint by his or her will or revocable trust making specific reference to this general power of appointment. To the extent that the Beneficiary does not exercise this general power of appointment, the remainder of such Beneficiary's Share shall be distributed to the issue of such Beneficiary in equal shares by right of representation and each such share shall be held, managed and further distributed by the Trustee as a Beneficiary's Share under Section G of Article Fourth. If the Beneficiary shall die failing to exercise this general power of appointment without leaving issue, then the Beneficiary's Share shall be distributed pro rata to the other Beneficiary's Shares then being administered by the Trustee hereunder, and if none, then to the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.*

6. Distributions to or for the Benefit of Minors or Persons Under Disability. *Whenever the Trustee is given the power or discretion to make distributions to or for the benefit of a minor or other beneficiary under a disability, the Trustee, in the Trustee's sole discretion, may make distributions to a minor or other person under disability by making distributions to the guardian or conservator of his or her estate and/or person, as the Trustee shall determine, or to any suitable person with whom he or she resides, or the Trustee may apply distributions directly for such beneficiary's benefit, or the Trustee may make distributions to any duly established custodian for any minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State. Any custodian acting on behalf of a minor beneficiary shall have the power to bind the beneficiary with respect to all matters concerning the Trust. The Trustee, in its sole discretion, may also make distributions directly to a minor if, in the Trustee's judgment, such minor is of sufficient age and maturity to receive such distribution and spend the money properly. The previous language of this paragraph 6 notwithstanding, if a beneficiary is, or would be eligible for need-based government benefits, the Trustee shall hold the funds for such beneficiary in a "special needs trust" as that term is understood for need-based government planning. By "special needs*

trust" is meant that the Trustee shall have the sole and absolute discretion to make distributions for the benefit of such beneficiary in a manner that improves the qualify of life for the beneficiary but will not make the beneficiary ineligible for need-based government benefits. The provisions of the Paragraph 6 are intended to supplant need-based government benefits, but not to replace them and all terms of this Paragraph 6 shall be so interpreted for all purposes.

H. Maximum Term for Trusts. Notwithstanding any other provision of this Trust, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities, or similar applicable rule. At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive distributions of income hereunder.

34. Article Twelfth of the Trust states, in pertinent part, as follows:

> Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor. the Grantors then nominate and appoint [the Petitioner] as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint the FIRST NATIONAL BANK OF NEVADA to serve in the said capacity.

35. In 2008, the FIRST NATIONAL BANK OF NEVADA failed, and is no longer in existence. As outlined in Article Twelfth, W. N. CONNELL and MARJORIE entrusted the beneficiaries (first being MARJORIE and, upon MARJORIE's death, the Petitioner) of the Trust to act as Trustees.

36. The Petitioner requests that, due to the failure of the successor Trustee named by the Grantors, this Court: (1) construe the Trust to provide that the intent of W. N. CONNELL and MARJORIE is to appoint the beneficiaries of the Trust to serve as Trustees thereof; and (2) to reform the Trust in accordance with such intention by modifying Article Twelfth as follows:

> *Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint JACQUELINE M.*

MONTOYA to serve in the said capacity. In the event that JACQUELINE M. MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN A. BOUVIER shall act as successor Trustee. No successor Trustee shall have any responsibility for the acts or omissions of any prior trustees and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.

In the event that none of the trustees named in this Article Twelfth are able or willing to serve, then the majority of adult income beneficiaries of the Trust shall select a successor Trustee.

37. The reformation of the Trust, pursuant to this Petition, will not change the substantive rights of the Petitioner during her lifetime. The sole purposes of the reformation are: (1) to clarify the dispositive provisions of Trust No. 2 after the death of the Petitioner; and (2) to forestall the requirement of petitioning the Court upon the death of the Petitioner to determine the successor Trustee.

38. The names, ages, residences, and relationships of the persons interested in the Trust, so far as known to Petitioner, are as follows:

NAME	AGE	RELATIONSHIP	ADDRESS
ELEANOR C. AHERN	Adult	Residual Beneficiary	6105 Elton Ave Las Vegas, NV 89107
JACQUELINE M. MONTOYA	Adult	Daughter of ELEANOR C. AHERN	3385 Maverick Street Las Vegas, NV 89108
KATHRYN A. BOUVIER	Adult	Daughter of ELEANOR C. AHERN	8461 Purple Sage Road Middleton, ID 83644
SHRINERS HOSPITALS FOR CHILDREN	N/A		Attn: Legal Department P.O. Box 31356 Tampa, FL 33631-3356

39. JACQUELINE M .MONTOYA and KATHRYN A. BOUVIER have consented in writing to the proposed reformation, as outlined in herein, and to this Court entering an order to assume jurisdiction over the Trust, the appointment of the Petitioner as the Trustee, and the reformation of the Trust as provided in this Petition. Said consents are attached hereto as **Exhibits** "6" and "7,"

respectively.

40. The interests of JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER and their respective issue in Trust No. 2 are substantially identical, and JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER are able to adequately represent the interests of their respective issue, including any minor and unborn issue without the necessity of the appointment of a guardian ad litem. *See*, NRS 155.140 and 164.005.

WHEREFORE, Petitioner requests that this Petition be set for hearing, and that after hearing the matters of this Petition, this Court find that notice of the time and place of such hearing has been given in the manner required by law, and that this Court make and enter its Orders and Decrees pursuant to NRS 153.031 (e) and (n), 164.010 and 164.015:

1. That this Court assume jurisdiction over THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, as a proceeding *in rem*;

2. That ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN be confirmed as the Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, with the exception of any trust in which the assets of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 were appointed by MARJORIE T. CONNELL;

3. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to provide that it was the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No. 2 created thereunder to ELEANOR C. AHERN's heirs upon her death; and (2) that the Trust is to be reformed in accordance with such intent;

4. That this Court order the Trust to be reformed to add new Sections "E," "F," "G," and "H" to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, as follows:

E. Distribution Upon Death of both the Survivor and the Residual Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance of Trust No. 2 into two equal shares, as follows:

1. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said equal share shall be distributed to JACQUELINE M. MONTOYA's then living issue, by right of representation. Each share created pursuant to this Section E(1) of Article Fourth for the benefit of the issue of JACQUELINE M. MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

2. One (1) equal share shall be distributed, outright and free of trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living. Subject to Section (F) below, if, as of the date of the Residual Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal share shall be distributed to KATHRYN A. BOUVIER's then living issue, by right of representation. Each share created pursuant to this Section E(2) of Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's Share") for the benefit of such issue ("Beneficiary") to be held by the Trustee, administered and further distributed pursuant to Section G of this Article Fourth.

3. In the event that both JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having failed to exercise the testamentary power of appointment pursuant to Section (F) below, then the balance shall be distributed in accordance with Article Eleventh herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's equal share to or in trust for such one or more persons or organizations and in such manner and proportions as such beneficiary may appoint by her will or revocable trust making specific reference to this general power of appointment.

G. Management of Beneficiary's Shares. Until a Beneficiary has attained the age of twenty-one (21) years, the Trustee may distribute to or apply for the benefit of such Beneficiary so much of the income or principal from such Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion, is necessary to provide for his or her health, education, maintenance, and support. In addition, the Trustee may make the following discretionary distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole discretion, apply the principal or income of such Beneficiary's Share for the purpose of investing in a business or profession operated by, or to be operated by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole discretion, apply the income and principal of such Beneficiary's Share for the purpose of purchasing one or more residences to be owned by the Beneficiary's Share and used and occupied by such Beneficiary and his or her family, including a primary residence, seasonal residence or otherwise. In the case of any residence owned by the Beneficiary's Share, and in the Trustee's sole discretion, such Beneficiary may occupy and use such residence without rent or any other financial obligation for the payment of the taxes, insurance payments, maintenance costs and other expenses required in order to keep such residences in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole discretion, may grant such Beneficiary the right to the use, possession and enjoyment of all of the tangible personal property held by such Beneficiary's Share, without financial obligation for the use of such property.

4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining the age of twenty-one (21), the Trustee shall distribute to him or her, outright and free of trust, the remaining principal and accumulated income of that Beneficiary's Share. If the Beneficiary has already reached the age of twenty-one (21) at the time of the creation of the Beneficiary's Share, then the Trustee shall, upon making the division, distribute, outright and free of trust, to the Beneficiary the balance of such Beneficiary's Share.

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall die prior to the complete distribution of such Beneficiary's Share, then all of the remaining assets in such Beneficiary's Share shall be distributed to or in trust for such one or more persons or organizations and in such manner and proportions as such Beneficiary may appoint by his or her will or revocable trust making specific reference to this general power of appointment. To the extent that the Beneficiary does not exercise this general power of appointment, the remainder of such Beneficiary's Share shall be distributed to the issue of such Beneficiary in equal shares by right of representation and each such share

shall be held, managed and further distributed by the Trustee as a Beneficiary's Share under Section G of Article Fourth. If the Beneficiary shall die failing to exercise this general power of appointment without leaving issue, then the Beneficiary's Share shall be distributed pro rata to the other Beneficiary's Shares then being administered by the Trustee hereunder, and if none, then to the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

6. Distributions to or for the Benefit of Minors or Persons Under Disability. Whenever the Trustee is given the power or discretion to make distributions to or for the benefit of a minor or other beneficiary under a disability, the Trustee, in the Trustee's sole discretion, may make distributions to a minor or other person under disability by making distributions to the guardian or conservator of his or her estate and/or person, as the Trustee shall determine, or to any suitable person with whom he or she resides, or the Trustee may apply distributions directly for such beneficiary's benefit, or the Trustee may make distributions to any duly established custodian for any minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State. Any custodian acting on behalf of a minor beneficiary shall have the power to bind the beneficiary with respect to all matters concerning the Trust. The Trustee, in its sole discretion, may also make distributions directly to a minor if, in the Trustee's judgment, such minor is of sufficient age and maturity to receive such distribution and spend the money properly. The previous language of this paragraph 6 notwithstanding, if a beneficiary is, or would be eligible for need-based government benefits, the Trustee shall hold the funds for such beneficiary in a "special needs trust" as that term is understood for need-based government planning. By "special needs trust" is meant that the Trustee shall have the sole and absolute discretion to make distributions for the benefit of such beneficiary in a manner that improves the qualify of life for the beneficiary but will not make the beneficiary ineligible for need-based government benefits. The provisions of the Paragraph 6 are intended to supplant need-based government benefits, but not to replace them and all terms of this Paragraph 6 shall be so interpreted for all purposes.

H. Maximum Term for Trusts. Notwithstanding any other provision of this Trust, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities, or similar applicable rule. At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive distributions of income hereunder.

5. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to provide that the intent of W. N. CONNELL and MARJORIE T. CONNELL was to appoint the beneficiaries of the Trust to serve as Trustees thereof; and

(2) that the Trust is to be reformed in accordance with such intent;

6. That this Court order the Trust to be reformed by modifying Article Twelfth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to read as follows:

> *Twelfth: Successor Trustee. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint JACQUELINE M. MONTOYA to serve in the said capacity. In the event that JACQUELINE M. MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN A. BOUVIER shall act as successor Trustee. No successor Trustee shall have any responsibility for the acts or omissions of any prior trustees and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.*
>
> *In the event that none of the trustees named in this Article Twelfth are able or willing to serve, then the majority of adult income beneficiaries of the Trust shall select a successor Trustee.*

7. For such other and further relief as the Court deems proper.

DATED this 14 day of August, 2009.

Respectfully submitted,
SOLOMON DWIGGINS & FREER, LTD.

By _____
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 00418
BRIAN K. STEADMAN
Nevada State Bar No. 10771
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483

Attorneys for Eleanor C. Ahern, Petitioner

VERIFICATION

ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, whose address is 6105 Elton Ave, Las Vegas, NV 89107, declares under penalties of perjury of the State of Nevada:

That she is the Petitioner who makes the foregoing Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust; that she has read said petition and know the contents thereof, and that the same is true of her own knowledge except for those matters stated on information and belief, and that as to such matters she believes it to be true.

DATED this 3rd day of August, 2009.

Eleanor C Ahern

ELEANOR C. AHERN f/k/a ELEANOR MARGUERITE CONNELL HARTMAN

EXHIBIT I

Consent and Waiver of Notice of Jacqueline M. Montoya to Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust in the matter of the W. N. Connell And Marjorie T. Connell Living Trust dated May 18, 1972 in the District Court of Clark County, Nevada, Case No. P-09-066425-T

CONS
SOLOMON DWIGGINS & FREER, LTD.
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9060 W. Cheyenne Avenue
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E-mail: msolomon@sdfnvlaw.com
Email: bsteadman@sdfnvlaw.com

Attorneys for Eleanor C. Ahern, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972 An Intervivos Irrevocable Trust.	Case No. Department No. **Date of Hearing:** **Time of Hearing:**

CONSENT TO PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND CONSTRUE AND REFORM TRUST AND WAIVER OF NOTICE

JACQUELINE M. MONTOYA, an interested party in the above-named Trust matter, states as follows:

1. I am a contingent income beneficiary of the W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust").

2. I have read the Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and Construe and Reform Trust (the "Petition") and believe it to be true and correct to the best of my knowledge.

3. I hereby consent to the Petition and request that the Court enter an Order approving the Petition in its entirety.

4. I hereby waive notice of notice of the hearing on the Petition pursuant to Nevada

Revise Statutes 155.010(4).

Dated this 8 day of August, 2009.

JACQUELINE M. MONTOYA

SOLOMON DWIGGINS & FREER, LTD.

By: _____
MARK A. SOLOMON, ESQ.
Nevada Bar No. 00418
BRIAN K. STEADMAN, ESQ.
Nevada Bar No. 10771
9060 W. Cheyenne Avenue
Las Vegas, NV 89129

Attorneys for Eleanor C. Ahern, Petitioner

EXHIBIT J

Death Certificate of Marjorie T. Connell

STATE OF NEVADA — DEPARTMENT OF HUMAN RESOURCES
DIVISION OF HEALTH — VITAL STATISTICS

CERTIFICATE OF DEATH

2009006369
STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK

DECEDENT

1a. DECEASED-NAME (FIRST,MIDDLE,LAST,SUFFIX): Marjorie T CONNELL
2. DATE OF DEATH (Mo/Day/Year): May 01, 2009
3a. COUNTY OF DEATH: Clark
3b. CITY, TOWN, OR LOCATION OF DEATH: Las Vegas
3c. HOSPITAL OR OTHER INSTITUTION -Name(If not either, give street and number): Valley Hospital Medical Center
3d. If Hosp or Inst indicate DOA,OP/Emer Rm. Inpatient(Specify): Inpatient
4. SEX: Female
5. RACE (Specify): White
6. Hispanic Origin? Specify: No - Non-Hispanic
7a. AGE-Last birthday (Years): 91
7b. UNDER 1 YEAR MOS / DAYS:
7c. UNDER 1 DAY HOURS / MINS:
8. DATE OF BIRTH (Mo/Day/Yr): March 02, 1918
9a. STATE OF BIRTH (If not U.S.A., name country): Alabama
9b. CITIZEN OF WHAT COUNTRY: United States
10. EDUCATION: 14
11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify): Widowed
12. SURVIVING SPOUSE (If wife, give maiden name):
13. SOCIAL SECURITY NUMBER: 417-12-1212
14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life. Even if Retired): Businesswoman
14b. KIND OF BUSINESS OR INDUSTRY: Investments
Ever in US Armed Forces? No
15a. RESIDENCE - STATE: Nevada
15b. COUNTY: Clark
15c. CITY, TOWN OR LOCATION: Las Vegas
15d. STREET AND NUMBER: 1325 Strong Drive
15e. INSIDE CITY LIMITS (Specify Yes or No): Yes

IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS

PARENTS

16. FATHER - NAME (First Middle Last Suffix): Oscar THRASH
17. MOTHER - NAME (First Middle Last Suffix): Cora BLAKE

DISPOSITION

18a. INFORMANT- NAME (Type or Print): Jacqueline MONTOYA
18b. MAILING ADDRESS (Street or R F D No, City or Town, State, Zip): 3385 Maverick Street Las Vegas, Nevada 89108
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify): Burial
19b. CEMETERY OR CREMATORY - NAME: Palm Downtown Cemetery
19c. LOCATION City or Town State: Las Vegas Nevada 89101
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such): BART BURTON
SIGNATURE AUTHENTICATED
20b. FUNERAL DIRECTOR LICENSE: 50
20c. NAME AND ADDRESS OF FACILITY: Palm Mortuary-Downtown
1325 North Main Street Las Vegas NV 89101

TRADE CALL

TRADE CALL - NAME AND ADDRESS

CERTIFIER

To Be Completed by CERTIFYING PHYSICIAN
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated (Signature & Title): SIGNATURE AUTHENTICATED
CHRISTOPHER CRUZ MD
21b. DATE SIGNED (Mo/Day/Yr): May 04, 2009
21c. HOUR OF DEATH: 08:47
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print):

To Be Completed by CORONERS OFFICE
22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated (Signature & Title)
22b. DATE SIGNED (Mo/Day/Yr):
22c. HOUR OF DEATH:
22d. PRONOUNCED DEAD (Mo/Day/Yr):
22e. PRONOUNCED DEAD AT (Hour):
23b. LICENSE NUMBER: 10545

23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print): CHRISTOPHER CRUZ MD 3650 S Decatur Las Vegas, NV 89103

REGISTRAR

24a. REGISTRAR (Signature): NINETTE HARRINGTON
SIGNATURE AUTHENTICATED
24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr): May 05, 2009
24c. DEATH DUE TO COMMUNICABLE DISEASE: YES ☐ NO ☒

CAUSE OF DEATH

CONDITIONS IF ANY WHICH GAVE RISE TO (IMMEDIATE CAUSE) -> STATING THE UNDERLYING CAUSE LAST

25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)
PART I
(a) Pneumonia — Interval between onset and death:
DUE TO, OR AS A CONSEQUENCE OF
(b) Sepsis — Interval between onset and death:
DUE TO, OR AS A CONSEQUENCE OF
(c) Renal failure — Interval between onset and death:
DUE TO, OR AS A CONSEQUENCE OF
(d) Respiratory failure — Interval between onset and death:

26. AUTOPSY (Specify Yes or No): No
27. WAS CASE REFERRED TO CORONER (Specify Yes or No): No

PART II

28a. ACC., SUICIDE, HOM., UNDET. OR PENDING INVEST. (Specify)	28b. DATE OF INJURY (Mo/Day/Yr)	28c. HOUR OF INJURY	28d. DESCRIBE HOW INJURY OCCURRED			
28e. INJURY AT WORK (Specify Yes or No)	28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)		28g. LOCATION	STREET OR R F D No	CITY OR TOWN	STATE

STATE REGISTRAR

572762

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, VS-Rev-2008I
STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED SEAL OF THE SOUTHERN NEVADA HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.
Registrar of Vital Statistics
By:
Date Issued: MAY 06 2009

EXHIBIT K

Order Denying Motion To Refer Contested Probate Matter To Master-Probate Commissioner Per EDCR 4.16; Directing Payment Of All Oil, Gas, Mineral And Interest Royalties And Rent To Eleanor C. Hartman, Also Known As Eleanor C. Ahern, As Trustee Of Trust No. 2 Of The W.N. Connell And Marjorie T. Connell Living Trust Dated May 18, 1972; And Setting Calendar Call And Hearing

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972 An Inter Vivos Irrevocable Trust.	Case No. P-09-066425-T Dept. No. XXVI (26) Date of Hearing: November 12, 2013 Time of Hearing: 9:30 a.m.

ORDER DENYING MOTION TO REFER CONTESTED PROBATE MATTER TO MASTER-PROBATE COMMISSIONER PER EDCR 4.16; DIRECTING PAYMENT OF ALL OIL, GAS , MINERAL AND INTEREST ROYATIES AND RENT TO ELEANOR C. HARTMAN, ALSO KNOWN AS ELEANOR C. AHERN, AS TRUSTEE OF TRUST NO. 2 OF THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST DATED MAY 18, 1972; AND SETTING CALENDAR CALL AND HEARING

THIS MATTER having come on for hearing on the Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E) and NRS 164.033(1)(A) (the "Petition") filed by Petitioner JACQUELINE M. MONTOYA, who appears by and through her counsel of record, JOSEPH J. POWELL, Esquire, of THE RUSHFORTH FIRM, LTD., and ELEANOR C. AHERN, a/k/a ELEANOR C. HARTMAN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, appearing by and through her counsel of record, JOHN R. MUGAN, Esquire, and MICHAEL D. LUM, Esquire, of the law firm of JEFFREY BURR, LTD., in opposition to the Petition and the Court having reviewed the pleadings, including the Motion To Refer Contested Probate Matter To Master-Probate

Commissioner Per EDCR 4.16 filed herein by ELEANOR C. AHERN, a/k/a ELEANOR C. HARTMAN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, examined the evidence and heard the arguments of counsel, the Court makes the following Findings Of Fact, Conclusions Of Law, and Order:

FINDINGS OF FACT

1. The Motion To Refer Contested Probate Matter To Master-Probate Commissioner Per EDCR 4.16 should be denied per the discretion of the Court.

2. An evidentiary hearing will be necessary regarding the Petition and the parties shall be entitled to conduct discovery herein. Accordingly, this matter should be set on a four week stack to begin February 18, 2014 at 9:00 a.m., and a Calendar Call will be held on January 24, 2014 at 11:00 a.m. at which Trial Counsel (and any party in proper person) must appear.

3. Texas legal counsel for Petitioner JACQUELINE M. MONTOYA has notified in writing the various lessees-payors of the Upton County, Texas, oil, gas, mineral and interest royalties and surface rent to lessor-payee ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, including but not limited to Apache Corporation-oil and gas leases with owner number 47052 and owner number 45572, Plains Marketing, L.P.-oil and gas leases with owner number 0782216 and owner number 0488845, and Drag A Cattle Company, LLC-surface tenant, of the Petition of JACQUELINE M. MONTOYA filed herein and requested that all such payments be held in suspense until the resolution of this action. The following was stated and agreed to by legal counsel of both parties herein in open Court and as set forth in the Petition:

A. There is currently no reasonable doubt and currently no legitimate title dispute as to the continued right that ELEANOR C. AHERN, individually as beneficiary of Trust No. 2 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, is entitled to a minimum of thirty-five percent (35%) of such oil, gas, mineral and interest royalties and surface rent from the Upton County, Texas;

B. Petitioner JAQUELINE M. MONTOYA currently makes no claim to such thirty-five percent (35%) share that has always been distributed to ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN;

C. The only current dispute between the parties is how the remaining sixty-five percent (65%) share should be allocated;

D. Legal title of record to such Upton County, Texas, real estate and oil, gas, mineral and interest rights is vested in ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, and

E. The last, peaceable, non-contested status quo between the parties was when all such oil, gas, mineral and interest royalties and surface rent was paid to ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee.

None of the oil, gas, mineral and interest royalties and surface rent should be suspended but should continue to be paid in a timely fashion to ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, during the pendency of this action, and ELEANOR C. AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas, mineral and interest royalties and surface rent and the remaining sixty-five percent (65%) of such oil, gas, mineral and interest royalties and surface rent shall be held in the Trust by ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee until final resolution of this matter.

CONCLUSIONS OF LAW

Rule 4.16 of the Rules of Practice For The Eighth Judicial District Court Of The State Of Nevada provides in part:

> "**Rule 4.16. Contested matters and referrals to probate commissioner.**
> (a) The probate judge may hear whichever contested matters the judge shall select, and schedule them at the convenience of the judge's calendar. The judge alone may also refer contested matters pertaining to the probate calendar to a master appointed by the judge for hearing and report."

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion To Refer Contested Probate Matter To Master-Probate Commissioner Per EDCR 4.16 is denied per the discretion of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an evidentiary hearing of this matter is set on the four week stack to begin February 18, 2014 at 9:00 a.m., and a Calendar Call will be held on January 24, 2014 at 11:00 a.m. at which Trial Counsel (and any party in proper person) must appear.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the various lessees-payors of the oil, gas, mineral and interest royalties and surface rent to lessor-payee THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, including but not limited to Apache Corporation-oil and gas leases with owner number 47052 and owner number 45572, Plains Marketing, L.P.-oil and gas leases with owner number 0782216 and owner number 0488845, and Drag A Cattle Company, LLC-surface tenant, shall not suspend such payments, and are ordered to continue to make such payments in a timely fashion to ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 during the pendency of this action, including the immediate payment of any past suspended payments.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ELEANOR C. AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas, mineral and interest royalties and surface rent and the remaining sixty-five percent (65%) of such oil, gas, mineral and

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interest royalties and surface rent shall be held in the Trust by ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee, until final resolution of this matter.

DATED: December 20, 2013.

DISTRICT JUDGE

Submitted by:

JEFFREY BURR, LTD.

JOHN R. MUGAN, Esquire
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APPROVED:

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972 An Inter Vivos Irrevocable Trust.	CASE NO. P-09-066425 DEPT NO. XXVI (26) **MOTION TO DISMISS COUNTERCLAIMS OF ELEANOR C. AHERN**

JACQUELINE M. MONTOYA, in her capacity as the trustee and a beneficiary under the "MTC Living Trust" dated December 6, 1995 (hereinafter "Jacqueline"), by and through her attorneys, G. MARK ALBRIGHT, ESQ., and WHITNEY B. WARNICK, ESQ., of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, hereby moves the Court to Dismiss with Prejudice the Counterclaims filed by ELEANOR C. AHERN (hereinafter "Eleanor") in her ANSWER OF TRUSTEE ELEANOR C. AHERN TO JACQUELINE M. MONTOYA'S PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(e), AND NRS 164.033(1)(a) AND COUNTERCLAIMS AGAINST JACQUELINE M. MONTOYA (hereinafter "Answer" and "Counterclaims"), filed herein on February 10, 2014.

This Motion is based upon the Affidavits and Points and Authorities submitted herewith, the

pleadings filed in this proceeding, and the argument of counsel at the hearing to consider this Motion.

DATED this 18th day of March, 2014.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

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Attorneys for Jacqueline M. Montoya

NOTICE OF MOTION

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION TO DISMISS COUNTERCLAIMS OF ELEANOR C. AHERN** on for hearing before the above entitled Court on the 13th day of May, 2014, at the hour of 9:00 o'clock a.m. on said date, or as soon thereafter as counsel can be heard.

DATED this 18th day of March, 2014.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

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MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND STATEMENT

On September 27, 2013, Jacqueline filed her Petition in these proceedings for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A). The purpose of this Petition was to obtain from the Court a determination of entitlement to income being earned from Texas oil and mineral properties owned by THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972 (hereinafter "Trust 1"), and the sub-trusts (Trust 2 and Trust 3) created under the provisions of Trust 1. Eleanor, as successor Trustee of Trust 1, in July, 2013, had abruptly stopped paying 65% of the income received from the properties to Jacqueline, and Jacqueline's sister, KATHRYN A. BOUVIER (hereinafter "Kathryn"), as beneficiaries under the MTC Living Trust, a trust established by Marjorie T. Connell through the exercise of her power of appointment over Trust 3, as exercised in her Last Will and Testament dated January 7, 2008.

For 34 years prior to July, 2013, the income from the properties had been allocated between the two sub-trusts created under the provisions of Trust 1. One sub-trust (hereinafter "Trust 2") received approximately 35% of the income, which went to Eleanor as a beneficiary of Trust 2. The remaining approximately 65% of the income was paid to Marjorie T. Connell (the surviving grantor of Trust 1) during her lifetime, as the beneficiary of the other sub-trust, Trust 3. Upon Marjorie's death on May 1, 2009, this 65% share of the income was then paid to Jacqueline and Kathryn, successor beneficiaries under Trust 3, until Eleanor abruptly stopped the payment to them beginning in July, 2013. Jacqueline and Kathryn were in essence designated as the beneficiaries of Trust 3 by Marjorie T. Connell, in the exercise of a power of appointment granted to her under Trust 1.

Eleanor filed two responsive pleadings to Jacqueline's Petition on November 7, 2013, and on December 11, 2013. Then, on February 10, 2014, shortly before this matter was set for a final hearing by the Court, Eleanor filed her Answer and Counterclaims. The Counterclaims filed raised completely new claims and issues for the Court to rule on, including Eleanor's Claim against Jacqueline that she was guilty of intentional interference with contractual relations, that Jacqueline should be assessed with punitive damages, that Eleanor was entitled to recover her attorney's fees and costs incurred in this proceeding, and that under the no-contest clause in Trust 1, the Court should determine that Jacqueline

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in filing her Petition forfeited her interests in excess of one dollar under the Trust.

On February 14, 2014, immediately after receiving Eleanor's Answer and Counterclaims, Jacqueline filed a Motion to Dismiss and Strike the Counterclaims on the basis that they had been asserted too late in the proceedings, and that it would be extremely prejudicial and unfair to Jacqueline for these claims to be considered at the time of the scheduled hearing. The Court dealt with the matter by canceling the pending hearing, allowing the Counterclaims to be made part of the proceedings, and giving Jacqueline the time to then prepare to defend against the Counterclaims.

Jacqueline, by and through her undersigned new counsel (engaged to represent her with respect to the Counterclaims filed by Eleanor), is now filing this Motion to Dismiss the Counterclaims filed by Eleanor on the grounds that they fail to state claims against her upon which the Court can grant relief, pursuant to NRCP Rule 12(b). Jacqueline's prior Motion to Dismiss, by the attorneys representing her with respect to the main issues in this case dealing with entitlement to the royalty income, was based solely upon the untimely filing by Eleanor of her Counterclaims on the eve of the final hearing, in order to protect her rights and interests in not having to deal with claims or issues for which she had not been given the chance to prepare her defense. Her instant Motion now seeks to have the Court dismiss the Counterclaims for their lack of merit.

POINTS AND AUTHORITIES AND UNDISPUTED FACTS

Initially, Jacqueline recognizes that motions to dismiss for failure to state a claim are not granted unless it appears beyond a doubt that the complaining party could prove no set of facts which, if accepted by the trier of fact, would entitle that party to relief. *Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966 (1997). The standard of review for a dismissal under NRCP 12(b)(5) is rigorous, as the court must construe the pleadings liberally and draw every inference in favor of the non-moving party. *Id.* The allegations in a pleading, when considering a motion to dismiss for failure to state a claim, must be accepted as true. *Hynds Plumbing & Heating Co., v. Clark County Sch. Dist.*, 94 Nev. 776, 587 P.2d 1331 (1978). However, notwithstanding the rigorous standard for approving a motion to dismiss for failure to state a claim, Jacqueline respectfully submits that Eleanor's Counterclaims assert no viable claims for relief against her upon which the relief requested can be granted.

The factual background relating to Jacqueline's Petition in this case is not in dispute, and the

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allegations made in Eleanor's Counterclaims can thus be weighed for sufficiency. W.N. Connell, and his wife Marjorie T. Connell, established a Trust in 1972 (Trust 1). Following Mr. Connell's death on November 24, 1979, and pursuant to the Trust 1 provisions, two sub-trusts were established, Trusts 2 and 3. Calculations were made in filing Federal and Texas Estate Tax Returns after Mr. Connell's death allocating, pursuant to the Trust provisions, a portion of Trust properties and income therefrom between the two sub-trusts. This allocation of property and income (approximately 35% to Trust 2 and 65% to Trust 3) was then followed for the ensuing 34 years until July, 2013 in the Trust administration. The allocation was recognized by Mrs. Connell for nearly 30 years as the surviving grantor of Trust 1, and successor Trustee of Trust 1. The allocation was recognized by Eleanor when she became a co-Trustee, in 1980, with her mother of Trust 1.

However, in July, 2013, more than four years after the death of Mrs. Connell, with Eleanor then acting as sole Trustee of Trust 1, Eleanor abruptly discontinued the income allocation to Trust 3, because she for some unexplained reason believes all of the income should be payable to Trust 2, the Trust under which she is the sole income beneficiary. She apparently believes the accountants, attorneys and Trustee of Trust 1 which made the allocation of property and income between Trust 2 and Trust 3 erred in their computations. After 34 years of allocating the Texas oil company income between Trust 2 and Trust 3 as determined after the death of Mr. Connell, Eleanor believes she has the right to challenge the allocation and claim all of the income.

Assuming she is not bound by any statute of limitations or other legal principles, such as laches or waivers, precluding her from now challenging a decision and act made 34 years ago, with her full knowledge and concurrence, one nevertheless cannot deny that her action in abruptly stopping income payments to Trust 3 in July, 2013, without first seeking any court approval or direction, borders on or constitutes a breach of her fiduciary duties as Trustee of Trust 1. One would have to agree that her actions were precipitous and without proper consideration for the rights and interests of beneficiaries under the Trust to whom she owes a fiduciary duty. Jacqueline's reaction to Eleanor's puzzling and alarming conduct, was to properly Petition the Court for Declaratory Relief as to the correct allocation of income between Trusts 2 and 3, and to try to secure the income accruing and payable to Trust 1, until the Court could make its determination, by asking the Texas oil companies to hold in trust income payments to Trust 1 pending the Court's decision. Her action to secure the royalty income payments

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pending the Court's decision, was recommended by her Texas attorneys and supported by Texas law. See, Affidavit of Jacqueline's Texas attorney, Sean Guerrero, Esq., attached hereto as Exhibit "A".

Her effort to have the income held in trust and secured resulted in two monthly payments of income to Trust 1 being temporarily held up during the last months of 2013. Eventually, however, the Texas oil companies decided that their contract was only with Trust 1, and they were not involved in or responsible for the allocations to Trust 2 and 3 under Trust 1 provisions. Therefore, to avoid getting involved in the family dispute, the oil companies resumed full payment and paid all of the royalty income owing to Trust 1. The only adverse effect on Eleanor (even assuming her position in this case as to entitlement to income ultimately proves to be correct) is that she had a temporary delay of a short two month period in receiving Trust income. These are the undisputed facts in this case, and based thereon, and on the defective pleading found in Eleanor's Counterclaims, the Court is entitled now to dismiss Eleanor's Counterclaims for failure to state a claim against Jacqueline upon which relief can be granted.

In *Tahoe Village Homeowners Ass'n v. Douglas County,* 106 Nev. 660, 799 P.2d 556 (1990), the Court dismissed claims for failure to state a cause of action against the defendant because the plaintiff's pleadings were insufficient to allege the claims in question. The Court held that "Tahoe failed to plead facts to support a cause of action alleging willful misconduct." *Id.* at 558. In the present case, Eleanor has failed to plead facts which support her Counterclaims, and in actuality no facts exist which she could plead to properly support her Counterclaims, and they should therefore be dismissed.

A. *ELEANOR'S COUNTERCLAIM ASSERTING INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS FAILS TO STATE A VALID CLAIM UPON WHICH RELIEF CAN BE GRANTED.*

In *Southerland v. Gross,* 105 Nev. 192, 772 P.2d 1287 (1989), the Nevada Supreme Court established the necessary elements which a plaintiff must prove to establish the tort of intentional interference with contractual relations. The Court noted at page 1290 of its decision that:

> To establish intentional interference with contractual relations, the plaintiff must show: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage.

In a later decision, in *J.J. Industries, LLC v. Bennett,* 119 Nev. 269, 71 P.3d 1264 (2003), the

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Nevada Supreme Court had occasion to further explain what had to be proved by the plaintiff with respect to element 3 (intentional acts intended or designed to disrupt the contractual relationship) in order to establish the tort of intentional interference with contractual relations. The Court in *J.J. Industries, LLC* noted that it disagreed with the plaintiff's contention in that case that "knowledge of the contract between it and Kaye was sufficient to establish" element number 3. *Id.* at 1268. Rather, the Court stated that:

> Contrary to J.J. Industries' argument, one does not commit the necessary intentional act – inducement to commit breach of contract – merely by entering into an agreement with knowledge that the other party cannot perform because there is an existing contract between the other party and a third person. Indeed, the United States District Court of Nevada, interpreting Nevada law, explained that the plaintiff must establish that the defendant had a ***motive to induce breach*** of the contract with the third party: "The fact of a general intent to interfere, under a definition that includes imputed knowledge of consequences, does not alone suffice to impose liability. *Inquiry into the motive or purpose of the actor is necessary.* (Emphasis is the Court's.) The inducement of a breach, therefore, does not always vest third or incidental persons with a tort action against the one who interfered. Where the actor's conduct is not criminal or fraudulent, and absent some other aggravating circumstances, it is necessary to identify those whom the actor had a specific motive or purpose to injure by his interference and to limit liability accordingly." (Citing U.S. District Court decision.)

As previously noted, in *Sutherland* we provided the necessary elements to establish the tort of intentional interference with contractual relations. In doing so, we relied on *Ramona Manor Convalescent Hospital v. Care Enterprise.* In that case, the California Court of Appeal explained that the plaintiff must prove that the defendant ***intended to induce the other person to breach its contract*** with the plaintiff. The court noted that because the action involves an intentional tort, the inquiry usually concerns the defendant's ultimate purpose or the objective that he or she is seeking to advance. Thus, mere knowledge of the contract is insufficient to establish that the defendant intended to disrupt the plaintiff's contractual relationship; instead, the plaintiff must demonstrate that the defendant ***intended to induce the other party to breach the contract*** with the plaintiff. Accordingly, the plaintiff must inquire into the defendant's motive. (Emphasis added.)

Applying the Nevada Supreme Court's guidelines in the *Sutherland* and *J.J. Industries, LLC* cases to the facts asserted by Eleanor in her Counterclaims (and the undisputed facts which exist in this case), Jacqueline respectfully submits that the facts plead do not meet the requirements necessary to establish element 3 (intentional acts intended or designed to disrupt [induce a breach of] the contractual relationship) to establish the tort of intentional interference with contractual relations. Unless the complained of conduct is criminal or fraudulent, or has some other aggravating circumstances, one must examine the motive behind the conduct. *Id.* To be tortious, the motive must intend a wrongful breach of the contract. In the present case, Jacqueline, through her Texas attorneys,

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never requested that the oil companies breach their contracts with Trust 1. Rather, as fully permitted under Texas law, she simply asked the companies to hold in trust income payable ***until this Court could determine entitlement*** to the income through her Petition pending before the Court.

Eleanor's Counterclaim for intentional interference with contractual relations is based upon two communications, dated September 30, 2013, and November 14, 2013, that Jacqueline's Texas legal counsel sent to companies which were paying income royalties on the Texas oil and mineral properties to Trust 1. See, Paragraph 9 on page 6 of the Counterclaim. In these communications, Jacqueline's Texas attorneys took it upon themselves to contact the oil companies and advise them of the pending dispute between Jacqueline, Kathryn and Eleanor as to entitlement to the income being paid by the companies to Trust 1. The attorneys notified the oil companies that Eleanor as Trustee of Trust 1 had abruptly stopped paying to Jacqueline and Kathryn their 65% share of the royalty income, contrary to the well established distribution requirements and history for Trust 1. The attorneys asked the oil companies to suspend and hold in Trust further payments of income royalties to Trust 1 until this Court had the opportunity to hear and resolve Jacqueline's Petition for Declaratory Relief. The attorneys in their last communication to one of the companies (Apache Corporation), also noted that until the dispute was resolved between the parties, it would not be fair to pay any of the royalty income to Trust 1, because Eleanor would simply then only pay to herself 35% (or more likely all of the of the income received), but withhold any payment to Jacqueline and Kathryn of their 65% share, placing Jacqueline and Kathryn at a great disadvantage in having funds available to pay for the litigation costs in the case. See, Exhibits 1 and 2 attached to Eleanor's Answer and Counterclaims.

It is important, for several reasons, to note that the companies paying the royalty income under the contracts in question, were paying 100% of the income to Trust 1, controlled solely by Eleanor as Trustee. The companies were not making payment directly to Eleanor personally as a beneficiary under the Trust 2. Also, the companies were not initially making any division of the income between Eleanor (as to a 35% interest as beneficiary under Trust 2) and Jacqueline and Kathryn (as to a 65% interest as beneficiaries under Trust 3). Accordingly, to the extent Jacqueline's Texas attorney's letters to the companies caused any disruption in the payments owed to Trust 1, this interference was with a contract between the companies and Trust 1, not with Eleanor personally.

While Eleanor has filed her Answer and Counterclaims in these proceedings purportedly in her

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capacity as Trustee of Trust 1, her Answer and Counterclaims make it clear that she is only seeking damage relief or reimbursement in her personal capacity as a beneficiary under Trust 2. This distinction is important because, as noted above in *J.J. Industries, LLC*, ". . . mere knowledge of the contract is insufficient to establish that the defendant intended to disrupt the plaintiff's contractual relationship; instead, the plaintiff must demonstrate that the defendant intended to induce the other party to breach the contract with the plaintiff." *Id.* Accordingly, since the contract which Eleanor accuses Jacqueline of tortiously interfering with was not a contract to which Eleanor personally was even a party, Jacqueline could not have committed a tortuous interference with Eleanor personally. Jacqueline's efforts to maintain a status quo and have distributions to Trust 1 held in trust by the companies, was not an attempt to challenge Eleanor's right to 35% of the royalty income once it had been paid to Trust 1. Thus, Jacqueline's efforts to have the distributions held in trust, was not an act done with the tortious intent required in order to prove the tort of intentional interference with contractual relations.

A second reason why it is important to note that the royalty income payments went to Trust 1, and not to Eleanor personally, is that in order to protect her and Kathryn's interests as to 65% of the royalty income, Jacqueline had no other option but to request that the companies make no distribution to Trust 1. Once a distribution was made to Trust 1, Eleanor would be in control of the further distribution of the funds, and this would defeat Jacqueline's reasonable efforts to try to secure the payments until the Court could resolve the parties' dispute. Accordingly, Jacqueline had to either accept continued distributions by the companies to Trust 1, with Eleanor then taking control of all these funds to the detriment of Jacqueline and Kathryn, or to request that the distributions be held in trust by these companies. The companies would not make partial payments of Eleanor's share of the royalty income to Trust 1, and withhold the balance.

Thus, under these circumstances, it is respectfully submitted that there was no intentional act by Jacqueline intended or designed to disrupt or breach the contractual relationship between the companies and Trust 1. Jacqueline's motives were not intended to cause damage to Eleanor or a breach of any contracts, but simply to maintain the status quo regarding the distribution of royalty income until the Court had the opportunity to resolve the parties' dispute. Thus, again, it is patently clear that her actions lacked the tortious intent required to establish Eleanor's Counterclaim.

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Where persons make conflicting claims to monies payable, the payor (in this case the companies paying the royalty income) has a right to withhold payment pending a court determination of entitlement to the monies. This situation often results in interpleader actions. In fact, under Texas law, *Texas Natural Resource Code Sec. 91.402(b),* as noted in the last communication from Jacqueline's Texas counsel to the Apache Corporation on November 14, 2013, a company paying royalty income has authority specifically given to it to withhold payments without interest if 1) a dispute exists concerning title that would affect distribution of payments; or 2) a reasonable doubt exists that the payee has clear title to the interest in the proceeds of production. *See, also,* the affidavit of Sean Guerrero, Esq., attached hereto as Exhibit "B". Accordingly, the request by Jacqueline's Texas counsel to the companies to suspend and hold in trust payments to Trust 1, pending the resolution of the parties' dispute was a proper and reasonable action on their part legally permissible under Texas law. This request was not intended to encourage a breach by the oil companies under their contracts with Trust 1, but rather to maintain a status quo pending Court resolution of the parties' dispute. Thus, the Counterclaim for intentional interference with contractual relations plead by Eleanor lacks a factual assertion sufficient to establish the required element of "tortious intent" in order to make a valid claim for relief and her Counterclaim should be dismissed.

Not only does Eleanor's Counterclaim for intentional interference with contractual relations fail to provide the necessary element 3 of the action, the required tortious intent to breach a contractual relationship, the Counterclaim fails to meet the requirements for elements 4 and 5 of the tort, i.e. (4) actual disruption of the contract; and (5) resulting damage. While Jacqueline's Texas attorneys sought the only method available to them under Texas law to protect Jacqueline's and Kathryn's royalty income interests, by having the initial 100% payment of royalty income by the companies to Trust 1 suspended and held in trust pending the Court's determination as to entitlement, the companies ultimately elected to reject their request. Having received communications from both Jacqueline's Texas attorneys (requesting a withholding of payments) and Eleanor's Texas attorneys (demanding continuation of the payments), the companies resolved their dilemma by pointing out that payments were owed to Trust 1, and not to Eleanor, Jacqueline or Kathryn personally. Therefore, they elected to continue making payments to Trust 1, leaving it to Jacqueline and Eleanor to then seek the Court's determination as to further distribution of the royalty income.

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Thus, in the final analysis, the efforts of Jacqueline's Texas attorneys to have payment of royalty income to Trust 1 suspended and held in trust per Texas law, caused no appreciable disruption with the contract between the companies and Trust 1. Accordingly, elements number 4 (actual disruption of the contract) and 5 (resulting damage) of the tort of intentional interference with contractual relations cannot be established by Eleanor. Eleanor has not suffered any damages due to the requests by Jacqueline 's Texas attorneys to the companies to withhold income payments. Rather, she continues to receive the 35% share of the income, she received all of the income which had been temporarily suspended by the oil companies, and the remaining 65% share is now being withheld without distribution (pursuant to an agreement between the parties) pending the Court's determination as to entitlement.

Eleanor may assert that the short period of time in which the companies evaluated the demands from her and Jacqueline (to suspend or not suspend distributions to Trust 1) caused a temporary delay in her ultimate receipt of 35% of the income and her use then of the funds. However, this slight inconvenience to her is clearly frivolous and any claim to damages therefrom is unsupportable, when one considers the disruption and harm she has caused to Jacqueline and Kathryn by abruptly withholding further payments to them of their 65% share of the monthly royalty income. Eleanor, as the Trustee of Trust 1, owes a fiduciary duty to Jacqueline and Kathryn in her management of the Trust and distribution of income to Trust 2 and Trust 3. In performing her duties over the last 34 years, she recognized and accepted a division of income from Trust 1 providing a 35% share to Trust 2 and a 65% share to Trust 3.

No one can reasonably argue that under these circumstances it was proper for her to unilaterally, without Court direction, abruptly stop any and all income distributions to Jacqueline and Kathryn based solely upon Eleanor's own assessment that the income allocation was incorrectly made and repeatedly made in error over the last 34 years. At a very minimum, Eleanor had a duty to first apply to the Court for directions and a determination as to how to deal with the income allocations, and obtain Court permission before withholding income allocations to Jacqueline and Kathryn. Failing to do this, and instead placing the onus on Jacqueline to seek the Court's assistance, and to take reasonable efforts to maintain the security of royalty income until the Court could resolve the dispute, renders frivolous any claim of Eleanor to having incurred damages due to Jacqueline's reasonable and

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legal efforts. Based upon the facts plead in her Counterclaim for wrongful interference by Jacqueline with contractual relations, it is clear that Eleanor, as a matter of law, cannot establish this tort , and her Counterclaim should be dismissed.

Thus, even if the Court were to eventually determine (contrary to 34 years of actual practice as to the income distributions) that Eleanor is entitled to 100% of the income during her life, Jacqueline has not committed any tortious act causing Eleanor damages by not receiving income paid to Trust 1 from the companies. The contracts with the companies and Trust 1 have not been appreciably disrupted, since they continue to pay 100% of the royalty income to Trust 1. The only actionable issue before the Court is: who is now entitled to the 65% share; which issue must be resolved by the Court in interpreting the provisions of Trust 1, allocation calculations made, and the history of the Trust administration.

While it is theoretically possible that 34 years ago, upon the death of W.N. Connell, a mistake was made by the accountants, attorneys, beneficiaries, successor trustees and others involved (in making the determination that approximately 35% of the royalty income being paid to Trust 1 would be distributed to Trust 2, and the remaining 65% would be distributed to Trust 3), thereby depriving Trust 2 (and Eleanor) of all of the royalty income, such seems highly unlikely. As noted in Jacqueline's initial Petition, Marjorie (Eleanor's mother and the co-grantor and co-Trustee of Trust 1 with her husband) recognized for nearly 29 years, up to the time of her death, the 35-65% distribution allocation between Trust 2 and Trust 3. Her understanding and acceptance of the allocation made is convincing evidence, standing alone, that no error was made in the calculations. She certainly knew what she and her husband intended in setting up the Trust. Eleanor herself, also, as co-Trustee or sole successor Trustee of Trust 1, has recognized this allocation of income for the last 34 years.

Accordingly, even assuming an allocation error was made over 34 years ago, it was not unreasonable for Jacqueline to seek the Court's assistance in protecting a right she believes she and Kathryn have to 65% of the income, once Eleanor abruptly stopped distributing the monthly income to her and Kathryn. Further, even if it is ultimately determined by the Court that Jacqueline and Kathryn are not entitled to 65% of the income, and all the income belongs to Eleanor during her lifetime, under the admitted facts in this case, Jacqueline's efforts to protect her and Kathryn's share

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of the income by seeking to have the income distribution by the oil companies to Trust 1 secured and held in trust until the Court resolved the parties' dispute, cannot be considered a tortious interference with contractual relations. Eleanor cannot come before the Court and assert, with any credibility or justification, that her actions in abruptly stopping income distributions to Jacqueline and Kathryn as Trustee of Trust 1, did not entitle Jacqueline to attempt to maintain a security hold on distributions until the Court could resolve the matter. Such efforts by Jacqueline were clearly not tortious, but were legally justified under the circumstances.

Eleanor asserts in her Counterclaim in Paragraphs 10 and 11 on page 6, that the communications referenced from the Texas attorneys to the companies resulted in "actual disruption of the contracts (i.e. the contracts under which the companies where required to pay royalty income to Trust 1)"; and, that as a direct and proximate result thereof Eleanor suffered damages. The damages she claims to have allegedly suffered include interest, fees, costs, expenses, attorney's fees, expert witness fees, and loss of the use of monies and properties. However, the fees, costs and other expenses she is incurring are not the result of any attempt by Jacqueline to have the companies hold in trust income distributions to Trust 1. Rather, it is obvious that Eleanor's fees, costs and other expenses were first incurred after Jacqueline's Petition was brought to seek declaratory relief and the proper determination as to income received by Trust 1. Eleanor's said fees, costs and expenses came about due to her own failure to first seek Court directions in this matter, and in responding to Jacqueline's proper action in presenting the matter to the Court. No one could reasonably dispute that Eleanor's abrupt disruption of income payments to Jacqueline and Kathryn in this case was precipitous at best, and violated the agreed upon allocation of income between the parties for the past 34 years. Further, any interest which may have been earned on the suspended payments would have been so minimal in today's financial market as to be a non-factor in this matter.

If Eleanor felt she had a legitimate claim to all of the income, as a Trustee under a fiduciary duty to treat other Trust 1 beneficiaries fairly, she at a minimum should have first initiated an action to have the Court determine income entitlement. Rather, she abruptly disrupted the income flow to Jacqueline and Kathryn, without first seeking a Court's direction and confirmation. The response of Jacqueline in trying to protect her and Kathryn's interests, by filing her Petition with the Court and attempting to have the income distributions to Trust 1 held in trust, under the admitted facts in this case, cannot be

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considered as an act meeting the elements of a tortious interference with contractual relations. Even if Eleanor's claim to all of the royalty income were to be upheld in this case by the Court, Jacqueline has not tortiously interfered with any contractual relationship, but has simply followed a legal course to resolve the disputed issues.

Eleanor further assets that it was undisputed that she had a right to at least 35% of the royalty income, and that it was improper for Jacqueline through her Texas counsel to attempt to hold up payment to her of this income while trying to resolve entitlement to the remaining 65% of the income. However, if the companies paid the royalty income to Trust 1, they had to pay all of the income, because the companies did not make any allocation of the income between Trusts 2 and 3. Rather, this was the duty of Eleanor as Trustee of Trust 1 once the income was received, to fulfill her fiduciary duties to the sub-Trusts' beneficiaries. Since Jacqueline's Petition asserts that Eleanor has breached and continues to breach her duty to properly allocate the income between Trusts 2 and 3, the only way for Jacqueline to keep Eleanor from continuing the breach of her fiduciary duties, was to keep the royalty income in dispute from her. That could only be done by asking the oil companies to hold in trust income distributions to Trust 1.

It was an all or nothing situation. Either income was paid to Trust 1 and Eleanor then took it all, including the disputed 65% share; or, income payments to Trust 1 were suspended, thereby maintaining an equilibrium and security over the funds and protecting all parties' interests pending the Court's resolution of the matter. The interest, fees, costs, expenses, attorney's fees, expert witness fees, and loss of the use of monies and properties, which Eleanor asserts as damages in her Counterclaim are not damages from any intentional interference by Jacqueline with contractual relations. Rather, they are costs Eleanor has been obligated to incur because she, without any explanation or logical reason, cut off the income which had been paid to Trust 3 and Jacqueline and Kathryn for over 34 years, forcing Jacqueline to file her Petition, which thus in turn obligated Eleanor to try to explain and defend her unreasonable behavior. Eleanor, having fiduciary responsibilities as Trustee of Trust 1, unfairly sought to benefit her interests without proper consideration for the rights of Jacqueline and Kathryn, by abruptly cutting off, without notice, their income flow which they had been counting on and receiving for many years.

Finally, Jacqueline respectfully submits that her position on the merits in this case, based upon

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the undisputed history of income allocations from Trust 1, has a strong likelihood of being approved by the Court. Eleanor in her Answer and Counterclaim seeks to dispute a calculation of the income interests allocated to Trust 2 and Trust 3 made more than 34 years ago upon the death of W. N. Connell in 1979. This income allocation was further recognized and approved by her mother, a co-Grantor with W.N. Connell in setting up the Trust. The calculation which resulted in an approximate 35% interest being allocated to Trust 2, and an approximate 65% interest being allocated to Trust 3 was made and memorialized in the Federal Estate Tax Return and Texas State Estate Tax Return filed after Mr. Connell's death. Eleanor in her Answer and Counterclaim merely asserts that Trust 2 became entitled to all of the income "by default" under the Trust 1 provisions. She asserts this now, notwithstanding the fact she also clearly accepted the calculation made as to the income allocation from the time of Mr. Connell's death to July, 2013. She does not provide any specific basis for claiming that the calculation was wrong. Thus, even assuming *arguendo* that the calculation was not correctly made 34 years ago, she was fully aware of the same and failed to take any action to challenge it within the applicable Statute of Limitations, or at a minimum she is guilty of laches.

Under NRS 11.190(1)(b), an action based on a written instrument must be brought within 6 years. If the claim of Eleanor to 100% of the royalty income under Trust 1 does not fall under the written document time deadline, then the time deadline would be set by NRS 11.220, which covers an action not otherwise specifically provided for, and sets the deadline at 4 years. If no statute of limitations precludes her action, then it should nonetheless fail under the doctrine of laches, because of her extremely tardiness in bringing the matter up after a history of trust administration and distributions covering 34 years. It is especially pertinent to note that Eleanor has been the Trustee or Co-Trustee under Trust 1 during the last 34 years tasked with making the distribution of royalty income between sub-Trusts 2 and 3. She cannot reasonably or logically claim to have only become aware in July, 2013, that a purported allocation error was made 34 years ago, and have justification to now change the income allocation, when she in fact has been tasked, as the Trustee, with the duty to properly make the allocation of income over all of these years.

The time for asserting a claim to all of the royalty income from Trust 1 arose when Eleanor, as a Co-Trustee, became aware of and consented to the allocation calculations made by the attorneys and accountants hired by the Trust 34 years ago. To now reject the calculations of professionals she herself

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is responsible for hiring (i.e. her agents hired by the Trustee of the Trust) 34 years ago, has no valid reason and is legally precluded under the applicable Statute of Limitations or doctrine of laches. While the Court may elect to leave the Statue of Limitations and laches issues on hold and allow the parties to proceed on the merits of Jacqueline's Petition to a final hearing, the effect of the Statute of Limitations and laches should be considered in determining this Motion to Dismiss Eleanor's Counterclaims. The fact Eleanor failed to challenge the income allocation for 34 years, then abruptly stopped the recognized income distribution rights to Jacqueline and Kathryn last July, makes the resultant conduct of Jacqueline in attempting to protect her and Kathryn's interests by having income distributions to Trust 1 suspended and held in trust very reasonable. Such action, even if eventually shown to be mistaken, was not criminal or fraudulent, or of such an aggravated nature as to show an intent to tortiously interfere with contractual relations.

If Eleanor's claim now to all of the income is not barred by the Statute of Limitations or laches, her conduct over the years would still constitute a waiver of any claims which she may have held. If Eleanor were to sue now alleging a claim to all the income, who would she sue? She herself as the Trustee of Trust 1 has had the duty during all these years to properly manage the Trust and make proper income distributions. Thus, as a beneficiary of the Trust, she would have to sue herself, as the Trustee, for a breach of her own fiduciary duties. Certainly her unwillingness to do this constitutes a waiver on her part as a beneficiary, precluding her from now attempting to correct her own breaches of duty. "Waiver requires 'an existing right, a knowledge of its existence, and an actual intention to relinquish it, or conduct so inconsistent with the intent to enforce the right as to induce a reasonable belief that is has been relinquished.'" *McKeeman v. General American Life Insurance Company,* 111 Nev. 1042, 899 P.2d 1124, 1128 (1995). Eleanor as the Trustee had a duty to understand and assure proper income distribution from Trust 1. Eleanor's failure as a beneficiary under Trust 2 to challenge the allocation of income between Trust 2 and Trust 3 made by her as the Trustee of Trust 1, should be determined to be a waiver of her right to now challenge the income distribution recognized and approved by her and the other beneficiaries during the last 34 years. This further renders the Counterclaim she has filed against Jacqueline for alleged wrongful interference with contractual relations a frivolous claim as a matter of law.

Based upon all of the foregoing reasons, Eleanor's Counterclaim for intentional interference

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with contractual relations should be dismissed.

B. *ELEANOR'S COUNTERCLAIM TO APPLY A NO-CONTEST PENALTY OF FORFEITURE OF ANY BENEFICIAL INTEREST OF JACQUELINE UNDER THE TRUST AS A RESULT OF JACQUELINE FILING HER PETITION HEREIN IS WITHOUT MERIT AND SHOULD BE DISMISSED.*

Section TENTH of Trust 1 has a standard no-contest clause providing that one who challenges the distributions provided for under the Trust could lose his or her rights to any distribution benefit from the Trust and receive instead only one dollar. Eleanor in her Counterclaims cites NRS 163.00195, which statute recognizes that no-contest clauses in trusts can be enforced. However, Jacqueline respectfully submits that her Petition for Declaratory Relief obviously falls under the recognized exceptions to enforcement of no-contest clause, set forth in the Statute, and recognized under Nevada law, even if her Petition is eventually denied and a determination is made that Eleanor is entitled to 100% of the royalty income paid into Trust 1.

NRS 163.00195(3) contains the exceptions to the enforcement of a no-contest clause. Subsection (a) thereof, states that a no-contest clause must not be enforced if the beneficiary (i.e. Jacqueline) seeks only to enforce the terms of the trust. This subsection does not require that Jacqueline be ultimately successful in her action, only that she is seeking to enforce what she believes is her right under the trust provisions. The same holds for subsection (b) thereof, which precludes enforcement of any no-contest clause when the beneficiary seeks to enforce the beneficiary's legal rights under the trust. Again, no requirement is provided with this exception that the beneficiary's action ultimately be successful. And finally, subsection (c) thereof provides that simply seeking a court ruling with respect to the construction or legal effect of the trust, precludes enforcement of a no-contest clause, even if the beneficiary's action is denied.

All of these statutory exceptions to enforcement of a no-contest clause are present in the Petition brought by Jacqueline for Declaratory Relief. Nowhere does it state that Jacqueline's Petition must ultimately be approved for the exceptions to be applicable. Rather, in line with the Nevada Supreme Court's decision in *Hannam v. Brown,* 956 P.2d 794 (1998), decided before the passage of NRS 163.00195, the Nevada Legislature recognized that a good faith challenge seeking a proper interpretation of trust provisions would not trigger enforcement of a no-contest clause. Even though a trust no-contest clause may not contain a good faith challenge exception to its enforcement, "public

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policy favors recognition of the implied exception to no-contest clauses for good faith challenges based on probable cause." *Id.* at 798. And, with the passage of NRS 163.00195, the Nevada Legislature made such good faith challenges exceptions to enforcement of a no-contest clause.

Recognition of this good faith standard is provided in Section 163.00195(4) wherein it is noted that a no-contest clause shall not be enforced where the beneficiary institutes a legal action in good faith "and based upon probable cause that would have led a reasonable person, properly informed and advised, to conclude that the trust is invalid." While Jacqueline is not challenging the validity of the Trust, her obvious good faith purpose in bringing her Petition before the Court cannot reasonably be denied. Certainly, no reasonable person could argue that Jacqueline's Petition to obtain Declaratory Relief lacked probable cause which would have led a reasonable person, properly informed and advised, to file her Petition. Jacqueline, in her capacity as the trustee of the MTC Living Trust, and as a beneficiary of the MTC Living Trust, is not seeking something more than she and Kathryn (and Marjorie T. Connell as the former beneficiary of Trust 3) have been receiving for the last 34 years, based upon the interpretation of the Trust provisions and administration now in question. Her action in bringing her Petition is palpably reasonable and clearly in good faith.

It should also be noted that Jacqueline, as the trustee of the MTC Living Trust, has a fiduciary duty to herself and Kathryn as beneficiaries under the MTC Living Trust to enforce the rights that the MTC Living Trust has to the income and assets of Trust 3. Thus, efforts by Eleanor to sanction her under the no-contest clause in Trust 1 for the fulfilling of her fiduciary duties under the MTC Living Trust should not be allowed. Eleanor's Counterclaim asserting that the Trust's no-contest clause should be enforced lacks any merit and should be dismissed.

Lastly, with respect to the assertion for the enforcement of the no-contest clause by Eleanor in her Counterclaim, it should be noted that NRS 153.031 and NRS Chapter 164 expressly give a beneficiary the right to seek the Court's interpretation of vague or disputed trust provisions. It would be counter-intuitive to assert that a no-contest clause can be enforceable where a beneficiary is simply asserting a statutorily given right to have the Court resolve a legitimate dispute the beneficiary has with an unreasonable action taken by a trust's trustee to cut off income benefits recognized by the Trustee under her administration of the Trust for over 34 years.

Although no basis exists for enforcing the Trust's no-contest clause against Jacqueline in this

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matter, there does appear to be a basis for asserting it against Eleanor. While Jacqueline in her Petition did not challenge Eleanor's right to 35% of the royalty income distribution, Eleanor in her Counterclaims has asserted a right to 100% of the royalty income, depriving Jacqueline and Kathryn of any share of the income. Further, even though she may argue this is her defense to the action instigated by Jacqueline, in fact it was Eleanor who first challenged the Trust distribution provisions by abruptly halting distributions to Jacqueline and Kathryn. Further, given the history of the income allocation for the last 34 years, and the fact Eleanor has not elaborated on why she believes she is now entitled to set aside the distribution practice she herself has countenanced over the years, her actions lack probable cause or good faith. Therefore, if it is determined that Jacqueline's Petition has merit in this case, grounds would exist for then not only having the 65% share of royalty income paid to Jacqueline and Kathryn, but also an assertion could be made under the Trust's no-contest clause that Eleanor has forfeited all her right to any distribution under the Trust, except for one dollar. Eleanor's conduct does not fall under one of the exceptions to the no-contest clause enforcement contained in NRS 163.00195.

In any event, Eleanor's Counterclaim against Jacqueline for enforcement of the no-contest clause should be dismissed.

C. *ELEANOR'S COUNTERCLAIM FOR PUNITIVE DAMAGES IS WITHOUT MERIT AND SHOULD BE DISMISSED.*

While under Nevada's notice pleading requirements a plaintiff may get by in being less specific about her assertion that a claim for punitive damages be recognized, certainly some indication of behavior justifying an award of punitive damages must be pled. Eleanor's Counterclaims are centered on her assertion that Jacqueline is mistaken in her interpretation of the Trust provisions regarding the allocation of income between Trust 2 and Trust 3, and her assertion that Jacqueline, in seeking to put a hold on income distributions pending the Courts determination as to the proper interpretation, committed a tort of intentional interference with contractual relations. As more fully analyzed above, neither of these actions by Jacqueline come remotely close to conduct justifying punitive damages. Even if Jacqueline's position in this matter is not accepted by the Court, her said reactions to Eleanor's abrupt discontinuance of income distributions to her and Kathryn were not unreasonable; and, in fact, a reasonable person would conclude they were based upon probable cause that Eleanor was in the

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wrong.

The Nevada Supreme Court has emphasized in its past decisions that punitive damages cannot be awarded without a showing that a defendant has been guilty of oppression, fraud or malice. *Village Dev. Co. v. Filice,* 90 Nev. 305, 526 P.2d 83 (1974). See also, NRS 42.05 which requires a showing of at least one of these conditions to claim punitive damages. Oppressive conduct is that "which subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person." NRS 42.001(4). See, also, *Maduike v. Agency Rent-A-Car,* 114 Nev. 1, 953 P.2d 24, 26 (1998). No oppressive conduct by Jacqueline is alleged in Eleanor's Counterclaim to support a punitive damage award, and certainly none could legitimately be asserted. While Eleanor asserts that Jacqueline's conduct exhibits fraud, she has not plead any facts establishing any fraud being perpetrated. NRS 42.001(2) defines the fraud present when punitive damages are proper as "intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another of his or her rights or property or to otherwise injure another person."

Clearly, Jacqueline's conduct, complained of by Eleanor in her Counterclaim, comes no where near any type of fraud justifying a punitive damage award. And again, no such conduct by Jacqueline under the recognized facts in this case could legitimately be asserted. While Eleanor asserts that Jacqueline's conduct was malicious, no one could honestly accuse Jacqueline of being malicious in trying to protect her and Kathryn's income benefits under the Trust. Even if Jacqueline's position proves to be incorrect, her actions were obviously not malicious or unwarranted. To be malicious, an act must show ill will on the defendant's part, or his desire to do harm for the mere satisfaction of doing it. . . It contemplates willful and intentional conduct done in reckless disregard of possible results. *Id.* at 93. NRS 42.001(3) defines malice as "conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights of safety of others." No such conduct by Jacqueline has been asserted by Eleanor in her Counterclaim. The dispute before the Court is based upon the proper interpretation of Trust provisions, calculations made 34 years ago, and administration occurring over the last 34 years. Jacqueline's efforts to assert and defend her and Kathryn's rights to income distribution from the Trust, as complained of by Eleanor in her Counterclaim, even if Jacqueline's position on the issues was determined to be incorrect by the Court, cannot be considered malicious so as to justify any punitive damage award.

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Clearly, Eleanor has added the Counterclaim for punitive damages simply as a means to try to cower Jacqueline into submitting to her demands, and to increase the issues she is forced to defend on in this case causing her financial stress. Such action by Eleanor should not be tolerated and her Counterclaim for punitive damages should be dismissed.

D. *ELEANOR'S REQUEST FOR ATTORNEY'S FEES LACKS ANY LEGAL JUSTIFICATION; HOWEVER, JACQUELINE SHOULD BE AWARDED JUDGMENT AGAINST ELEANOR FOR THE ATTORNEY'S FEES SHE HAS BEEN REQUIRED TO INCUR AS A RESULT OF ELEANORS SPURIOUS COUNTERCLAIMS.*

Eleanor, while counterclaiming and requesting she receive an award of attorney's fees and costs in these proceedings, fails to provide the Court with any justification for such requested relief. Clearly, the law is that unless provided for by statute, a party is not entitled to attorney's fees in an action. NRS 18.010 provides a basis for awarding attorney's fees to the party winning in the litigation, provided the amount in controversy is not more than $20,000.00. In the present case, the amount in controversy greatly exceeds this sum. Thus, Eleanor has asserted no basis in this case for seeking an award of attorney's fees.

On the contrary, however, Jacqueline does have a statutory basis for seeking an award of attorney's fees from Eleanor or Trust 1, and to have Eleanor's trustee compensation, if any, reduced, in the event Eleanor's position in this matter is denied and Jacqueline's Petition is approved. NRS 153.031(3) grants the Court the authority to award Jacqueline attorney's fees and to penalize Eleanor should Jacqueline prevail in this matter.

With respect to Eleanor's Counterclaims in particular, and the expense she has put Jacqueline through to defend against them, it is submitted that Jacqueline is now entitled to an award of attorney's fees and costs against Eleanor. Eleanor's Counterclaims lack any merit and have obviously been brought to harass Jacqueline. NRS 18.010(2)(b) provides that the Court may award attorney's fees to a prevailing party:

> Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court should liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

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Clearly, Eleanor's Counterclaims fall under the situations envisioned by the Legislature where the Court should assess her with and grant to Jacqueline her reasonable attorney's fees incurred in bringing this Motion to Dismiss.

In any event, Eleanor's Counterclaim for an award of attorney's fees should be denied.

D. *SUMMARY*

In summary, while the issues addressed in Jacqueline's Petition may need to be addressed by the Court in an evidentiary hearing, it is respectfully submitted that the Counterclaims asserted by Eleanor have no merit on the face of her pleadings and should therefore be dismissed. Eleanor has not plead facts sufficient to show that a claim for intentional interference with contractual relations can be established. Further, she has not plead facts sufficient to allow the Court to consider, going forward, her claim for enforcement of the no-contest clause in the Trust, her claim for punitive damages, or her claim for attorney's fees in this proceeding. In addition, it is important to note that Eleanor could not in all honesty plead any additional facts which might shore up her Counterclaim pleadings so as to meet the requirements for stating viable causes of action against Jacqueline. The facts in this case, relating to Eleanor's Counterclaims, are undisputed, and no additional facts exist which could salvage viable counterclaims for Eleanor.

All of Eleanor's Counterclaims, submitted tardily shortly before the scheduled evidentiary hearing in this case, have been plead simply to delay matters, to try to wrongfully harass and intimidate Jacqueline, and to force her to incur more costs and fees in this proceeding. Notwithstanding Nevada is a notice-pleading State where dismissal of claims is rarely granted when some semblance of allegations are made, which if proven could support an award to the pleading party, Eleanor's Counterclaims fall greatly short of even meeting minimum standards of pleading any wrongful conduct on Jacqueline's part sufficient to justify the relief requested in her Counterclaims. Therefore, Eleanor's Counterclaims in this case should be dismissed. Also, it is respectfully submitted that Eleanor be required to reimburse Jacqueline for her reasonable attorney's fees incurred in bringing this

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Motion.

DATED this 18th day of March, 2014.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT and that on the _____ day of March, 2014, I placed a true and correct copy of the foregoing **MOTION TO DISMISS COUNTERCLAIMS OF ELEANOR C. AHERN** in the United States Mail, at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully prepaid, and addressed to the following:

John R. Mugan, Esq.
Michael D. Lum, Esq.
JEFFREY BURR, LTD.
2600 Paseo Verde Parkway, Suite 200
Henderson, NV 89074

Joseph J. Powell, Esq.
The Rushforth Firm, Ltd.
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134

_____
An Employee of Albright, Stoddard, Warnick & Albright

EXHIBIT "A"

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

JACQUELINE M. MONTOYA, under oath, testifies as follows:

1. In my capacity as Trustee and a beneficiary under the "MTC Living Trust" dated December 6, 1995, I am the Petitioner in the above-entitled proceedings.

2. I have carefully read the factual assertions made in the foregoing Motion to Dismiss the Counterclaims filed against me by Eleanor C. Ahern and confirm that to the best of my knowledge and belief they are true and correct.

3. In filing my Petition herein, and in seeking to have a hold put upon payments from oil companies to Trust 1, I was following and relying upon the advice and counsel of my attorneys to secure the income payments until the court had the opportunity to resolve the dispute between me and Eleanor.

4. It was never my intent to have the oil companies cancel their contracts with Trust 1, or to induce them in any way to breach those contracts. Rather, I was applying a method allowed under Texas law to preserve and hold in trust disputed payments of royalty income until a determination could be made by the court as to entitlement to the income.

5. I would never seek to otherwise disrupt the contractual relations between the oil companies and Trust 1, because I, myself, and my sister are and have been beneficiaries of income distributions stemming from these contracts.

6. In fact, I was instrumental in negotiating the contracts in question with the oil companies, on behalf of Trust 1, and the beneficiaries to the income.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true.

Jacqueline M. Montoya
JACQUELINE M. MONTOYA

EXHIBIT “B”

AFFIDAVIT OF SEAN GUERRERO

Before me this day came Sean Guerrero, who on his oath recited the following:

"My name is Sean Guerrero I am a licensed attorney in Midland, Texas, where I am a partner with the law firm of Stubbeman, McRae, Sealy, Laughlin, Browder, Inc. Our firm represents Jacqueline M. Montoya and Kathryn A. Bouvier and we have assisted our clients in dealing with a probate and oil and gas issues in Upton County, Texas.

Our clients filed a lawsuit in Clark County, Nevada, in January 2014 in order to enforce their rights to distribution of a Trust created by the Will of Marjorie T. Connell. This Trust owns extensive oil and gas properties and mineral rights in Upton County, Texas.

Under Texas Natural Resources Code Section 91.402, an oil and gas company is insulated from disputes regarding ownership of oil and gas interests among potential royalty owners. Section 91.402 allows that an oil and gas company may hold in suspense payments of royalty interests where a dispute in ownership is alleged, or where a dispute exists that could affect distribution of royalty payments. The suspended funds are held in trust until the oil company receives an affirmation as to the ownership of those royalty interests. The Natural Resources Code provision prevents an oil company from accidentally paying the wrong interest owner in the event that title in that interest is disputed. Interest accrues on the suspended funds.

The underlying suit was filed in Clark County, Nevada, and called into question the distribution of royalty payments to the parties to the suit. As a result, I wrote letters to all oil companies that make royalty payments to the trust, requesting that all oil companies suspend payments and hold those payments in trust until the suit has been resolved. Our request was consistent with not only Texas statutory law, but with industry standard and regular practice in Texas where disputed royalty allocation is the focus of a lawsuit. Such a request prevents the oil company from making payments to the wrong parties. Apache Oil Corporation, the oil company making the largest payments to the trust, initially agreed to hold their royalty payments in suspense in accordance with Section 91.402.

After objection from attorneys for Eleanor Ahern, Apache reviewed the situation and determined that since their royalty payments were to the Trust, rather than to any of the individual parties to the suit, Apache played no role in determining how the trust assets were distributed. Consequently, Apache resumed payments shortly thereafter. Presumably, Apache also paid to the opposing party

the amounts which had previously been held in suspense, along with any interest that accrued during the short period when the funds were in suspense."

Further affiant saith not.

Sean Guerrero

Subscribed and sworn to before me on March 14, 2014, by Sean Guerrero.

MONA GARCIA
Notary Public
STATE OF TEXAS
My Comm. Exp. Jul. 05, 2016

Notary Public, State of Texas

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03/20/2014 11:46:49 AM

CLERK OF THE COURT

MDSM
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LAW OFFICES
A PROFESSIONAL CORPORATION
ASWA

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of
THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972

An Inter Vivos Irrevocable Trust.

CASE NO. P-09-066425
DEPT NO. XXVI (26)

AMENDED CERTIFICATE OF MAILING

I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT and that on the 20th day of March, 2014, I placed a true and correct copy of the **MOTION TO DISMISS COUNTERCLAIMS OF ELEANOR C. AHERN,** filed herein on March 18, 2014. in the United States Mail, at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully prepaid, and addressed to the following:

John R. Mugan, Esq.
Michael D. Lum, Esq.
JEFFREY BURR, LTD.
2600 Paseo Verde Parkway, Suite 200
Henderson, NV 89074

G:\Mark\00-MATTERS\Montoya, Jacqueline (10658.0010)\Amended Cert of Mailing 032014.wpd

Joseph J. Powell, Esq.
The Rushforth Firm, Ltd.
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134

An Employee of Albright, Stoddard, Warnick & Albright

ASWA
ALBRIGHT · STODDARD · WARNICK · ALBRIGHT
LAW OFFICES
A PROFESSIONAL CORPORATION

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

IN THE MATTER OF: THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, DATED MAY 18, 1972,	Supreme Court No.: 66231 Consolidated with: 67782, 68046 District Court Case No.: P-09-066425-T
ELEANOR C. AHERN A/K/A ELEANOR CONNELL HARTMAN AHERN, Appellant, vs. JACQUELINE M. MONTOYA; AND KATHRYN A. BOUVIER, Respondents.	Appeal from the Eighth Judicial District Court, The Honorable Gloria Sturman Presiding

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Nov 20 2015 04:09 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

(VOLUME 5 OF 17)

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

IN THE MATTER OF: THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, DATED MAY 18, 1972, ELEANOR C. AHERN A/K/A ELEANOR CONNELL HARTMAN AHERN, Appellant, vs. JACQUELINE M. MONTOYA; AND KATHRYN A. BOUVIER, Respondents.	Supreme Court No.: 66231 Consolidated with: 67782, 68046 District Court Case No.: P-09-066425-T Appeal from the Eighth Judicial District Court, The Honorable Gloria Sturman Presiding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRAP 25(c) and (d), I caused a true and correct copy of the foregoing **APPELLANT'S APPENDIX (Volume 5 of 17) (Pages AA 920-1164)** by using the Court's Electronic Filing System on November 20, 2015, upon the following:

WHITNEY B. WARNICK, ESQ.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106
Attorneys for Kathryn A. Bouvier

JOSEPH J. POWELL, ESQ.
THE RUSHFORTH FIRM, LTD.
P.O. Box 371655
Las Vegas, NV 89137-1655
Attorneys for Jacqueline M. Montoya and Kathryn A. Bouvier

I hereby certify that on November 20, 2015, I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

MICHAEL K. WALL, ESQ.
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Fredrick P. Waid, Court-appointed Trustee

/s/ Erin Parcells
an employee of Brownstein Hyatt Farber Schreck, LLP

Article Six
Specific Distributions and Disposition of Tangible Personal Property

Section 6.01 Specific Distribution to LINDA VARGAS

As soon as practicable after my death, my Trustee shall distribute $10,000 to LINDA VARGAS.

If LINDA VARGAS should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.02 Specific Distribution to SALLY ROSE

As soon as practicable after my death, my Trustee shall distribute $5,000 to SALLY ROSE.

If SALLY ROSE should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.03 Specific Distribution to GREAT GRANDCHILDREN

As soon as practicable after my death, my Trustee shall allocate my JP Morgan Bond held through Wells Fargo Account Number W68560920, if in existence at my death, to be divided into as many shares as shall be necessary to create one equal share for each child of JACQUELINE MARGUERITE MONTOYA and KATHRYN ANN BOUVIER to be held in a separate trust for the benefit of each one of them to be administered as provided in this Section.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

My Trustee shall administer the amount set aside for each Beneficiary as follows:

(a) Distributions of Income and Principal

My Trustee may distribute to a Beneficiary as much of the income and principal of their trust as my Trustee determines is necessary or advisable for their health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of a Beneficiary

If a Beneficiary should die after the establishment of their trust, but before the complete distribution of their trust, my Trustee shall distribute the remaining trust property under the Articles that follow.

Section 6.04 Specific Distribution to ELEANOR C. HARTMAN AHERN

As soon as practicable after my death, my Trustee shall allocate the sum of $300,000 to be held in a separate trust for the benefit of ELEANOR C. HARTMAN AHERN to be administered as provided in this Section.

If ELEANOR C. HARTMAN AHERN should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

My Trustee shall administer the amount set aside for ELEANOR C. HARTMAN AHERN as follows:

(a) Distributions of Income and Principal

My Trustee may distribute to ELEANOR C. HARTMAN AHERN as much of the income and principal of her trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of ELEANOR C. HARTMAN AHERN

If ELEANOR C. HARTMAN AHERN should die after the establishment of her trust, but before the complete distribution of her trust, my Trustee shall distribute the remaining trust property to the descendants of ELEANOR C. HARTMAN AHERN, *per stirpes*, in separate trusts.

If ELEANOR C. HARTMAN AHERN has no descendants, my Trustee shall distribute the balance of the trust property under the Articles that follow.

Section 6.05 Specific Distribution to SHEILA HATHORN WHITE

As soon as practicable after my death, my Trustee shall distribute the real property located at 1325 Strong Drive, Las Vegas, Nevada 89102 to SHEILA HATHORN WHITE.

If SHEILA HATHORN WHITE should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.06 Distribution of Tangible Personal Property by Memorandum

I reserve the right to make dispositions of items of tangible personal property by a signed written memorandum executed after I sign this agreement that refers to my trust and lists items of tangible personal property and designates the beneficiary of each item. If I execute a memorandum, the memorandum is to be incorporated by reference into this agreement to the extent permitted by law.

I direct that upon my death, my Trustee distribute the items of tangible personal property listed in the memorandum, together with any insurance policies covering such property and claims under such policies, as provided in the memorandum. Should I leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date shall control as to those items that are in conflict.

If the memorandum with the most recent date conflicts with a provision of this agreement as to the specific distribution of any item of tangible personal property, the provisions of the memorandum with the most recent date shall control as to those items that are in conflict.

If the memorandum can not legally be incorporated by reference, the memorandum shall then be treated as an amendment to my trust and I request that my Trustee follow my wishes and distribute the items of tangible personal property listed in the memorandum according to its terms.

Section 6.07 Distribution of Remaining Tangible Personal Property

My Trustee shall distribute any tangible personal property not disposed of by a written memorandum under the Articles that follow.

Section 6.08 Definition of Tangible Personal Property

For purposes of this Article, my tangible personal property shall include but not be limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia.

My tangible personal property shall not include any property that my Trustee, in its sole and absolute discretion, determines to be part of any business or business interest owned by me or my trust.

If my Trustee receives property to be distributed under this Article from my probate estate or in any other manner after my death, my Trustee shall distribute the property, free of trust, in accordance with this Article. The fact that an item of tangible personal property was not received by my trust until after my death shall not affect the validity of the gift. If property to be distributed under this Article is not part of the trust property upon my death and is not subsequently transferred to my Trustee from my probate estate or in any other manner after my death, then the specific distribution of property made in this Article shall be considered null and void, without any legal or binding effect.

Section 6.09 Encumbrances and Incidental Expenses of Tangible Personal Property

My Trustee shall distribute property under this Article subject to any liens, security interests or other encumbrances on the property.

My Trustee shall pay, as an administration expense, the reasonable expenses of storing, insuring, packing, transporting and otherwise caring for my tangible personal property until each item of property is actually delivered to the appropriate beneficiary.

Section 6.10 Residuary Distribution

Any tangible personal property not distributed under this or prior Articles of this agreement shall be distributed as provided in the Articles that follow.

Article Seven
Creation of Trust Shares Upon My Death

Section 7.01 Division of My Trust

My Trustee shall divide the remaining trust property into Exempt and Nonexempt Shares. My Trustee shall allocate a fraction (the "Exempt Fraction") of the remaining trust property to the Exempt Share as defined in subsection (a). The balance of the trust property shall be allocated to the Nonexempt Share.

My Trustee shall administer the Exempt Share as provided in Article Eight. My Trustee shall administer the Nonexempt Share as provided in Article Nine.

(a) Computation of the Exempt Fraction

The numerator of the Exempt Fraction is equal to the amount, if any, of my available GST Exemption, as defined in Section 15.05(c), and the denominator is the aggregate value, for federal estate tax purposes, of the remaining trust property.

(b) Satisfaction of the Exempt Fraction

My Trustee shall have complete authority and discretion to allocate property to the Exempt Share in satisfaction of the Exempt Fraction in cash or in kind, or partly in cash and partly in kind, or in undivided interests in property.

In making the computations necessary to determine the Exempt Fraction, my Trustee shall use those values as finally determined for federal estate tax purposes. Once determined the Exempt Fraction shall be fixed and shall not vary with changes in the value of the trust property subsequent to the valuation date used for federal estate tax purposes. However, since the Exempt Fraction is not intended to be a gift of a specified dollar amount or pecuniary in nature, my Trustee shall apply the fraction to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of the Exempt Fraction will include fluctuations in the value of the trust property.

If the numerator of such fraction is zero, no property shall be allocated to the Exempt Share. If the numerator of the fraction is equal to or greater than the denominator, all the remaining trust property shall be allocated to the Exempt Share.

(c) Allocation of GST Exemption

I recommend, but do not require, that my Personal Representative or my Trustee will allocate my available GST Exemption to the Exempt Share.

Article Eight
My Exempt Property

My Trustee shall administer and distribute my remaining exempt trust property (not distributed under prior Articles of this agreement) under the terms of this Article.

Section 8.01 Division of My Exempt Property

My Trustee shall divide my exempt property into shares as follows:

Name	Share
JACQUELINE MARGUERITE MONTOYA	1/2
KATHRYN ANN BOUVIER	1/2

My Trustee shall administer the exempt share of each beneficiary in an exempt trust as provided in the Sections that follow.

Section 8.02 Distribution of the Exempt Share for JACQUELINE MARGUERITE MONTOYA

My Trustee shall hold and administer the exempt share set aside for JACQUELINE MARGUERITE MONTOYA in a separate trust under the provisions of this Section.

(a) Distributions of Income and Principal

My Trustee may distribute to JACQUELINE MARGUERITE MONTOYA as much of the income and principal of her exempt trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distributions on the Death of JACQUELINE MARGUERITE MONTOYA

If JACQUELINE MARGUERITE MONTOYA should die after the establishment of her exempt trust, but before the complete distribution of her exempt trust, my Trustee shall distribute the remaining trust property to her descendants, *per stirpes*, in separate trusts. If she has no living descendants, my Trustee shall distribute the balance of the trust property to KATHRYN ANN BOUVIER in a separate trust. The trust is to be held and administered under the same provisions as JACQUELINE MARGUERITE MONTOYA's exempt trust.

(c) Distribution if JACQUELINE MARGUERITE MONTOYA is Deceased

If JACQUELINE MARGUERITE MONTOYA should die before the establishment of her exempt trust, my Trustee shall distribute the JACQUELINE MARGUERITE MONTOYA's share to the descendants of JACQUELINE MARGUERITE MONTOYA, *per stirpes*, in separate

trusts. My Trustee shall administer the trusts under the same provisions as JACQUELINE MARGUERITE MONTOYA's exempt trust.

If she has no living descendants, my Trustee shall distribute JACQUELINE MARGUERITE MONTOYA's share to KATHRYN ANN BOUVIER in a separate trust. The trust is to be held and administered under the same provisions as JACQUELINE MARGUERITE MONTOYA's exempt trust.

Section 8.03 Distribution of the Exempt Share for KATHRYN ANN BOUVIER

My Trustee shall hold and administer the exempt share set aside for KATHRYN ANN BOUVIER in a separate trust under the provisions of this Section.

(a) Distributions of Income and Principal

My Trustee may distribute to KATHRYN ANN BOUVIER as much of the income and principal of her exempt trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distributions on the Death of KATHRYN ANN BOUVIER

If KATHRYN ANN BOUVIER should die after the establishment of her exempt trust, but before the complete distribution of her exempt trust, my Trustee shall distribute the remaining trust property to her descendants, *per stirpes*, in separate trusts. If she has no living descendants, my Trustee shall distribute the balance of the trust property to JACQUELINE MARGUERITE MONTOYA in a separate trust. The trust is to be held and administered under the same provisions as KATHRYN ANN BOUVIER's exempt trust.

(c) Distribution if KATHRYN ANN BOUVIER is Deceased

If KATHRYN ANN BOUVIER should die before the establishment of her exempt trust, my Trustee shall distribute the KATHRYN ANN BOUVIER's share to the descendants of KATHRYN ANN BOUVIER, *per stirpes*, in separate trusts. My Trustee shall administer the trusts under the same provisions as KATHRYN ANN BOUVIER's exempt trust.

If she has no living descendants, my Trustee shall distribute KATHRYN ANN BOUVIER's share to JACQUELINE MARGUERITE MONTOYA in a separate trust. The trust is to be held and administered under the same provisions as KATHRYN ANN BOUVIER's exempt trust.

Article Nine
My Nonexempt Property

My Trustee shall administer and distribute my remaining nonexempt trust property (not distributed under prior Articles of this agreement) under the terms of this Article.

Section 9.01 Division of My Nonexempt Trust Property

My Trustee shall divide my nonexempt into shares as follows:

Name	Share
JACQUELINE MARGUERITE MONTOYA	1/2
KATHRYN ANN BOUVIER	1/2

My Trustee shall administer the share of each beneficiary as provided in the Sections that follow.

Section 9.02 Distribution of the Share for JACQUELINE MARGUERITE MONTOYA

My Trustee shall administer the nonexempt share set aside for JACQUELINE MARGUERITE MONTOYA in trust as provided in this Section.

(a) Distributions of Income and Principal

My Trustee may distribute to JACQUELINE MARGUERITE MONTOYA as much of the income and principal of her nonexempt trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of JACQUELINE MARGUERITE MONTOYA

Subject to the provisions of the next paragraph, JACQUELINE MARGUERITE MONTOYA shall have the unlimited and unrestricted testamentary general power to appoint any property remaining in her nonexempt trust at her death among her Descendants and the creditors of JACQUELINE MARGUERITE MONTOYA's estate.

JACQUELINE MARGUERITE MONTOYA may not exercise this power of appointment to appoint to her estate, her creditors, or the creditors of her estate from the limited share of her nonexempt trust. For purposes of this power of appointment, the "limited share" of JACQUELINE MARGUERITE MONTOYA's nonexempt trust. is that portion of her nonexempt trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or which, in the absence of the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at her death. If the generation-skipping tax does not then apply,

the limited share shall be JACQUELINE MARGUERITE MONTOYA's entire nonexempt trust.

Insofar as any part of JACQUELINE MARGUERITE MONTOYA's nonexempt trust shall not be effectively appointed, my Trustee shall distribute the remaining unappointed *per stirpes* in trusts to the descendants of JACQUELINE MARGUERITE MONTOYA. If JACQUELINE MARGUERITE MONTOYA has no living descendants, my Trustee shall distribute the balance of the trust property to KATHRYN ANN BOUVIER in a separate trust. The trust is to be held and administered under the same provisions as JACQUELINE MARGUERITE MONTOYA's nonexempt trust.

(c) Distribution if JACQUELINE MARGUERITE MONTOYA is Deceased

If JACQUELINE MARGUERITE MONTOYA should die before the establishment of her trust, my Trustee shall distribute JACQUELINE MARGUERITE MONTOYA's share *per stirpes* in trusts to the descendants of JACQUELINE MARGUERITE MONTOYA. My Trustee shall administer the trusts under the same provisions as JACQUELINE MARGUERITE MONTOYA's nonexempt trust.

If JACQUELINE MARGUERITE MONTOYA has no living descendants, my Trustee shall distribute JACQUELINE MARGUERITE MONTOYA's share to KATHRYN ANN BOUVIER in a separate trust. The trust is to be held and administered under the same provisions as JACQUELINE MARGUERITE MONTOYA's nonexempt trust.

Section 9.03 Distribution of the Share for KATHRYN ANN BOUVIER

My Trustee shall administer the nonexempt share set aside for KATHRYN ANN BOUVIER in trust as provided in this Section.

(a) Distributions of Income and Principal

My Trustee may distribute to KATHRYN ANN BOUVIER as much of the income and principal of her nonexempt trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of KATHRYN ANN BOUVIER

Subject to the provisions of the next paragraph, KATHRYN ANN BOUVIER shall have the unlimited and unrestricted testamentary general power to appoint any property remaining in her nonexempt trust at her death among her Descendants and the creditors of KATHRYN ANN BOUVIER's estate.

KATHRYN ANN BOUVIER may not exercise this power of appointment to appoint to her estate, her creditors, or the creditors of her estate from the limited share of her nonexempt trust. For purposes of this power of appointment, the "limited share" of KATHRYN ANN BOUVIER's nonexempt trust is that portion of her nonexempt trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or which, in the absence of the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at her death. If the generation-skipping tax does not then apply, the limited share shall be KATHRYN ANN BOUVIER's entire nonexempt trust.

Insofar as any part of KATHRYN ANN BOUVIER's nonexempt trust shall not be effectively appointed, my Trustee shall distribute the remaining unappointed *per stirpes* in trusts to the descendants of KATHRYN ANN BOUVIER. If KATHRYN ANN BOUVIER has no living descendants, my Trustee shall distribute the balance of the trust property to JACQUELINE MARGUERITE MONTOYA in a separate trust. The trust is to be held and administered under the same provisions as KATHRYN ANN BOUVIER's nonexempt trust.

(c) Distribution if KATHRYN ANN BOUVIER is Deceased

If KATHRYN ANN BOUVIER should die before the establishment of her trust, my Trustee shall distribute KATHRYN ANN BOUVIER's share *per stirpes* in trusts to the descendants of KATHRYN ANN BOUVIER. My Trustee shall administer the trusts under the same provisions as KATHRYN ANN BOUVIER's nonexempt trust.

If KATHRYN ANN BOUVIER has no living descendants, my Trustee shall distribute KATHRYN ANN BOUVIER's share to JACQUELINE MARGUERITE MONTOYA in a separate trust. The trust is to be held and administered under the same provisions as KATHRYN ANN BOUVIER's nonexempt trust.

Article Ten
Remote Contingent Distribution

If, at any time, there is no person or entity qualified to receive final distribution of my trust estate or any part of it, then my Trustee shall distribute the portion of my trust estate with respect to which the failure of qualified recipients has occurred to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Nevada then in effect.

Article Eleven
Administration of Trusts for Underage and Incapacitated Beneficiaries

Section 11.01 Distributions for Underage and Incapacitated Beneficiaries

If under another provision of this agreement any part of the trust property is directed to be distributed outright, or if a distribution is required to be made, to a person when that person has not yet attained the age of 21 years, or at a time when that person is incapacitated and in the opinion of my Trustee is unable to manage the distribution properly, my Trustee may distribute or retain the trust property in any one or more of the following methods described in Section 11.02.

Notwithstanding the preceding paragraph, if under another provision of this agreement any part of the trust property becomes distributable outright, or if a distribution is required to be made, to a person when that person is receiving or applying for needs-based government benefits, my Trustee shall distribute or retain the trust property as described in Section 11.03.

I request, but do not require, that before making a distribution to a beneficiary, my Trustee, to the extent that it is both reasonable and possible, consider the ability the beneficiary demonstrated in managing prior distributions of trust property.

Section 11.02 Methods of Distribution

My Trustee may distribute or retain trust property in any one or more of the following methods for the benefit of any beneficiary subject to the provisions of this Section:

(a) Distribution to Beneficiary

My Trustee may distribute trust property directly to the beneficiary.

(b) Distribution to Guardian or Conservator or Family Member

My Trustee may distribute trust property to the beneficiary's guardian, conservator, parent or a family member or other person who has assumed the responsibility of caring for the beneficiary.

(c) Distribution to Custodian

My Trustee may distribute trust property to any person or entity, including my Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act, or similar statute.

(d) Distribution to Other Persons or Entities

My Trustee may distribute trust property to other persons and entities for the use and benefit of the beneficiary.

(e) Distribution to Agent under Durable Power of Attorney

My Trustee may distribute trust property to an agent or attorney-in-fact authorized to act for the beneficiary under a legally valid durable power of attorney executed by the beneficiary prior to the incapacity.

(f) Retention in Trust

My Trustee may retain trust property in a separate trust for the benefit of the beneficiary until the beneficiary attains 21 years of age or, in the opinion of my Trustee, is no longer incapacitated (as the case may be).

My Trustee shall distribute as much of the net income and principal of any trust created under this subsection that my Trustee deems necessary or advisable for the health, education, maintenance and support of the beneficiary for whom the trust was created. My Trustee shall accumulate any undistributed net income and add such income to principal.

When the beneficiary for whom a trust is created under this subsection attains 21 years of age or is no longer incapacitated (as the case may be), the beneficiary may withdraw from the trust at any time or times any portion or all of the accumulated trust income and principal.

The beneficiary for whom a trust is created under this subsection shall have the testamentary general power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities, including the creditors of the beneficiary's estate. The beneficiary shall have the sole and exclusive right to exercise this general power of appointment.

I intend that this testamentary power of appointment be a general power of appointment as defined in Section 2041 of the Internal Revenue Code.

If the beneficiary fails to validly exercise this testamentary general power of appointment, my Trustee shall distribute the balance of his or her trust property to the then living descendants of the beneficiary, *per stirpes*.

If the beneficiary has no then living descendants, my Trustee shall distribute the beneficiary's remaining trust property *per stirpes* to the living descendants of the beneficiary's nearest lineal ancestor who was my descendant or if no such descendant is then living, to my then living descendants, *per stirpes*.

If I have no then living descendants, my Trustee shall distribute the remaining trust property as provided in Article Ten.

Section 11.03 Special Needs Trust

My Trustee shall distribute or retain trust property as follows for the benefit of any beneficiary who is subject to the provisions of this Section:

(a) Distributions for Special Needs

My Trustee, in its sole, absolute, and unreviewable discretion, may distribute discretionary amounts of net income and principal for special needs of the beneficiary not otherwise provided by governmental financial assistance and benefits, or by the providers of services.

"Special needs" refers to the requisites for maintaining the good health, safety, and welfare when, in the discretion of my Trustee, such requisites are not being provided by any public agency, office, or department of any state or of the United States.

"Special needs" shall also include, but not be limited to, medical and dental expenses, annual independent checkups, clothing and equipment, programs of training, education, treatment and rehabilitation, private residential care, transportation (including vehicle purchases), maintenance, insurance, and essential dietary needs. "Special needs" may include spending money; additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and money to purchase appropriate gifts for relatives and friends.

My Trustee shall have no obligation to expend trust assets for such needs, but if my Trustee, in its sole, absolute and unreviewable discretion, decides to expend trust assets, under no circumstances should any amounts be paid to, or reimbursed to, the federal government, any state, or any governmental agency for any purpose, including for the care, support, and maintenance of the beneficiary.

(b) Objective to Promote Independence of the Beneficiary

While actions are in my Trustee's sole, absolute and unreviewable discretion, all parties to this trust agreement should be mindful that it is my wish that the beneficiary live as independently, productively, and happily as possible.

(c) Trust Assets not to be Considered Available Resource to the Beneficiary

The intent of the provisions of this Section 11.03 is to supplement any benefits received, or for which the beneficiary may be eligible, through or from various governmental assistance programs and not to supplant any such benefits. All actions of my Trustee shall be directed toward carrying out this intent and the discretion granted my Trustee under this agreement to carry out this intent is absolute.

For purposes of determining the beneficiary's eligibility for any such benefits, no part of the principal or undistributed income of the trust estate shall be considered available to the beneficiary for public benefit purposes. The beneficiary shall not be considered to have access to principal or income of the trust, and he or she has no ownership, right, authority, or power to convert any asset into cash for his or her own use.

My Trustee shall hold, administer, and distribute all property allocated to this trust for the exclusive benefit of the beneficiary during his or her lifetime. All distributions from this trust share are in the sole, absolute, and unreviewable discretion of my Trustee, and the beneficiary is legally restricted from demanding trust assets for his or her support and maintenance.

In the event my Trustee is requested to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or in the event my Trustee is requested to petition a court or any other administrative agency for the release of trust principal or income for this purpose, my Trustee is authorized to deny such request and is authorized in its discretion to take whatever administrative or judicial steps may be necessary to continue the beneficiary's eligibility for benefits, including obtaining legal advice about the beneficiary's specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to the beneficiary for eligibility purposes. Any expenses of my Trustee in this regard, including reasonable attorneys' fees, shall be a proper charge to the trust estate.

(d) Distribution Guidelines

My Trustee shall be responsible for determining what discretionary distributions shall be made from this trust. My Trustee may distribute discretionary amounts of income and principal to or for the benefit of the beneficiary for those special needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services. Any undistributed income shall be added to principal. In making distributions, my Trustee:

Shall consider any other known income or resources of the beneficiary that are reasonably available;

Shall take into consideration all entitlement benefits from any government agency, such as Social Security disability payments, Medicare, Medicaid (or any state Medicaid program equivalent), Supplemental Security Income (SSI), In-Home Support Service (IHSS) and any other special purpose benefits for which the beneficiary is eligible;

Shall take into consideration resource and income limitations of any such assistance program;

Shall make expenditures so that the beneficiary's standard of living will be comfortable and enjoyable;

Shall not be obligated to or compelled to make specific payments;

Shall not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by such governmental agency and reimbursement is required by the state; and

Shall not be liable for any loss of benefits.

(e) No Seeking of Order to Distribute

For purposes of determining the beneficiary's state Medicaid program equivalent eligibility, no part of the principal or undistributed income of the trust estate shall be considered available to the beneficiary. My Trustee shall deny any request by the beneficiary to (1) release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or (2) petition a court or any other administrative agency for the release of trust principal or income for this purpose. My Trustee may, in its sole, absolute and unreviewable discretion, take necessary administrative or legal steps to protect the beneficiary's state Medicaid program equivalent eligibility, including obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to the beneficiary for purposes of determining state Medicaid program equivalent eligibility. Expenses for this purpose, including reasonable attorneys' fees, will be a proper charge to the trust estate.

(f) Indemnification of Trustee When Acting in Good Faith

My Trustee shall be indemnified from the trust property for any loss or reduction of public benefits sustained by the beneficiary as a result of my Trustee exercising, in good faith, the authority granted to my Trustee under this Section.

(g) Termination and Distribution of the Special Needs Trust

If my Trustee, in its sole, absolute and unreviewable discretion, determines that the beneficiary is no longer dependent on others and is able to provide independent support, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust agreement as though the provisions of this Section 11.03 had not been effective.

If the other provisions of this trust agreement do not provide for the distribution or retention of the remaining property, then my Trustee shall distribute the remaining property to the beneficiary outright, free of trust.

"Independent support" shall be satisfied at such time as the beneficiary has been gainfully employed for thirty-three (33) months of a thirty-six (36) month period immediately preceding the decision to terminate the trust share.

The terms "gainful employment" and "gainfully employed" shall be construed to mean such full-time employment that produces sufficient net income to enable the beneficiary to contribute not less than 100 percent of the funds (exclusive of other sources of revenue) that are necessary to provide for the independent care, support, maintenance, and education of the beneficiary. My Trustee, in its sole, absolute and unreviewable discretion, shall determine whether or not the beneficiary has satisfied the condition of gainful employment.

(h) Distribution Upon the Death of the Beneficiary

Upon the death of the beneficiary, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust agreement as though the provisions of this Section 11.03 had not been effective. If the other provisions of this trust agreement provide for the beneficiary's share to be held in trust, then those provisions shall be interpreted as though the beneficiary died after the establishment of such trust.

If the other provisions of this trust agreement do not provide for the distribution or retention of the remaining property, then the beneficiary shall have the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities. However, the beneficiary may not exercise this limited power of appointment to appoint to himself or herself, his or her estate, his or her creditors or the creditors of his or her estate.

I intend that this be a limited power of appointment and not a general power of appointment as defined in Section 2041 of the Internal Revenue Code.

Insofar as any part of the beneficiary's trust shall not be effectively appointed, my Trustee shall distribute the remaining unappointed balance *per stirpes* to the descendants of the beneficiary. If the beneficiary has no living descendants, my Trustee shall distribute the balance of the trust property *per stirpes* to my descendants.

If I have no living descendants, my Trustee shall distribute the balance of the trust property as provided in Article Ten.

Section 11.04 Application of Article

Any decision made by my Trustee under this Article shall be final, controlling and binding upon all beneficiaries subject to the provisions of this Article.

The provisions of this Article shall not apply to distributions to me.

Further, the provisions of this Article shall not apply to distributions that are required to be made to a beneficiary pursuant to the provisions of Section 12.01.

Article Twelve
Retirement Plans and Life Insurance Policies

The provisions of this Article apply to qualified retirement plans and insurance policies owned by or made payable to my trust.

Section 12.01 Retirement Plans

Notwithstanding any other provision of this agreement to the contrary, the provisions of this Section apply to qualified retirement plans.

(a) Rights of My Trustee

Subject to the provisions below pertaining to distributions from qualified retirement plans, my Trustee may exercise the right to determine the manner and timing of payments (by lump sum or otherwise) of qualified retirement plan benefits that are permitted under qualified retirement plans and are consistent with the federal income tax rules regarding required minimum distributions under Section 401(a)(9) of the Internal Revenue Code.

My Trustee may make a qualified disclaimer of any qualified retirement benefits or non-qualified annuity benefits payable to my trust.

My Trustee shall not be liable to any beneficiary for the death benefit election selected or for any decision regarding the disclaimer of any qualified retirement benefits payable to my trust.

(b) Distributions from Qualified Retirement Plans to Trusts

Unless specifically stated otherwise, each year, beginning with the year of my death, if any trust created under this agreement becomes the beneficiary of death benefits under any qualified retirement plan, my Trustee shall withdraw from the trust's share of the plan, in each year, the required minimum distribution required under Section 401(a)(9) of the Internal Revenue Code. My Trustee may withdraw such additional amounts from the trust's share of the plan as my Trustee deems advisable; but, only if the dispositive terms of the trust authorize my Trustee to immediately distribute the withdrawn amount as provided below. My Trustee shall immediately distribute all amounts withdrawn to:

> My descendants, *per stirpes*, who are beneficiaries of such trust; and
>
> If no descendant of mine is a beneficiary of the trust, then to the income beneficiaries of such trust in equal shares.

Amounts required to be withdrawn and distributed under this Section shall, to the extent they are withdrawn and distributed, reduce mandatory distribution amounts under other provisions of this agreement that otherwise require distribution of all of the income of the trust.

The purpose of this Section is to insure that the life expectancy of the beneficiaries of the trust may be used to calculate the minimum distributions required by the Internal Revenue Code. This Section shall be interpreted consistent with my intent despite any direction to the contrary in this agreement.

(c) Minimum Required Distribution

In administering my trust, the minimum required distribution for any year shall be, for each qualified retirement plan, the greater of (1) the value of the qualified retirement plan determined as of the preceding year-end, divided by the applicable distribution period; and (2) the amount that my Trustee shall be required to withdraw under the laws then applicable to the trust to avoid penalty.

If I die before my required beginning date with respect to a qualified retirement plan, the applicable distribution period means the life expectancy of the beneficiary. If I die on or after my required beginning date with respect to a qualified retirement plan, the applicable distribution period means the life expectancy of the beneficiary, or (if longer) my remaining life expectancy.

Notwithstanding the foregoing, if I die on or after my required beginning date with respect to a qualified retirement plan, the minimum required distribution for the year of my death shall mean (a) the amount that was required to be distributed to me with respect to the qualified retirement plan during the year, minus (b) amounts actually distributed to me with respect to the qualified retirement plan during the year.

"Life expectancy," "required beginning date" and other similar terms used in this subsection, shall be determined in accordance with Section 401(a)(9) of the Internal Revenue Code.

Section 12.02 Life Insurance Policies

The following provisions apply to life insurance policies owned by or made payable to my trust.

(a) Provisions During My Life

During my life, I reserve all of the rights, powers, privileges, and options, with respect to any insurance policy, annuity or any other third-party beneficiary contract owned by or made payable to my trust, including, but not limited to, the right to designate and change beneficiaries, the right to borrow money, the right to surrender the policy, the right to receive any payments as owner, and the right to make any available elections.

My Trustee shall have no duty to exercise, or refrain from exercising, any rights, powers, privileges or options with respect to any insurance policy, annuity contract or other third-party beneficiary contract. My Trustee shall have no obligation to pay premiums or other contractual amounts that may be payable under any such policy.

(b) Provisions After My Death

After my death, my Trustee may make all appropriate elections with respect to such policies and may collect all sums made payable to my trust or my Trustee under all such policies or contracts.

My Trustee may exercise any settlement options or other options or rights that may be available under the terms of any policy or contract. My Trustee shall not be liable to any beneficiary on account of any election made by my Trustee with respect to any policy or contract.

Section 12.03 Limitation on Liability of Payor

Persons or entities dealing in good faith with my Trustee shall not be required to see to the proper application of proceeds delivered to my Trustee, or to inquire into any provision of this agreement.

A receipt signed by my Trustee for any proceeds or benefits paid shall be a sufficient discharge to the person or entity making the payment.

Section 12.04 Collection Efforts

My Trustee shall make reasonable efforts to collect the proceeds of all life insurance policies and qualified retirement benefits payable to my trust.

My Trustee may commence legal or administrative proceedings to collect the proceeds of any life insurance policy or qualified retirement benefits to which the trust is entitled; provided, however, that my Trustee need not commence any such proceedings until my Trustee is indemnified to its satisfaction for any expenses and liabilities it may incur in connection with the proceeding.

My Trustee may settle or compromise any and all claims with respect to the collection of any life insurance proceeds or qualified retirement benefits to which my trust may be entitled. A settlement made by my Trustee shall be binding on all beneficiaries.

Section 12.05 No Obligation to Purchase or Maintain Benefits

Nothing in this agreement shall impose any obligation, legal or otherwise, on me or on my Trustee to purchase, invest, or maintain any qualified retirement plan or life insurance policy.

Article Thirteen
Trust Administration

Section 13.01 Distributions to Beneficiaries

Whenever this agreement authorizes or directs a Trustee to make a distribution of net income or principal to a beneficiary, the Trustee may apply for the benefit of the beneficiary any property that otherwise could be distributed directly to the beneficiary. The Trustee shall have no responsibility to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this agreement.

The Trustee may make distributions in cash or in kind, or partly in each, in proportions and at values determined by the Trustee. The Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that the Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

The Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

Section 13.02 No Court Proceedings

This trust shall be administered expeditiously, consistent with the provisions of this agreement, free of judicial intervention, and without order, approval or action of any court. The trust shall be subject to the jurisdiction of a court only if my Trustee or another interested party institutes a legal proceeding. A proceeding to seek instructions or a court determination shall be initiated in the court having original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination shall not subject this trust to the continuing jurisdiction of the court.

Section 13.03 No Bond

My Trustee shall not be required to furnish any bond for the faithful performance of my Trustee's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety shall be required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

Section 13.04 Exoneration of My Trustee

No successor Trustee is obligated to examine the accounts, records or actions of any previous Trustee or of the Personal Representative of my estate. No successor Trustee shall be in any way or manner responsible for any act or omission to act on the part of any previous Trustee or the Personal Representative of my estate.

Unless a Trustee has received notice of removal, the Trustee shall not be liable to me or to any beneficiary for the consequences of any action taken by the Trustee that would have been, but for the prior removal of the Trustee, a proper exercise by the Trustee of the authority granted to the Trustee under this agreement.

Any Trustee may request and obtain from the beneficiaries or from their legal representatives, agreements in writing releasing the Trustee from any liability that may have arisen from the Trustee's acts or omissions to act and indemnifying the Trustee from liability for the acts or omissions. An agreement described in this paragraph, if acquired from all the living beneficiaries of the trust or from their legal representatives, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

The Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal and may withhold distribution or allocation pending determination or release of a tax lien or other lien. This refunding agreement provision shall not apply to any distribution that qualifies for the federal estate tax charitable deduction.

Section 13.05 Trustee Compensation

An individual serving as Trustee, other than me, shall be entitled to fair and reasonable compensation for the services rendered as a fiduciary. A corporate fiduciary serving as Trustee shall be compensated by agreement with an individual Trustee or, in the absence of an individual Trustee or in the absence of an agreement, in accordance with the corporate fiduciary's published schedule of fees in effect at the time the services are rendered.

A Trustee may charge additional fees for services it provides that are not comprised within its duties as Trustee such as fees for legal services, tax return preparation and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out its duties under this agreement.

Section 13.06 Employment of Professionals

My Trustee may appoint, employ and remove, at any time and from time to time, investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, expert advisers, agents, and employees to advise or assist the Trustee in the performance of its duties. My Trustee may act upon the recommendations of the persons or entities employed with or without independent investigation.

My Trustee may reasonably compensate an individual or entity employed to assist or advise my Trustee regardless of whether the person or entity shall be a Trustee of a trust established under this agreement or a corporate affiliate of a Trustee and regardless of whether the entity shall be one in which a Trustee of a trust created under this agreement is a partner, member, stockholder, officer, director or corporate affiliate or has any other interest.

My Trustee may pay the usual compensation for services contracted for under this Section out of principal or income of the trust as my Trustee may deem advisable. My Trustee may pay compensation to an individual or entity employed to assist or advise my Trustee without diminution of or charging the same against the compensation to which the Trustee is entitled under this agreement. Any Trustee who shall be a partner, stockholder, officer, director or corporate affiliate in any entity employed to assist or

advise my Trustee shall nonetheless receive the Trustee's share of the compensation paid to the entity.

Section 13.07 Exercise of Testamentary Power of Appointment

A testamentary power of appointment granted under this agreement may be exercised by valid will, revocable living trust, or any other written instrument that specifically refers to this power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the holder of the power designates. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

My Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this agreement has not been exercised by the beneficiary if my Trustee has no knowledge of the existence of a valid will, revocable living trust, or any other written instrument exercising the power within 3 months after the beneficiary's death.

Section 13.08 Determination of Principal and Income

My Trustee may determine in a fair, equitable and practical manner how all Trustee's fees, disbursements, receipts, and wasting assets shall be credited, charged, and apportioned between principal and income. My Trustee may allocate capital gain to income rather than principal.

My Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and for the equalization of payments to or for the beneficiaries. My Trustee may select appropriate accounting periods with regard to the trust property.

Notwithstanding the foregoing or Nevada law to the contrary, my Trustee shall treat distributions from any qualified retirement accounts to any trust established under this agreement in any given year as income to the extent the distribution represents income generated or treated as generated by any qualified retirement account for that year.

In addition, my Trustee shall treat annuity and other periodic payments to any trust established under this agreement in any given year as income to the extent the distribution represents income generated and treated as generated by any qualified retirement plan for that year; if income information is not available then my Trustee shall apportion the annuity and other periodic payments between principal and income in a fair, equitable and practical manner in accordance with the guidelines set forth in this Section. "Annuity and other periodic payments" refers to distributions made to my Trustee over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments and includes payments made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement annuity, a pension, profit-sharing plan, stock-bonus plan, stock ownership plan or similar arrangement.

1. To the extent an annuity or other periodic payment is characterized as interest, dividend or other item of income or an annuity or other periodic payment is made in lieu of interest, dividend or other item of income; my Trustee shall allocate the payment to income. My Trustee shall allocate to principal the balance of the annuity or other periodic payment as well as any other payment received in the same accounting period that is not characterized as interest, dividend or other item of income.

2. To the extent annuity and other periodic payments are made and no part of the payments are characterized as interest, dividend or other item of income, my Trustee shall use the present value of the annuity and other periodic payments as finally determined for federal estate tax purposes and the Section 7520 rate of the Internal Revenue Code used to determine the value for federal estate tax purposes to prepare an annuitization table to allocate the payments between income and principal.

3. In the event that the amount of annuity and other periodic payments change because of changes in the investment markets or other changes, my Trustee shall allocate the change in the amount of the payments between income and principal in a fair, equitable and practical manner.

If, to obtain an estate tax marital deduction for a trust established under this agreement, my Trustee must allocate more of a payment to income than provided for by this section, my Trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

Section 13.09 Trust Accounting

Upon the written request of a beneficiary, my Trustee shall render an accounting at least annually to the income beneficiaries of the trust during the accounting period that includes the date of the written request. The accounting shall include the receipts, disbursements, and distributions occurring during the accounting period and a balance sheet of the trust property if no tax return is filed, or may consist just of the tax return for the accounting period if a tax return is filed for the trust.

In the absence of fraud or manifest error, the assent by all income beneficiaries to an accounting of an Independent Trustee shall make the matters disclosed in the accounting binding and conclusive upon all persons, both those in existence on the date of this agreement and those to be born in the future who have, or will in the future have, a vested or contingent interest in the trust property. In the case of a minor or incapacitated beneficiary, that beneficiary's natural guardian or legal representative shall give the assent required under this Section.

The failure of any person to object to any accounting by giving written notice to my Trustee within 60 days of the person's receipt of a copy of the accounting shall be deemed to be an assent by such person.

The trust's financial records and documentation shall be available at reasonable times and upon reasonable notice for inspection by trust beneficiaries and their representatives. My Trustee shall not be required to furnish trust information regarding my trust to any

individual, corporation, or other entity that is not a beneficiary or the representative of a beneficiary, and is not requesting the information pursuant to a valid court order.

Section 13.10 Action of Trustees; Disclaimer

Unless otherwise provided in this agreement, whenever I am serving as Trustee, I may make all decisions and exercise all powers and discretions granted to my Trustee under this agreement without the consent of any other Trustee.

When I am not serving as a Trustee, if two Trustees are eligible to act with respect to a given matter, the concurrence of both shall be required for action to be taken; if more than two Trustees are eligible to act with respect to a given matter, the concurrence of a majority of my Trustees shall be required for action to be taken.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee shall be absolved from personal liability by registering its dissent or abstention in the records of the trust. After doing so, the dissenting Trustee shall then act with my other Trustees in any way necessary or appropriate to effectuate the decision of the majority.

Notwithstanding any provision of this agreement to the contrary, any Trustee may disclaim or release, in whole or in part, by an instrument in writing, any power it holds as Trustee, irrevocably or for any period of time that the Trustee may specify. The Trustee may make the relinquishment of a power personal to the Trustee or may relinquish the power for all subsequent Trustees.

Section 13.11 Delegation of Trustee Authority; Power of Attorney

Subject to the limitations set forth in Section 14.23, any Trustee may, by an instrument in writing, delegate to any other Trustee the right to exercise any power (including a discretionary power) granted my Trustee in this agreement. During the time a delegation under this Section is in effect, the Trustee to whom the delegation was made may exercise the power to the same extent as if the delegating Trustee had personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice of revocation to the Trustee to whom the power was delegated.

My Trustee may execute and deliver a revocable or irrevocable power of attorney granting any individual or entity the power to transact any and all business on behalf of my trust or any other trust created under this agreement. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that my Trustee is entitled to exercise under this agreement.

Section 13.12 Additions to Separate Trusts

If upon my death, or upon the termination of any trust created under this agreement, a final distribution is to be made to a person who is or is named as the primary beneficiary of another trust created or provided for under this agreement, and there is no specific indication whether the distribution is to be made in trust or outright, free of trust, my Trustee shall make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, my Trustee shall treat the distribution as though it had been an original part of the second trust.

Section 13.13 Authority to Merge or Sever Trusts

My Trustee may merge and consolidate a trust created under this agreement with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and at least one Trustee in common.

My Trustee may administer the merged and consolidated trust as a single trust or unit. If, however, a merger or consolidation does not appear feasible, my Trustee may consolidate the assets of the trusts for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

My Trustee may sever any trust on a fractional basis into two or more separate and identical trusts or may segregate a specific amount or asset from the trust property by allocation to a separate account or trust. The separate trusts may be funded on a non *pro rata* basis provided that funding is based on the total fair market value of the assets on the date of funding. Income earned on a segregated amount or specific asset after the segregation passes with the amount or asset segregated. My Trustee shall hold and administer each separate trust upon terms and conditions substantially identical to those of the trust from which it was severed.

Subject to the terms of the trust, my Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections, and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective; however, the effective date of severance may be retroactive to a date before the date on which my Trustee exercises the power.

Section 13.14 Authority to Terminate Trusts

If, at any time, my Trustee, other than an Interested Trustee, in its sole and absolute discretion, determines that a trust created under this agreement is no longer economical or is otherwise inadvisable to administer as a trust, or if my Trustee, other than an Interested Trustee, deems it to be in the best interest of my beneficiaries, my Trustee, without further responsibility, may terminate the trust and distribute the trust property, including any undistributed net income, in the following order of priority:

To me, if I am then living;

To the beneficiaries then entitled to mandatory distributions of net income of the trust and in the same proportions; and

If none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of net income of the trust, in such amounts and shares as my Trustee, other than an Interested Trustee, may determine.

Section 13.15 Discretionary Distribution to Fully Utilize Basis Increase Upon Death of Beneficiary

This Section shall apply during any time there is no federal estate tax in effect and Section 1022 of the Internal Revenue Code is in effect.

If I have given my Trustee the authority to make distributions of principal to the beneficiary of a trust, my Trustee, other than an Interested Trustee, may, from time to time, distribute to the beneficiary as much of the principal of the trust as such Trustee may determine is advisable so that upon the death of the beneficiary the estate of the beneficiary will have sufficient appreciated assets to fully utilize the aggregate basis increase allowed under Section 1022.

Before making a distribution of property under this Section, I request, but do not require that the Trustee determine whether there is a good reason to retain the property in trust such as whether or not the asset may be sold in the near future, the need for creditor protection by the beneficiary, protection of the beneficiary from failed marriages and protection of the asset for future generations. My Trustee shall not be liable to any beneficiary for the exercising or failing to exercise its discretion to make a distribution under this Section.

Section 13.16 Merger of Corporate Fiduciary

If any corporate fiduciary acting as my Trustee under this agreement is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the trusteeship as if originally named a Trustee. No document of acceptance of trusteeship shall be required.

Section 13.17 Beneficiary's Status

Until a Trustee receives notice of the incapacity, birth, marriage, death or other event upon which a beneficiary's right to receive payments may depend, the Trustee shall not be liable for acting or failing to act with respect to the event or for disbursements made in good faith to persons whose interest may have been affected by such event. Unless otherwise provided in this agreement, the parent or legal representative may act on behalf of a beneficiary who is a minor or is incapacitated.

A Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. A Trustee shall have no independent duty to investigate the status of any beneficiary and shall not incur any liability for failure to do so.

Section 13.18 Discharge of Third Persons

Persons dealing in good faith with my Trustee shall not be required to see to the proper application of money paid or property delivered to my Trustee, or to inquire into the authority of my Trustee as to any transaction. The receipt from my Trustee for any money or property paid, transferred or delivered to my Trustee shall be a sufficient discharge to the person or persons paying, transferring or delivering the money or property from all liability in connection with its application.

Section 13.19 Certificate by Trustee

A written statement of my Trustee may always be relied upon by, and shall always be conclusive evidence in favor of, any transfer agent or any other person dealing in good faith with my Trustee in reliance upon the statement.

Section 13.20 Funeral and Other Expenses of Beneficiary

Upon the death of an income beneficiary, my Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts and other expenses incurred due to the death of the beneficiary from trust property. This Section shall only apply to the extent the income beneficiary has not exercised any testamentary power of appointment granted to him or her under this agreement.

My Trustee may rely upon any request by the Personal Representative or members of the family of the deceased beneficiary for payment without verifying the validity or the amounts and without being required to see to the application of the amounts so paid. My Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or rule of court and may be made without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary's estate.

Section 13.21 Generation-Skipping Transfer Tax Provisions

Notwithstanding any other provision of this agreement to the contrary, if a trust created under this agreement would be partially exempt from generation-skipping transfer tax after the intended allocation of GST exemption as defined in Section 2631 of the Internal Revenue Code to the trust then:

(a) Division into Exempt and Nonexempt Trusts

My Trustee may divide the property of the trust into two separate trusts so that the allocation of GST exemption can be made to a trust that will be entirely exempt from generation-skipping transfer tax (the "exempt trust"). The exempt trust shall consist of the largest fractional share of the total trust assets that will permit the exempt trust to be entirely exempt from generation-skipping transfer tax. The "nonexempt trust" shall consist of the balance of the total trust assets. For purposes of computing the fractional share, asset values as finally determined for federal estate tax purposes shall be used. The fraction shall be applied to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of such fraction will include fluctuations in the value of the trust property.

(b) Administration of the Trusts

The trusts created under this Section shall have the same terms as the original trust. To the extent possible, distributions to a non-skip person as defined by Section 2613 of the Internal Revenue Code shall be made from a nonexempt trust and distributions to a skip person as defined by Section 2613 shall be made from an exempt trust.

My Trustee shall administer each exempt and nonexempt trust as a separate and independent trust.

Any exempt or nonexempt trust established under this agreement may be referred to by the name designated by my Trustee.

If an exempt trust and a nonexempt trust are further divided under the terms of this agreement, my Trustee may allocate property from the exempt trust first to the trust from which a generation skipping transfer is more likely to occur.

(c) My Intent; Trust Additions

My intent is to minimize the application of the generation-skipping transfer tax to the trust property but not to affect the total amount of trust property to which any beneficiary may be entitled under this agreement. This agreement shall be so construed and interpreted to give effect to this intent.

If at any time any property that has an inclusion ratio greater than zero for generation-skipping transfer tax purposes would be added to a trust with property that has an inclusion ratio of zero, then my Trustee shall instead hold such property in a separate trust on the same terms and conditions as the original trust.

(d) Independent Trustee May Confer Testamentary Power of Appointment

My Trustee, excluding any Interested Trustee, may during the lifetime of the beneficiary of the trust, grant the beneficiary a testamentary power to appoint all or part of such beneficiary's trust or trust share to the creditors of the beneficiary's estate. The Trustee granting the power of appointment may require, as a condition for the beneficiary's exercise of such power, that the beneficiary obtain the consent of such Trustee. Any testamentary power of appointment granted by the Trustee shall be in writing and may be revoked at any time during the lifetime of the beneficiary to whom the power was given. I suggest, but do not require, that my Trustee exercise this authority to subject trust property to estate tax instead of the generation-skipping transfer tax when it appears that it may reduce overall taxes.

Article Fourteen
My Trustee's Powers

Section 14.01 Introduction to Trustee's Powers

Except as otherwise specifically provided in this agreement, my Trustee may exercise, without prior approval from any court, all the powers conferred by this agreement and any powers conferred by law, including, without limitation, those powers set forth under the common law or statutory law of the State of Nevada or any other jurisdiction whose law applies to this trust. The powers conferred upon my Trustee by law, including those powers conferred by Nevada Revised Statutes, Sections 163.265 to 163.410, shall be subject to any express limitations or contrary directions contained in this agreement.

My Trustee shall exercise these powers in the manner my Trustee determines to be in the best interests of the beneficiaries. My Trustee shall not exercise any of its powers in a manner that is inconsistent with the right of the beneficiaries to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee of a trust may have duties and responsibilities in addition to those described in this agreement. I encourage my Trustee to obtain appropriate legal advice if my Trustee has any questions concerning its duties and responsibilities as Trustee.

Section 14.02 Execution of Documents by My Trustee

My Trustee may execute and deliver any and all instruments in writing that my Trustee considers necessary to carry out any of the powers granted in this agreement.

Section 14.03 Investment Powers in General

My Trustee may invest in any type of investment that my Trustee determines is consistent with the investment goals of my trust, whether inside or outside the geographic borders of the United States of America and its possessions or territories, taking into account my trust's overall investment portfolio.

Without limiting my Trustee's investment authority in any way, I request that my Trustee exercise reasonable care and skill in selecting and retaining trust investments. I also request that my Trustee take into account the following factors in choosing investments for my trust:

The potential return from the investment, both in the form of income and appreciation;

The potential income tax consequences of the investment;

The investment's potential for volatility; and

The role the investment will play in the trust's portfolio.

I request that my Trustee, in arranging the investment portfolio of the trust, also consider the possible effects of inflation or deflation, changes in global and U.S. economic conditions, transaction expenses, and the trust's need for liquidity.

My Trustee may delegate its discretion to manage trust investments to any registered investment adviser or corporate fiduciary.

Section 14.04 Banking Powers

My Trustee may establish bank accounts of any type in one or more banking institutions that my Trustee may choose. My Trustee may open accounts in the name of my Trustee (with or without disclosing fiduciary capacity) or in the name of the trust. When an account is in the name of the trust, checks on that account and authorized signatures need not disclose the fiduciary nature of the account or refer to any trust or Trustee.

An account from which my Trustee makes frequent disbursements need not be an interest bearing account. My Trustee may authorize withdrawals from an account by check, draft or other instrument or in any other manner.

Section 14.05 Business Powers

My Trustee is authorized to serve as an officer, director, manager, or in any other capacity of any proprietorship, partnership, joint venture, corporation, or other enterprise in which the trust has an interest (whether or not such interest is total or controlling). My Trustee may receive compensation for services.

My Trustee may contract with and otherwise deal with any such enterprise in the same manner as it would with any enterprise in which the trust has no interest, and may use any voting power my Trustee may have to implement its authority (whether as Trustee or as an officer, director, or other official of the enterprise).

With respect to any units in a limited liability company, limited partnership, or stock in a closely-held corporation ("closely-held company") that are contributed to the trust, the powers granted to my Trustee in this Article shall not disqualify my Trustee from acting personally and independently, and not in a fiduciary capacity, with respect to any closely held company, from holding office in the closely-held company, from accepting remuneration from the closely-held company, from voting any units or stock in favor of the Trustee as a director or officer of the closely-held company, or from purchasing or selling units or stock of the closely-held company.

If the trust owns or acquires an interest in a business as a shareholder, partner, sole proprietor, member, participant in a joint venture or otherwise, my Trustee may exercise the authority and discretion provided for in this Section. The powers granted in this Section are in addition to and not in limitation of all other powers granted to my Trustee in this agreement.

(a) No Duty to Diversify

Notwithstanding any duty to diversify imposed by state law, my Trustee may retain any business in which the trust has an ownership interest even though the interest may constitute all or a substantial portion of the trust property. I recognize that the value of a non-controlling interest in a business entity may be less than the underlying value of the net assets of the entity. Nonetheless, I authorize my Trustee to retain non-controlling business interests owned by the trust.

(b) Specific Management Powers

My Trustee shall have all power and authority necessary to manage and operate any business owned by the trust, whether directly or indirectly, including, without limitation, the express powers set forth in this subsection.

My Trustee may participate directly in the conduct of the business, by serving as a general partner of a limited partnership, a member, manager or managing member of a limited liability company, or a shareholder of a corporation, or may employ others to serve in that capacity.

My Trustee may take part in the management of the business and delegate duties with respect to management, together with the requisite powers, to any employee, manager, partner or associate of the business, without incurring any liability for the delegation. To the extent that the business interest held by the trust is not one that includes management powers (such as a minority stock interest, limited partnership interest, or a membership interest in a limited liability company), my Trustee shall have no obligation to supervise the management of the underlying assets, and no liability for the actions of those who do manage the business.

My Trustee may enter into management agreements and nominee agreements whereby my Trustee and the trust may serve as the exclusive manager or nominee of property or property interests on behalf of any limited partnership, limited liability company or corporation.

My Trustee, individually or if my Trustee is a corporate fiduciary or an employee of the Trustee, may act as a director, general or limited partner, associate or officer of the business.

My Trustee may participate with any other person or entity in the formation or continuation of a partnership either as a general or limited partner, or in any joint venture. My Trustee shall have and exercise all the powers of management necessary and incidental to a membership in the partnership, limited partnership, or joint venture, including the making of charitable contributions.

My Trustee may reduce, expand, limit or otherwise adjust the operation or policy of the business. My Trustee may subject the principal and income of the trust to the risks of the business for such term or period as my Trustee may determine.

My Trustee may advance money or other property to any business in which the trust has an interest, make loans (subordinated or otherwise) of cash or securities to the business and guarantee the loans of others made to the business. My Trustee may borrow money for the business, either alone or with other persons interested in the business, and secure any such loan or loans by a pledge or mortgage of any part of any trust property.

My Trustee may select and vote for directors, partners, associates and officers of the business. My Trustee may enter into owners' agreements

with a business in which the trust has an interest or with the other owners of the business.

My Trustee may execute agreements and amendments to agreements that are necessary to the operation of the business including, but not limited to, stockholder agreements, partnership agreements, buy-sell agreements and operating agreements for limited liability companies.

My Trustee may generally exercise any and all powers necessary for the continuation, management, sale or dissolution of the business. My Trustee may participate in the sale, reorganization, merger, consolidation, recapitalization, or liquidation of the business. My Trustee may sell or liquidate the business or business interest on such price and on such terms as my Trustee deems advisable and in the best interests of the trust and the beneficiaries. My Trustee may sell any business interest held by the trust to one or more of the beneficiaries of this trust or to any trust in which a majority of the beneficiaries are one or more of the beneficiaries of this trust. The sale may be made in exchange for cash, a private annuity, an installment note or any combination thereof.

My Trustee may exercise all of the business powers granted in this agreement even though my Trustee may be personally invested in or otherwise involved with the business.

(c) Business Liabilities

If any tort or contract liability arises in connection with the business, and if the trust is a responsible party with regard to the liability, my Trustee shall satisfy the liability first from the assets of the business, and only then from other trust property.

(d) Trustee Compensation

In addition to the Trustee compensation set forth in Section 13.05, my Trustee may receive additional reasonable compensation for services in connection with the operation of the business. My Trustee may receive this compensation directly from the business, from the trust or partly from both.

(e) Conflicts of Interest

My Trustee may exercise all of the powers granted in this trust agreement even though my Trustee may be involved with or have a personal interest in the business.

Section 14.06 Contract Powers

My Trustee may sell at public or private sale, transfer, exchange for other property, and otherwise dispose of trust property for consideration and upon terms and conditions that my Trustee deems advisable. My Trustee may grant options of any duration for any such sales, exchanges, or transfers of trust property.

My Trustee may enter into contracts, and may deliver deeds or other instruments, that my Trustee deems appropriate.

Section 14.07 Common Investments

For purposes of convenience with regard to the administration and investment of the trust property, my Trustee may invest part or all of the trust property jointly with trust property of other trusts for which my Trustee is also serving as a Trustee. For this purpose, a corporate fiduciary acting as my Trustee may use common funds for investment.

When trust property is managed and invested in this manner, my Trustee shall maintain records that sufficiently identify that portion of the jointly invested assets that constitute the trust property of this trust.

Section 14.08 Environmental Powers

My Trustee shall have the right to inspect trust property to determine compliance with or to respond to any environmental law affecting the trust property. "Environmental law" shall mean any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or of human health.

My Trustee may refuse to accept property if my Trustee determines that the property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to my Trustee.

My Trustee may use and expend trust property to (i) conduct environmental assessments, audits or site monitoring; (ii) take remedial action to contain, clean up or remove any hazardous substance including a spill, discharge or contamination; (iii) institute, contest or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance; (iv) comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement or clean-up of any hazardous substance; and (v) employ agents, consultants and legal counsel to assist my Trustee in these actions.

My Trustee shall not be liable for any loss or reduction in value sustained by my trust as a result of my Trustee's retention of property on which hazardous materials or substances requiring remedial action are discovered unless my Trustee contributed to the resulting loss or reduction in value through willful misconduct or gross negligence.

My Trustee shall not be liable to any beneficiary or to any other party for any decrease in the value of trust property as a result of my Trustee's compliance with any environmental law, including any reporting requirement.

My Trustee may release, relinquish or disclaim any power held by my Trustee that my Trustee determines may cause my Trustee to incur individual liability under any environmental law.

Section 14.09 Farming and Ranching Operations

If the trust owns or acquires an interest in a farm, ranch or other agricultural property or business, my Trustee may exercise the authority and discretion provided for in this

Section. The powers granted in this Section are in addition to and not in limitation of all other powers granted to my Trustee in this agreement.

(a) Authority to Operate the Farm or Ranch

Notwithstanding any duty to diversify imposed by state law, my Trustee may retain and continue to operate a farm or ranch even though the interest may constitute all or a substantial portion of the trust property.

My Trustee may take part in the management of the farm or ranch or hire a farm manager or a professional farm management service. My Trustee may delegate any of the powers authorized by this Section to a hired farm manager or professional farm management service.

My Trustee may purchase, sell, hold, manage, operate, lease, improve and maintain the farm or ranch, or any interests in the farm or ranch, and in general deal with and do all things necessary to operate the farm or ranch as my Trustee deems advisable.

My Trustee may buy, sell and raise livestock; plant, cultivate, harvest and sell cash crops; produce timber or forest products for sale; or lease or rent all or part of the farm or ranch for cash or a share of the crops. My Trustee may contract with hired labor, tenants or sharecroppers.

My Trustee may construct, repair and improve farm buildings, fences and other farm or ranch structures including drainage facilities, dig and maintain wells, ponds and lagoons, and participate in cooperative agreements concerning water rights and ditch rights.

My Trustee may purchase or rent any kind of farm machinery, equipment, feed and seed necessary for the operation of the farm or ranch.

My Trustee may use approved soil conservation practices in order to conserve, improve and maintain the productivity of the soil, and may engage in timber or forest conservation practices.

My Trustee may engage and participate in any farm program sponsored by any federal, state or local governmental agency.

(b) Business Liabilities

If any tort or contract liability arises in connection with the farm or ranch, and if the trust is a responsible party with regard to the liability, my Trustee shall satisfy the liability first from the assets of the farm or ranch, and only then from other trust property.

(c) Trustee Compensation

In addition to the Trustee compensation set forth in Section 13.05, my Trustee may receive additional reasonable compensation for services in connection with the operation of a farm or ranch. My Trustee may receive this compensation directly from the farm or ranch, from the trust or partly from both.

(d) Conflicts of Interest

My Trustee may exercise all of the powers granted in this trust agreement even though my Trustee may be involved with or have a personal interest in the farm or ranch.

Section 14.10 Insurance Powers

My Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on my life, the life of any beneficiary, or on the life of any person in whom any beneficiary has an insurable interest.

My Trustee may purchase disability, medical, liability, long-term health care and other insurance on behalf of and for the benefit of any beneficiary. My Trustee may purchase annuities and similar investments for any beneficiary.

My Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy. My Trustee may borrow money to pay premiums due on any policy, either by borrowing from the company issuing the policy or from another source. My Trustee may assign the policy as security for the loan.

My Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

My Trustee may elect any paid-up insurance or extended term insurance nonforfeiture option contained in a policy.

My Trustee shall have the power to sell any policy at its fair market value to anyone having an insurable interest in the policies including the insured.

My Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing the policy.

Upon termination of the trust, my Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section 14.11 Loans and Borrowing Powers

My Trustee may make secured or unsecured loans to any person (including a beneficiary), entity, trust or estate, for any term or payable on demand, with or without interest. My Trustee may enter into or modify the terms of any mortgage or security agreement granted in connection with any loan and may release or foreclose on the mortgage or security.

My Trustee may borrow money at interest rates and on other terms that it deems advisable from any person, institution or other source including, in the case of a corporate fiduciary, its own banking or commercial lending department.

My Trustee may encumber trust property by mortgages, pledges and other hypothecation and shall have the power to enter into any mortgage, whether as a mortgagee or

mortgagor even though the term may extend beyond the termination of the trust and beyond the period that is required for an interest created under this agreement to vest in order to be valid under the rule against perpetuities.

My Trustee may purchase, sell at public or private sale, trade, renew, modify, and extend mortgages. My Trustee may accept deeds in lieu of foreclosure.

Section 14.12 Nominee Powers

My Trustee may hold real estate, securities and any other trust property in the name of a nominee or in any other form without disclosing the existence of any trust or fiduciary capacity.

Section 14.13 Oil, Gas and Mineral Interests

My Trustee may acquire, maintain, develop and exploit, either alone or jointly with others, any oil, gas, coal, minerals or other natural resource rights or interests.

My Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell and exchange any of such rights and interests on terms and for a price that my Trustee deems advisable.

My Trustee may execute leases, pooling and unitization agreements and other types of agreements in connection with such oil, gas, coal, mineral and other natural resource rights and interests even though such arrangements may extend beyond the termination of the trust.

My Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it deems proper.

My Trustee may employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any mineral interest, and may pay the cost of the services from the principal and income of the trust property.

Section 14.14 Payment of Taxes and Expenses

Except as otherwise provided in this agreement, my Trustee is authorized to pay all property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of the trust. All payments shall be a charge against the trust property and shall be paid by my Trustee out of the income, or to the extent that the income is insufficient, then out of the principal of the trust property. The determination of my Trustee with respect to the payment of expenses shall be conclusive upon the beneficiaries.

Section 14.15 Qualified Family Owned Business Interests Deduction

My Trustee, other than an Interested Trustee, shall have the power to amend the terms of a trust holding "qualified family-owned business interests" as defined in Section 2057 of the Internal Revenue Code, in order to permit trust property to qualify for the "family owned business deduction," even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

Section 14.16 Qualified Real Property Valuation

My Trustee, other than an Interested Trustee, shall have the power to amend the terms of a trust holding "qualified real property" as defined in Section 2032A of the Internal Revenue Code, in order to permit the qualified real property to qualify or continue to qualify for special use valuation permitted under Section 2032A, even if the amendment changes beneficial interests and that directs the segregation of trust property into more than one trust.

Section 14.17 Real Estate Powers

My Trustee may sell at public or private sale, convey, purchase, exchange, lease for any period, mortgage, manage, alter, improve and in general deal in and with real property in such manner and on such terms and conditions as my Trustee deems appropriate.

My Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements, and abandon, any real property.

My Trustee may manage real estate in any manner that my Trustee deems best and shall have all other real estate powers necessary for this purpose.

My Trustee may enter into contracts to sell real estate. My Trustee may enter into leases and grant options to lease trust property even though the term of the agreement extends beyond the termination of the trust and beyond the period that is required for an interest created under this agreement to vest in order to be valid under the rule against perpetuities. For such purposes, my Trustee may enter into any contracts, covenants and warranty agreements that my Trustee deems appropriate.

Section 14.18 Residences and Tangible Personal Property

My Trustee may acquire, maintain and invest in any residence for the use and benefit of the beneficiaries, whether or not the residence is income producing and without regard to the proportion that the value of the residence may bear to the total value of the trust property and even if retaining the residence involves financial risks that trustees would not ordinarily incur. My Trustee may pay or make arrangements for others to pay all carrying costs of the residence, including, but not limited to, taxes, assessments, insurance, expenses of maintaining the residence in suitable repair, and other expenses relating to the operation of the residence for the benefit of the beneficiaries.

My Trustee may acquire, maintain and invest in articles of tangible personal property, whether or not the property is income producing, and may pay the expenses of the repair and maintenance of the property.

My Trustee shall have no duty to convert the property referred to in this Section to productive property except as required by other provisions of this agreement.

My Trustee may permit any income beneficiary of the trust to occupy any real property or use any personal property owned by the trust on terms or arrangements that my Trustee may determine, including rent free or in consideration for the payment of taxes, insurance, maintenance, repairs, or other charges.

My Trustee shall have no liability for any depreciation or loss as a result of the retention of any property retained or acquired under the authority of this Section.

Section 14.19 Retention and Abandonment of Trust Property

My Trustee may retain, without liability for depreciation or loss resulting from retention, any property constituting the trust at the time of its creation, at the time of my death or as the result of the exercise of a stock option. My Trustee may retain property, notwithstanding the fact that the property may not be of the character prescribed by law for the investment of assets held by a fiduciary, and notwithstanding the fact that retention may result in inadequate diversification under any applicable Prudent Investor Act or other applicable law.

My Trustee may hold property that is non-income producing or is otherwise nonproductive if holding the property is, in the sole and absolute discretion of my Trustee, in the best interests of the beneficiaries. On the other hand, except when I am serving as a Trustee, my Trustee shall invest contributions of cash and cash equivalents as soon as reasonably practical after the assets have been acquired by the trust. My Trustee is permitted to retain a reasonable amount in cash or money market accounts in order to pay anticipated expenses and other costs and to provide for anticipated distributions to or for the benefit of a beneficiary.

My Trustee may abandon any trust property that my Trustee deems to be of insignificant value.

Section 14.20 Securities, Brokerage and Margin Powers

My Trustee may buy, sell, trade and otherwise deal in stocks, bonds, investment companies, mutual funds, common trust funds, commodities, options and other securities of any kind and in any amount, including short sales. My Trustee may write and purchase call or put options, and other derivative securities. My Trustee may maintain margin accounts with brokerage firms and may pledge securities to secure loans and advances made to my Trustee or to or for the benefit of a beneficiary.

My Trustee may place all or any part of the securities held by the trust in the custody of a bank or trust company. My Trustee may have all securities registered in the name of the bank or trust company or in the name of its nominee. My Trustee may appoint the bank or trust company as the agent or attorney in fact to collect, receive, receipt for and disburse any income and generally to perform the duties and services incident to a custodian of accounts.

My Trustee may employ a broker-dealer as a custodian for securities held by the trust and may register the securities in the name of the broker-dealer or in the name of a nominee with or without the addition of words indicating that the securities are held in a fiduciary capacity. My Trustee may hold securities in bearer or uncertificated form and may use a central depository, clearing agency or book-entry system, such as The Depository Trust Company, Euroclear or the Federal Reserve Bank of New York.

My Trustee may participate in any reorganization, recapitalization, merger or similar transaction. My Trustee may exercise or sell conversion or subscription rights for securities of all kinds and description.

My Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution. My Trustee may vote or refrain from voting as to any matter.

Section 14.21 Settlement Powers

My Trustee may settle, by compromise, adjustment, arbitration or otherwise any and all claims and demands in favor of or against the trust. My Trustee may release or abandon any claim in favor of the trust.

Section 14.22 Sub-Chapter S Corporation Stock Provisions

After my death and during any period when the trust is not treated for tax purposes as a grantor trust under Section 671 of the Internal Revenue Code, my Trustee may elect to hold any S corporation stock held by the trust as a separate "electing small business trust" as defined in Section 1361(e)(1) or as a separate "qualified subchapter S trust," as defined in Section 1361(d)(3).

In making this determination, my Trustee may consider any changes to the terms and conditions of the trust that will be required as a result of either election.

For purposes of this Section, "S corporation stock" shall mean all capital stock issued by a corporation (or other entity taxable as a corporation for federal income tax purposes) that is treated, or intends to be treated under Section 1361(a), as an "S corporation" for federal income tax purposes.

(a) Electing Treatment as an Electing Small Business Trust

If my Trustee elects under Section 1361(e)(3) of the Internal Revenue Code to qualify the trust or portion thereof as an "electing small business trust," my Trustee shall:

Apportion to the electing small business trust a reasonable share of the unallocated expenses of all trusts created under this agreement, in accordance with the applicable provisions of the Internal Revenue Code and Treasury Regulations; and

Administer the trust as an electing small business trust, under Section 1361(e) of the Internal Revenue Code.

(b) Electing Treatment as a Qualified Subchapter S Trust

If my Trustee elects to treat the trust or portion thereof as a "qualified subchapter S trust," my Trustee shall:

Refer to the qualified subchapter S trust using the same name as the trust to which the stock was originally allocated, plus the name of the current income beneficiary of the trust, followed by the letters "QSST;"

Administer the qualified subchapter S trust in accordance with the same provisions contained in the trust to which the S corporation stock was originally allocated; provided,

however, that the provisions of this subsection shall control the administration of the trust to the extent that they are inconsistent with the provisions of the original trust;

Maintain the qualified subchapter S trust as a separate trust held for the benefit of one beneficiary as required in Section 1361(d)(3); and

Request that the current income beneficiary of the trust, with the assistance of my Trustee, make an election in accordance with Section 1361(d)(2) to qualify the trust as a qualified subchapter S trust within the meaning of Section 1361(d)(3).

(1) Current Income Beneficiary

The "current income beneficiary" of a qualified subchapter S trust is the person who has a present right to receive income distributions from the trust to which the S corporation stock is allocated. A qualified subchapter S trust shall have only one current income beneficiary.

If under the terms of the agreement, there is more than one person who has a present right to receive income distributions from the trust originally holding the S corporation stock, my Trustee shall cause the S corporation stock to be segregated into separate qualified subchapter S trusts for each person who has a present right to receive income distributions.

(2) Distributions

Until the first to occur of (a) the death of the current income beneficiary and (b) the date on which the qualified subchapter S trust no longer holds any S corporation stock (the "QSST termination date"), my Trustee shall distribute to the current income beneficiary, at least annually, all of the trust's "net income," as that term is defined in Section 643(b) of the Internal Revenue Code.

The terms of the trust to which the S corporation stock was originally allocated shall govern distributions of principal from the qualified subchapter S trust; provided, however, that until the QSST termination date, my Trustee may only distribute principal to the current income beneficiary of the qualified subchapter S trust.

(3) Allocation of Income and Expenses

My Trustee shall characterize receipts and expenses of any qualified subchapter S trust in a manner consistent with Section 643(b) of the Internal Revenue Code.

(4) Trust Merger or Consolidation

My Trustee may not merge or consolidate any qualified subchapter S trust with the assets of another trust if doing so would jeopardize the qualification of either trust as a qualified subchapter S trust.

(c) Governance of the Trusts

The following additional provisions shall apply to any separate trust created under this Section.

(1) Protection of S Corporation Status

My Trustee shall not administer a trust holding S corporation stock in a manner that would cause the termination of the S corporation status of the entity whose stock is held as part of the trust. Therefore during any period that the trust holds S corporation stock, the terms of this agreement shall be construed in a manner that is consistent with the trust qualifying as an electing small business trust or as a qualified subchapter S trust. Any provision of this agreement that cannot be so construed or applied shall be disregarded.

(2) Methods of Distribution

No method of distribution permitted under this Section may be used in a manner that would jeopardize the qualification of the trust as an electing small business trust or as a qualified subchapter S trust.

(3) Election

Any reference in this agreement to any person acting in an individual or fiduciary capacity, making an election for himself or for or on behalf of any other person, shall include, but not be limited to, an election made in accordance with Section 1361(e)(3), Section 1361(d)(2) or any other applicable subsection of Section 1361 of the Internal Revenue Code.

(4) Disposition of S Corporation Stock

If the continuation of any trust would, in my Trustee's opinion, result in the termination of the S corporation status of any entity whose stock is held as a part of the trust property, my Trustee, other than an Interested Trustee, shall have, in addition to the power to sell or otherwise dispose of the stock, the power to distribute the stock to the person who is then entitled to receive the income from the trust.

Section 14.23 Limitation on My Trustee's Powers

All powers granted to my Trustee under this agreement or by applicable law shall be limited as set forth in this Section, unless explicitly excepted by reference to this Section. The limitations set forth in this Section shall not apply to me.

(a) An Interested Trustee Limited to Ascertainable Standards

An Interested Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal, or the termination of the trust to or for the benefit of a beneficiary, to the extent that the exercise of such discretion is other than for the health, education, maintenance or support of a beneficiary as described under Sections 2041 and 2514 of the Internal Revenue Code.

(b) No Distributions in Discharge of Certain Legal Obligations

My Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of my Trustee, including the obligation of support.

If a beneficiary or any other person has the power to remove a Trustee, that Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal that would in any manner discharge a legal obligation of the person having the power to remove the Trustee, including that person's obligation of support.

(c) Insurance Policy on the Life of My Trustee

If the trust holds a policy that insures the life of my Trustee, my Trustee shall have no right to exercise any powers or rights with respect to the policy. A Cotrustee serving under this agreement shall exercise the powers and rights with respect to the policy.

If the insured Trustee is the only Trustee, then an Independent Special Trustee designated under Section 3.08 shall exercise the powers and rights with respect to the policy.

If any rule of law or court decision construes the ability of the insured Trustee to name an Independent Special Trustee as an incident of ownership of the policy, then a majority of the then current mandatory and discretionary income beneficiaries (excluding the insured Trustee if he or she is a beneficiary) shall select the Independent Special Trustee.

(d) Insurance Policy on a Beneficiary's Life

If the trust holds a policy that insures the life of a beneficiary, the beneficiary (acting individually or as Trustee) shall have no power over the policy, the cash value of the policy, or the proceeds of the policy. The intent of this denial of power is to prevent an insured beneficiary from

having a power that would constitute an incident of ownership of the policy.

In addition, no distribution of income or principal to the insured beneficiary shall be satisfied out of the proceeds of the policy, the cash value of the policy or any other economic benefit of the policy.

The limitations of this subsection shall not apply if the proceeds of the policy would, upon the death of the beneficiary, otherwise be included in the gross estate of the beneficiary for federal estate tax purposes.

Article Fifteen
General Provisions

Section 15.01 Maximum Term for Trusts

Notwithstanding any other provision of this agreement, unless terminated earlier under other provisions of this agreement, each trust created under this agreement shall terminate upon the expiration of the longest period that property may be held in trust under this agreement without violating the applicable rule against perpetuities.

If the applicable rule against perpetuities for trusts is determined by reference to the death of the last to die among a group of individuals living on the date of my death, the group of individuals shall consist of the descendants of my paternal and maternal grandparents and the descendants of John Davison Rockefeller, born in Richford, New York, in 1839, who are living at the date of my death.

At that time, the remaining trust property shall vest in and be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If none of the beneficiaries is entitled to mandatory distributions of net income, the remaining trust property shall vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares *per stirpes*.

Section 15.02 Spendthrift Provision

This trust and all trusts created under this trust agreement shall be a spendthrift trust as defined in the Spendthrift Trust Act of Nevada, except for my interest therein while I am living. No beneficiary or remainderman of any trust established under this trust shall have the right or power to sell, transfer, assign, pledge, mortgage, alienate, hypothecate their interest in the principal or income of the trust estate in any manner whatsoever. To the fullest extent of the law, the interest of each beneficiary and remainderman shall not be subject to the claim of any creditors or liable to attachment, execution, bankruptcy proceedings, or any other legal process. The Trustee shall pay, disburse, and distribute principal and income of the trust estate only in the manner provided for in this trust agreement and not upon any attempted transfer or assignment, whether oral or written, of any beneficiary or remainderman nor by operation of law.

Section 15.03 Contest Provision

If any beneficiary of this trust or any trust created under this trust agreement, alone or in conjunction with any other person engages in any of the following actions, the right of the beneficiary to take any interest given to the beneficiary under this trust or any trust created under this trust agreement must be determined as it would have been determined had the beneficiary predeceased me without surviving descendants.

> Contests by a claim of undue influence, fraud, menace, duress or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) this trust, (b) any trust created under the terms of this agreement, (c) my will, or (d) any beneficiary designation of an annuity, retirement plan,

IRA, Keogh, pension or profit sharing plan or insurance policy signed by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document; or

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify or set aside a Document or any of its provisions; or

Files suit on a creditor's claim filed in a probate of my estate, against my trust estate, or any other Document, after rejection or lack of action by the respective fiduciary; or

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document; or

Claims ownership in a court proceeding to any asset I hold in joint tenancy, other than as a surviving joint tenant; or

Files a petition to determine domestic partnership property as my cohabitant; or

Files a petition for probate homestead in a probate proceeding of my estate without the prior written consent of the Personal Representative designated in my Will; or

Files a petition for family allowance in a probate of my estate without the prior written consent of the Personal Representative designated in my will; or

Files a petition to impose a constructive trust or resulting trust on any assets of the trust estate; or

Participates in any of the above actions in a manner adverse to the trust estate, such as conspiring with or assisting any person who takes any of the above actions;

then the right of such beneficiary to take any interest given to such beneficiary under this trust or any trust created under this trust agreement shall be determined as it would have been determined had such beneficiary predeceased me without surviving issue.

My Trustee is hereby authorized to defend, at the expense of the trust estate, any violation of this Section. A "contest" shall include any action described above in an arbitration proceeding and shall not include any action described above solely in a mediation not preceded by a filing of a contest with a court, notwithstanding the foregoing. In addition, should any beneficiary under the trust contest a provision of the same, the Trustee shall charge such beneficiary's interest with all attorneys fees and costs incurred by the Trustee in connection with same.

This Section may not be applied so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax charitable deduction.

Section 15.04 Survivorship Presumption

If any beneficiary is living at my death, but dies within 90 days after my death, then the beneficiary will be deemed to have predeceased me for purposes of this agreement.

Section 15.05 Definitions

For purposes of this agreement, the following terms have the following meanings:

(a) Adopted and Afterborn Persons

A legally adopted person in any generation and his or her descendants, including adopted descendants, has the same rights and shall be treated in the same manner under this agreement as natural children of the adopting parent, provided such person is legally adopted prior to attaining the age of 18 years. A person is deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

A fetus in utero that is later born alive shall be considered a person in being during the period of gestation.

(b) Agreement

The term "this agreement" means this trust agreement and includes all trusts created under the terms of this agreement.

(c) Available GST Exemption

"My available GST Exemption" means the GST Exemption provided in Section 2631 of the Internal Revenue Code in effect at the time of my death; reduced by the aggregate of (1) the amount, if any, of GST Exemption allocated to my lifetime transfers, including those allocations made at the time of my death by my Personal Representative, by my Trustee, or by operation of law and (2) the amount, if any, allocated to direct skips as defined in Section 2612(c)(1) of the Internal Revenue Code that do not qualify for an exclusion from the generation-skipping transfer tax occurring at my death to or for the benefit of my descendants.

If, at the time of my death, I have made a lifetime transfer to a trust with an inclusion ratio of greater than zero but have not filed a gift tax return and the due date for the gift tax return has not yet passed, my available GST Exemption shall also be reduced to the extent necessary and possible to reduce the trust inclusion ratio to zero, thereby exempting the transfer from generation-skipping transfer tax.

(d) Descendants

The term "descendants" shall include a person's lineal descendants of all generations.

(e) Education

The term "education" is intended to be an ascertainable standard in accordance with Section 2041 and Section 2514 of the Internal Revenue Code and shall include, but not be limited to:

Enrollment at private elementary, junior and senior high school including boarding school;

Undergraduate and graduate study in any field at a college or university;

Specialized, vocational or professional training or instruction at any institution, including private instruction; and

Any other curriculum or activity that my Trustee may deem useful for developing the abilities and interests of a beneficiary including, without limitation, athletic training, musical instruction, theatrical training, the arts and travel.

The term "education" shall also include distributions made by my Trustee for expenses such as tuition, room and board, fees, books and supplies, tutoring and transportation and a reasonable allowance for living expenses.

(f) Incapacity

Except as otherwise provided in this agreement, a person is deemed incapacitated in any one of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual shall be deemed incapacitated whenever, in the written opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual shall be deemed restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual is deemed incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

(3) Detention, Disappearance or Absence

An individual is deemed incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance or absence or detention under duress may be established by an affidavit of my

Trustee, or, if no Trustee is serving, by the affidavit of any beneficiary. The affidavit shall describe the circumstances of the individual's disappearance, absence or detention and may be relied upon by any third party dealing in good faith with my Trustee in reliance upon the affidavit.

(g) Income Beneficiary

The term "income beneficiary" means any beneficiary who is then entitled to receive distributions of the net income of the trust, whether mandatory or discretionary.

Unless otherwise provided in this agreement, the phrase "majority of the income beneficiaries" means any combination of income beneficiaries who, if all accrued net income were distributed on the day of a vote by the beneficiaries, would receive more than 50% of the accrued net income. For purposes of this calculation, beneficiaries who are eligible to receive discretionary distributions of net income are deemed to receive the income in equal shares.

References to a "majority" refer to a majority of the entire trust collectively until my Trustee allocates property to separate trusts or trust shares. After the allocation of property to separate trusts or trust shares, references to a "majority" refer to a majority of each separate trust or trust share.

(h) Income in Respect of a Decedent (IRD)

The term "income in respect of a decedent" or "IRD" means income received after a decedent's death that would have been taxable to the decedent if the income had been received by the decedent during the decedent's lifetime. For example, payments under qualified retirement plans and other deferred compensation arrangements are IRD. For purposes of this agreement, IRD means any income that would be classified as IRD under Section 691(a) of the Internal Revenue Code.

(i) Independent Trustee

The term "Independent Trustee" means a Trustee who is not an Interested Trustee as defined in subsection (j) and includes an Independent Special Trustee appointed under the provisions of Section 3.08. Whenever (1) a power is granted exclusively to an Independent Trustee or (2) the phrase "other than an Interested Trustee" is used, then the power or discretion may be exercised only by an Independent Trustee. Whenever this agreement specifically prohibits an Interested Trustee from exercising discretion or performing an act, then only an Independent Trustee may exercise that discretion or perform that act.

(j) Interested Trustee

The term "Interested Trustee" means (1) a Trustee who is a transferor of property to the trust; (2) a Trustee who is a beneficiary of the trust; (3) a

Trustee who is related or subordinate within the meaning of Section 672(c) of the Internal Revenue Code to a transferor of property to the trust or a beneficiary of the trust; or (4) a Trustee whom a transferor of property to the trust or a beneficiary of the trust can remove and replace by appointing a Trustee that is related or subordinate to the beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

For purposes of this subsection "a transferor of property to the trust" includes a person whose qualified disclaimer resulted in property passing to the trust.

For purposes of this subsection "a beneficiary of the trust" means a person who is or in the future may be eligible to receive income or principal from the trust pursuant to the terms of the trust. A person shall be considered a beneficiary of a trust even if he or she has only a remote contingent remainder interest in the trust; however, a person shall not be considered a beneficiary of a trust if the person's only interest is as a potential appointee under a testamentary power of appointment.

(k) Internal Revenue Code and Treasury Regulations

References to the "Internal Revenue Code" or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and the corresponding Treasury Regulations, if any. References to the "Treasury Regulations," are to the Treasury Regulations under the Internal Revenue Code in effect from time to time. If a particular provision of the Internal Revenue Code is renumbered, or the Internal Revenue Code is superseded by a subsequent federal tax law, any reference is deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this agreement. The same rule shall apply to references to the Treasury Regulations.

(l) Legal Representative or Personal Representative

As used in this agreement, the term "legal representative" or "Personal Representative" means a person's guardian, conservator, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

(m) Per Stirpes

Whenever a distribution is to be made to a person's descendants "per stirpes," the distribution shall be divided into as many shares as there are then living children of the person and deceased children of the person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among the child's then living descendants in the same manner.

(n) Primary Beneficiary

The primary beneficiary of a trust created under this agreement is the oldest income beneficiary of that trust unless some other individual is specifically designated as the primary beneficiary of that separate trust.

(o) Qualified Retirement Plan

The term "qualified retirement plan" means a plan qualified under Section 401 of the Internal Revenue Code, an individual retirement arrangement under Section 408 or Section 408A or a tax-sheltered annuity under Section 403. The term "qualified retirement benefits" means the amounts held in or distributed pursuant to a plan qualified under Section 401, an individual retirement arrangement under Section 408 or Section 408A, a tax-sheltered annuity under Section 403 or any other benefit subject to the distribution rules of Section 401(a)(9).

(p) Shall and May

Unless otherwise specifically provided in this agreement or by the context in which used, I use the word "shall" in this agreement to command, direct or require, and the word "may" to allow or permit, but not require. In the context of my Trustee, when I use the word "may" I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in this agreement.

(q) Trust

The terms "this trust" or "this trust agreement" shall refer to this agreement and all trusts created under the terms of this agreement.

(r) Trustee

The term "my Trustee" or "Trustee" refers to the Trustee named in Article One and to any successor, substitute, replacement or additional person, corporation or other entity that is from time to time acting as the Trustee of any trust created under the terms of this agreement. The term "Trustee" refers to singular or plural as the context may require.

(s) Trustmaker

The term "Trustmaker" has the same legal meaning as "Grantor," "Settlor," "Trustor" or any other term referring to the maker of a trust.

(t) Trust Property

The phrase "trust property" shall be construed to mean all property held by my Trustee under this agreement, including all property that my Trustee may acquire from any source.

Section 15.06 General Provisions and Rules of Construction

The following general provisions and rules of construction shall apply to this agreement:

(a) Duplicate Originals

This agreement may be executed in any number of counterparts, each of which is deemed to be an original. Any person may rely upon a copy of this agreement certified under oath by my Trustee to be a true copy, to the same effect as if it were an original.

(b) Singular and Plural; Gender

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word "or" when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

(c) Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and subsections used within this agreement are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of this agreement.

(d) Governing State Law

This agreement is governed, construed and administered according to the laws of the State of Nevada as from time to time amended.

(e) Notices

Unless otherwise stated, whenever this agreement calls for notice, the notice must be in writing and must be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice is effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice is effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice must be given to the parent or legal representative of the minor or incapacitated individual.

(f) Severability

The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this agreement are to be interpreted and construed as if the invalid provision had never been included in this agreement.

I have executed this restated trust agreement on this day, January 7, 2008. I certify to the officer taking my acknowledgment that I have read this restated trust agreement, that I understand it, and that it correctly states the provisions under which my trust property is to be administered and distributed by my Trustee.

MARJORIE T. CONNELL, Trustmaker and
Trustee

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on January 7, 2008, by MARJORIE T. CONNELL, as Trustmaker and as Trustee.

[Seal]

NOTARY PUBLIC
County of Clark-State of Nevada
S. A. BROWN
No. 00-60753-1
My Appointment Expires Jan. 28, 2008

Sharon A. Brown, Notary Public
900 Rancho Lane
Las Vegas, Nevada 89106
My commission expires: January 28, 2008

Schedule A

Ten Dollars cash

112

EXHIBIT E

The W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972

1972

TRUST AGREEMENT

("The W. N. Connell and Marjorie T. Connell Living Trust")

THIS TRUST AGREEMENT, made this 18th day of May, 1972, by W. N. CONNELL and MARJORIE T. CONNELL, husband and wife, (hereinafter sometimes referred to as the "Grantors", when reference is made to them in their capacity as creators of this Trust and the transferrors of the principal properties thereof), and W. N. CONNELL and MARJORIE T. CONNELL, of Las Vegas, Nevada, (hereinafter sometimes referred to as the "Trustee" when reference is made to them in their capacity as the Trustee or fiduciary hereunder), and by this instrument revoke the previous revocable living trust made by us on the 1st day of Dec., 1971:

W I T N E S S E T H :

WHEREAS, the Grantors desire by this Trust Agreement to establish a revocable trust for the uses and purposes hereinafter set forth, to make provision for the care and management of certain of their present properties and for the ultimate disposition of the trust properties;

NOW, THEREFORE, the Grantors hereby give, grant, transfer, set over and deliver as the original trust estate, IN TRUST, unto the Trustee, who hereby declare that they have received from the Grantors all of the property listed on Schedule "A" (which schedule is attached hereto and made a part of this Trust Agreement), TO HAVE AND TO HOLD THE SAME IN TRUST, and to manage, invest and reinvest the same and any additions that may from time to time be made thereto, subject to the hereinafter provided trusts and the terms and conditions, powers and agreements, relating thereto.

Additional property may be added to the trust estate, at any time and from time to time, by the Grantors, or either of them, or by any person or persons, by inter vivos act or testamentary transfer, or by insurance contract or trust designation.

The property comprising the original trust estate during the joint lives of the Grantors shall retain its character as their community property or separate property, as designated on the attached Schedule "A". Property subsequently received by the Trustee during the joint lives of the Grantors shall be listed on an appropriate schedule annexed hereto and shall have the separate or community character ascribed thereto on such schedule.

FIRST: NAME AND BENEFICIARIES OF TRUST. The trusts created hereby shall be for the use and benefit of the Grantors and for ELEANOR MARGUERITE CONNELL HARTMAN, the daughter of W. N. CONNELL by a prior marriage, and for her issue as hereinafter provided. ELEANOR MARGUERITE CONNELL HARTMAN shall hereinafter be designated as the "Residual Beneficiary".

This trust shall be known and identified as the "W. N. Connell and Marjorie T. Connell Living Trust", and, for purposes of convenience, shall hereinafter be referred to as Trust No. 1.

SECOND: TRUST NO. 1. The Trustee shall hold, manage, invest and reinvest the trust estate and shall collect the income thereof and dispose of the net income and principal as follows:

A. Income. The Trustee shall pay equally to the Grantors, during their joint lives, all community net income of the trust estate and shall pay to each Grantor all separate net income from his or her respective share of the trust estate. Such income shall be paid to the Grantors unless the Trustee receives written notice from the Grantors that all income shall not be distributed but shall be accumulated by the Trustee and invested and reinvested as herein provided.

B. Principal. During the joint lives of the Grantors, the Trustee shall pay over and distribute to a Grantor such part or all of the principal of his or her separate property and his or her share of the community property placed in this initial trust by that Grantor as he or she shall demand in a writing directed to the Trustee.

C. Death of Either Grantor. Upon the death of the Grantor whose death shall first occur, the Trustee shall divide the trust estate, including all property received as a result of the decedent's death, as follows:

1. The trust estate and all property received as a result of the decedent's death shall be divided into two parts, each part to be administered as a separate trust to be known respectively as "Trust No. 2" and "Trust No. 3". Reference hereafter to the "Decedent" shall refer to either of the Grantors whose death shall first occur and reference to the "Survivor" shall refer to the other Grantor.

2. The Trustee shall allocate to Trust No. 3 (a) the Survivor's separate property interest in the trust estate; (b) the Survivor's one-half (1/2) interest in the community property of the trust estate, less a proportionate part of all amounts properly chargeable against all community property; and (c) the Survivor's community property interest in any policy of insurance on the life of the Decedent owned by the Grantors as community property and made payable to Trust No. 1.

3. The Trustee shall allocate to Trust No. 3, from the Decedent's separate property an amount as determined in Article THIRD hereof.

4. The Trustee shall allocate to Trust No. 2, all the remaining protion of the trust estate not allocated to Trust No. 3, including, but not limited to, the Decedent's community property interest, if any, in any life insurance policy on the life of the Decedent payable to Trust No. 1.

5. In the event that property is received by the Trustee, by inter vivos or testamentary transfer and directions are contained in the instrument of transfer for allocation to or between Trust No. 2 or Trust No. 3, then the Trustee shall make allocation in accordance with such directions, anything to the contrary herein notwithstanding.

6. It is the intention of the parties, that ELEANOR MARGUERITE CONNELL HARTMAN shall be a Co-trustee of the Decedent's separate property in trust in this Trust to the extent the term "Trustee", as hereinafter used, shall apply to her.

THIRD: MARITAL DEDUCTION. The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code as a Marital Deduction which are not a part of this trust estate. In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and ownership of the said property and the value thereof shall be as finally established for federal estate tax

purposes. This distribution is being made without regard to death taxes payable by reason of the Decedent's death, which taxes shall be paid from Trust No. 2 only.

FOURTH: TRUST NO. 2. The Trustee shall hold, manage, invest and reinvest the estate of Trust No. 2 and shall collect the income thereof and dispose of the net income and principal as follows:

A. Death of Decedent. Upon the death of the Decedent, the Trustee shall pay from the income or principal of this trust, the death taxes, probate and legal expenses, and the expenses of the last illness and funeral of the Decedent, provided, however, that no funds received by the Trustee as proceeds from a retirement plan qualified under the Internal Revenue Code shall be available for these purposes unless there are no other assets in the Survivor's estate, in which event funds from a qualified plan can be used, but only to the extent of these actual expenses.

B. Income. All income received by this Trust from the separate property of the Decedent shall be paid to the Residual Beneficiary. In the event any of the real property located in Upton County, Texas, as listed on the original Schedule "A" attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of this Trust, equal to all of the income received by this Trust from the real property located in Upton County, Texas. However, the provisions relating to the additional payment, shall be noncumulative, and in any calendar year in which the income received from the said community property is not sufficient to make full payment hereunder, the Trustee is directed to pay only the income which has been received by this Trust during that year, and not to carry forward any deficiency in payment to the next calendar year's income.

In the event the Residual Beneficiary predeceases the Survivor, the Residual Beneficiary's rights to receive income hereunder shall be paid to or for the benefit of her living children and the issue of any deceased child by right of representation; or in the event she dies without living issue, her income rights hereunder shall become those of the Survivor.

All other income received by this Trust shall be distributed to the Survivor.

All payments as provided in this Section shall be made at frequent intervals, but at least semi-annually.

C. Principal. The Trustee shall pay over and distribute the principal of the estate of Trust No. 2 as follows:

1. Power to make gifts. The Survivor shall have the discretionary power during his or her lifetime to direct the Trustee to pay over and distribute trust principal of the separate property in trust from the Decedent's Trust to or for the benefit of the Residual Beneficiary or any of her living issue; such power may be exercised by delivering to the Trustee a writing duly executed and acknowledged, wherein he or she specifies the amount of principal that should be paid over and distributed to the particular issue and in what proportions such principal shall be paid over and distributed. It is the Grantors' intent hereby to convey upon the Survivor a sprinkling power; said power is limited, however, to appointments made to and among the Residual Beneficiary or her living issue.

2. Power of invasion. If, in the opinion of the Trustee, the income from all sources of which the Trustee has knowledge shall not be sufficient to support, maintain, educate and provide for the Survivor or Residual Beneficiary or any issue of the Residual Beneficiary in their accustomed manner of living, or in the event of any emergency befalling these said parties, such as illness, accident or other distress, the Trustee is authorized to use and expend such part of the trust principal of Decedent's separate property in trust, as the Trustee may deem necessary or desirable to meet such needs or emergencies. The decision of the Trustee as to what shall constitute an emergency or the necessity or desirability of encroachment upon principal shall be conclusive upon all parties and the Trustee shall be relieved and exonerated hereunder if the Trustee acts in good faith in making such determination.

3. Sale of real property from Decedent's separate property. The Survivor is directed that in the event any additional money is needed for payment of funeral, last illness or other costs to settle any claims made against Decedent's estate, or in the event that the sale of Decedent's separate property is contemplated at any time, only the separate property of Decedent situated in Las Vegas, Clark County, Nevada, shall be sold to satisfy this obligation.

4. Sale of real property. In the event that any real property which is listed on Schedule "A" attached hereto as the Decedent's separate property, and, is a part of the corpus of Trust No. 2 is sold, the Grantors direct the Trustee to distribute the net proceeds from such sale, less any applicable income tax due because of such sale, to the Residual Beneficiary, free of trust. In the event the Residual Beneficiary is not living at the time of the said sale, the proceeds therefrom shall remain in this Trust, and shall be subject to all of the provisions as herein contained.

D. Definition of real property. The term "real property" as used in this Article FOURTH shall not include the mineral, oil and gas interests in Upton County, Texas, if the same are separately listed on Schedule "A" hereto.

FIFTH: TRUST NO. 3. The Trustee shall hold, manage, invest and reinvest the estate of Trust No. 3 and shall collect the income thereof and dispose of the net income and principal as follows:

A. Income. The Trustee shall pay to the Survivor during his or her lifetime all of the net income of the Survivor's trust estate in convenient, regular installments, but not less frequently than quarter-annually.

B. Powers of appointment over income and principal.

1. During his or her lifetime, the Survivor shall have the power to appoint all or any part of the principal and undistributed income, if any, of the estate of Trust No. 3 to himself or herself, or to any person or persons. Such power of appointment shall be exercisable in all events, but only by the Survivor's submitting to the Trustee written instructions expressly exercising such power.

2. Upon the death of the Survivor, he or she shall have the absolute power to appoint the entire principal and the undistributed income, if any, of the estate of Trust No. 3, or any part thereof, to his or her estate or to any person or persons. Such power of appointment shall be exercised only by a provision in the Last Will of the Survivor expressly exercising such power. Unless within ninety (90) days after the death of the Survivor the Trustee has actual notice of the existence of a Will exercising such power, it shall be deemed for all purposes hereunder that such power was not exercised.

C. Revocation and Amendments. The Survivor shall have the power to revoke, amend or terminate Trust No. 3 herein provided by delivering such amendments or revocation in writing to the Trustee provided that the Trustee's duties and liabilities cannot be increased without the Trustee's consent.

D. Death of Survivor. Upon the death of the Survivor, the Trustee shall distribute the trust estate in accordance with and to the extent provided by the Survivor's exercise of his or her power of appointment.

If and to the extent that the Survivor shall fail to effectively exercise the foregoing power of appointment, the principal and undistributed income of Trust No. 3 shall, upon his or her death, be distributed to the Residual Beneficiary, or to the heirs of her body if she is not then living.

SIXTH: SPENDTHRIFT PROVISION. Each and every beneficiary under the Living Trust and the various estates created hereunder is hereby restrained from and shall be without right, power or authority to sell, transfer, assign, pledge, mortgage, hypothecate, alienate, anticipate, bequeath or devise, or in any manner affect or impair his, her or their beneficial right, title, interest, claim and estate in and to either the income or principal of any claim created hereunder, or to any part thereof, during the entire term of said trusts; nor shall the right, title, interest, or estate of any beneficiary be subject to any right, claim, demand, lien or judgment of any creditor of any such beneficiary, nor be subject nor liable to any process of law or equity, but all of the income and principal, except as otherwise provided in this Trust Agreement shall by the Trustee be payable and deliverable to or for the benefit of only the before named and designated beneficiaries, at the times hereinbefore set out, and receipt by such beneficiaries shall relieve the Trustee from responsibility for such good faith distributions.

SEVENTH: POWERS OF TRUSTEE. To carry out the purposes of any trust created under this instrument and subject to any limitations stated elsewhere in this Trust Agreement, the Trustee is vested with the following powers with respect to the trust estate and any part of it, in addition to those powers now or hereafter conferred by law:

A. To continue to hold any property, including any shares of the Trustee's own stock and to operate at the risk of the trust estate any business that the Trustee receives or acquires under the trust as long as the Trustee deems advisable.

B. To manage, control, grant options on, sell, (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair trust property.

C. To lease trust property for terms within or beyond the term of the trust and for any purpose, including

exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

D. To borrow money and to encumber or hypothecate trust property by mortgage, deed of trust, pledge, or otherwise; to borrow money on behalf of one trust from any other trust created hereunder to guarantee any loan made during the lifetime of the Grantors.

E. To carry, at the expense of the trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the trust estate and the Trustee against any hazard.

F. To commence or defend such litigation with respect to the trust or any property of the trust estate as the Trustee may deem advisable at the expense of the trust.

G. To compromise or otherwise adjust any claims or litigation against or in favor of the trust.

H. To invest and reinvest the trust estate in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts, investment companies, and mutual funds and mortgage participations, which men of prudence, discretion and intelligence acquire for their own account, and to invest in any common trust fund administered by the Trustee and to lend money of one trust to any other trust created hereunder.

I. With respect to securities held in the trust, to have all the rights, powers and privileges of an owner, including, but not by way of limitation, the power to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales and leases and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscriptions or conversion rights.

J. Except as otherwise specifically provided in this instrument, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses thereon shall be governed by the provisions of the Nevada Principal and Income Law and shall be determined by the Trustee in the Trustee's discretion; provided, however, that all capital gain distributions from mutual funds should be allocated to principal.

K. All of the trust powers set forth in Nevada Revised Statutes 163.265 to 163.410 inclusive, are hereby incorporated into this Trust Agreement.

EIGHTH: SPECIAL PROVISIONS.

A. Use of Home. The Trustee shall allow the Survivor to occupy and use until his or her death the home (or any interest therein) used by either or both Grantors as a principal residence at the time of the Decedent's death. The Trustee shall, at the discretion of the Survivor, sell such home, and if the Survivor so directs, purchase and/or build another comparable residence to be used as a home for the Survivor, and so on from time to time. The Survivor shall not be required to pay any rent for the use of such home.

B. Revocation and Amendment.

1. (Except as provided in paragraph 2 of this clause):

(a) This Trust Agreement, and the trusts evidenced thereby, may be revoked at any time during the joint lives of the Grantors by either of the Grantors delivering written notice of revocation to the Trustee and to the other Grantor.

(b) This Trust Agreement, and the trusts evidenced thereby, may be amended at any time and from time to time during the joint lives of the Grantors by the joint action of both Grantors delivering such amendment or amendments in writing to the Trustee provided that the Trustee's duties and liabilities cannot be increased without the Trustee's consent.

(c) From and after the death of the Decedent, this Trust Agreement may not be revoked, altered or amended, except as provided in relation to Trust No. 3.

(d) Upon any revocation of this Trust Agreement, during the Grantors' joint lives, the Trustee shall return to each Grantor his or her half of the community assets and to each Grantor his or her separate property, as indicated on Schedule "A".

2. In the event that any insurance on the life of either Grantor, owned by the other Grantor as his or her separate property, is payable to the Trustee or Trustees of any trust hereunder, then this Trust Agreement and the trusts evidenced thereby may be amended or revoked, insofar as they relate to such insurance, only by the Grantor who is owner of such insurance. The insured Grantor shall have no right to revoke or amend to that extent. This paragraph shall be construed as limiting the rights of the insured-Grantor and not as expanding the rights of the owner-Grantor.

C. Simultaneous Death. If there be no sufficient evidence that the Grantors died otherwise than simultaneously, then for purposes of this Trust Agreement, it shall be conclusively presumed for all purposes of administration and tax effect of this Trust Agreement that the Decedent shall be the Husband and the Survivor shall be the Wife.

D. Limitation of Trust Powers. Administrative control and all other powers relating to the various trust estates created hereunder, shall be exercised by the Trustee in a fiduciary capacity and solely for the benefit of the Survivor and the other beneficiaries as herein provided. Neither the Trustee, the Grantors, nor any other person, shall be permitted to purchase, exchange, reacquire or otherwise deal with or dispose of the principal of any of the various trust estates or the income therefrom, for less than an adequate and full consideration in money or money's worth; nor shall any person borrow the principal or income of the trust estates, directly or indirectly, without adequate interest in any case or without adequate security therefor.

E. Compensation of Trustee. The Trustee or successor Trustee, as herein provided, shall receive reasonable compensation for ordinary services performed hereunder. Reasonable compensation shall be based upon the then prevailing rates charged for similar services in the locality where the same are performed by other fiduciaries engaged in the trust business or acting as trustees.

F. Applicable Law. This Trust Agreement is executed under the laws of the State of Nevada and shall in all respects be governed by the laws of the State of Nevada; provided, however, the Trustee shall have the discretion, exercisable at any later time and from time to time, to administer Trust No. 1 pursuant to the laws of any jurisdiction in which the Trustee may be domiciled, by executing and acknowledging a written instrument to that effect and attaching the same to this Trust Agreement, and, if the Trustee so exercises the Trustee's discretion, as above provided, the various trust estates shall be governed by the laws of the other state or jurisdiction in which Trust No. 1 is then being administered.

G. Invalid Provisions. In the event any clause, provision or provisions of this Trust Agreement and the Living Trust created hereunder prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions, shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible. If any provision contained in this Trust Agreement shall otherwise violate the rules against perpetuities now or hereafter in effect in the State of Nevada or in any state by which this Living Trust may subsequently be governed, that portion of the Trust so effected shall be administered as herein provided until the termination of the maximum period authorized by law, at which time and forthwith, such part of the said trust estate so

affected shall be distributed in fee simple to the beneficiary or beneficiaries in the proportions in which they are then entitled to enjoy the benefits so terminated.

H. Incompetency of Beneficiary. During any period in which any beneficiary under this Trust Agreement is judicially declared incompetent, or in the opinion of the Trustee is unable to care for himself, the Trustee shall pay over or use for the benefit of said incompetent beneficiary any part or all of the net income or principal from his or her share of the trust estate, in such manner as the Trustee shall deem necessary or desirable for said beneficiary's support, maintenance and medical care.

I. Claimants. The Grantors have, except as otherwise expressly provided in this Trust Agreement, intentionally and with full knowledge declined to provide for any and all of their heirs or other persons who may claim an interest in their respective estates or in these trusts.

J. Headings. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Agreement.

K. Copies. This Trust Agreement may be executed in any number of copies and each shall constitute an original of one and the same instrument.

L. Construction. Whenever it shall be necessary to interpret this trust, the masculine, feminine and neuter personal pronouns may be construed interchangeably, and the singular shall include the plural and the plural the singular.

NINTH: LIFE INSURANCE POLICIES. With respect to any policies of life insurance under which the Trustee is designated as beneficiary, the Trustee shall deal with such policies as required by the following trust provisions, in addition to the general trust provisions hereinbefore and hereinafter set forth:

A. Custody of Insurance Policies. The Trustee shall have the custody of any policy of life insurance under which the Trustee is designated as beneficiary. However, the owner shall have the right to possession of said policy or policies upon written request to the Trustee.

B. Payment of Premiums. The Trustee shall be under no obligation to pay the premium of any policy or policies of insurance, nor to make certain that such premiums are paid by the Grantors or others, nor to notify any persons of the non-payment of such premiums; and, the Trustee shall be under no responsibility or liability of any kind in case such premiums are not paid.

C. Collection of Policy Proceeds. Upon the death of the insured under such policy or policies, the Trustee shall collect all proceeds due thereon and the Trustee shall make all reasonable efforts to carry out the provisions of this Trust Agreement, including the maintenance of or defense of any action or suit; provided, however, the Trustee shall be under no duty to maintain or enter into any litigation unless the expenses thereof, including counsel fees and costs, have been advanced or guaranteed in an amount and in a manner which is reasonably satisfactory. The Trustee may repay any advances made by the Trustee or reimburse itself for any such fees and costs expended in reasonable attempts for collection of such proceeds out of the principal or income of the trust.

D. Purchase of Assets. The Trustee is hereby authorized and empowered to apply any part or the whole amount of any insurance proceeds collected hereunder to purchase assets from the insured's estate which may be offered for sale by the legal representative of the insured's estate at a price equal to the value of such assets as fixed by competent authority for purposes of determining the liability of the insured's estate for death taxes or at such other price as may be agreed upon by the personal representative of the insured's estate.

TENTH: NON-CONTEST PROVISION. The Grantors specifically desire that these trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these trusts or any other person, whether stranger, relatives or heirs, or any legatees or devisees under the Last Will and Testament of the Grantors or the successors in interest of any such persons, including any person who may be entitled to receive any portion of the Grantors' estates under the intestate laws of the State of Nevada, seek or establish to assert any claim to the assets of these trusts established herein, or attack, oppose or seek to set aside the administration and distribution of the said trusts, or to have the same declared null and void or diminished, or to defeat or change any part of the provisions of the trust established herein, then in any and all of the above mentioned cases and events, such person or persons shall receive One Dollar ($1.00) and no more in lieu

of any interest in the assets of the trusts.

ELEVENTH: DEATH OF ALL BENEFICIARIES. In the event the Residual Beneficiary shall predecease the Grantors without living issue or children of any deceased child, then the Grantors direct that all of the income and principal of any trusts created hereunder shall be distributed to the Shriners Hospitals for Crippled Children upon the death of the Survivor.

TWELFTH: SUCCESSOR TRUSTEE. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR MARGUERITE CONNELL HARTMAN as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint the FIRST NATIONAL BANK OF NEVADA to serve in the said capacity. No successor trustee shall have any responsibility for the acts or omissions of any prior trustee and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.

THIRTEENTH: ACKNOWLEDGEMENT, REPORTS, INSPECTION OF RECORDS. The Trustee hereby acknowledges receipt of and accepts the property and the estate of Trust No. 1 created hereunder on the terms and conditions stated and agrees to care for, manage and control the same in accordance with the directions herein specified, and to furnish to each beneficiary having income paid, distributed, credited or accumulated for his or her benefit, annually and more often if requested so to do, a statement showing

the condition of the trust property, the character and amounts of the investments and liabilities, and the receipts, expenses and disbursements since the last previous statement. The books of account of the Trustee in connection with the investments shall at all times be open to the reasonable inspection of the living beneficiaries or their duly qualified representatives, and such person or persons as they may designate for that purpose.

THIS TRUST AGREEMENT is accepted and executed by the Grantors and Trustee in the State of Nevada on the day and year first above written.

GRANTORS:

W. N. CONNELL

MARJORIE T. CONNELL

TRUSTEE:

W. N. CONNELL

MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

On January 18th, 1972, personally appeared before me, a Notary Public, W. N. CONNELL and MARJORIE T. CONNELL, who declared to me that they executed the foregoing Trust Agreement.

June A. Gavin
Notary Public in and for said County and State

NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY
JUNE A. GAVIN
My Commission Expires May 4, 1976

SCHEDULE "A"

("The W. N. Connell and Marjorie T. Connell Living Trust")

All of the Grantors' rights, title and interest in the following assets are hereby transferred to the Trustee as part of this trust estate and will be administered and distributed in accordance with the terms of the foregoing Trust Agreement.

The following real property interests constitute the community property of the Grantors:

1. Lots One (1) and Two (2) in Block Sixteen (16) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.

2. Lot Three (3), Block Six (6), Biltmore Addition to the City of Las Vegas, as shown by map thereof on file in Book 2 of Plats, Page 33, in the Office of the County Recorder of Clark County, Nevada.

3. Lots Fifteen (15) and Sixteen (16) in Block Fifteen (15) in the South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 14, in the Office of the County Recorder of Clark County, Nevada.

4. Lots Twenty-Two (22) and Twenty-Three (23) in Block Eleven (11) of South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 51, in the Office of the County Recorder of Clark County, Nevada.

5. Lots Twenty-four (24) and Twenty-five (25) in Block Eleven (11) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.

The following assets constitute the separate property of

W. N. CONNELL:

1. Real Property:

(a) That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B.&M., described as follows:

Beginning at the point of intersection of the East Line of the Northwest Quarter (NW 1/4) of

the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereinafter called Line 1) with the South boundary of Clark Avenue produced Westerly as the same is now established (hereinafter called Line 2); thence South along said Line 1 a distance of 378 feet; thence North 89° 36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning-

Together with an undivided 1/30th interest of, in and to all water flowing or otherwise produced from that certain artesian well located in the North Half of the South Half of the Southeast Quarter of Section 29, Township 20 South, Range 61 East, M.D.B.&M, known as the New Russell Well. Together with an undivided 1/30th interest in and to that certain pipe line connected to and running from said well Easterly to a point 100 feet West from said Line 1 above described; together with an easement for said pipe line in common with all the other owners of said pipe line along a strip of ground three feet in width, the center line of which is located approximately 150 feet South of and running parallel with said Line 2, and which strip extends from said well to a point 100 feet West from said Line 1; together with the right to enter thereon for the purpose of repairing, replacing and renewing said pipe line.

Reference: Deed # 180405, Book 35, pages 159 and 160.

(b) The West 1/2 of Section 37, all of Sections 38, 47 and 48 in Block 39, Township 5 South, T. & P. R.R. Co. Survey in Upton County, Texas.

2. Oil, gas and mineral rights on and under the following described real property in Upton County, Texas.

(a) Sections 31 and 42 of Block 38, Township 5 South, T. & P. R.R. Co. Survey.

(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R.R. Co. Survey.

(c) Sections 36 and 37 of Block 40, Township 5 South, T. & P. R.R. Co. Survey.

3. The oil, gas and mineral leases on the following described real property in Upton County, Texas.

(a) Sections 31 and 42 of Block 38, Township 5 South, T. & P. R.R. Co. Survey.

(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R. R. Co. Survey.

(c) Sections 36 and 37 of Block 40, Township 5 South, T. & P. R.R. Co. Survey.

The undersigned Grantors named in the foregoing Trust Agreement hereby certify that they have read said Trust Agreement and that it fully and accurately sets out the terms, trusts and conditions under which the trust estate therein described is to be held, managed and disposed of by the Trustee therein named; and, that they hereby approve, ratify and confirm the said Trust Agreement.

W. N. CONNELL

MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

On May 18th, 1972, personally appeared before me, a Notary Public, W. N. CONNELL and MARJORIE T. CONNELL, who acknowledged to me that they executed the foregoing Trust Agreement.

Notary Public in and for said County and State

NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY
JUNE A. GAVIN
My Commission Expires May 9, 1976

EXHIBIT F

Quitclaim Deeds of Grantor W.N. Connell – Upton County, Texas

Name W. N. Connell
Street Address 727 So. 3rd Street
City & State Las Vegas, Nev. 89101

EXHIBIT "B"

409/329

SPACE ABOVE THIS LINE FOR RECORDER'S USE

61969

DOCUMENTARY TRANSFER TAX $ None
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.
W N Connell
Signature of Declarant or Agent determining tax. Firm Name

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged

WILLIAM N. CONNELL, also known as W. N. CONNELL

do hereby

REMISE, RELEASE AND FOREVER QUITCLAIM to W. N. CONNELL and MARJORIE T. CONNELL, as TRUSTEE All of his rights and title to the Oil, Gas and Minerals interest on and under the following described property

~~the real property~~ in the State of TEXAS County of UPTON

~~Description attached hereto and made a part hereof~~

SUBJECT TO: "The W. N. CONNELL and MARJORIE T. CONNELL LIVING TRUST" dated May 18, 1972.

(a) Sections 31 and 42 of Block 38, Township 5 South, T. P. RR. Co. Survey

(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R.R. Co. Survey.

(c) Sections 36 and 37 of Block 40, Township 5 South, T. & P. RR. Co. Survey.

Dated: June 5, 1972

William N. Connell
William N. Connell

State of California, Nevada } ss
County of Clark

On June 5, 1972, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM N. CONNELL

known to me to be the person whose name subscribed to the within instrument and acknowledged that he executed the same.

Witness my hand and official seal.

ELSIE M. BELLONI
NOTARY PUBLIC - NEVADA
CLARK COUNTY
My Commission Expires Jan. 19, 1976

(Seal) Elsie M. Belloni
Notary Public in and for said State.

Title Order No.

Escrow or Loan No.

MAIL TAX
STATEMENTS TO
NAME ADDRESS ZIP

DEED—QUITCLAIM—WOLCOTTS FORM 700 REV. 2-70

This standard form covers most usual problems in the field indicated. Before you sign, read it, fill in all blanks, and make changes proper to your transaction. Consult a lawyer if you doubt the form's fitness for your purpose.

FILED FOR RECORD ON THE 13th DAY OF June A.D., 19 72 AT 10:04 O'CLOCK A. M
DULY RECORDED THIS THE 15th DAY OF June A.D., 19 72 AT 1:00 O'CLOCK P. M
INSTRUMENT NO. 61969
VOL. 409 PAGE 329 OFFICIAL RECORDS
BUENA R. COFFEE, COUNTY CLERK
UPTON COUNTY

ECA018

PROPOSED EXHIBIT B

Name W. N. Connell
Street Address 727 So. 3rd Street
City & State Las Vegas, Nevada 89101

414/9

SPACE ABOVE THIS LINE FOR RECORDER'S USE

61970

DOCUMENTARY TRANSFER TAX $ none
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.
W N Connell
Signature of Declarant or Agent determining tax. Firm Name

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged

WILLIAM N. CONNELL, also known as W. N. CONNELL

does hereby

REMISE, RELEASE AND FOREVER QUITCLAIM to W. N. CONNELL and MARJORIE T. CONNELL, as TRUSTEE, SUBJECT TO: "The W. N. Connell and Marjorie T. Connell Living Trust" dated May 18, 1972 with complete powers of disppsition of the real estate herein described

this real property in the State of Texas County of Upton

~~State of California~~ described as:

The West 1/2 of Section 37, all of Sections 38, 47 and 48 in Block 39, Township 5 South, T. & P. R.R. Co. Survey in Upton County, Texas.

Dated: June 5, 1972

William N Connell
William N. Connell

cc:

State of ~~California~~ Nevada, } ss
County of Clark

On June 5, 1972 before me, the undersigned, a Notary Public in and for said State, personally appeared: WILLIAM N. CONNELL

known to me to be the person whose name subscribed to the within instrument and acknowledged that he executed the same.

Witness my hand and official seal.

ELSIE M. BELLONI
NOTARY PUBLIC - NEVADA
CLARK COUNTY
My Commission Expires Jan. 18, 1976

(Seal) Elsie M. Belloni
Notary Public in and for said State.

Title Order No.

Escrow or Loan No.

MAIL TAX
STATEMENTS TO NAME ADDRESS ZIP

QUIT-CLAIM-WOLCOTT Form 700 This standard form approved by title insurance companies in the field indicated. Before you sign, read it. All be all blanks.

FILED FOR RECORD ON THE 13th DAY OF June A.D., 1972 AT 10:06 O'CLOCK A.
DULY RECORDED THIS THE 13th DAY OF June A.D., 1972 AT 1:00 O'CLOCK P.
INSTRUMENT NO. 61970
VOL. 414 PAGE 91 DEED RECORDS
BUENA R. COFFEE, COUNTY CLERK
UPTON COUNTY, TEXAS

ECA019

EXHIBIT G
Apache Oil and Gas Leases

OIL AND GAS LEASE

STATE OF TEXAS §
§
COUNTY OF UPTON §

THIS AGREEMENT, made and entered into as of the 4th day of April, 2012, by and between the undersigned party or parties designated as Lessor on the signature page of this Lease (such party or parties hereinafter called "Lessor") and the undersigned party or parties designated as Lessee on the signature page of this Lease (such party or parties hereinafter called "Lessee").

1. Definitions. As used in this Lease, the following words and phrases shall have the meaning set forth below:

A. "commence a well", "commencement of a well", "commence actual drilling operations", "commencement of actual drilling operations", "actual drilling" or "actual drilling of a well" shall be deemed to occur at such time as there has been erected on the leased premises at the location for the well, a derrick, a rig and machinery capable of drilling to the base of the objective formation, the well has been "spudded-in" and the machinery for drilling is rotating under power.

B. "completion" or "completion of a well" shall be deemed to occur on (i) the date which is ninety (90) days after the production casing and/or liner has been run in the hole, (ii) the date which is ninety (90) days after total depth of the well in question has been reached, or (iii) the date indicated in the completion report for the well which is filed with the Railroad Commission, whichever is the earliest date.

C. The date of abandonment of a dry hole is the date indicated on the Texas Railroad Commission plugging report for the well or thirty (30) days after total depth is reached, whichever is the earlier date.

D. "production", "producing", "production in paying quantities", "commercial production", "production in commercial quantities", "producing in paying quantities" and "producing in commercial quantities" shall have the same meaning for purposes of this Lease, namely production in quantities sufficient to yield a return to the holders of the working interest excluding severance taxes, in excess of operating expenses, royalties and expenses of equipment beyond the wellhead and costs including depreciation of assets ("depreciation of assets" shall be the actual loss of fair market value of salvable equipment on the leased premises during the relevant period), even though drilling costs may never be recouped by working interest owners. The review period for purposes of determining whether production is in paying or commercial quantities shall be one hundred twenty (120) consecutive days. There shall be no review period when production ceases. Production in less than paying or commercial quantities shall never be considered as production for purposes of this Lease.

E. "operations for reworking", "reworking operations", "commencement of reworking operations", "commence reworking operations", "commence reworking operations" and "actual reworking operations" shall have the same meaning being the actual re-entry into an existing wellbore with a drilling or workover rig capable of re-entering and reworking such well and the timely prosecution of such actual reworking operations in good faith and with reasonable diligence and without cessation of more than sixty (60) days, toward the re-establishment of commercial production of oil or gas from such previously producing zone or zones.

F. "Producing Unit" means the following:

(i) With respect to vertical wells:

[a] A tract of land designated in writing by Lessee, as provided in this Lease,

EMA

ECA094

PROPOSED EXHIBIT D

containing no more than 80 acres on which Lessee has drilled and completed an oil well pursuant to the terms of this Lease and which is producing in paying quantities (provided that if the field rules of the Texas Railroad Commission applicable to wells which are completed in each of the Wolfcamp, Dean and Spraberry formations are modified or amended after the date of this Lease to provide that the standard proration unit for such wells shall be 40 acres, then and in that event, each Producing Unit for oil wells drilled by Lessee after the effective date of such modification or amendment of the applicable field rules shall contain no more than 40 acres, plus a tolerance of ten percent);

[b] A tract of land designated in writing by Lessee as provided in this Lease containing no more than 320 acres on which Lessee has drilled a gas well pursuant to the terms of this Lease and which is producing in paying quantities.

(ii) With respect to horizontal wells:

[a] As to horizontal wells, which are not drilled or produced pursuant to a pooled unit created under the terms of this Lease, a tract of land designated in writing by Lessee containing no more than the lesser of:

[I] Forty (40) acres plus the minimum additional acreage allowed for horizontal drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

[II] 320 acres.

[b] As to horizontal wells which are located within a valid pooled unit created under the terms of this Lease, the Producing Unit for purposes of this Lease shall be the portion of the leased premises comprising a part of such pooled unit.

A Producing Unit, whether for a vertical well or for a horizontal well, shall include only those depths and horizons from one hundred feet (100') above the top of the shallowest formation producing in the well for such Producing Unit down to one hundred feet (100') below the base of the deepest producing formation in such well.

G. "Surface Owner" shall mean the record owner of the fee interest in the surface estate of the tract of land described in Section 2 of this Lease.

H. "Disposition" shall mean when used in reference to Lessee's handling of production; the transaction, place and point in time whereby Lessee and its Affiliates finally and fully relinquish any beneficial ownership, rights or enjoyment of any substance produced under the terms of this Lease.

I. "Affiliate" or "affiliate" as used herein means and shall include each and every one of the following:

(i) each individual, corporation, joint venture, trust, estate, partnership, limited liability company or other entity that owns or controls more than one percent (1%) of the outstanding voting securities or interest of Lessee; and

(ii) each corporation, joint venture, trust, partnership, limited liability company or other entity in which Lessee or any current or past officer or director of Lessee owns or controls more than one percent (1%) of the outstanding voting

securities or interest.

2. Grant of Interest/Description.

A. Lessor, in consideration of a cash bonus in hand paid, of the royalties herein provided, and of the agreements of Lessee hereinafter contained, hereby grants, leases, and lets unto Lessee for the sole purpose of exploring for, drilling, operating, and producing oil and/or gas and of laying pipelines, temporarily storing oil, building one or more tank batteries, power lines, and roads thereon necessary to produce, save, care for, treat and transport the oil and/or gas produced from the land leased hereunder, the following described land situated in Upton County, Texas, (sometimes referred to hereinafter as the "leased premises") to wit:

Tract A: All depths lying below a depth of 9300 feet below the surface in the NE/4 and SW/4 of Section 32, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract B: All depths lying below the base of the Dean Sand Formation in the NW/4 and SE/4 of Section 32, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract C: All depths lying below the base of the Dean Sand Formation in the SW/4 NE/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract D: All depths lying below the base of the Dean Sand Formation in the SW/4 NW/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract E: All depths lying below the base of the Dean Sand Formation in the SW/4 of Section 41, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract F: All depths lying below the base of the Dean Sand Formation in the N/2 of Section 44, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract G: All depths lying below a depth of 9300 feet below the surface in the S/2 of Section 44, Block, 39, T-5-S, T&P Ry. Co. Survey.

Tract H: All depths lying below the base of the Dean Sand Formation in the NE/4 and SW/4 of Section 45, Block 39, T-5-S, T&P Ry. Co. Survey.

Tract I: All depths lying below a depth of 9250 feet below the surface in the NW/4 and SE/4 of Section 45, Block 39, T-5-S, T&P Ry. Co. Survey.

B. This Lease is made subject to any and all easements, rights of way and other encumbrances burdening any part of the leased premises as shown of record in Upton County, Texas or apparent from a reasonable inspection of the leased premises.

C. By this Lease, Lessee acquires no right to construct, operate or maintain any treating or processing plant, dwelling house, lease house, camp, pipe yard, equipment yard, warehouse or similar structure on the leased premises and acquires no easement, express or implied, with respect to any land other than the leased premises.

D. Lessee specifically covenants and agrees that with respect to its performance of obligations (both express and implied) and exercise of rights and privileges arising under this Lease that Lessee shall conduct itself with respect to Lessor and the Surface Owners with the utmost good faith and fair dealing. Lessee further covenants and agrees to comply with all applicable local, state and federal laws, rules, and regulations.

3. Term. Subject to the provisions contained herein, this Lease shall be for a term of three (3) years from this date (called "primary term"), and for so long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased premises.

4. Surface Use Agreement. Lessee's rights to utilize the surface estate in the leased premises as elsewhere described in this Oil and Gas Lease are expressly made subject to that certain Surface Use Agreement dated April 4, 2012, entered into by and between Connell-Cowden Ranch, LP, as Owner, and Apache Corporation, as Operator. It is understood and agreed that the execution and delivery of this Oil and Gas Lease is made conditional upon the execution and delivery of the Surface Use Agreement.

5. Reservations. There is EXCEPTED from this Lease and Lessor RESERVES unto Lessor and Lessor's heirs, successors, administrators and assigns:

A. all minerals except oil, gas and other liquid and gaseous substances and sulphur that are necessarily produced with such oil or gas;

B. equal and concurrent rights of occupancy, use and possession of the surface estate by (1) Lessor, (2) the Surface Owner and (3) Lessor's or the Surface Owner's other mineral, surface, grazing, agricultural and recreational lessees or assignees, together with the right of ingress to and egress from the leased premises for all purposes including exploring, developing and operating said leased premises for oil, gas and other minerals of whatever nature which are not covered by this Lease or which may hereafter be released from this Lease and, the sole and exclusive right, as between Lessor and Lessee, to complete water source wells on the leased premises and in any reservoir not productive of oil or gas for the purpose of obtaining water for domestic and agricultural use and consumption and for the exploration, development and operation of Lessor's reserved rights; provided, however, Lessor and Surface Owner agree not to use the surface of the premises affected hereby in any manner that will interfere unduly with any of Lessee's rights in exploring, developing, producing, transporting, and marketing oil, gas and other hydrocarbons under leased premises. As between mineral, surface, and agricultural lessees, access to the surface shall be based on the principle of first-in-time, first-in-right, but as between Lessee herein and subsequent mineral lessees, the leasehold estate created by this Lease shall be considered dominant;

C. all rights granted to Lessee in this Lease shall be limited to the leased premises and depths described and covered by this Lease together with such ingress to and egress from leased premises as designated by Lessor and shall not extend to and Lessor expressly reserves all rights, privileges and usage which relate to land not described herein or which may be released herefrom. It is understood and agreed that to the extent Lessee establishes roads, flowlines, pipelines or power lines across the leased premises in accordance with the terms and provisions of the Surface Use Agreement to service its operations on any of the following described tracts of land (the "Jointly Operated Acreage"), prior to any partial or total termination of this Lease, then and in that event, Lessee may nevertheless continue to use such established roads, flowlines, pipelines and power lines as originally configured for as long as any of the existing oil and gas leases (including this Lease and any oil and gas leases executed by Lessor to Lessee within (30) days from and after the date of this Lease) covering any portion of the Jointly Operated Acreage remains in force and effect; provided however it is expressly understood and agreed that Lessee's limited right to use the surface estate of the leased premises for roads, flowlines, pipelines and power lines across the leased premises for the benefit of Lessee's other leasehold operations on the Jointly Operated Acreage shall never be extended or construed to extend or be utilized by Lessee for the use or benefit of or as a convenience to Lessee in operating on lands not within the Jointly Operated Acreage, regardless of whether such lands not included within the Jointly Operated Acreage are owned by Lessor or any one or more of the Surface Owner or third parties:

(i) W/2 of Section 48, Block 40, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(ii) SE/4 of Section 43, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(iii) Section 42, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(iv) Section 32, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(v) SW/4 NE/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(vi) SW/4 NW/4 of Section 40, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(vii) SW/4 of Section 41, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(viii) Section 44, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

(ix) Section 45, Block 39, T-5-S, T&P Ry. Co. Survey, Upton County, Texas.

6. Partial Termination; Continuous Development; Retained Acreage and Depths.

A. At the later to occur of the following: (i) the expiration of the primary term of this Lease, or (ii) the conclusion of the Lessee's continuous development program undertaken and prosecuted in accordance with the provisions of this Lease; this Lease shall terminate as to all of the leased premises not theretofore released, save and except the acreage and depths included in the Producing Unit(s) established by Lessee.

B. Each Producing Unit shall be in the form of a square or rectangle as nearly as is practicable with the well at a legal location on such Producing Unit and as nearly as possible in the center of such Producing Unit.

C. Lessee shall designate each Producing Unit in recordable form with such designation containing a metes and bounds description or other sufficient legal description of the Producing Unit's exterior boundaries and relevant depth limitations. Lessee shall place each designation of a Producing Unit of record in Upton County, Texas within sixty (60) days after the completion of the well for such Producing Unit and promptly provide to Lessor a certified copy of such recorded designation of Producing Unit; provided, however that during the existence (if any) of Lessee's continuous development program, Lessee may defer filing such designations until the continuous development program has been concluded at which time Lessee may file a single instrument which identifies and designates each Producing Unit situated on the leased premises.

D. Lessee shall, within sixty (60) days after termination of this Lease, as to any part of the leased premises, execute and furnish to Lessor a recordable release describing the acreage and/or depths as to which this Lease has terminated.

E. Subject to the provisions of Section 6.G. below, if at the expiration of the primary term of this Lease, Lessee is then engaged in drilling a well on the leased premises or if Lessee has completed a well as a commercial producer on the leased premises and such well is then still producing in paying quantities upon the expiration of the primary term of this Lease, Lessee shall have the right and option (but not obligation) to engage in a continuous development program on the leased premises by conducting a program of continuous drilling of new wells on the leased premises allowing no more than one hundred eighty (180) days to elapse between (i) the completion of one well as a well producing in paying quantities or as a dry hole, and (ii) the commencement of actual drilling operations on the next succeeding well. If a continuous development program is undertaken by the Lessee it shall be deemed to have been concluded on the earlier to occur of the following: (x) at such time as Lessee allows more than one hundred eighty (180) days to pass from the most recent completion of a new well on the leased premises without having commenced actual drilling operations on another new well; or (y) upon the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expired. It is understood and agreed that commencement of reworking operations or drilling, side tracking or deepening operations on a well previously completed pursuant to this Lease shall not constitute "commencement of actual drilling on the next succeeding well" so as to constitute continuous development.

F. If after the expiration of the primary term of this Lease or the conclusion of Lessee's continuous development program, whichever occurs later, any Producing Unit shall cease to produce

continuous development program, whichever occurs later, any Producing Unit shall cease to produce in paying quantities this Lease shall terminate as to such Producing Unit unless Lessee, within sixty (60) days after such cessation of production in paying quantities, commences reworking operations or commences actual drilling operations and thereafter diligently prosecutes the same or different reworking or actual drilling operations on such Producing Unit with no cessation of more than thirty (30) days until production in paying quantities is restored.

G. Notwithstanding anything herein to the contrary, on the date which is the tenth (10th) anniversary of the date on which the primary term of this Lease expires, this Lease shall terminate as to all acreage not then located within a Producing Unit.

H. Although this Lease may have terminated in part or may have been partially released, Lessee shall have and retain easements over and across the terminated portion or portions of the surface of the leased premises as shall be reasonably necessary for ingress and egress so as to enable Lessee to develop and operate the portion or portions of the leased premises as to which this Lease continues in effect and Lessee shall not be required to relocate any pipelines or roads solely because of the partial termination or partial release of this Lease.

7. Royalties. As royalty, Lessee covenants and agrees:

A. Oil. To deliver free of cost to Lessor at the location of the disposition of Lessee's oil and liquid hydrocarbons or to the credit of Lessor at the pipelines to which the wells may be connected, one-fourth (1/4) of all oil and other liquid hydrocarbons (recovered or separated on the leased premises) produced and saved from the leased premises; or, at the Lessor's option, which may be exercised from time to time, Lessee shall pay to Lessor the same percentage of the market value at the point of Lessee's disposition of its oil and liquid hydrocarbons for such oil and other liquid hydrocarbons of like grade and gravity prevailing in the area on the day such oil and other hydrocarbons are run; provided, however, there shall be no deduction from the value of Lessor's royalty by reason of any processing, treatment, trucking, transportation or other cost to market such oil and other liquid hydrocarbons. If Lessee or any Affiliate of Lessee engages in any "downstream marketing" of oil or other liquid hydrocarbons, from the leased premises, including receiving payments for aggregating such substances with oil or liquid hydrocarbons produced from other tracts of land, then and in that event, Lessee shall fully disclose any such contractual or other marketing arrangements and shall include in its payment of royalties on oil the share of the payments or value of any other consideration received in connection with or for such arrangements on the basis that the production from and attributable to this lease bears to the total volume of production the disposition for which Lessee or any of its Affiliates received any "bonuses", "marketing fees", "aggregation fees" or the like.

B. Gas. To pay the Lessor:

(i) On gas produced from the leased premises which is processed in a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive the higher of (a) one-fourth (1/4) of the market value of such gas at the inlet to the processing plant, or (b) one-fourth (1/4) of the market value of all processed liquids saved from said gas at the point of disposition for Lessee's share of processed liquids, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(ii) On gas produced from the leased premises, which is processed in facilities other than a processing plant in which Lessee or any parent, subsidiary or affiliate of Lessee has a direct or indirect interest, Lessor shall receive one-fourth (1/4) of the market value at the point of disposition of Lessee's liquids of all processed liquids credited to the account of Lessee and attributable to such gas, plus one-fourth (1/4) of the market value of all residue gas at the point of sale, use or other disposition.

(iii) On all gas produced from the leased premises, and sold by Lessee or used on or off the leased premises, and to which the preceding subparagraphs (i) and (ii) above do not apply, Lessor shall receive one-fourth (1/4) of the market value at the point of use or other disposition of all such gas.

E MA

C. The market value of all gas shall be determined at the specified location and by reference to the gross heating value (measured in British thermal units) and quality of the gas. The market value used in the calculation of all royalty under this Lease shall never be less than the total proceeds received by Lessee in connection with the sale, use or other disposition of oil or gas produced or sold from the leased premises. If Lessee receives from a purchaser of oil or gas any reimbursement for all or any part of severance or production taxes, the proportionate part of such reimbursement amount shall be added to the total proceeds received by Lessee for purposes of this subsection. If Lessee realizes proceeds of production after deduction of any expenses of production, gathering, dehydration, separation, compression, transportation, treatment, processing, storage or marketing, then the proportionate part of such deductions shall be added to the total proceeds received by Lessee for purposes of this Section 7.C.

D. Notwithstanding anything to the contrary, Lessor's royalty shall never bear, either directly or indirectly, any part of the costs or expenses of production, separation, gathering, dehydration, compression, transportation, trucking, processing, treatment, storage or marketing of the oil or gas produced from the leased premises, nor any part of the costs of construction, operation or depreciation of any plant or other facilities or equipment used in the handling of oil or gas produced from the leased premises. Royalty shall be payable on oil, gas and other products produced from the leased premises and consumed by Lessee on the leased premises, whether for compression, dehydration, fuel or other uses. It is understood and agreed that as to gas volumes produced from the leased premises which are reinjected by Lessee into a producing formation in the leased premises for the purpose of pressure maintenance or re-pressuring such formation with Lessee having the good faith belief that such re-injection will result in the enhancement of the overall recovery of royalty-bearing hydrocarbons from this Lease, then and in that event Lessee shall not be required to pay royalties on such re-injected gas volumes.

E. If the gas produced from the leased premises is sold by Lessee pursuant to an arms-length contract with a purchaser which is not an affiliate of Lessee, and the contract provides for (i) net proceeds to be paid to Lessee which equal or exceed the market value of the gas at the point of delivery to such purchaser at the time such contract is entered into, and (ii) a term no longer than that which is usual and customary in the industry at the time the contract is made and such contract provides for redetermination of price to reflect increases in the market value of natural gas not less frequently than annually, then the market value of the gas sold pursuant to such contract shall be the total proceeds received by Lessee in such sale, subject to the provisions of Section 7.C. and 7.D. above.

8. Payment of Royalties. With respect to each well on the leased premises, initial royalty payments for oil and/or gas shall be made on or before the end of the fourth (4th) calendar month following the month of first production. Thereafter, all royalties which are required to be paid hereunder to Lessor shall be due and payable in the following manner: Royalty on oil shall be due and payable on or before the fifth (5th) day of the second (2nd) calendar month following the month production is sold, and royalty on gas shall be due and payable on or before the fifteenth (15th) of the third (3rd) calendar month following the month of production. Each royalty payment shall be accompanied by a check stub, schedule, summary or remittance advice identifying the Lease and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas. A copy of all contracts under which gas is sold or processed and all subsequent agreements and amendments to such contracts shall be delivered to Lessor within thirty (30) days after entering into or making such contracts, agreements or amendments. The books, accounts and all other records pertaining to production, transportation, sale and marketing of oil or gas from the leased premises shall at any time during normal business hours be subject to inspection and examination by Lessor. If payments to be made by Lessee to Lessor are not made when due for whatever reason, the unpaid portion shall bear interest at the lower of Twelve Percent per annum (12%) or the highest rate allowed by law. If Lessee is in default hereunder and this matter is turned over to an attorney for collection, or is collected by suit, Lessee agrees to pay all reasonable attorney's fees and litigation expenses incurred by Lessor. Payments may be remitted to Lessor annually for the aggregate of up to twelve (12) months' accumulation of proceeds if the total amount owed is $25.00 or less.

9. Limitation of Oil and Gas. This Lease is intended to cover only oil and gas, but some other substances (including helium and sulphur) may be produced necessarily with and incidental to the

production of oil or gas from the leased premises; and, in such event, this Lease shall also cover all such other substances so produced. On all such substances produced under and by virtue of the terms of this Lease, Lessor shall receive a royalty of one-fourth (1/4) of all such substances so produced and saved, same to be delivered to Lessor, free of all costs; or, at Lessor's election, Lessor's one-fourth (1/4) of such substances shall be sold by Lessee with Lessee's portion of such substances and at the same price realized by Lessee in its disposition of its portion of such substances.

10. Gas Contracts; Contracts for Sale or Other Disposition of Production.

A. Each and every contract or agreement entered into by Lessee for or relating to the sale, processing or other disposition of production from or attributable to this Lease shall contain provisions sufficient to accommodate the Lessor's full exercise of its rights and privileges with respect to its royalty share of production including, but not limited to, those set forth in Section 12 of this Lease.

B. In the event Lessee enters into a contract for the sale of gas produced from or attributable to this Lease (including the Lessor's royalty share of gas) which contract contains what is commonly referred to as a "take or pay provision" (such provision meaning that the gas purchaser agrees to take delivery of a specified minimum volume or quantity of gas over a specified term at a specified price or to make minimum periodic payments to the producer for gas not taken by purchaser) and the purchaser under such gas purchase contract makes payments to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of gas, then Lessor shall be entitled to one-fourth (1/4) of all sums paid to producer under the provisions of such contract. Such royalty payments shall be due and owing to Lessor within sixty (60) days after Lessee's receipt of such payments from its purchaser. Any royalty payments made to Lessor under the "pay" obligation of any "take or pay" gas contract shall be applied as a credit toward Lessee's minimum royalty obligation. If the gas purchaser which has made any such "take or pay" payments to Lessee is entitled to and does "make-up" volumes of gas within the recoupment period called for in the gas contract and Lessee is required to give such purchaser a credit for those volumes of gas previously paid for but not taken, then Lessor shall not be entitled to royalty on such "make-up" gas, except to the extent necessary for Lessor to receive its full royalty share of the market value of such gas in accordance with Section 7.

C. To the extent Lessor's royalty share of oil, gas, natural gas liquids or any other substance produced and saved from the leased premises is covered or included by Lessee in any contract for the sale, processing or other disposition of production from or attributable to this Lease, Lessor shall be an intended third-party beneficiary of any such contract regardless of any provision of such contract(s) to the contrary. Further, Lessor shall be entitled to one-fourth (1/4) of the value of any benefits obtained by or granted to Lessee in connection with the Lessee's execution, amendment, modification, extension, cancellation, waiver, or settlement of any such contract.

11. Separation of Liquids. All gas produced from the leased premises shall, before the same is sold or used for any purpose or is transported from the leased premises be passed through a mechanical separator system situated on the leased premises designed and operated to effect the maximum economical recovery of liquid hydrocarbons therefrom. All condensate, distillate, natural gasoline, kerosene and all other liquid hydrocarbons and mixtures thereof produced with gas from the leased premises and separated from such shall be considered oil for all purposes of Section 7.A. above.

12. Right to Take Production in Kind. Lessor shall always have the right, at any time and from time to time, upon reasonable written notice to Lessee, to take Lessor's share of oil, gas and processed liquids in kind. Lessor may elect to take Lessor's gas in kind at the well, or at the point of delivery where Lessee delivers Lessee's gas to any third party. If gas is processed, Lessor may elect to take Lessor's share of residue gas attributable to production from the leased premises, at the same point of delivery where Lessee receives its share of residue gas or has its share of residue gas delivered to a third party. Lessor may elect to have its royalty share of processed liquids stored in tanks at the plant or delivered into pipelines on the same basis as Lessee's share of liquids is stored or delivered. Lessor shall reimburse Lessee for all reasonable costs incurred by Lessee in operating or maintaining additional facilities necessary for Lessor's royalty gas and processed liquids to be separately metered,

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accounted for, and delivered to a third party, but Lessor shall not be charged for any expense in the production, gathering, dehydration, separation, compression, transportation, treatment, processing or storage of Lessor's share of gas and processed liquids along with Lessee's share of gas and processed liquids.

13. Shut-in Gas Well Payments. If after the expiration of the primary term there is a gas well on the leased premises capable of producing in paying quantities but the production thereof is shut-in, shut-down or suspended for lack of a market, available pipelines, or because of government restrictions or, if it is economically inadvisable for both the Lessor and Lessee to sell gas for a time as evidenced by a written agreement signed by both parties, then, and in any such event, Lessee may pay as shut-in royalty on or before sixty (60) days after the date on which (a) production from any such well is shut-in, shut-down or suspended; or (b) this Lease is no longer maintained by compliance with one of the other preservation provisions hereof, whichever is the later date and thereafter at annual intervals the sum of Twenty Five Dollars ($25.00) per net mineral acre per Producing Unit per well, or Five Hundred Dollars ($500.00) per well which ever is greater, for each and every shut-in, shut-down or suspended well. If such payment is made in accordance with the terms hereof, this Lease shall not terminate, but shall continue in force for a period of one (1) year from the date of making such shut-in payment (subject to the exceptions set out hereafter) and it will be considered that gas is being produced from the leased premises in paying quantities within the meaning of each pertinent provision of this Lease. Provided, however, in no event shall shut-in well payments maintain this Lease in force for any single period exceeding two (2) years nor shall Lessee be entitled to utilize shut-in gas well payments to maintain any part of this Lease if this Lease has theretofore been maintained in whole or in part by the payment of shut-in gas well payments for a cumulative length of time exceeding four (4) years. Any shut-in royalty payment shall not be a credit against production nor be credited with prior production royalty. In the event that production is begun or resumed during the year following the payment of a shut-in royalty payment and is subsequently shut-in, during such year the second annual shut-in payment shall be due and payable on the anniversary date of the first payment. If there is production on such first anniversary date and the well is subsequently shut-in, shut-down or suspended, then the second shut-in payment shall be made on or before sixty (60) days after such new shut-in date or the Lease shall terminate. Notwithstanding anything to the contrary set out above, a proper shut-in gas well payment will maintain the rights granted by this Lease only to the Producing Unit(s) of such gas well(s) as if they were producing gas in paying quantities pursuant to Section 2 above. Should such shut-in gas well payments not be made in a timely manner as provided for above, then, in that event, it shall be considered for all purposes that there is no production of gas from any such well or wells and, unless this Lease is being maintained by another preservation provision hereof, this Lease shall terminate automatically at midnight on the last day provided for the payment of such shut-in royalties, and Lessee shall thereupon furnish to Lessor a release of all of its interest in and to the Producing Units containing a shut-in gas well.

14. Pooling.

Vertical Wells. Unless Lessee obtains the prior written consent of Lessor, Lessee shall have no authority under this Lease to pool all or any portion of the leased premises with other acreage, tracts, interests or leases for the purposes of drilling or producing from a vertical well.

Horizontal Wells. Lessee, at its option, is granted the right and power to pool or combine Lessor's interest in the leased premises, or any portion thereof, as to oil and gas, or either of them, with other contiguous land, lease or leases, to form a pooled unit for a horizontal well, when in Lessee's judgment it is necessary or advisable to do so in order to properly explore, develop and operate the leased premises in compliance with the spacing and density rules of the Railroad Commission of Texas, or other lawful authority, or when to do so would, in the judgment of Lessee, promote the conservation of the oil and/or gas in and under and that may be produced from the portion of the leased premises to be included in such a pooled unit for a horizontal well.

A pooled unit created for a horizontal well under this Lease may contain no more than the lesser of:

(a) Forty (40) acres plus the minimum additional acreage allowed for horizontal

drain holes, as set forth in Rule 86 of the Texas Railroad Commission utilizing the Additional Acreage Assignment Table of Rule 86 for fields with a density rule of forty (40) acres or less, as set forth in Section 3.86, Chapter 3, Part 1, Title 16, of the Texas Administrative Code; or

(b) 320 acres.

Lessee shall execute in writing an instrument identifying and describing the pooled acreage, the leases and interests so pooled, the zones, substances, formations and depths covered by the pooled unit and record such instrument in the county or counties in which the pooled land is situated. The pooled unit shall be effective on the date such instrument is filed of record. A copy of such recorded instrument, and all amendments thereof, shall be furnished to Lessor within thirty (30) days from and after the respective effective date of such instrument(s).

Production from or drilling or reworking operations on any horizontal well on such pooled unit shall be treated as production from or drilling or reworking operations on the portion of the leased premises included in such pooled unit, provided, however, notwithstanding anything else in this Lease to the contrary, production from or drilling or reworking operations on any pooled unit established hereunder shall not be treated as or constitute production from, or drilling or reworking operations on any portion of the leased premises not included within such pooled unit. This Lease may be continued in force and effect as to portions of the leased premises not included in a pooled unit only as provided elsewhere in this Oil and Gas Lease.

Unless otherwise stated herein, there shall be allocated to this Oil and Gas Lease the proportion of the total production from the pooled unit that the number of surface acres covered by this Oil and Gas Lease and included in the pooled unit bears to the total number of surface acres in such pooled unit; and royalties shall be paid hereunder only upon that portion of total pooled unit production so allocated.

Any pooled unit designated by Lessee in accordance with the provisions of this Lease shall automatically terminate upon the completion of a dry hole on the pooled unit or upon the cessation of production in commercial quantities from said pooled unit unless Lessee commences additional operations or restores production on the pooled unit within the applicable time period required for operations provided in Section 6.F. of this Lease. Lessee may dissolve a pooled unit designated in accordance with this Lease at any time after the completion of a dry hole or cessation of production in commercial quantities from such pooled unit.

15. Assignability. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof extend to the heirs, executors, administrators, successors and assigns of the parties hereto; provided, however, that any such assignment by Lessee shall require the prior written consent of Lessor, provided further, however that such consent shall not be unreasonably withheld. Lessor's consent to any assignment shall not constitute consent to any other assignment. Lessee shall furnish Lessor a copy of any assignment made pursuant to this section, with the recording data reflected thereon (if recorded). Assignment of this Lease or any part thereof shall not relieve Lessee, its assignees, or any subassignees of any obligations hereunder, theretofore accrued or to accrue in the future; and any assignee of Lessee shall, by acceptance of such assignment, be bound by all terms and provisions hereof. The term "assignment" as used herein, shall include, without limitation, any sublease, farmout, or any other agreement by which any share of the operating rights granted by this Lease are assigned or conveyed, or agreed to be assigned or conveyed, to any other party.

No change or division in ownership of the leased premises, rentals or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of Lessee, nor shall any such change or division be binding upon Lessee for any purpose until the person acquiring any interest has furnished Lessee with a true and correct copy of the instrument or instruments constituting his chain of title from Lessor.

16. Duty to Develop. The drilling of a well or wells within the broad language of this Lease shall not be construed as an agreement or construction on the part of Lessor that such drilling would constitute reasonable development of the leased premises, or such portion or portions thereof as may

be in force from time to time, as may be necessary to reasonably explore and develop the same for the production of oil and gas. In the event a well or wells producing oil or gas should be brought in on adjacent land and draining the leased premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances. If oil and/or gas are discovered on the land covered by this Lease, Lessee agrees to further develop said land covered by this Lease as a reasonable prudent operator would under the same or similar circumstances.

17. Surface Damages and Restoration. Lessee's obligations with respect to its use of the surface estate in the leased premises is governed by that certain Surface Use Agreement between Lessee and the Surface Owner of even date herewith which is incorporated herein by reference for all purposes.

18. Water. Lessee's rights and interests to utilize potable ground water from the acreage covered by this Lease shall be restricted to those rights and interests more fully described in the Surface Use Agreement; otherwise by this Lease, Lessee does not (expressly or by implication or by operation of law) acquire any title to or right to use for any purpose, any water located in, on or under the leased premises.

19. Division Orders. Division orders or transfer orders, if executed, shall be solely for the convenience of the parties for the purpose of confirming the extent of Lessor's interest in production of oil and gas from the leased premises. No term or provision of this Lease shall be altered, amended, extended or ratified by any division order or transfer order. Any amendment, alteration, extension or ratification of this Lease or of any term or provision of this Lease shall be made by an instrument in writing clearly denominated as to its purpose and effect, describing the specific terms or provisions of the Lease affected and the proposed change or modification, and executed by the party against whom the amendment, alteration, extension, or ratification is to be enforced, any amendment, alteration, extension or ratification not so drafted and executed shall be of no force or effect.

20. Information Requirements.

A. Lessee shall furnish to the designated representative of Lessor (such representative initially designated to be Jacqueline Montoya of Las Vegas, Nevada, at or within the times indicated, a true and correct copy of each of the following:

(i) Any contract under which gas is sold or processed and any amendment to contract, within thirty (30) days after entering into the contract or amendment.

(ii) Each week, the daily drilling reports covering each well being drilled on the leased premises during the preceding week.

(iii) Simultaneously with its filing, any document affecting the leased premises and which is filed by Lessee with the Texas Railroad Commission or any other regulatory agency.

(iv) As soon as completed, final prints of all driller's logs, electrical logs and surveys obtained in drilling any well on the leased premises, any core analysis and test results obtained from any well on the leased premises, and Lessee's interpretation of all data obtained in Lessee's exploration operations on the leased premises.

(v) As soon as obtained by or on behalf of or made available to Lessee, any title opinion covering all or any part of the leased premises and obtained by or on behalf of or made available to Lessee while this Lease is in effect.

(vi) As soon as entered into, any permitted farm out agreement which is not filed for record.

(vii) With each royalty payment, a check stub, schedule, summary or other remittance advice showing the production period covered by the payment, gross production for the period, the amounts of any deductions and the amount of royalty being paid.

B. Lessee shall furnish to Lessor, as soon as the recording data is available for inclusion, a true and correct photocopy of this Lease, any release of this Lease in whole or in part, any permitted farm out agreement which is filed for record and any permitted assignment of this Lease in whole or in part. In each case where such instruments are to be recorded, the copy provided to Lessor shall reflect the recording data for such instrument.

C. Lessor, at Lessor's risk, shall have access to the derrick floor and all other areas at all times during any operations conducted by Lessee on the land. Lessee shall advise Lessor of the size of chokes installed on all producing wells on the leased premises at all times, together with appropriate pressure information to permit Lessor to check the rate of production from the wells. Lessor shall have the right to strap all storage tanks and read and check all meters and charts affixed to any producing well at reasonable times without previous notice to Lessee, and Lessor may, at Lessor's expense, install check meters on or otherwise check any producing well or wells located on the leased premises.

D. During Lessee's regular office hours, Lessor shall have access to and may inspect and copy all information concerning the drilling, coring, testing and completing of all wells, including the driller's log and all electrical logs and surveys, and all accounting books and records, production charts, records and information, concerning the production, transportation and marketing of oil and gas from the leased premises, and during and for five (5) years after expiration of the primary term of this Lease, all of the following data obtained as a result of Lessee's operations under this lease: all seismic, gravity meter and similar exploration data obtained by Lessee in its exploration of the leased premises so as to permit Lessor to make its own evaluation and interpretation of the data.

E. Lessee shall notify Lessor at least thirty (30) days in advance (exclusive of Saturdays, Sundays and legal holidays) of the time and date of the proposed plugging of any well which has produced, so as to allow Lessor to observe and inspect the plugging operations.

21. INDEMNIFICATION. **LESSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, DEFEND AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, FINES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) (COLLECTIVELY "CLAIMS") RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH OPERATIONS OF OR FOR LESSEE, ITS AGENTS, CONTRACTORS, OR SUBCONTRACTORS HEREUNDER, INCLUDING CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE PROVIDED HOWEVER, THAT THE LESSEE'S OBLIGATIONS UNDER THIS SECTION 21 SHALL NOT APPLY TO CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.**

22. Special Warranty of Title. Lessor warrants title to the undivided fractional mineral fee interest it owns of record as of the date of this Lease and which is covered by this Lease subject to the reservations, exceptions and other provisions hereof, unto Lessee from and against the claims of persons claiming or to claim the same or any part thereof during the term of this Lease by, through and under Lessor, but not otherwise. Lessor agrees that Lessee, at its option after Lessee has given Lessor sixty (60) days' written notice, may discharge any tax, mortgage or other lien upon Lessor's interest in the lease premises, either in whole or in part, and in the event Lessee does so, it shall be subrogated to such lien with right to enforce same, subject to any defenses of Lessor, and apply royalties accruing hereunder toward satisfying same.

23. Proportionate Reduction for less than Entire Interest. It is agreed that if Lessor owns an interest in oil and gas in and under any of the leased premises which is less than the entire oil and gas fee simple estate, then the royalties on production shall each be reduced by the proportion thereof which the mineral fee estate of Lessor in such land bears to the entire mineral fee estate, provided that in no event shall there by any refund of any amounts previously paid to Lessor as bonus, or shut-in gas well payments.

24. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS. LESSEE, ITS SUCCESSORS AND ASSIGNS, BY ITS ACCEPTANCE OF THIS LEASE, HEREBY AGREES TO COMPLY WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS AND HEREBY ASSUMES FULL RESPONSIBILITY FOR, AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS, LESSOR FROM AND AGAINST ANY LOSS, LIABILITY, CLAIM, FINE, EXPENSE AND COSTS (INCLUDING REASONABLE ATTORNEYS FEES AND LITIGATION EXPENSES) AND CAUSE OF ACTION (COLLECTIVELY "ENVIRONMENTAL CLAIMS") CAUSED BY OR ARISING OUT OF THE VIOLATION (OR DEFENSE OF THE ALLEGED VIOLATION) OF ANY FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS APPLICABLE TO ANY WASTE MATERIAL, DRILLING MATTER OR FLUID OR ANY HAZARDOUS OR TOXIC SUBSTANCES RELEASED OR CAUSED TO BE RELEASED BY LESSEE OR LESSEE'S AGENTS, OR INDEPENDENT CONTRACTORS FROM THE LEASED PREMISES HEREUNDER INTO THE ATMOSPHERE OR INTO OR UPON THE LEASED PREMISES OR ANY WATER COURSE OR BODY OF WATER, INCLUDING GROUND WATER, INCLUDING ENVIRONMENTAL CLAIMS ARISING OUT OF LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT LESSEE'S OBLIGATIONS UNDER THIS SECTION 24 DO NOT APPLY TO ENVIRONMENTAL CLAIMS THAT ARISE SOLELY OUT OF LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. ADDITIONALLY, UPON RECEIVING ANY NOTICE REGARDING ANY ENVIRONMENTAL, POLLUTION OR CONTAMINATION PROBLEM OR VIOLATION OF ANY LAW, RULE OR REGULATION, LESSEE WILL FORWARD A COPY TO LESSOR BY CERTIFIED MAIL. THIS PROVISION AND ITS INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS LEASE, AND SHALL INURE TO THE BENEFIT OF AND BE BINDING UPON THE RESPECTIVE SUCCESSORS, HEIRS AND ASSIGNS OF LESSOR AND LESSEE.

25. No Salt Water or Waste Injection Wells. Lessee shall not be permitted to dispose of salt water or produced wastes or wastes of any kind into any formation or strata on this Lease, provided however Lessee may inject salt water produced from the leased premises into a well located thereon that has been drilled by Lessee or an existing wellbore that Lessee has converted into a disposal well, provided that Lessor's written consent is first obtained (such consent not to be unreasonably withheld). If and when requested by Lessor, Lessee shall demonstrate to Lessor's reasonable satisfaction that any such disposal or injection well is in compliance with all relevant laws and regulations concerning protection of ground water resources.

26. Timely Plugging and Abandonment of Wells. Without prior written consent of the Lessor, Lessee shall not allow any well located on the leased premises to remain in a shut-in, temporarily abandoned or otherwise non-productive state for a period of more than twelve (12) months without beginning plugging and abandonment operations with respect to the well and restoring the location, and providing that these procedures must be completed within two (2) months of their initiation. The only exception to this shall be gas wells capable of production which are shut-in pursuant to the provisions above regarding shut-in gas well payments, and for which shut-in gas well payments are being made in accordance with those same provisions. The obligations of Lessee, (and the concomitant rights of the Lessor), under this provision concerning the proper plugging and abandonment of wells and restoration of the surface of the leased premises shall survive the termination of this Lease, and shall inure to the benefit of and be binding upon the respective successors, heirs and assigns of Lessor and Lessee.

27. Alteration/Modification. The terms of this Lease cannot be altered or amended except by a written instrument clearly demonstrating such purpose and effect, and executed by both parties to this Lease. The written instrument shall describe the specific terms or provisions being altered and the proposed modification or change thereto. Any notation or legend attached to a royalty check shall be null and void and without legal significance for the purpose of altering this Lease.

28. Recording Memorandum. It is understood and agreed that Lessee may, if it so chooses, file a Memorandum of this Lease in the real property records of Upton County, Texas, such Memorandum to describe the Leased Premises and identify the primary term and Lessor(s) and Lessee(s) who execute this Lease. Such a recording Memorandum will be executed and acknowledged by each of the parties hereto and shall disclose the existence of the continuous development program called for

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in this Lease.

29. Counterparts. This Lease may be executed in multiple counterparts each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

30. GOVERNING LAW; VENUE. THIS LEASE SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. THE VENUE FOR ANY ACTION TO ENFORCE OR CONSTRUE THE TERMS AND PROVISIONS OF THIS LEASE SHALL BE IN THE STATE COURTS OF UPTON COUNTY, TEXAS.

31. Separate Tracts/No Communitization. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts in intended or shall be implied, or result from, the inclusion of such separate tracts within this Lease. As used in this paragraph, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to the parties or amounts, from that as to any other part of the leased premises. Lessor has included multiple tracts under this Lease for the convenience of Lessor and Lessee, with the express agreement and stipulation that this Lease is not a "community lease" and that no communitization of royalty interest shall occur and that each separate tract shall be, for purposes of calculating and paying of royalty interest, considered a separate lease.

32. Lease Bonus for Excess Acreage. In the event during the primary term of this Lease it is discovered by Lessor or Lessee that this Lease actually covers more net mineral acres in the leased premises than such parties believed to be covered by this Lease at the time of its execution and delivery, and Lessor provides reasonable documentary proof of the existence of such excess net mineral acreage, then and in that event Lessee agrees to pay to Lessor an additional lease bonus consideration equal to the sum arrived at by multiplying the number of excess net mineral acres times the agreed per acre lease bonus consideration paid at the time of the execution and delivery of this Lease.

33. Notices. Any notice permitted or required under the terms and provisions of this Lease shall be in writing signed by or on behalf of the party giving notice and properly addressed and delivered to the recipient party utilizing the following address and contact information. Each notice under this Lease shall be sent by certified mail, return receipt requested, by facsimile transmission (fax), or by commercial overnight courier. A notice sent by mail shall be deemed to have been received (if properly addressed, with postage prepaid) no later than three (3) Business Days after it is postmarked, while notices sent by commercial overnight courier shall be deemed to have been delivered when actually received.

Notices to the Lessor(s) and Lessee(s) respectively, shall be addressed as follows:

If to Lessor:
Eleanor C. Hartman, Individually and as
Trustee of the W. N. Connell and
Marjorie T. Connell Living Trust
Agreement dated May 18, 1972
P.O. Box 710
Las Vegas, Nevada 89125-0710 See attached addendum.

If to Lessee:
Apache Corporation
303 Veterans Airpark Lane, Suite 3000
Midland, Texas 79705

EMA

IN WITNESS WHEREOF, this instrument is dated as of the date first written above.

LESSOR

By: Eleanor C Hartman Individually and as Trustee
Eleanor C. Hartman, Individually and as
Trustee of the W. N. Connell and Marjorie
T. Connell Living Trust under Trust
Agreement dated May 18, 1972

LESSEE

APACHE CORPORATION

By:_____
Printed Name:_____
Title:_____

THE STATE OF NEVADA §
§
COUNTY OF CLARK §

The foregoing instrument was acknowledged before me this 4th day of April, 2012, by Eleanor C. Hartman, Individually and as Trustee of the W. N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972.

[SEAL]

STEPHEN MILLER
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 10-20-15
Certificate No: 11-6077-1

Notary Public in and for the State of Texas Nevada
Printed Name of Notary: Stephen M. Miller
My commission Expires: 10-20-15

THE STATE OF TEXAS §
§
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of April, 2012, by _____, _____ of Apache Corporation, a Delaware corporation, on behalf of said corporation.

[SEAL]

_____
Notary Public in and for the State of Texas
Printed Name of Notary:_____
My commission Expires:_____

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ADDENDUM TO:
OIL AND GAS LEASE

Replace addresses in paragraph 33 **Notices** on Page 14.
SIGNED 4-4-2012

Notices to Lessor and Lessee(s), respectfully, shall be addressed as follows:

If to Lessor:

Eleanor C. Hartman, Individually and as Trustee of the
W. N. Connell and Marjorie T. Connell
Living Trust under Trust Agreement dated May 18, 1972
8635 West Sahara Avenue, #549
The Lakes, Nevada 89117-5858

If to Lessee:

Apache Corporation 303 Veterans Airpark Lane, Suite 3000 Midland, Texas 79705

LESSEE
APACHE CORPORATION
BY: Timothy R. Custer
NAME: TIMOTHY R. CUSTER
Title: ATTORNEY IN FACT

LESSOR

BY: Eleanor C. Hartman, Trustee

Eleanor C. Hartman, Individually and as Trustee of the
W. N. Connell and Marjorie T. Connell
Living Trust Agreement dated May 18, 1972
8635 West Sahara Avenue, #549
The Lakes, Nevada 89117-5858

State of TEXAS
County of MIDLAND

The foregoing instrument was acknowledged before me this 10th day of July, 2012, by Timothy R. Custer, Attorney in Fact of Apache Corporation, a Delaware corporation, on behalf of said corporation.

Melissa L. Dimit
Notary Public in and for the State of Texas
Printed Name of Notary: Melissa L. Dimit
My commission expires: 9/9/2013

MELISSA L. DIMIT
Notary Public
STATE OF TEXAS
My Comm. Exp. Sep. 09, 2013

NOTARY Nevada
State of Nevada
County of Clark
This Document was Acknowledged before me this May 23rd 2012, by Eleanore. Hartman
Dennis Hanson
Notary Public

DENNIS HANSON
Notary Public State of Nevada
No. 00-60668-1
My appt. exp. March 1, 2016