

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

IN THE MATTER OF THE W.N. CONNELL
AND MARJORIE T. CONNELL LIVING
TRUST, DATED MAY 18, 1972, AN INTER
VIVOS IRREVOCABLE TRUST.
ELEANOR CONNELL HARTMAN AHERN,
Appellant,
vs.
JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,
Respondents.

No. 68046

Electronically Filed
Jun 11 2015 08:45 a.m.
Tara K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 26
County Clark Judge Gloria Sturman
District Ct. Case No. P-09-066425-T

2. Attorney filing this docketing statement:

Attorney Tamara Beatty Peterson Telephone 702.382.2101
Firm Brownstein Hyatt Farber Schreck, LLP
Address 100 N. City Parkway, Suite 1600
Las Vegas, NV 89106

Client(s) Eleanor Connell Hartman Ahern

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Joseph J. Powell, Esq. Telephone (702) 255-4552
Firm The Rushforth Firm, Ltd.
Address 9505 Hillwood Drive, Suite 100
Las Vegas, NV 89134

Client(s) Jacqueline M. Montoya

Attorney Whitney Warnick, Esq. Telephone (702) 384-7111
Firm Albright, Stoddard, Warnick & Albright
Address 801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106

Client(s) Kathryn A. Bouvier

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

This case is currently on appeal in two related matters:

First Appeal: In the Matter of: The W.N. Connell and Marjorie T. Connell Living Trust,
Dated May 18, 1972, Supreme Court Case No. 66231.

Second Appeal: In the Matter of: The W.N. Connell and Marjorie T. Connell Living Trust,
Dated May 18, 1972, Supreme Court Case No. 67782.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Case Name: In the Matter of MARJORIE T. CONNELL, deceased
Case No.: P-14-080595-E
Court: Eighth Judicial District Court of Nevada, Department 26
Date of Disposition: May 4, 2015 (on Order to Statistically Close Case)

8. Nature of the action. Briefly describe the nature of the action and the result below:

In this action, Ms. Montoya and Ms. Bouvier (the "Sisters") sought a declaration regarding the correct interpretation of certain Trust provisions regarding entitlement to income generated by the oil, gas and mineral interests on and under certain real estate in Upton County, Texas, which was previously the sole and separate property of Ms. Ahern's father, W.N. Connell. Ms. Ahern was both the trustee and a beneficiary of the Trust.

The orders being appealed are the district court's Summary Judgment Order entered on April 17, 2015, and the district court's Order Regarding The Accounting, Breach of Fiduciary Duty Claims and Award of Attorneys' Fees entered on April 20, 2015. The district court adopted the Sisters' interpretation of the Trust documents, finding the Sisters are entitled to 65% of the income from the Texas oil properties while Ms. Ahern is entitled to 35%. The Court also found that Ms. Ahern, who was both the trustee and a beneficiary of the Trust, had breached her fiduciary duty as trustee, and therefore is personally liable for all of the Sisters' attorneys' fees and costs in this matter.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

The first issue on appeal is the district court's grant of summary judgment in favor of Ms. Montoya and Ms. Bouvier, as beneficiaries of the MTC Living Trust. The district court failed to apply the proper legal standard, failed to consider the clear language of the trust documents, improperly referred to extrinsic evidence, improperly considered disputed facts, and improperly weighed evidence. The second issue on appeal is the propriety of the district court's finding that Ms. Ahern breached her fiduciary duty and thus is personally liable for Ms. Montoya and Ms. Bouvier's attorneys' fees and costs.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from April 16, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served April 17, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed May 18, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(1) states that "[a]n appeal may be taken from...[a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." Here, Ms. Ahern appeals from the district court's order granting summary judgment on all claims against her. The district court also dismissed all counterclaims filed by Ms. Ahern without prejudice.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Appellant: Eleanor Connell Hartman Ahern

Respondents: Jacqueline M. Montoya and Kathryn A. Bouvier

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Jacqueline M. Montoya's and Kathryn A. Bouvier's claim: That they, or a trust of which they are the equal beneficiaries, own sixty-five percent (65%) of the Upton County, Texas, Oil rights that are the subject of this dispute. This claims was disposed of by the District Court's order granting summary judgment on April 16, 2015.

Eleanor C. Ahern's counterclaims: A life estate in one hundred percent (100%) of the Upton County, Texas, Oil right income, Intentional interference with contractual relations, and enforcement of no contest provisions. Dismissed on April 16, 2015.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION


I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Eleanor Connell Hartman Ahern
Name of appellant

June 10, 2015
Date

Clark County, Nevada
State and county where signed

Tamara Beatty Peterson
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 10 day of June, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Please see attached.

Dated this 10th day of June, 2015


Signature

SERVICE LIST

I hereby certify that on June 10, 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:

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

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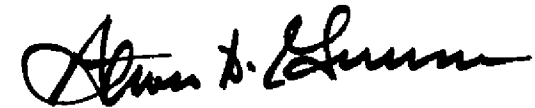
TODD L. MOODY, ESQ.
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*Attorneys for Fredrick P. Waid,
Court-appointed Trustee*

ITEM 26 - LIST OF EXHIBITS

EXHIBIT NO.	DOCUMENT
1.	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)
2.	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
3.	Summary Judgment
4.	Order Regarding the Accounting, Breach of Fiduciary Duty Claims and Award of Attorney Fees
5.	Notice of Entry of Order on Summary Judgment
6.	Notice of Entry of Order Regarding the Accounting, Breach of Fiduciary Duty Claims and Award of Attorney Fees

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

PETN
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: 26 (Probate)

**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)**

Date of Hearing: October 11, 2013
Time of Hearing: 9:30 a. m.

JACQUELINE M. MONTTOYA ("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 a declaration 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" ("Trust"), dated May 18, 1972, is

1 entitled to only a 35% proportion of all income generated from gas, oil, and mineral leases,
2 which are owned partially by the Trust and partially owned by another trust established by
3 Marjorie T. Connell and in turn a declaration that Jacqueline and her sister, KATHRYN A.
4 BOUVIER ("Kathryn") are entitled to the other 65% proportionate share of the income
5 generated from these same gas, oil, and mineral leases. Jacqueline respectfully declares as
6 follows:
7

8 **A. OVERVIEW**

9
10 Recently, Mrs. Ahern has asserted, without providing any logic or authority to
11 support such assertion, that she is entitled to 100% of the proceeds from the leases for
12 the Texas property and has refused to distribute the 65% proportion that has been
13 distributed to Jacqueline and Kathryn since Mrs. Connell's death in May of 2009, and
14 was previously distributed to Marjorie for the previous 29 years.
15

16 **B. JURISDICTION OVER TRUST**

17 B.1 This Court already has jurisdiction over "The W.N. Connell and Marjorie T.
18 Connell Living Trust", dated May 18, 1972 ("Trust") and in turn Ms. Ahern. Pursuant to the
19 "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for Construction of and
20 Reform of Trust Instrument", dated September 4, 2009, this Court assumed jurisdiction
21 over the Trust and confirmed Ms. Ahern as trustee of the Trust.
22

23 B.2 Additionally, on information and belief, Ms. Ahern has continued to serve in
24 the role as trustee of the Trust from that point in time through the present.

25 B.3 There is nothing that has been discovered after review of the court file which
26 indicates that any petition to remove this Court's jurisdiction over the Trust was ever filed
27 subsequent to the September 4, 2009 Order.
28

C. BACKGROUND HISTORY

C.1 W.N. Connell, also known as William N. Connell, and Marjorie T. Connell ("Marjorie") established "The W.N. Connell and Marjorie T. Connell Living Trust" on May 18, 1972.

C.2 By the express terms found on page one of the Trust instrument, the Trust revoked and entirely replaced a previous trust that was executed by the Connells on December 1, 1971, which was described as a "revocable living trust".

C.3 A copy of the Trust is attached hereto as Exhibit "A" and is hereby incorporated by this reference.

C.4 During the joint lifetimes of the Connells, all of the Trust assets were to be administered as prescribed under "Trust No. 1", which was a general, undivided "pot" trust.

C.5 After the death of the predeceased grantor, the Trust was to be divided into two subtrusts, known respectively as "Trust No. 2" and "Trust No. 3".

C.6 In describing the subtrusts in general, yet not entirely completely precise terms, Trust No. 2 was what would commonly be referred to as the "Decedent's Trust", while Trust No. 3 was what would commonly be referred to as the "Survivor's Trust". However, Trust No. 3 was also to serve as a "marital" trust as well. As to this marital trust component of Trust No. 3, Section Third of the Trust, titled "Marital Deduction" contains the following clause:

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 the death taxes payable by reason of the Decedent's death, which taxes shall be paid from Trust No. 2 only.

C.7 As to the Texas property, and more precisely the acreage and accompanying rights in minerals, gas, and oil on such acreage, which is the focus of this Petition, there is certainly a reference to that land and those rights being Mr. Connell's separate property.

C.8 As outlined on schedule A for the Trust, which was executed the same day as the Trust, there is clear reference to real property in Upton County, Texas and oil, gas, and mineral rights/leases being the separate property of Mr. Connell. A copy of Schedule A of the Trust is attached hereto as Exhibit "B" and is hereby incorporated by this reference.

C.9 W.N. Connell died on November 24, 1979. Mr. Connell died as a resident of Boulder City, Nevada.

C.10 Therefore, Trust No. 3 became Marjorie's trust, meaning that she was free to amend the provisions of it or to revoke it entirely as she saw fit. Specifically, Marjorie was given a power of appointment over Trust No. 3.

C.11 As to Trust No. 2, it became irrevocable upon Mr. Connell's death. The provisions of Trust No. 2 expressly state that all income generated from it shall be paid to the "Residual Beneficiary" which was/is Ms. Ahern. As it relates to income distributions, Trust No. 2 also contained the following statement:

In the event that 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 from the real property located in Upton County, Texas.

C.12 Trust No. 2 also stated that "All other income received by this Trust shall be

1 *distributed to the Survivor*".

2 C.13 As to principal distributions from Trust No. 2, Marjorie, as the surviving
3 Trustor, had various powers over principal distributions.

4 C.14 On May 6, 1980, Marjorie and Ms. Ahern executed a document titled
5 "Substitution of Trustee". A copy of the "Substitution of Trustee" is attached hereto as
6 Exhibit "C" and is hereby incorporated by this reference.

7 C.15 The purpose of the "Substitution of Trustee" was to add Ms. Ahern as a co-
8 trustee with Mrs. Connell of the "separate property of W.N. Connell presently held in the
9 above-entitled Trust" in accordance with the terms of Trust No. 2.

10 C.16 On December 16, 1980, a state of Texas "Inheritance Tax Return----Non-
11 Resident" was executed by the tax preparer, Darrell Knight of Darrell Knight Assoc. Inc.-PC,
12 out of Abilene, Texas, and Mrs. Connell, in her capacity as executrix of the Estate of Mr.
13 Connell, for Mr. Connell. A copy of the Texas Return is attached hereto as Exhibit "D" and
14 is hereby incorporated by this reference.

15 C.17 In the schedules attached to the Texas Return, there is reference to land in
16 Upton County, Texas and also mineral rights on that same land being split in a proration
17 close to 65%/35% (the precise split was 64.493% and 35.507%), with the schedules
18 reflecting "ownership" by Marjorie of the larger amount and "ownership" by Ms. Ahern of
19 the smaller amount.

20 C.18 A Federal Estate Tax Return, Form 706, was also prepared and filed in 1980
21 for Mr. Connell as well. In fact, the Form 706 was prepared prior to the Texas Return and
22 was the basis for the allocation and figures reflected on the Texas Return. It was a Nevada
23 accountant who calculated the applicable allocations, including the marital deduction
24
25
26
27
28

1 percentage. Therefore, all of the intricate calculations, including the allocations between
2 Trust No. 2 and Trust No. 3, were done for purposes of the Form 706. As such, Mr. Knight
3 simply took those percentages from the Form 706 and in turn applied them to the appraised
4 value of the surface and minerals in Upton County, Texas.
5

6 C.19 Both the Form 706 and the Texas Return were submitted together to both the
7 IRS and the state of Texas. A closing letter was later received from the IRS approving of the
8 Form 706 and the amount that had been submitted as owing tax. Similarly, the State of
9 Texas, via the State Comptroller, also accepted the Texas Return as well. Copies of both of
10 those documents can be submitted upon request of this Court.
11

12 C.20 Unfortunately, a copy of the Form 706 that was filed for Mr. Connell's estate
13 cannot be located. Despite the diligent efforts of Jacqueline to locate a copy of the Form
14 706 she has simply had no success in finding it. These efforts have included Jacqueline, in
15 her capacity as the personal representative of Marjorie's estate, making a request to the
16 Internal Revenue Service. After searching their records, the IRS informed Jacqueline that
17 they were unable to locate a copy of the Form 706 that was filed. A copy of the letter from
18 the IRS which informed Jacqueline of this fact can be provided upon the request of this
19 Court. In addition, to seeking a copy of the Form 706 directly from the IRS, Jacqueline has
20 spent numerous hours looking through all of the records that she has copies of, which has
21 included looking through storage sheds and safe deposit boxes.
22

23 C.21 Despite not being able to locate a copy of the Form 706, as noted above, the
24 proof of the figures reflected therein is evidenced by the those which were in turn reflected
25 on the Texas Return. Therefore, the Texas Return is the only surviving document that can
26 be used to establish the proof of the allocations between the No. 2 and No. 3 subtrusts.
27
28

1 C.22 Marjorie died on May 1, 2009. Marjorie died as a resident of Clark County,
2 Nevada.

3 C.23 Up to the date of her death, Marjorie was receiving approximately 65% of the
4 income generated by the various oil, gas, and mineral rights' leases that had been signed
5 over the years from the time of Mr. Connell's death. Therefore, she had been receiving
6 distributions from these income sources for approximately 29 years. At no time did Ms.
7 Ahern ever dispute that allocation of the income distributions between herself and Marjorie.
8 In fact, Ms. Ahern, in her capacity as a co-trustee of the Trust, signed every document,
9 including oil and gas leases, division orders, and tax returns, etc.
10

11
12 C.24 Even Ms. Ahern's divorce documentation from 1984 acknowledges and
13 documents the 65%/35% split. For purposes of privacy, such documentation can be
14 provided to this Court for *in camera* review should this Court request it.
15

16 C.25 In the Last Will and Testament of Marjorie T. Connell, which was executed
17 by Marjorie on January 7, 2008, which is attached hereto as Exhibit "E" and is incorporated
18 herein by this reference, Marjorie exercised her power of appointment over Trust No. 3 of
19 the Trust. Specifically, under section 4.1 of her Will, which was titled "Exercise of Power
20 of Appointment Granted by William N. Connell", Marjorie declared the following:
21

22 *In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18,*
23 *1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted*
24 *a testamentary power of appointment. I hereby exercise that power of*
25 *appointment and appoint the entire principal and the undistributed income*
26 *in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and*
KATHRYN ANNE BOUVIER to be distributed in trust in accordance with
the provisions of the MTC LIVING TRUST dated December 6, 1995, as
restated on January 7, 2008.

27 C.26 To ensure that Marjorie's exercise of the power of appointment was
28

1 recognized by Ms. Ahern, in her capacity as the now sole trustee of the Trust due to
2 Marjorie's passing, a letter dated May 21, 2009 was sent to Ms. Ahern by Marjorie's estate
3 planning attorney, David A. Strauss, notifying her of the such action being taken by
4 Marjorie under the terms of her Will. A copy of the Attorney Strauss' letter to Ms. Ahern
5 is attached hereto as Exhibit "F" and is incorporated herein by this reference.
6

7 C.27 Marjorie executed the MTC Living Trust on December 6, 1995. Mrs. Connell
8 subsequently executed a restatement of the MTC Living Trust on January 7, 2008. A copy
9 of the MTC Living Trust is attached hereto as Exhibit "G" and is incorporated herein by this
10 reference.
11

12 C.28 The current beneficiaries of the MTC Living Trust are Jacqueline and Kathryn,
13 with Jacqueline serving as the sole trustee.
14

15 C.29 As noted above, on September 4, 2009, Ms. Ahern, as trustee of the Trust,
16 obtained the "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for
17 Construction of and Reform of Trust Instrument". As can be seen from the title of the
18 Order, the Order had the effect of confirming the intended construction of Trust No. 2 in
19 compliance with the stated intent of Mr. Connell, while at the same time reforming Trust
20 No. 2.
21

22 C.30 As to Trust No 2, the Order, in part, confirmed that following the death of Ms.
23 Ahern, the beneficiaries of Trust No. 2 would be Jacqueline and Kathryn, in equal shares.
24 The Order also had the effect of establishing that upon the resignation or incapacity of Ms.
25 Ahern that the trustee of Trust No. 2 would be Jacqueline, or, if she was unable to serve,
26 then Kathryn.
27

28 C.31 As will be detailed further herein, since Marjorie's death, Jacqueline and

1 Kathryn have been receiving approximately 65% of the income generated from the various
2 leases that have been signed regarding the Texas properties, with Ms. Ahern continuing to
3 receive the remaining 35% as she has been for approximately the last 33 years.

4
5 **D. PETITION FOR DECLARATORY RULING REGARDING INTERESTS IN TEXAS**
6 **PROPERTY AND INCOME GENERATED FROM LEASES**

7 D.1 This Petition is brought pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS
8 164.033(1)(a).

9 D.2 NRS 30.040 provides for the following:

10 *1. Any person interested under a deed, written contract or other writings*
11 *constituting a contract, or whose rights, status or other legal relations are*
12 *affected by a statute, municipal ordinance, contract or franchise, may have*
13 *determined any question of construction or validity arising under the*
14 *instrument, statute, ordinance, contract or franchise and obtain a*
15 *declaration of rights, status or other legal relations thereunder.*

16 *2. A maker or legal representative of a maker of a will, trust or other*
17 *writings constituting a testamentary instrument may have determined any*
18 *question of construction or validity arising under the instrument and obtain*
19 *a declaration of rights, status or other legal relations thereunder. Any*
20 *action for declaratory relief under this subsection may only be made in a*
21 *proceeding commenced pursuant to the provisions of title 12 or 13 of NRS,*
22 *as appropriate.*

23 D.3 NRS 153.031(1)(e) provides for the following:

24 *1. A trustee or beneficiary may petition the court regarding any aspect of*
25 *the affairs of the trust, including:*

26 *(e) Ascertaining beneficiaries and determining to whom property is to pass*
27 *or be delivered upon final or partial termination of the trust, to the extent*
28 *not provided in the trust instrument;*

D.4 NRS 164.033(1)(a) provides for the following:

1. The trustee or an interested person may petition the court to enter an
order:

1 (a) *If the trustee is in possession of, or holds title to, property and the*
2 *property or an interest in it is claimed by another.*

3 D.5 As stated out the outset of this Petition, within the last few months Ms. Ahern
4 has asserted, without providing any logic or authority to support such assertion, that she
5 is entitled to 100% of the proceeds from the leases for the Texas property and has refused
6 to distribute the 65% proportion that has been distributed to Jacqueline and Kathryn since
7 Mrs. Connell's death in May of 2009, and was previously distributed to Marjorie for the
8 previous 29 years.
9

10 D.6 Specifically, Jacqueline and Kathryn have not received distributions for the
11 months of July, August, and September of 2013. Previous distributions had been averaging
12 in the range of \$30,000 to each for Jacqueline and Kathryn. Therefore, as of the date of
13 this filing, Jacqueline and Kathryn have experienced losses in excess of approximately
14 \$100,000 each.
15

16 D.7 As noted, there has been absolutely no explanation from Ms. Ahern as to why
17 and under what authority she feels justified in undoing 33 years of precedent and now
18 believes that she is entitled to 100% of the income from the leases. It seems as though the
19 only answer being offered by Ms. Ahern is "because".
20

21 D.8 As noted above, the allocation of a 65%/35% of the ownership of the Texas
22 land and the leases involving the land, and more specifically what is actually in the soil and
23 beneath it, was done in 1980. There is nothing to indicate that this allocation was done
24 improperly at the time that it was done. Furthermore, there were professionals advising
25 Marjorie as to how to accomplish this task as evidenced by the Form 706 as reflected in the
26 Texas Estate tax return.
27
28

1 D.9 Therefore, Jacqueline and Kathryn are extremely perplexed as to what has
2 occurred in Ms. Ahern's mindset that would prompt her to believe that she is now entitled
3 to 100% of the income from these leases despite 33 years of established precedent without
4 complaint or assertion of mistake.
5

6 D.10 As established, the allocation of the 65%/35% split occurred a very long time
7 ago and under the supervision and expertise of professionals. There is absolutely nothing
8 to suggest that this allocation was inappropriately done in 1980 and Ms. Ahern has never
9 once asserted anything to this effect, either during the 29 years following the death of Mr.
10 Connell in which Marjorie was receiving 65% of the income, nor the past 4 years since
11 Marjorie's death in which the 65% has been equally divided between Jacqueline and
12 Kathryn.
13

14 D.11 Furthermore, this allocation was accepted by both the state of Texas, via the
15 Comptroller, and the IRS. If either entity felt that the allocation being made was being done
16 improperly, then both of these entities would surely have voiced concern. Likewise, as a co-
17 trustee, Ms. Ahern had ample opportunity to voice a belief that the allocation was done
18 improperly and to seek its redress. However, no such action was ever taken and no proof
19 of mistake or error has ever been documented. Therefore, it must be determined that the
20 allocation was properly made in 1980, which is why it is also logical that for the past 33
21 years the allocation has been accepted and followed by Ms. Ahern without incident.
22

23 D.12 Even in the off chance that the allocation was not done with complete
24 precision, it is simply too late to question and rehash the issue, as returns have been filed
25 and accepted and rights have become vested under numerous equitable principles. Just as
26 with statutes of limitations, or even with the offering of subsequently discovering a will of
27
28

1 a decedent years after a probate has been conducted and concluded, there simply becomes
2 a point in time when it is simply too late to seek redress of an issue.

3 D.13 As to why Ms. Ahern has only recently chosen to assert that she is entitled to
4 100% of the income derived from the leases, only she herself knows the motivation behind
5 this. However, the exponential increase in the value of the leases/royalties derived from
6 them may have played a significant role in her unwarranted determination.

7 D.14 To get full appreciation of what has occurred here, and why the actions of Ms.
8 Ahern are so reprehensible and unacceptable, it is necessary to look back at the relevant
9 factors that are at play and what has transpired over the last 33 years.

10 D.15 Marjorie managed the 1972 Connell Trust properties until her death in 2009.
11 She did the active negotiating with oil companies and surface users and consulted other
12 relatives on decisions on the properties.

13 D.16 Around the year 2000, Marjorie's health began to fail. She was still a resident
14 of Las Vegas, as was Jacqueline. Marjorie requested that Jacqueline help her with the
15 record keeping, deposits, and other aspects of managing the Texas oil and gas properties.

16 In respecting Marjorie's instructions, Jacqueline checked the mail, kept the records, and
17 deposited the run checks. Marjorie and Ms. Ahern handled the leases and division orders,
18 and the signing and copying of all documents. At no time did, Jacqueline ever act as trustee,
19 but instead she acted at the direction of Marjorie who was a co-trustee. Again, Jacqueline
20 was an aide to her grandmother and acted at her grandmother's direction.

21 D.17 The money from the 1972 Connell Trust continued to be divided between Ms.
22 Ahern and the MTC Living Trust in the same manner in which it had been divided since
23 1980: 65% and 35%. The routine administrative duties followed by Jacqueline each month
24

1 included gathering the checks from the trust post office box and depositing them into an
2 account in the name of Marjorie Connell and Ms. Ahern, which has been a longstanding
3 account that was originally opened by Marjorie and Ms. Ahern in 1980. This account has
4 always been referred to and commonly known by the parties as the "oil and gas account."
5

6 D.18 As soon as all the income checks were in the bank from the various leases in
7 effect, at approximately the first of the month, Jacqueline would proceed to divide the
8 money, with 35% going to Ms. Ahern, and 65% going to Marjorie. Following Marjorie's
9 passing, the 65% that previously went to Marjorie would now be divided between
10 Jacqueline and Kathryn equally. Within the first few days of each month, the two parties,
11 Ms. Ahern and Marjorie, which became three parties at the death of Marjorie, were able to
12 rely on their share of the previous month's income from the various leases being reflected
13 in their own individual bank accounts.
14

15 D.19 As part of this process, Jacqueline routinely and faithfully put the financial
16 records on computer concerning the leases and the associated business expenses in tracking
17 this information, allocated the money from the leases, and gave updates to Ms. Ahern and
18 Kathryn.
19

20 D.20 In recent times, Jacqueline, with the assistance of other professionals, has put
21 in a tremendous amount of time and energy in negotiating new leases for the Texas
22 properties, which, as noted above, was a task that had previously been done by Marjorie.
23 Once the terms of a new lease, or the renewal of a previous lease, had been agreed upon and
24 reviewed by professionals specializing in the field, Jacqueline gave Ms. Ahern the original
25 documents and Ms. Ahern would sign them in the presence of a notary, and return the
26 original and copies to Jacqueline. When production was developed in any well, Jacqueline
27
28

1 would get the division order from the mail and deliver it to Ms. Ahern to be signed and then
2 returned the document to the oil and gas purchaser for payment.

3 D.21 Once the proceeds from the various leases were received and deposited in the
4 "oil and gas account", Jacqueline divided the net income in the exact percentages that they
5 had followed since 1980. Additionally, Jacqueline also dealt with an accountant in
6 California, Corey Haina of Fast Tax, who had done the income taxes for approximately 8 to
7 9 years for Marjorie, furnishing him with the 1099's and Jacqueline's records reflect the
8 amount of money received from each purchaser of the oil and gas. Following Marjorie's
9 passing, Ms. Ahern was agreeable to continue to have Mr. Haina continue to prepare the
10 necessary returns.

11 D.22 In addition to these tasks, Jacqueline also kept all of the check stubs and
12 totaled them at year end for tax purposes. Jacqueline reconciled the income with the 1099's
13 and gave all interested parties a three page summary at year end.

14 D.23 As a matter of habit, the only time Jacqueline did not issue 100% of the
15 income from the oil and gas account was when she started withholding a percentage of the
16 income around the July runs so that there would be sufficient funds to pay the *ad valorem*
17 taxes due in Upton County, Texas when that bill was received in October. Ms. Ahern was
18 aware of this hold back for this purpose and verbally approved of such practice on multiple
19 occasions. All expenses, income tax, accounting and legal fees, *ad valorem* taxes, and any
20 miscellaneous expenses, such as office supplies, were dutifully deducted from distributions.

21 All expenditures were reported to Ms. Ahern annually on the year-end report from
22 Jacqueline. So that there is no confusion as to what capacity Jacqueline was acting since
23 Marjorie's passing, it is necessary to keep in mind that Jacqueline has been serving as the
24

1 sole trustee of the MTC Trust since Marjorie's death.

2 D.24 As stated above, a significant increase in value derived from the leases, and
3 one in particular, occurred in 2012. In this time frame, a very lucrative lease was entered
4 into with Apache Corporation covering part of the property in Upton County, Texas. The
5 total bonus on this lease totaled in the millions, and Ms. Ahern, Jacqueline and Kathryn
6 together received a total of \$1.7 million. This bonus was divided in the usual 65%/35% ratio.
7

8 D.25 The signing of the lease leading to the bonus occurred in approximately April
9 of 2013. On approximately July 4th and July 5th of 2013, a fair amount of time after the \$1.7
10 million bonus was received, without any warning or explanation, Ms. Ahern had the post
11 office box closed where income checks generated by the leases were mailed to.
12 Additionally, at this same point in time, Ms. Ahern subsequently instructed the bank where
13 the "oil and gas" account was located to take no direction from Jacqueline and to refuse to
14 speak with her. For purposes of clarification, Jacqueline had been given signatory rights
15 on the account by Marjorie to act on her behalf and as such access to the funds of the
16 account to carry out the tasks that Jacqueline had performed at Marjorie's request, as has
17 been detailed above.
18
19

20 D.26 The monthly payments from the income generated from the leases continued
21 to be received from Ms. Ahern after the above actions were taken towards Jacqueline and
22 Kathryn. The checks were smaller than they should have been and were distributed later
23 than they had been when Jacqueline was making the distributions to each of the personal
24 accounts. However, as noted above, all distributions stopped in July of 2013, when no
25 checks were received by either Jacqueline or Kathryn.
26
27

28 D.27 Given the actions that were occurring, counsel based in Texas for Jacqueline

1 and Kathryn contacted the Texas counsel for Ms. Ahern to attempt to get an understanding
2 of why Ms. Ahern was taking these actions. The explanation from Ms. Ahern's counsel was
3 that Ms. Ahern was entitled to 100% of the income from the leases and that any further
4 distributions to Jacqueline and Kathryn would be gifts to them given by Ms. Ahern. To
5 cement this position, the June 2013 distributions to Jacqueline and Kathryn were smaller
6 than they otherwise should have been. On the deposit slip with the checks it was noted that
7 the amounts were "gifts". To reiterate, following the June 2013 distributions, no additional
8 distributions have been forthcoming to Jacqueline and Kathryn.
9

10
11 D.28 As stated above, there is no justification for what is occurring and as such it
12 is crucial that this Court render an order declaring that Ms. Ahern has only a 35% interest
13 in the proceeds generated from the oil, gas, mineral leases and that the remaining 65%
14 belongs to the MTC Trust. As established, a 65%/35% split has been occurring for 33 years
15 now and there is no reason nor justification for upsetting this long standing precedent and
16 practice.
17

18 D.29 Therefore, Jacqueline respectfully requests that this Court take all necessary
19 action and make such rulings as are appropriate to force the status quo back into place.
20

21 E. DAMAGES

22 Jacquie and Kathryn have incurred substantial attorney's fees and costs in having
23 to seek this declaratory judgment based on the unwarranted actions of Ms. Ahern. As such,
24 Jacquie, on both her behalf and on behalf of Kathryn, hereby requests that this Court hold
25 Ms. Ahern responsible for the damages that she has triggered by her unjustifiable and
26 unwarranted actions. This request is made based on the provisions of NRS 153.031(3)(b),
27 based on the applicability of that provision through NRS 164.005. However, the amount
28

1 of damages will be discussed and set forth in an additional related petition that will be filed
2 shortly hereafter. Therefore, for the sake of clarity, the request for damages is hereby made
3 and preserved, but topic will be addressed in great detail in a related petition so as not to
4 distract or confuse the straightforward declaration of rights and interests that is sought
5 herein.
6

7 **F. PRAYER**

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

9 F.1 Declaring that:

10 (a) ELEANOR C. AHERN, also known as Eleanor Marguerite Connell
11 Hartman, both individually and in her capacity as the trustee of "The W.N. Connell
12 and Marjorie T. Connell Living Trust", dated May 18, 1972, is entitled to only a 35%
13 proportion of all real property located in Upton County, Texas, including the income
14 generated from gas, oil, and mineral leases relating to such Upton County, Texas real
15 property; and
16

17 (b) JACQUELINE M. MONTOYA, in her capacities as a beneficiary and
18 as the trustee of "MTC Living Trust" dated December 6, 1995, and in her capacity as
19 a beneficiary of the power of appointment exercised by Marjorie T. Connell over
20 Trust No. 3 of the "The W.N. Connell and Marjorie T. Connell Living Trust", dated
21 May 18, 1972, and KATHRYN A. BOUVIER, in her capacity as a beneficiary of the
22 "MTC Living Trust" dated December 6, 1995, and in her capacity as a beneficiary of
23 the power of appointment exercised by Marjorie T. Connell over Trust No. 3 of the
24 "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, are
25 entitled to a 65% proportionate share of all income generated from gas, oil, and
26
27
28

1 mineral leases relating to Upton County, Texas real property.

2 F.2 Granting such other and further relief as the Court shall deem appropriate.

3
4 Respectfully submitted,

5 THE RUSHFORTH FIRM, LTD.

6
7
8 

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10 _____
11 JOSEPH J. POWELL
12 State Bar No. 8875

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

Exhibit “A”

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 portion 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

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.

W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

On May 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.

NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY

JUNE A. GAVIN
My Commission Expires May 2, 1975

Exhibit “B”

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.

June A. Davis
Notary Public in and for said
County and State

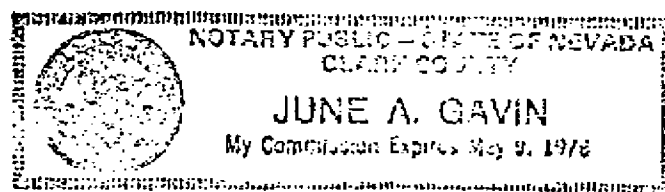


Exhibit “C”

1249 1208700
SUBSTITUTION OF TRUSTEE

1 MARJORIE T. CONNELL, surviving Trustee of the W. N.
2 CONNELL AND MARJORIE T. CONNELL LIVING TRUST, made and en-
3 tered into on May 18, 1972, by and between W. N. CONNELL
4 and MARJORIE T. CONNELL, as Grantors, and W. N. CONNELL and
5 MARJORIE T. CONNELL, as Trustee, hereby substitutes and
6 appoints ELEANOR MARGUERITE CONNELL HARTMAN, daughter of
7 W. N. CONNELL, as Co-Trustee of the separate property of
8 W. N. CONNELL presently held in the above-entitled Trust.
9 This substitution is made pursuant to the terms of said Trust.
10 due to the decease of W. N. CONNELL, who passed away Novem-
11 ber 24, 1979.

12
13 Marjorie T. Connell
14 MARJORIE T. CONNELL

15 The undersigned, ELEANOR MARGUERITE CONNELL HARTMAN, also
16 known as ELEANOR C. HARTMAN, hereby consents to serve as Co-
17 Trustee of the separate property of W. N. CONNELL in the above-
18 entitled Trust.

19 Dated this 6th day of May, 1980.

20
21 Eleanor Marguerite Connell Hartman
22 ELEANOR MARGUERITE CONNELL HARTMAN
23 Eleanor C. Hartman

24 STATE OF NEVADA)
25 : ss
26 COUNTY OF CLARK)

27 On this 6th day of May, 1980, before me, the
28 undersigned, a Notary Public in and for said County and State,
29 duly commissioned and sworn, personally appeared MARJORIE T.
30 CONNELL, known to me to be the person whose name is subscribed
31 to the within instrument, and who acknowledged to me that she
32 executed the same freely and voluntarily and for the uses and
33 purposes therein mentioned.

STATE OF NEVADA)
COUNTY OF CLARK) ss

On this 6th day of May, 1980, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared ELEANOR MARQUERITE CONNELL HARTMAN, known to me to be the person whose name is subscribed to the within instrument, and who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Gina Di Marco
NOTARY PUBLIC



Notary Public - State of Nevada
CLARK COUNTY
Gina Di Marco
My Appointment Expires Mar. 2, 1982

CLARK COUNTY, NEVADA
JOAN L. GILBERT, CLERK
RECORDED & INDEXED

Morse - Foley
JUL 7 2 25 PM '80

DEPUTY
OFFICIAL RECORDS
BOOK - CERTIFICATE

Exhibit “D”

Date Received (Do not write in this space)

INHERITANCE TAX RETURN - NON-RESIDENT

Decedent's Name (First, Middle, Maiden, Last) William M. Connell		Date of Death November 24, 1979	T CODE <input checked="" type="checkbox"/> 90100 DEPOSIT CODE <input checked="" type="checkbox"/> 110 AMOUNT
Residence (Domicile) at Time of Death (City and State) Boulder City, Nevada		Year in which domicile was established. 1936	
Marital Status: <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Single <input type="checkbox"/> Legally Separated <input type="checkbox"/> Widow/Widower			
If Married, Date of Marriage: June 2, 1942		Number of Children: one	Number of Children Surviving: one
Did the decedent, at any time during life, make any transfer of property within Texas in which any beneficial interest was retained? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Did the decedent, within three years immediately prior to death, make any transfer of property within Texas without an adequate and full consideration? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
Did the decedent die testate? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If "YES" attach copy of will. If "NO" attach an affidavit of heirship.		Were letters testamentary or of administration granted for this estate? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
To whom granted? (Designate "Executor," "Executrix," "Administrator," or "Administratrix")			
NAME	DESIGNATION	ADDRESS (Street & No., City, State, Zip Code)	
Name of Court		Location of Court	
Have ancillary probate proceedings been applied for and granted? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		County in Texas	
Name of ancillary administrator or executor			
Address			

INHERITANCE TAX DUE

PART I Basic inheritance tax (From Schedule B) <div style="border: 1px solid black; padding: 5px; width: 150px; margin: 0 auto;">\$ -00-</div>		PART II Federal credit for state death tax (From Schedule C) <div style="border: 1px solid black; padding: 5px; width: 150px; margin: 0 auto;">\$ 515.00</div>	
TAX DUE (PART I OR PART II, WHICHEVER IS GREATER) <div style="border: 1px solid black; padding: 5px; width: 150px; margin: 0 auto;">\$ 515.00</div>			

I declare that this return and any accompanying statements are true, correct and complete to the best of my knowledge. I understand that this return is subject to the fraudulent report provisions of TEX. TAX-GEN. ANN. art. 1.12 (1969).

Name of Preparer Darrel Knight Assoc., Inc.-PC	Phone (Area Code & No.) 915 695-2370	Name of Executor, Administrator, Heir at Law Marjorie Connell, Executrix	Phone (Area Code & No.) 702 293-5391
Address (Street & No., City, State, Zip Code) 301 S. Pioneer, #102, Abilene, TX 79605		Address (Street & No., City, State, Zip Code) P O Box 710, Las Vegas, Nevada 89101	
sign here <i>Darrel Knight</i>	Date 12-16-80	sign here <i>Marjorie Connell</i>	Date 12-16-80

PLEASE NOTE: RETURN MUST BE SIGNED BY PERSONAL REPRESENTATIVE OF ESTATE AND PERSON PREPARING RETURN. A COPY OF DECEDENT'S WILL OR AFFIDAVIT OF HEIRSHIP MUST BE ATTACHED.

For assistance call Area Code 512 475-3603 or TOLL FREE from anywhere in Texas 1-800-252-5555, Ext. 119, 120 or 121	MAIL TO: BOB BULLOCK COMPTROLLER OF PUBLIC ACCOUNTS INHERITANCE TAX DIVISION CAPITOL STATION AUSTIN, TEXAS 78774
---	--

20

(June, 1975)

STATE OF TEXAS

Copy

APPLICATION FOR EXTENSION OF TIME TO FILE INHERITANCE TAX RETURN AND/OR PAY INHERITANCE TAX
(Articles 14.14(C) and/or 14.16(A) and (B) of Title 122A, Chapter 14, Revised Civil Statutes, 1925)

PART I - IDENTIFICATION

Name and Mailing Address of Application Preparer Darrel Knight Associates, Inc. - P.C. 301 South Pioneer, Suite 102 Abilene, Texas 79605		Inheritance Tax Return Due Date August 24, 1980
		Decedent's County of Residence - or County of Probate Proceedings Clark County
		Decedent's Social Security Number 530-05-6631
Decedent's First Name and Middle Initial William N.	Decedent's Last Name Connell, Jr.	Date of Death Nov. 24, 1979

PART II - EXTENSION OF TIME TO FILE (Art. 14.14(C))

Extension Date Requested
Feb. 24, 1981

Reasons (state in detail):

The federal estate return is being prepared by a CPA in Nevada. He has not received all the information he needs to complete form 706 at this time. I am unable to complete the Texas return until I receive form 706 from Nevada.

PART III - EXTENSION OF TIME TO PAY (Art. 14.16 (A) and (B))

Extension Date Requested

Reasons (state in detail):

Amount of estimated Inheritance Tax Due

-0-

Amount of Cash Shortage Claimed

BALANCE DUE (Pay with this Application)

-0-

PART IV - SIGNATURE AND VERIFICATION

If prepared by Executor, Administrator or Person in Possession of Property. - Under penalties of Section 37.10, Title 8, Texas Penal Code, I declare that to the best of my knowledge and belief, the statements made herein are true and correct.

(Signature of executor, administrator or person in possession of property)

(Title)

(Date)

If prepared by Someone Other Than Executor, Administrator or Person in Possession of Property. - Under penalties of Section 37.10, Title 8, Texas Penal Code, I declare that to the best of my knowledge and belief, the statements made herein are true and correct, that I am authorized by the executor, administrator or person in possession of property to prepare this application and that I am:

- ☐ A member in good standing of the bar of the highest court of (specify jurisdiction) _____
- ☒ A certified public accountant duly qualified to practice in (specify jurisdiction) State of Texas
- ☐ A personal representative (as defined in Article 14.00A(c), Taxation-General, Revised Civil Statutes of Texas) other than above.

Explain

[Signature], CPA
(Signature of preparer other than executor, administrator or person in possession of property)

8-22-80
(Date)

PART V - NOTICE TO APPLICANT - TO BE COMPLETED BY INHERITANCE TAX DIVISION

1. The Application For Extension of Time to File (Part II) is:

- ☒ Approved until February 24, 1981
- ☐ Not approved because _____

☐ Other _____

2. The Application For Extension of Time to Pay (Part III) is:

- ☐ Approved
- ☐ Not approved because _____

☒ Other not requested

Director

[Signature]

Date August 28, 1980

SCHEDULE A

C. J.

PROPERTY SUBJECT TO TEXAS INHERITANCE TAX

Did the decedent at the time of death own an interest in real estate or minerals located within the State of Texas?
☒ Yes ☐ No If "Yes," list below.

Did the decedent at the time of death own an interest in any tangible personal property such as livestock, farm and ranching equipment, grain in storage, growing crops, all equipment used in connection with the drilling and producing of subsurface crude oil, gas or other minerals and any other tangible property having an actual situs in the State of Texas? ☐ Yes ☒ No If "Yes," list below.

All assets listed below must be clearly described and identified. If valuations are based upon appraisals, copies of such appraisals should accompany the return. If a formal appraisal of oil and gas leases and royalties is not made, a five-year payout based on the last twelve months prior to death will be used in determining the value of such mineral interest.

ALTERNATE VALUATION

An election to have the gross estate of the decedent valued as of the alternate date or dates is made by entering a check mark in the box set forth below:

- ☐ The executor elects to have the gross estate of the decedent valued in accordance with values as of a date or dates subsequent to the decedent's death as authorized under TEX. TAX. GEN. ANN. art. 14.11 (Supp. 1976).

ITEM NO.	DESCRIPTION	SUBSEQUENT VALUATION DATE	ALTERNATE VALUE	VALUE AT DATE OF DEATH
1	2,301 acres, pasture land, out of Block 39, T-5-S, Sections 38,47,48, W $\frac{1}{2}$ 37, Upton County, Texas. Separate property of decedent.		\$	\$ 80,535.
2	Mineral rights, Upton County, Texas, $\frac{1}{4}$ interest in Dora Connell Estate. Separate property of decedent. Valued on a 5-year payout based on payments received 12 months prior to date of death.			32,677.
TOTAL (Also enter under Schedule C, Page 4)			\$	\$ 113,212.

SCHEDULE B

COMPUTATION OF BASIC INHERITANCE TAX

- List all beneficiaries under the will of the decedent (including charitable bequests) or under the laws of intestacy who take any share of the estate.
- If beneficiaries do not share the estate equally, attach a copy of the distribution indicating the items and amounts distributed to each beneficiary.
- Attach a copy of the last will and testament or an affidavit of heirship if the decedent died intestate.
- If beneficiaries listed on the distribution schedule are not as specified in decedent's will, please explain (predeceased, disclaimed, etc.).

(1) Name and Address of Beneficiary	(2) Relationship of Beneficiary to Decedent	(3) Age of Beneficiary at date of death of Decedent	(4) Value of share of entire net estate wherever located (See Sch. B-3)	(5) Value of share of net Texas estate (See Sch. B-3)	(6) Tax at Texas rates on share of entire net estate (4). (See Tax Rate Schedule)	(7) Ratio of share of Texas net estate to share of entire net estate. (5)divided by (4)	(8) Texas Inheritance Tax (6) multiplied by (7)
Marjorie Connell P. O. Box 710 Boulder City, Nevada 89101	wife	60	\$ 69,704	-0-	\$ 197.04	-0-	\$ -0-
Eleanor M. Connell Hartman P. O. Box 710 Las Vegas, Nevada 89101	daughter	41	12,528	-0-	125.28	-0-	-0-
Robert Hartman P. O. Box 710 Las Vegas, Nevada 89101	son-in-law	43	-0-	-0-	-0-	-0-	-0-

TOTAL TEXAS INHERITANCE TAX-Col. 8 (TO BE CARRIED FORWARD TO PAGE 1, PART 1)

\$ -0-

(if more space is needed, insert additional sheets of same size)

SCHEDULE C

Copy

COMPUTATION OF PROPORTIONATE SHARE OF
FEDERAL CREDIT FOR STATE DEATH TAXHAS A FORM 706, U.S. ESTATE TAX RETURN BEEN FILED WITH THE INTERNAL REVENUE SERVICE? ☒ YES ☐ NO

The following information should be furnished from Form 706, U.S. Estate Tax Return, filed or to be filed on behalf of this estate with the Internal Revenue Service.

IF FORM 706 WAS NOT FILED, COMPLETE LINES 1 THROUGH 5 AND LINE 12

1. Value of property subject to Texas Inheritance Tax.	1. \$ 113,212	
2. Total value of all other property.	2. 180,023	
3. Total gross estate (lines 1 plus 2)-(Same as recapitulation p. 3, U.S. Estate Tax Return)		3. 293,235
4. Funeral, administration expenses, debts of decedent, mortgage and liens (Schedules J & K, U.S. Estate Tax Return)	4. 10,936	
5. Total value of net estate wherever located.		5. 282,299
6. Other deductions (Total of Schedules L, M, N and O, U.S. Estate Tax Return)	6. 76,688	
7. Total allowable deductions (Line 4 plus line 6) (Same as Recapitulation, page 3, U.S. Estate Tax Return)		7. 87,624
8. Taxable estate for Federal Estate Tax purposes. (Line 3 minus line 7) (Same as page one U.S. Estate Tax Return, line 3)		8. 205,611
9. Adjustment to compute State Death Tax.	9. 60,000.00	
10. Federal adjusted taxable estate (line 8 minus line 9).		10. 145,611
11. a) Excess of gross estate tax over unified credit. (from line 12, page 1, form 706)	11a 18,596	
b) Maximum Federal Credit for State Death Tax. (Computed on Table C, Form 706)	11b 1,335	
c) Allowable Federal Credit for State Death Tax. (line 11a or 11b, whichever is smaller)		11c 1,335
12. Percentage of Texas gross estate to total gross estate. (line 1 divided by line 3)	12. 38.61%	
13. Portion of Federal Credit for State Death Tax allocated to the State of Texas. (line 11c multiplied by line 12). TO BE CARRIED FORWARD TO PAGE 1, PART II		13. 515 \$

Copy

SCHEDULE B-1

William M. Connell Estate
Distribution of Net Estate Wherever Located
Supporting Schedule B-3

Net Taxable Estate Wherever Located \$282,299

Distribution to Marjorie Connell:

Las Vegas rental property (Sch. A, Item 3, Form 706)	\$37,500	
Stock and bonds (Sch. B, Form 706)	52,218	
Cash and First Trust Deeds (Sch. C, Form 706)	74,660	
Insurance proceeds (Sch. D, Form 706)	1,358	
Mobil home, furniture and automobiles (Sch. F, Items 3, 4, 5 and 6, Form 706)	11,250	
Marital bequest, 64.493% of 2,301 acres Upton Co., Texas land (Sch. A, Item 1, Form 706)	51,940	
Marital bequest, 64.493% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	21,074	
Distributive share of allowable deductions	(10,936)	(239,064)

Distribution to Eleanor M. Connell Hartman:

Diamond Shrine Riva (Sch. F, Item 1, Form 706)	2,750	
35.507% of 2,301 acres, Upton Co., Texas land (Sch. A, Item 1, Form 706)	28,595	
35.507% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	<u>11,603</u>	(42,948)

Distribution to Robert Hartman:

Gold Diamond Glycene wristwatch		<u>(287)</u>
---------------------------------	--	--------------

\$ -0-

Copy

SCHEDULE B-2

William M. Connell Estate
Distribution of Texas Estate
Supporting Schedule B-3

Net Texas Estate		\$113,212
------------------	--	-----------

Distribution to Marjorie Connell:

Marital bequest, 64.493% of 2,301 acres Upton County land (Sch. A, Item 1)	\$51,940	
Marital bequest, 64.493% of mineral rights, Upton County, Texas (Sch. A, Item 2)	<u>21,074</u>	(73,014)

Distribution to Eleanor M. Connell Hartman:

35.507% of 2,301 acres, Upton County land (Sch. A, Item 1)	28,595	
35.507% of mineral rights, Upton County, Texas (Sch. A, Item 2)	<u>11,603</u>	<u>(40,198)</u>

\$ -0-

SCHEDULE B-3


William M. Connell Estate
Determination of Value of Taxable Share
Supporting Schedule B, Columns 4 & 5

Beneficiary	(a) Value of share of entire net estate wherever located	(b) % of share received to total of all Class A shares	(c) Exemption	(d) Pro rata share of exemption (b) x (c)	(e) Value of taxable share (a) - (d)
Marjorie Connell	\$239,064	84.68%	\$200,000	\$169,360	\$ 69,704
Eleanor C. Hartman	42,948	15.21%	200,000	30,420	12,528
Robert Hartman	<u>287</u>	<u>.11%</u>	<u>200,000</u>	<u>25,000</u>	<u>-0-</u>
Totals	<u>\$282,299</u>	<u>100.00%</u>	<u>-</u>	<u>-</u>	<u>\$ 82,232</u>

Beneficiary	(a) Value of share of Texas net estate	(b) % of share received to total of all Class A shares	(c) Exemption	(d) Pro rata share of exemption (b) x (c)	(e) Value of taxable share (a) - (d)
Marjorie Connell	\$ 73,014	64.49%	\$200,000	\$128,980	-0-
Eleanor C. Hartman	40,198	35.51%	200,000	71,020	-0-
Robert Hartman	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Totals	<u>\$113,212</u>	<u>100.00%</u>	<u>-</u>	<u>\$200,000</u>	<u>-0-</u>

copy

Copy

MARJORIE CONNELL		242
P. O. BOX 710		
LAS VEGAS, NEVADA 89101		
		<u>Dec. 16 1980</u> 94-38/1224
Pay to the order of	<u>Bob Bullock</u>	\$ <u>515⁰⁰</u>
<u>Five Hundred Fifteen</u>		<u>00/100</u> Dollars
 SOUTH BOULEVARD OFFICE FIRST NATIONAL BANK OF NEVADA P. O. BOX 15188 LAS VEGAS, NEVADA 89114		
For <u>W.N. Connell-Inheritance Tax</u> <u>Marjorie Connell</u>		
SS# <u>330-05-6631</u>		
⑆1224⑆0038⑆069118⑆3961⑆		

ROCKY MOUNTAIN BANKNOTE CO.

Exhibit “E”

COPY

Last Will and Testament of MARJORIE T. CONNELL

The original of this LAST Will
located in the office of DAVID A. STOKES
900 Rancho Lane Las Vegas, NV 89101
702-474-4500

I, MARJORIE T. CONNELL, also known as MARJORIE THRASH CONNELL, a resident of Clark County, Nevada, revoke any prior wills and codicils made by me and declare this to be my Last Will and Testament.

Article One Family Information

I am unmarried.

I have one step-child, ELEANOR C. HARTMAN AHERN, born on May 13, 1938.

Article Two Distribution of My Property

Section 2.01 Pour-Over to My Living Trust

All of my probate estate, excluding any property over which I might have a power of appointment, and after payment of expenses and taxes which are paid pursuant to this will, I give to the then acting Trustee of the MTC LIVING TRUST dated December 6, 1995 as restated on January 7, 2008 and executed prior to this will, to be added to the property of that trust. I direct that the Trustee administer the property as provided in the trust agreement and any amendments prior to my death.

Section 2.02 Alternate Disposition

If the trust referred to in Section 2.01 is not in effect at my death or if for any other reason the pour-over cannot be accomplished, I specifically and completely incorporate the terms of the trust into this will by reference. In such a situation, I direct my Personal Representative to establish a trust in accordance with the provisions of such trust and give the remainder of my estate, excluding any property over which I might have a power of

appointment, to the Trustee of said trust to be administered as provided in the trust agreement.

Article Three

Designation and Succession of Fiduciaries

Section 3.01 Personal Representative

I nominate JACQUELINE MARGUERITE MONTOYA as my Personal Representative. If JACQUELINE MARGUERITE MONTOYA fails or ceases to act as my Personal Representative, I nominate KATHRYN ANN BOUVIER as my successor Personal Representative.

Article Four

Exercise of Power of Appointment

Section 4.01 Exercise of Power of Appointment Granted by WILLIAM N. CONNELL

In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted a testamentary power of appointment. I hereby exercise that power of appointment and appoint the entire principal and the undistributed income in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and KATHRYN ANNE BOUVIER to be distributed in trust in accordance with the provisions of the MTC LIVING TRUST dated December 6, 1995, as restated on January 7, 2008.

Article Five

Powers of Fiduciaries

Section 5.01 Grant

My Personal Representative may perform every act reasonably necessary to administer my estate and any trust established under my will.

Specifically, my Personal Representative may exercise the following powers: hold, retain, invest, reinvest, sell, and manage real or personal property, including interests in any form of business entity including, but not limited to, limited partnerships and limited liability companies, and policies of life, health and disability insurance, without diversification as to kind, amount or risk of non-productivity and without limitation by statute or rule of law. My Personal Representative may partition, sell, exchange, grant, convey, deliver, assign, transfer, lease, option, mortgage, pledge, abandon, borrow, loan and contract. My Personal Representative may distribute the assets of my estate in cash or kind or partly in each at fair market value on the date of distribution, without requiring pro rata distribution of specific assets and without requiring pro rata allocation of the tax bases of such assets. My Personal Representative may hold in nominee form, continue businesses, carry out agreements and deal with itself, other fiduciaries and business organizations in which my Personal Representative may have an interest. It may establish reserves; release powers, and abandon, settle or contest claims. It may employ attorneys, accountants, custodians of the trust assets, and other agents or assistants as deemed advisable to act with or without discretionary powers and compensate them and pay their expenses from income or principal or both.

Section 5.02 Powers Granted by State Law

In addition to all of the above powers, my Personal Representative may, without prior authority from any court, exercise all powers conferred by my will or by common law or by the Nevada Revised Statutes or other statute of the State of Nevada or any other jurisdiction whose law applies to my will. My Personal Representative shall have absolute discretion in exercising these powers. Except as specifically limited by my will, these powers shall extend to all property held by my fiduciaries until the actual distribution of the property.

Section 5.03 Distribution Alternatives

My Personal Representative may make any payments under my will:

Directly to the beneficiary;

In any form allowed by applicable state law for gifts or transfers to minors or persons under disability;

To the beneficiary's guardian, conservator or caregiver for the benefit of the beneficiary; or

By direct payment of the beneficiary's expenses.

A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of my fiduciaries' duties hereunder, shall fully discharge my fiduciaries.

Article Six

Administrative Provisions

Section 6.01 Court Proceedings

If any trust is established under my will that trust shall be administered in a timely and efficient manner consistent with its terms, free of active judicial intervention and without order, approval or other action by any court. It shall be subject only to the jurisdiction of a court being invoked by the trustees or other interested parties or as otherwise provided by law.

Section 6.02 No Bond

I direct that no fiduciary shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute, or rule of court, no sureties be required.

Section 6.03 Compensation

Any fiduciary under this instrument shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

Section 6.04 Ancillary Fiduciary

In the event ancillary administration shall be required or desired and my domiciliary Personal Representative is unable or unwilling to act as an ancillary fiduciary, my domiciliary Personal Representative shall have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may either be a natural person or a corporation. My domiciliary Personal Representative may delegate to such ancillary fiduciary such powers granted to my original Personal Representative as my Personal Representative may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate shall be paid over to the domiciliary Personal Representative.

Article Seven

Taxes, Claims and Expenses

Section 7.01 Payment of Death Taxes, Claims and Expenses

The Trustee of the trust referred to in this will is authorized to pay my funeral and burial expenses, claims against my estate, and expenses of estate administration. Accordingly, I direct my Personal Representative to consult with the Trustee to determine which such expenses and claims should be paid by my personal representative from property passing under my will, and which such expenses and claims should be paid by the trustee from the trust.

I direct my Personal Representative to follow any instructions contained in the MTC LIVING TRUST in making any tax election, including, but not limited to, the allocation of my GST Exemption. I direct that the taxes imposed by reason of my death upon property passing under and outside my will be apportioned and paid in the manner provided in the MTC LIVING TRUST, and I incorporate the tax apportionment provisions of the MTC LIVING TRUST as part of my will.

In no event shall any of such taxes be allocated to or paid from property which is not included in my gross estate for federal estate tax purposes or which qualifies for the federal estate tax charitable deduction.

Section 7.02 Tax and Administrative Elections

My Personal Representative may exercise any available elections under any applicable income, inheritance, estate, succession, or gift tax law. This authority specifically includes the power to select any alternate valuation date for death tax purposes and the power to determine whether any or all of the administration expenses of my estate are to be used as estate tax deductions or as income tax deductions, and no compensating adjustments need be made between income and principal as a result of such determinations unless my Personal Representative shall determine otherwise, in the discretion of my Personal Representative, or unless required by law.

My Personal Representative shall not be liable to any beneficiary of my estate for tax consequences occasioned by reason of the exercise or non-exercise of any such elections or by reason of the allocation and distribution of property in kind in full or partial satisfaction of any beneficiary's interest in my estate.

Article Eight General Provisions

Section 8.01 Applicable Law

The validity and construction of my will shall be determined by the laws of Nevada.

Section 8.02 No Contract to Make Will

I have not entered into any contract, actual or implied, to make a will.

Section 8.03 Contest Provision

If any beneficiary of this will or any trust created under this will, alone or in conjunction with any other person undertakes or participates in any one or more of the actions listed below, then the right of such beneficiary to take any interest given to such beneficiary under this will or any trust created pursuant to this will shall be determined as it would have been determined had such 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 Will, (b) any trust created under the terms of this Will, (c) any other trust created by me, and any trusts created under those agreements, or (d) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan or insurance policy signed by or created by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document;

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;

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;

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;

Claims ownership in a court proceeding to any asset held by me in joint tenancy, other than as a surviving joint tenant;

Files a petition to determine domestic partnership property as my cohabitant or as my Spouse;

Files a petition for probate homestead in a probate proceeding of my estate without the prior written consent of the Personal Representative designated in this Will;

Files a petition for family allowance in a probate of my estate without the prior written consent of the Personal Representative designated in this Will;

Files a petition to impose a constructive trust or resulting trust on any assets of my estate, if any; or

Participates in any of the above actions in a manner adverse to my estate, such as conspiring with or assisting any person who takes any of the above actions.

My Personal Representative is hereby authorized to defend, at the expense of my estate, any violation of this paragraph. 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.

This Section shall not apply so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax charitable deduction.

Section 8.04 Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural. Words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender, if appropriate.

Section 8.05 Headings and Titles

The headings and paragraph titles are for reference only.

Section 8.06 Internal Revenue Code, IRC or Code

References to the Internal Revenue Code, the IRC or the Code shall refer to the Internal Revenue Code of the United States. References to specific sections of the Code shall be to any sections of like or similar import that replace the specific sections as a result of changes to the Internal Revenue Code made after the date of my will.

Section 8.07 Other Definitions

Except as otherwise provided in my will, terms shall be as defined in the Nevada Revised Statutes as amended after the date of my will and after my death.

Section 8.08 Survivorship

For purposes of this will, any beneficiary shall be deemed to have predeceased me if such beneficiary dies within 90 days after the date of my death.

Section 8.09 Severability

If any part of this instrument shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

I, MARJORIE T. CONNELL, sign my name to this instrument consisting of 9 pages on January 7, 2008 and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.


MARJORIE T. CONNELL, Testatrix

Then and there personally appeared the within-named Sharon A. Brown and Josefina C. Jones, who, being duly sworn, depose and say under the penalty of perjury: That they witnessed the execution of the within Will of the within-named Testatrix, MARJORIE T. CONNELL, that the Testatrix subscribed the Will and declared the same to be her Last Will and Testament in their presence; that they thereafter subscribed their names as witnesses in the presence of the Testatrix and in the presence of each other and at the request of the Testatrix; that the Testatrix at the time of the execution of the Will appeared to them to be of full age and of sound mind and memory, and that they make this affidavit at the request of the Testatrix.



Sharon A. Brown, Witness
900 Rancho Lane
Las Vegas, NV 89106



Josefina C. Jones, Witness
900 Rancho Lane
Las Vegas, NV 89106

Exhibit “F”

Law Offices of
DAVID A. STRAUS
A LIMITED-LIABILITY COMPANY
NEVADA'S ESTATE PLANNING LAW FIRM

900 Rancho Lane,
Las Vegas, NV 89106
Telephone (702) 474-4500
Facsimile (702) 474-4510

VIA CERTIFIED MAIL

May 21, 2009

Eleanor C. Ahern, Trustee
6105 Elton Avenue
Las Vegas, NV 89107

Re: Estate of Marjorie Connell

Dear Ellie:

Enclosed, please find a certified copy of the Last Will and Testament of Marjorie Connell. This letter shall serve as your notice that Ms. Connell exercised her power of appointment in Article Four, Section 4.01 of her Last Will and Testament wherein she appointed that upon her death the entire principal and the undistributed income in Trust No. 3 of the W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972 be distributed to Jacqueline Montoya and Kathryn Anne Bouvier in trust in accordance with the provisions of the MTC Living Trust dated December 6, 1995 as last restated on January 7, 2008.

As you are the Successor Trustee of the W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972, I would suggest that you contact an attorney to assist you in administering the trust or our offices would be happy to assist.

In the interim, should you have any questions and/or comments, please do not hesitate to contact me personally.

Very truly yours,



DAVID A. STRAUS, ESQ.

DAS:pf

Enclosure

cc: Jacqueline Montoya
Kathryn Bouvier

Exhibit “G”

**THE MTC LIVING TRUST
DATED DECEMBER 6, 1995**

Restatement dated January 7, 2008

LAW OFFICES
LAW OFFICES OF DAVID A. STRAUS
A PROFESSIONAL CORPORATION
900 RANCHO LANE
LAS VEGAS, NEVADA 89106
(702) 474-4500

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The MTC LIVING TRUST

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The MTC LIVING TRUST

Article One Establishing My Trust

On December 6, 1995, I established the MTC LIVING TRUST, wherein I reserved the right to amend the trust agreement, in whole or in part in Article Four, Section 1(d). On this day, January 7, 2008, I now exercise my power to amend that agreement, in its entirety, so that after amendment, the MTC LIVING TRUST states as follows:

The parties to this restated agreement are MARJORIE T. CONNELL, also known as MARJORIE THRASH CONNELL, (the "Trustmaker") and MARJORIE T. CONNELL (my "Trustee").

Section 1.01 Identifying My Trust

My trust may be referred to as "MARJORIE T. CONNELL, Sole Trustee, or her successors in trust under the MTC LIVING TRUST dated December 6, 1995, and any amendments thereto."

For the purpose of transferring property to my trust, or identifying my trust in any beneficiary or pay-on-death designation, any description referring to my trust shall be effective if it reasonably identifies my trust and indicates that the trust property is held in a fiduciary capacity.

Section 1.02 Reliance by Third Parties on Affidavit or Certification of Trust

From time to time, third parties may require documentation to verify the existence of this agreement, or particular provisions of it, such as the name or names of my Trustee or the powers held by my Trustee. To protect the confidentiality of this agreement, my Trustee may use an affidavit or a certification of trust that identifies my Trustee and sets forth the authority of my Trustee to transact business on behalf of my trust. The affidavit or certification may include pertinent pages from this agreement, such as title or signature pages.

A third party may rely upon an affidavit or certification of trust that is signed by my Trustee with respect to the representations contained in the affidavit or certification of trust. A third party relying upon an affidavit or certification of trust shall be exonerated from any liability for actions the third party takes or fails to take in reliance upon the representations contained in the affidavit or certification of trust. A third party dealing with my Trustee shall not be required to inquire into the terms of this agreement or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.

Section 1.03 Transferring Property to My Trust

Any person or entity may transfer property of any kind, nature and description to my trust in any manner authorized by law.

(a) Funding of My Trust

By execution of this agreement, I transfer, convey and assign to my Trustee and my Trustee accepts and agrees to hold, the property described in Schedule A, annexed hereto, together with all my right, title and interest in and to all of my property that may by law be held in trust and that may, by this assignment, be transferred to my trust. In addition, any assets already in the name of my trust shall be controlled by this agreement. This assignment shall include, without limitation, all real and personal, tangible and intangible property, located in the United States, whether separate or community, whether acquired before or after the execution of this agreement except for the following assets that are expressly not transferred to my trust by this assignment:

Life insurance policies, unless the ownership of a policy is transferred to my trust by a separate instrument that specifically refers to such policy;

Corporate and self-employed ("Keogh") pension, profit sharing and stock bonus plans;

Qualified retirement plans;

Commercial annuities;

Any property, the transfer of which would result in the immediate recognition of income subject to income or other taxes or the transfer of which would result in the loss of a homestead exemption or violate a restriction on transfer agreement.

(b) Acceptance by My Trustee

By execution of this agreement, my Trustee accepts and agrees to hold the trust property described on Schedule A, along with all other property initially transferred to it by virtue of subsection (a). All property transferred to my trust after the date of this agreement must be acceptable to my Trustee. My Trustee may refuse to accept any property. My Trustee shall hold, administer and dispose of all trust property accepted by my Trustee for my benefit and the benefit of my beneficiaries in accordance with the terms of this agreement.

Section 1.04 Powers Reserved by Me as Trustmaker

During my lifetime, I shall retain the powers set forth in this Section in addition to any powers that I reserve in other provisions of this agreement.

(a) Action on Behalf of My Trust

During any period that I am serving as a Trustee of my trust, I may act for and conduct business on behalf of my trust without the consent of any other Trustee.

(b) Amendment, Restatement or Revocation

I have the absolute right, at any time and from time to time, to amend, restate, or revoke any term or provision of this agreement in whole or in part. Any amendment, restatement, or revocation must be in a written instrument signed by me.

(c) Addition or Removal of Trust Property

I have the absolute right, at any time and from time to time, to add to the trust property and to remove any property from my trust.

(d) Control of Income and Principal Distributions

I have the absolute right to control the distribution of income and principal from my trust. My Trustee shall distribute to me, or to such persons or entities as I may direct, as much of the net income and principal of the trust property as I deem advisable. My Trustee may distribute trust income and principal to me or for my unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed income shall be added to the principal of my trust.

(e) Approval of Investment Decisions

I reserve the absolute right to review and change my Trustee's investment decisions; however, my Trustee shall not be required to seek my approval before making investment decisions.

Section 1.05 Grantor Trust Status

By reserving the broad rights and powers set forth in Section 1.04 of this Article, I intend to qualify my trust as a "Grantor Trust" under Sections 671 to 677 of the Internal Revenue Code so that, for federal income tax purposes, I will be treated as the owner during my lifetime of all the assets held in my trust as though I held them in my individual capacity.

During any period that my trust is a Grantor Trust, the taxpayer identification number of my trust shall be my social security number, in accordance with Treasury Regulation Section 301.6109-1(a)(2).

Article Two Family Information

I am unmarried.

I have one child ELEANOR C. HARTMAN AHERN, born on May 13, 1938.

I have also made provision for the following individuals in this agreement:

Name	Relationship
JACQUELINE MARGUERITE MONTOYA	Granddaughter
KATHRYN ANN BOUVIER	Granddaughter

Article Three

Trustee Succession Provisions

Section 3.01 Resignation of a Trustee

A Trustee may resign by giving notice to me. If I am deceased, a resigning Trustee shall give notice to the income beneficiaries of the trust and to any other Trustee then serving.

Section 3.02 Trustee Succession During My Lifetime

During my lifetime, this Section shall govern the removal and replacement of my Trustees.

(a) Removal and Replacement by Me

I may remove any Trustee with or without cause at any time. If a Trustee is removed, resigns or cannot continue to serve for any reason, I may serve as sole Trustee, appoint a Trustee to serve with me or appoint a successor Trustee.

(b) During My Incapacity

During any time that I am incapacitated, the following, in the order named, shall replace any then serving Trustee:

First, JACQUELINE MARGUERITE MONTOYA; and
then

Second, KATHRYN ANN BOUVIER

If I am incapacitated, a Trustee may be removed only for cause, which removal must be approved by a court of competent jurisdiction upon the petition of an interested party.

All appointments, removals and revocations shall be by signed written instrument.

Notice of removal shall be delivered to the Trustee being removed and shall be effective in accordance with the provisions of the notice.

Notice of appointment shall be delivered to and accepted by the successor Trustee and shall become effective at that time. A copy of the notice shall be attached to this agreement.

Section 3.03 Trustee Succession After My Death

After my death, this Section shall govern the removal and replacement of my Trustees.

(a) Successor Trustee

Upon my death, the following, in the order named, shall serve as my successor Trustee, replacing any then serving Trustee:

First, JACQUELINE MARGUERITE MONTOYA; and
then

Second, KATHRYN ANN BOUVIER

(b) Trustees of the Separate Trusts

The primary beneficiary of a separate trust created under this agreement may, upon attaining the age of 21, appoint himself or herself as a Cotrustee of his or her separate trust to serve with the then serving successor Trustee. Upon attaining the age of 25, the primary beneficiary may serve as sole trustee.

At any time a beneficiary is serving as a Trustee of his or her trust before attaining the age of 25, there must be at least one other Trustee serving with the beneficiary. If a Trustee vacancy occurs and no designated successor Trustee is available to serve, the vacancy shall be filled as provided in subsection (d) of this Section.

If the interest of a beneficiary will be merged into a life estate or an estate for years because the beneficiary is serving as sole Trustee, the beneficiary shall appoint a Cotrustee to avoid such merger. Similarly, if the interest of a beneficiary becomes, or is likely to become, subject to the claims of any creditor or to legal process as a result of serving as sole Trustee the beneficiary shall appoint an Independent Trustee to serve as Cotrustee.

(c) Removal of a Trustee

A Trustee may be removed only for cause, which removal must be approved by a court of competent jurisdiction upon the petition of any beneficiary.

In no event shall the court petitioned to approve the removal of a Trustee acquire any jurisdiction over the trust except to the extent necessary to approve or disapprove removal of a Trustee.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

(d) Default of Designation

If the office of Trustee of a trust created under this agreement is vacant and no designated successor Trustee is able and willing to act as Trustee, the primary beneficiary of the trust shall appoint an individual or corporate fiduciary as successor Trustee.

Any beneficiary may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy remaining unfilled after a period of 30 days. By making such appointment, the court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making the appointment.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

Section 3.04 Notice of Removal and Appointment

Notice of removal shall be in writing and shall be delivered to the Trustee being removed, along with any other Trustees then serving. The notice of removal shall be effective in accordance with its provisions.

Notice of appointment shall be in writing and shall be delivered to the successor Trustee and any other Trustees then serving. The appointment shall become effective at the time of acceptance by the successor Trustee. A copy of the notice shall be attached to this agreement.

Section 3.05 Appointment of a Cotrustee

Any individual Trustee may appoint an individual or a corporate fiduciary as a Cotrustee. A Cotrustee so named shall serve only as long as the Trustee who appointed such Cotrustee serves (or, if such Cotrustee was named by more than one Trustee acting together, by the last to serve of such Trustees), and such Cotrustee shall not become a successor Trustee upon the death, resignation, or incapacity of the Trustee who appointed such Cotrustee, unless so appointed under the terms of this agreement. Although such Cotrustee may exercise all the powers of the appointing Trustee, the combined powers of such Cotrustee and the appointing Trustee shall not exceed the powers of the appointing Trustee alone. The Trustee appointing a Cotrustee may revoke the appointment at any time with or without cause.

Section 3.06 Corporate Fiduciaries

Any corporate fiduciary serving under this agreement as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal and state law and that is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

Such corporate fiduciary shall:

- Have a combined capital and surplus of at least Five Million Dollars; or

- Maintain in force a policy of insurance with policy limits of not less than Five Million Dollars covering the errors and omissions of my Trustee with a solvent insurance carrier licensed to do business in the state in which my Trustee has its corporate headquarters.

Section 3.07 Incapacity of a Trustee

If any individual Trustee becomes incapacitated, it shall not be necessary for the incapacitated Trustee to resign as Trustee. For Trustees other than me, a written declaration of incapacity by the Cotrustee, if any, or, if none, by the party designated to succeed the incapacitated Trustee, if made in good faith and if supported by a written opinion of incapacity by a physician who has examined the incapacitated Trustee, will terminate the trusteeship.

Section 3.08 Appointment of Independent Special Trustee

If for any reason the Trustee of any trust created under this agreement is unwilling or unable to act with respect to any trust property or any provision of this agreement, the Trustee shall appoint, in writing, a corporate fiduciary or an individual to serve as an Independent Special Trustee as to such property or with respect to such provision. The Independent Special Trustee appointed shall not be related or subordinate to any beneficiary of the trust within the meaning of Section 672(c) of the Internal Revenue Code.

An Independent Special Trustee shall exercise all fiduciary powers granted by this agreement unless expressly limited elsewhere in this agreement or by the Trustee in the instrument appointing the Independent Special Trustee. An Independent Special Trustee may resign at any time by delivering written notice of resignation to the Trustee. Notice of resignation shall be effective in accordance with the terms of the notice.

Section 3.09 Rights and Obligations of Successor Trustees

Each successor Trustee serving under this agreement, whether corporate or individual, shall have all of the title, rights, powers and privileges granted to the initial Trustee named under this agreement. In addition, each successor Trustee shall be subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to the initial Trustee named under this agreement.

Article Four

Administration of My Trust During My Incapacity

Section 4.01 Definition of My Incapacity

I shall be considered incapacitated during any time that, because of age, illness, mental disorders, dependence on prescription medications or other substances, or any other cause, I am unable to effectively manage my property or financial affairs.

Section 4.02 Determination of My Incapacity

For purposes of this agreement, I am incapacitated if I am determined to be so under any one of the following subsections.

(a) Determination by Physicians

I shall be deemed incapacitated if in the opinion of two licensed physicians my then existing circumstances fall within the definition of incapacity as provided in Section 4.01.

I shall be deemed restored to capacity if my personal or attending physician signs a written opinion that I can manage my property and financial affairs.

(b) Court Determination

I shall be deemed incapacitated if a court of competent jurisdiction determines that I am legally incapacitated, incompetent, or otherwise unable to effectively manage my property or financial affairs.

(c) Detention or Disappearance

I shall be deemed incapacitated if I cannot effectively manage my property or financial affairs due to my unexplained disappearance or absence for more than 30 days, or if I am detained under duress. My disappearance, absence, or detention under duress may be established by an affidavit of my Trustee, or, if no Trustee is serving under this agreement, by the affidavit of any beneficiary under this agreement. The affidavit shall describe the circumstances of my disappearance, absence, or detention under duress. A third party dealing with my Trustee in good faith may always rely on the representations contained in the affidavit.

Section 4.03 Trust Distributions During My Incapacity

During any period of time that I am incapacitated, my Trustee shall administer my trust and distribute its net income and principal as provided in this Section.

(a) Distributions for My Benefit

My Trustee shall regularly and conscientiously make appropriate distributions of trust income and principal for my general welfare and

comfort under the circumstances existing at the time such distributions are made.

Distributions under this subsection shall include payments for any of my enforceable legal obligations. My Trustee may also make distributions for the payment of insurance premiums for insurance policies owned by me or by my trust, including but not limited to, life, medical, disability, property and casualty, errors and omissions and long-term health care insurance policies.

My Trustee is authorized to honor pledges and continue to make gifts to charitable organizations that I have regularly supported in the amounts I have customarily given.

The examples included in this subsection are for purposes of illustration only and are not intended to limit the authority of my Trustee to make distributions for my benefit that my Trustee determines to be appropriate.

(b) Manner of Making Distributions

My Trustee may make distributions for my benefit in any one or more of the following ways:

To me, but only to the extent I am able to manage such distributions;

To other persons and entities for my use and benefit;

To my agent or attorney-in-fact authorized to act for me under a legally valid durable power of attorney executed by me prior to my incapacity;

To my guardian or conservator who has assumed responsibility for me under any court order, decree or judgment issued by a court of competent jurisdiction.

(c) Distributions for the Benefit of Persons Dependent on Me

My Trustee also may distribute as much of the net income and principal as my Trustee deems necessary for the health, education, maintenance or support of persons that my Trustee determines to be dependent on me for support.

(d) Guidance for My Trustee Regarding Distributions

In making distributions under subsections (a) and (c), my Trustee shall give consideration first to my needs, and then to the needs of those persons dependent on me.

When making distributions under subsections (a) and (c), I request, but do not require, that my Trustee, in its sole and absolute discretion, consider other income and resources available to the beneficiaries. My Trustee

may make unequal distributions, distributions to some but not all beneficiaries or no distributions.

A distribution made to a beneficiary under this Section shall not be considered an advance and shall not be charged against the share of the beneficiary that may be distributable under any other provision of this agreement.

Section 4.04 Appointment of the Trustmaker's "HIPAA" "Personal Representative"

a. Provisions of the Act Regarding Personal Representatives.

Pursuant to 45 CFR 164.502(g)(1), promulgated under the Health Insurance Portability and Accountability Act of 1996 (the Act), any entity covered by the Act must treat the Personal Representative of an individual as follows:

"(g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter." (emphasis supplied) (Neither of paragraphs (g)(3) nor (g)(5) apply in this situation.)

b. Appointment of the Trustmaker's Personal Representative.

For purposes of this Section and the Act, the serving Trustee, or Co-Trustees, if more than one Trustee is serving, of my Trust shall be the Trustmaker's appointed "Personal Representative." As such, the Personal Representative appointed under this Section shall have the same rights as the Trustmaker, whether the Trustmaker is or is not considered disabled pursuant to any standard contained in this agreement or otherwise.

c. Covered Entities Under the Act.

A covered entity includes, but is not limited to, the physician, health care professionals, dentists, a health plan, hospital, laboratory, pharmacy, insurance company, the Medical Information Bureau, Inc., other health care clearinghouses or persons or entities requiring compliance with the Act before releasing protected health care information.

d. Coordination with an Agent or Attorney in Fact under any Health Care Power of Attorney

For the purpose of accessing any health care information covered by the Act, both the Personal Representative appointed under this Section, and the Health Care Agent appointed under my Health Care Power of Attorney shall be

considered as "Personal Representatives" under the Act, and either may request health care information covered by the Act.

e. Legal Action to Enforce the Terms of this Section

My Trustee is specifically empowered to take any and all legal action necessary to enforce the intent of this Section as regards accessing the Trustmaker's health care information in compliance with the Act. My Trustee is specifically empowered to seek a recovery of any legal fees and costs incurred as a result of any legal action taken hereunder, or for any damages caused by a covered entity's failure to comply with the Act.

Section 4.05 Special Disability Instructions for MARJORIE T. CONNELL.

I have led an independent life. And through the course of my life I have managed to set aside some savings and assets of value. I am mindful of the fact that nursing home care is very costly and that, even at the rates currently in effect, the costs can be in the neighborhood of \$60,000.00 per year. I request my disability Trustee to investigate the resources and services available through Visiting Nurses Association, Home Hospice Health Care, Meals on Wheels, part-time private nursing care, or any and all other then-available services which might provide for in-home care.

I request that my disability Trustee, make every reasonable effort to see to it that I am taken care of in my own home, at least or in the home of members of my family or loved ones, and not placed in a long-term convalescent health care facility, nursing home, or any similar facility. In my own home I find convenience, comfortable surroundings, and I can maintain my own privacy and my own dignity.

In the event that family members or others are so kind as to care for me under circumstances where that care is necessary to prevent me from being institutionalized in a nursing home, I direct my disability Trustee to pay to them upon their written request, fair compensation for their abilities, talent, and time dedicated on my behalf. I further request that whenever possible, in my Trustee discretion, my disability Trustee would see to it that one or more family members or others may, if they wish, occupy my home together with me, without payment or rent, so that I may receive care in my home to the extent that is medically and physically possible.

I wish to remain in my personal residence unless I am in a coma. I request my Trustee to pay the operating expenses of maintaining my residence, including normal domestic help.

I direct my Trustee to consult with my Health Care Representative regarding the cost of my medical care, and to pay all expenses incurred as a result of the decisions made by my Trustee and Health Care Representative. The decision as to whether to reimburse my Health Care Representative for expenses incurred in fulfilling the duties of the Health Care Representative position shall be in the sole and absolute discretion of my Trustee.

I further specifically prohibit my Trustee from expending any trust funds for medical treatment considered "extraordinary" or "heroic" by my Health Care Representative. The decision as to whether treatment shall be considered "extraordinary" or "heroic" shall be

in the sole and absolute discretion of my Health Care Representative contained in my Health Care Power of Attorney, or appointment of Health Care Representative.

If it should become necessary to sell my residence or for any other reason to dispose of some or all of my tangible personal property from my living quarters, my Trustee shall store or safeguard such tangible personal property (and pay all costs thereof) or, alternatively, transfer custody and possession, but not title, for such storage or safekeeping to the persons named as recipients of such property pursuant to this trust.

I wish to remain mentally and physically active as long as possible. I direct my Trustee to provide opportunities for me to engage in social, recreational, and sports activities, including travel, as my health permits. Such decisions shall be made in consultation with my Health Care Representative. I further direct my Trustee to provide me with books, tapes, and similar materials consistent with my interests.

It is my desire to provide for the presence and involvement of religious clergy or spiritual leaders in my care, provide them access to me at all times, maintain my memberships in religion or spiritual organizations, and enhance my opportunities to derive comfort and spiritual satisfaction from such activities, including religious books, tapes and other materials.

I further direct my Trustee, in cooperation with my Health Care Representative, to provide for companionship for me consistent with my needs and preferences. I consider such continuing interaction to be essential.

Finally, I authorize my Trustee to make advance arrangements for me in accordance with the memorial instructions I have left in my Living Trust Portfolio if I have not previously made such advance arrangements myself. If I have left no memorial instructions, I authorize my Trustee, in consultation with my Health Care Representative, to make advance arrangements considered necessary or appropriate.

Article Five

Administration of My Trust Upon My Death

Section 5.01 My Trust Shall Become Irrevocable

Upon my death, my trust shall become irrevocable and my social security number may no longer be used to identify my trust. My Trustee shall apply for a separate taxpayer identification number for my trust.

Section 5.02 Administrative Trust

After my death and prior to the distribution of trust property as provided in the subsequent Articles of this agreement, my trust shall be an administrative trust but may continue to be known as the MTC LIVING TRUST. My administrative trust shall exist for a reasonable period of time necessary to complete the administrative tasks set forth in this Article.

Section 5.03 Payment of My Expenses and Taxes

My Trustee is authorized but not directed to pay from the administrative trust:

- Expenses of my last illness, funeral and burial or cremation, including expenses of memorials and memorial services;

- Legally enforceable claims against me or my estate;

- Expenses of administering my trust and my estate; and

- Court ordered allowances for those dependent upon me.

These authorized payments are discretionary with my Trustee. My Trustee may make decisions on these payments without regard to any limitation on payment of such expenses imposed by law and may make payments without obtaining the approval of any court. No third party may enforce any claim or right to payment against my trust by virtue of this discretionary authority. My Trustee shall not pay any administrative expenses from assets passing to an organization that qualifies for the federal estate tax charitable deduction or to a split-interest charitable trust.

My Trustee shall pay death taxes out of the principal of the trust property as provided in Section 5.05. If, however, a probate estate is opened within six months from the date of my death, my Personal Representative shall pay claims, expenses and death taxes from my probate estate to the extent that the cash and readily marketable assets included in my probate estate are sufficient to pay such items unless my Trustee has already paid them.

Section 5.04 Restrictions on Certain Payments from Qualified Retirement Plans

The "designation date" shall mean September 30 of the calendar year following the calendar year in which my death occurs, or such other date as shall be established by Treasury Regulations or other tax law authority as the final date for determining whether

this trust meets the requirements for treatment of the trust's oldest beneficiary as if he or she had been named directly as beneficiary of any qualified retirement plan payable to this trust.

Notwithstanding any other provision of this agreement or state law to the contrary, my Trustee may not, on or after the "designation date", distribute to or for the benefit of my estate, any charity or any other non-individual beneficiary any qualified retirement benefit payable to a trust created under this agreement. It is my intent that all such qualified retirement benefits held by or payable to this trust on or after the designation date be distributed to or held for only individual beneficiaries, within the meaning of Section 401(a)(9) of the Internal Revenue Code.

Accordingly I direct that qualified retirement benefits not be used or applied on or after the designation date for payment of my debts, taxes, expenses of administration or other claims against my estate or for payment of estate, inheritance or similar transfer taxes due on account of my death (other than those directly attributable to and the legal obligation of a particular Qualified Retirement Plan). This Section shall not apply to any bequest or expense that is specifically directed to be funded with qualified retirement benefits.

Section 5.05 Payment of Death Taxes

For the purposes of this Article, the term "death taxes" shall refer to any taxes imposed by reason of my death by federal, state or local authorities, including but not limited to estate, inheritance, gift, and direct-skip generation-skipping transfer taxes. For purposes of this Section, death taxes shall not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable recapture tax imposed by any taxing authority. Nor shall death taxes include any generation-skipping transfer tax, other than a direct skip generation-skipping transfer tax.

Except as otherwise provided in this Section or elsewhere in this agreement, my Trustee shall provide for payment of all death taxes from the administrative trust without apportionment. My Trustee shall not seek contribution toward or recovery of any such payments from any individual.

(a) Protection of Exempt Property

In no event shall death taxes be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes.

(b) Protection of the Charitable Deduction

No death taxes shall be allocated to or paid from any assets passing to an organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless my Trustee has first used all other assets available to my Trustee to pay the taxes.

(c) Property Passing Outside of My Trust

Death taxes imposed with respect to property included in my gross estate for death tax purposes but passing outside of my trust shall be apportioned

among the persons and entities benefited in the proportion that the taxable value of the property or interest bears to the total taxable value of all property and interests included in my gross estate for death tax purposes. The values to be used for the apportionment shall be the values as finally determined under federal, state or local law as the case may be.

Section 5.06 No Apportionment Between Current and Future Interests

No interest in income and no estate for years or for life or other temporary interest in any property or trust are subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder are chargeable against the corpus of the property or trust subject to the temporary interest and remainder.

Section 5.07 Coordination with My Personal Representative

The following provisions are intended to help facilitate the coordination between my Personal Representative, if any, and my Trustee. These provisions apply even if my Personal Representative and my Trustee are the same person or entity.

(a) Reliance on My Personal Representative

My Trustee may rely upon the written request of my Personal Representative for payments authorized under this Article and the amounts included in such payments without computing the sums involved. If a payment is made under this Article to my Personal Representative, my Trustee shall not have any duty to inquire into the application of the payment.

(b) Receipt of Probate Property

My Trustee may accept or decline any distributions of property tendered to my Trustee by my Personal Representative. As to property deemed acceptable by my Trustee, my Trustee may accept the property without audit and without obligation to review the records of my Personal Representative.

(c) Purchase of Assets from and Loans to My Probate Estate

My Trustee is authorized to purchase and retain, as an investment for my trust estate, any property that forms a part of my probate estate. My Trustee may make loans, with or without security, to my probate estate. My Trustee shall not be liable for any loss suffered by my trust as a result of the exercise of the powers granted to my Trustee in this subsection.

(d) Discretionary Distributions to My Personal Representative

My Trustee is authorized to distribute to my probate estate, as a beneficiary of this trust, cash or other trust property, including accrued

income, to whatever extent my Trustee determines it to be in the best interests of the beneficiaries of my trust.

Section 5.08 Authority to Make Tax Elections

Following my death, I authorize my Trustee to make tax elections as provided in this Section. If, however, a Personal Representative is appointed for my probate estate and as my Personal Representative is the recipient of specific statutorily delegated authority relative to any tax election, the discretionary authority granted my Trustee relative to the tax election shall be subordinate to the statutorily delegated authority.

(a) Tax Elections

My Trustee's authority to make tax elections shall include, but shall not be limited to, the right to choose the alternate valuation date, the right to elect whether to take administration expenses as estate tax deductions or income tax deductions, the right to allocate my unused generation-skipping exemption to all or any portion of the trust property, the right to make special use valuation elections, and the right to defer payment of all or any portion of any taxes.

My Trustee may elect to treat my administrative trust as part of my estate for federal or state income tax purposes or both.

My Trustee may elect to have trust property qualify for the "family owned business deduction" authorized under Section 2057 of the Internal Revenue Code. My Trustee may enter into any agreement on behalf of my trust that is necessary to validly make such election under the Internal Revenue Code.

My Trustee may make equitable adjustments between income and principal on account of any tax elections made by my Trustee.

(b) Allocation of GST Exemption

My Trustee may elect to allocate or not allocate any portion of the available GST exemption under Section 2631 of the Internal Revenue Code, or a counterpart exemption under any applicable state law, to any property of which I am the transferor or deemed transferor for generation-skipping transfer tax purposes, including any property transferred by me during my life as to which I did not make an allocation prior to death. The exercise of such discretion shall be based on the transfers, gift tax returns and other information known to my Trustee, with no requirement that allocations benefit the various transferees or beneficiaries equally, proportionally, or in any other particular manner.

(c) Qualified Conservation Easements

My Trustee may create a qualified conservation easement, as defined in Section 2031(c)(8)(A) of the Internal Revenue Code in any land held by my trust and make the necessary election provided by Section 2031(c)(6).

Section 5.09 Payment of Charitable Bequests

I instruct my Trustee to satisfy all of my charitable gifts and bequests, to the extent possible, from property that constitutes income in respect of a decedent.

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
MARJORIE T. CONNELL, Trustmaker and
Trustee

STATE OF NEVADA

)

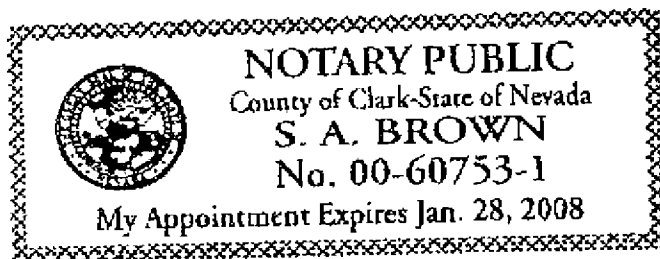
) ss.

COUNTY OF CLARK

)

This instrument was acknowledged before me on January 7, 2008, by MARJORIE T. CONNELL, as Trustmaker and as Trustee.

[Seal]



Sharon A. Brown

Sharon A. Brown, Notary Public

900 Rancho Lane

Las Vegas, Nevada 89106

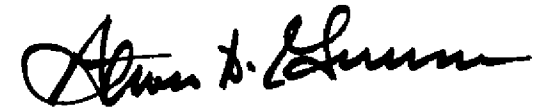
My commission expires: January 28, 2008

Schedule A

Ten Dollars cash

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

ANS

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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

Case No. P-09-066425-T

Dept. No. XXVI (26)

An Inter Vivos Irrevocable Trust.

**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**

COMES NOW 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, 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 Answer 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, and in support thereof states:

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ANSWER

1. The surface real estate located in Upton County, Texas, and the oil, gas and mineral interests on and under such real estate and severed oil, gas and mineral interest in other acreage in Upton County, Texas (the "Upton County, Texas, Oil rights" or the "royalties and rent") were originally the sole and separate property of W. N. CONNELL.

2. The Upton County, Texas, Oil rights or any part thereof were never allocated to Trust No. 3.

3. The Upton County, Texas, Oil rights became an asset of Trust No. 2 by default pursuant to the language of the W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 (the "TRUST"). See Subparagraph 4 of Paragraph C of the TRUST agreement.

4. Subsequent to the death of MARJORIE T. CONNELL on May 1, 2009, NRS 163.385 is not applicable as the TRUST and the MTC LIVING TRUST were not created by a single instrument.

5. The TRUST agreement should be construed to require that an amount equal to the revenue from the Upton County, Texas, Oil rights be distributed to ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN ("ELEANOR") during her lifetime.

AFFIRMATIVE DEFENSES

As and for separate affirmative defenses, ELEANOR hereby allege as follows:

FIRST AFFIRMATIVE DEFENSE

There is lack of subject matter jurisdiction by this Court regarding 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) (the "Petition").

SECOND AFFIRMATIVE DEFENSE

Petitioner Jacqueline M. Montoya (the "Petitioner") fails to state an action upon which relief

1 can be granted against Defendants.

2 **THIRD AFFIRMATIVE DEFENSE**

3 The claims of Petitioner set forth in her Petition are barred by the doctrine of claim
4 preclusion.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 The claims of Petitioner set forth in her Petition are barred by the doctrine of issue
7 preclusion.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 The claims of Petitioner set forth in her Petition are barred by the doctrine of laches.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 The claims of Petitioner set forth in her Petition are barred by the doctrine of unclean hands
12 on the part of Petitioner.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 The claims of Petitioner set forth in her Petition are barred by the doctrine of detrimental
15 reliance.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 The claims of Petitioner set forth in her Petition are barred by the doctrine of promissory
18 estoppel.

19 **NINTH AFFIRMATIVE DEFENSE**

20 Any damages which Petitioner may have sustained by reason of the allegations of the
21 Petition were proximately caused, in whole or in part, by sets of persons other than ELEANOR and
22 with whom ELEANOR had no legal connection.

23 **TENTH AFFIRMATIVE DEFENSE**

24 No actual, justifiable controversy exists between Petitioner and ELEANOR, and thus, the
25 Petitioner must be dismissed as to these Defendants.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 Petitioner, by her own conduct or failure to act or otherwise, is estopped from making any
28 claim against ELEANOR.

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TWELTH AFFIRMATIVE DEFENSE

Petitioner has waived, by conduct or failure to act or otherwise, any claim against ELEANOR.

THIRTEENTH AFFIRMATIVE DEFENSE

By virtue of the acts, conduct, mismanagement, wrongdoing, fraud, undue influence, illegality and/or omissions to act of Petitioner under the circumstances, ELEANOR is released and discharged from any liability whatsoever to Petitioner, which liability is expressly denied.

FOURTEENTH AFFIRMATIVE DEFENSE

There is no privity of contract between Petitioner and ELEANOR.

FIFTEENTH AFFIRMATIVE DEFENSE

ELEANOR asserts that she has performed and fully discharged all obligations owed to Petitioner including meeting the requisite standard of care to which Petitioner was entitled, if any obligation existed at all.

SIXTEENTH AFFIRMATIVE DEFENSE

The loss, injuries, damages, costs and attorneys' fees, if any, suffered by Petitioner were the result of her own acts, wrongdoing, fraud, undue influence and/or her omissions to act.

SEVENTEENTH AFFIRMATIVE DEFENSE

Petitioner has failed to cure procedural prerequisites to the institution and maintenance of this lawsuit, which precludes the ability of the Petitioner to institute or maintain this cause of action.

EIGHTEENTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the applicable statutes of limitations.

NINETEENTH AFFIRMATIVE DEFENSE

Petitioner has failed to satisfy conditions precedent to bringing any action against ELEANOR.

TWENTIETH AFFIRMATIVE DEFENSE

If ELEANOR has failed to perform a contractual obligation owed to Petitioner, if any contractual obligation existed at all, there existed a valid excuse for such nonperformance, if any required performance existed at all.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 ELEANOR acted in good faith in all of her dealings with Petitioner.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 ELEANOR lacked the requisite specific intent necessary for Petitioner to sustain her claims
5 against ELEANOR.

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

7 ELEANOR asserts that at all times its activities relating to this matter she has been in full
8 compliance with all applicable rules, regulations, ordinances, statutes and Orders of the Court and
9 that has acted in all respects in a careful, reasonable and prudent manner.

10 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

11 Damage suffered by Petitioner, if any exist at all, are a result of her contributory negligence
12 and/or her comparative fault, and Petitioner is barred from recovery on such grounds

13 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

14 Petitioner has failed to mitigate damages, if any such damages exist at all.

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 The claims of Petitioner set forth in her Petition are barred by the Statute of Frauds.

17 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18 The claims of Petitioner set forth in her Petition are barred by failure of consideration.

19 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

20 The issues raised by Petitioner in her Petition are not ripe.

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

22 ELEANOR has been forced to retain counsel to defend against the Petition, and Petitioner is
23 entitled to an award of reasonable attorneys' fees.

24 **THIRTIETH AFFIRMATIVE DEFENSE**

25 All possible affirmative defenses may not have been alleged herein as sufficient facts were
26 not available after reasonable inquiry upon the filing of this pleading. Therefore, ELEANOR
27 reserves the right to amend this pleading, including adding affirmative defenses, based upon
28 discovery, review of document, and development of evidence in this case.

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16. The actions of Petitioner in filing her Petition and/or in contacting the surface tenant and oil companies as noted above are violations of the no contest provisions of the TRUST.

PRAYER

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 the Court to:

1. Deny Petitioner 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 dismiss the same with prejudice;
2. In the alternative, construe the terms of THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 to mean that ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN is the sole beneficiary during her life of the Upton County, Texas surface real estate, oil, gas, and mineral interest on and under such real estate and severed oil, gas and mineral interest in other acreage in Upton, County, Texas, and that such construction shall apply prospectively;
3. Enter judgment against Petitioner JACQUELINE M. MONTOYA for intentional interference with contractual relations and award all monetary damages incurred as a result thereof, including but not limited to general damages, actual damages, compensatory damages, pecuniary damages, and consequential damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) including prejudgment and post judgment interest;
4. Enter judgment against Petitioner JACQUELINE M. MONTOYA for punitive damages;
5. Enter judgment against Petitioner JACQUELINE M. MONTOYA for interest, fees, costs, expenses, attorneys' fees, loss of use of monies and property, and expert witness fees;
6. Enforce the no-contest clause of the TRUST against JACQUELINE MONTOYA; and

1 7. For such other and further relief as this Court deems appropriate.

2
3 DATED: January 31, 2014.

4 JEFFREY BURR, LTD.

5 By: 

6 JOHN R. MUGAN, ESQUIRE

7 Nevada Bar No. 10690

8 MICHAEL D. LUM, ESQUIRE

9 Nevada Bar No. 12997

10 2600 Paseo Verde Parkway, Suite 200

11 Henderson, Nevada 89074

12 Attorneys for Trustee ELEANOR CONNELL

13 HARTMAN AHERN

VERIFICATION

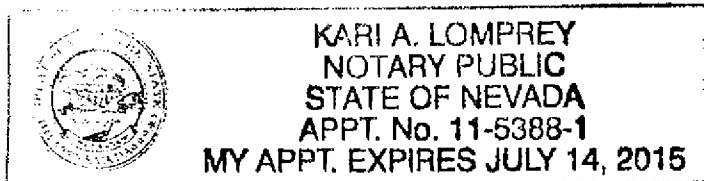
STATE OF NEVADA)
): ss
COUNTY OF CLARK)

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 Objection 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; 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

SUBSCRIBED and SWORN to before me
this 16 day of February, 2014.


NOTARY PUBLIC



CERTIFICATE OF MAILING

I hereby certify that on the 10 day of February, 2014, I did email to JOSEPH J. POWELL, Esquire, as indicated below, and I did deposit in the U.S. Post Office at Las Vegas, Nevada, postage prepaid, a copy of the above and foregoing Answer 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, 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.

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INDEX OF EXHIBITS

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2	Email of Texas Legal Counsel of Jacqueline M. Montoya dated November 14, 2013 to Apache Corporation	14

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EXHIBIT 1
Demand Letters of Texas Legal Counsel of Jacqueline M. Montoya dated September
30, 2013 to Apache Corporation, Plains Marketing, L.P., and Drag A Cattle
Company, LLC.

STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.
ATTORNEYS AT LAW

FASHEH CENTER - TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701
432.682.1616
FACSIMILE 432.682.4584
www.stubbemanlawfirm.com

SEAN GUERRERO
Direct Dial 432.580.0243
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (713) 296-6454
and CMRRR7003 3110 0002 5180 6829
Apache Corporation
Attn: Division Order Dept.
2000 Post Oak Blvd, Suite 100
Houston, Texas 77056

Re: William and Marjorie Connell Living Trust, Marjorie Connell and Eleanor
Hartman, Co Trustees

Owner Numbers: 47052
45572

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in Cause No. P-09-066425-T; In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Apache Corporation hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,


Sean Guerrero

18 OCT 3 PM 4:46

SMG:mg
Enclosures



STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.
ATTORNEYS AT LAW

FASKEN CENTER • TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701
432.682.1616
FACSIMILE 432.682.4884
www.stubbemanlawfirm.com

SEAN GUERRERO
Direct Dial: 432.688.0242
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (713) 646-4571
and CMRRR#7003 3110 0002 5180 6836
Plains Marketing, L.P.
Attn: Division Orders Dept.
P.O. Box 4648
Houston, Texas 77210

Re: William and Marjorie Connell Living Trust, Marjorie Connell and Eleanor
Hartman, Co Trustees

Owner Numbers: 0782216
0488845

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in Cause No. P-09-066425-1; *In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Plains Marketing hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,


Sean Guerrero

SMG:mg
Enclosure

STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.

ATTORNEYS AT LAW

FASKEN CENTER • TOWER TWO
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701
432.682.1616
FACSIMILE 432.682.4884
www.stubbemanlawfirm.com

SEAN GUERRERO
Direct Dial: 432.688.0242
ALSO LICENSED IN NEW MEXICO
sguerrero@stubbemanlawfirm.com

September 30, 2013

Via facsimile (432) 682-4929
and CMRRR#7003 3110 0002 5180 6843

Drag A Cattle Company, LLC
c/o James Walton
414 W. Texas, Suite 310
Midland, Texas 79702

Re: W.N. and M.T. Connell Living Trust, M. Connell and E. Hartman, Trustees

To Whom It May Concern:

I write on behalf of our client, Jaqueline M. Montoya, individually and in her capacity as trustee of the MCT Living Trust, Plaintiff in *Cause No. P-09-066425-T; In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments into the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.

Due to the dispute regarding the distribution of payments, a portion of which has been made by your company, we request that Drag A Cattle Company hold in suspense all payments to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved. We request that you take action immediately so that no further payments are distributed until this suit is resolved. Please let me know if you have any questions. We appreciate your cooperation and look forward to working with you.

Very truly yours,



Sean Guerrero

SMG:mg
Enclosures

Cooper, Courtney

Subject: FW: Cause No. P-09-066425-T: In the Matter of the W. N. Connell and Marjorie T. Connell Living Trust
Attachments: 2013-09-27 Petition for Declaratory Judgment.pdf, W N & MARJORIE T CONNELL LIV TR-0004557202.pdf

From: Sean Guerrero [<mailto:sguerrero@stubbemanlawfirm.com>]
Sent: Thursday, October 10, 2013 9:31 AM
To: Cooper, Courtney
Subject: re: Cause No. P-09-066425-T: In the Matter of the W. N. Connell and Marjorie T. Connell Living Trust

Courtney,

Thank you for getting back to us. I have attached a file-marked copy of the petition for your records. I appreciate your help and will provide any other information you might need. If you will confirm when Apache places the royalty payments into suspense, I would also appreciate it. Please let me know if you have any questions.

Thank you,

Sean Guerrero
Stubbeman, McRae, Sealy, Laughlin & Browder, Inc.
550 W. Texas, Suite 800
Midland, TX 79701
Phone: 432.682.1616
Fax: 432.682.4884
sguerrero@stubbemanlawfirm.com

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EXHIBIT 2
Email of Texas Legal Counsel of Jacqueline M. Montoya dated November 14, 2013
to Apache Corporation



Andrew M. (Andy) Taylor
Senior Counsel
Apache Corporation
2000 Post Oak Blvd., Suite 100
Houston, Texas 77056
(713) 296-7302 Direct
(713) 213-5546 Cell
(713) 296-7263 Fax

From: Sean Guerrero [<mailto:sguerrero@stubbemanlawfirm.com>]
Sent: Thursday, November 14, 2013 11:53 AM
To: Taylor, Andy
Cc: jmj@usaonline.net; Cooper, Courtney; Sloan, Thomas
Subject: RE: W.N. Connell and Marjorie T. Connell Living Trust

Dear Mr. Taylor,

I am in receipt of your email of this morning and appreciate the time and attention you have given our matter. In short, we do not believe that a release of any funds to Eleanor Ahern is appropriate at this time. We hope that some clarification of this matter will help you in your determination that royalty suspense is the appropriate action.

Ms. Ahern is the trustee of the W.N. Connell and Marjorie Trust (the "Trust"). Our clients are the primary beneficiaries, receiving, 65% of the Trust distributions. After 33 years of distribution in a 65%/35% split, Ms. Ahern determined last year that she was entitled to ALL Trust distributions, while our clients were entitled to none. As of June of this year, Ms. Ahern has reneged on her fiduciary duty altogether and refused payment to our clients. She has kept the royalty proceed from Apache, as well as all other oil and gas operators who make royalty payments to the Trust. As you know, those payments have been substantial in the past few years.

Ms. Ahern has no documentation to support her decision, and you will note that her attorneys have provided no proof that she is entitled to 100% of the Trust proceeds. I find it ironic that, although Ms. Ahern denies that she is entitled to only a 35% distribution (which has been the status quo for 33 years), this is exactly what her attorneys have requested of you. Instead, we believe Ms. Ahern and her attorneys hope to fund their litigation with a portion of the Trust proceeds while denying our clients the same opportunity and "starving them out."

We have undertaken the lawsuit in Nevada to re-establish our clients' rights to the 65% distribution of the Trust and ultimately force Ms. Ahern out as Trustee. Our clients will file a second lawsuit regarding Ms. Ahern's breach of fiduciary duties, fraud and misappropriation of Trust funds. While this first lawsuit is intended to determine the appropriate distribution of the Trust, the bigger picture reflects that we intend to seek damages against Ms. Ahern for her theft. We are extremely concerned that Ms. Ahern has not only spent the money that she has withheld from our clients, but also 35% that she has received from the Trust. As a result of the litigation, and the likely substantial judgment that Ms. Ahern will be forced to pay, it is critical that all Trust proceeds remain untouched pending the outcome of these suits.

Under Texas Natural Resources Code Sec. 91.402(b), you have authority to withhold payment without interest when there is (1) a dispute concerning title that would affect distribution of payments; or (2) a reasonable doubt that the payee has clear title to the interest in the proceeds of production. The Trust is subject to your division order, and under Sec. 91.402(c)(1), the Trust has authorized Apache to suspend payment for production until the resolution of any title dispute or adverse claim asserted regarding the interest in production.

Ms. Ahern's attorneys have no basis to challenge your decision to put the interest payments in suspense, as the Texas Natural Resources Code applies to all proceeds derived from the sale of oil or gas production from an oil or gas well located in Texas. Further, they have not provide any documents which would allow you to split up an undivided royalty payment to the Trust. Short of a court order, I do not see who you can legally and arbitrarily allocate 35% of royalty payments to the Trustee of a trust and withhold 65% from the beneficiaries. Apache would be wise to await a court order on the subject rather than taking the word of Ms. Ahern's attorney.

We have a complicated suit regarding the Trust distribution pending, and we will have a second suit regarding Ms. Ahern's misappropriation of Trust assets filed in short order. As a result, we renew our request that Apache continue to hold all interest payments to the Trust in suspense. If Apache insists on making royalty payments to Ms. Ahern on a monthly basis, we then likewise request that Apache also make a 65% distribution to our clients every month.

I am happy to answer any questions you may have regarding the suit or the request for suspense of royalty payments. I look forward to working with you in resolving this matter.

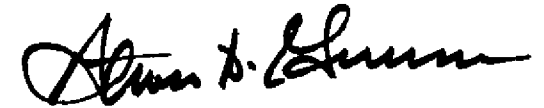
Thank you,

Sean Guerrero
Stubbeman, McRae, Sealy, Laughlin & Browder, Inc.
550 W. Texas, Suite 800
Midland, TX 79701
Phone: 432.682.1616
Fax: 432.682.4884
sguerrero@stubbemanlawfirm.com

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EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

JUDG

JOSEPH J. POWELL, ESQ.

Nevada Bar No. 008875

THE RUSHFORTH FIRM, LTD.

9505 Hillwood Drive, Suite 100

Las Vegas, Nevada 89134

Tel: (702) 255-4552

Fax: (702) 255-4677

joey@rushforth.net

Attorneys for Jacqueline M. Montoya

WHITNEY B. WARNICK, ESQ.

Nevada Bar No. 001573

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

801 South Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

Tel: (702) 384-7111

Fax: (702) 384-0605

gma@albrightstoddard.com

Attorneys for Kathryn A. Bouvier

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

Date of Hearing: January 30, 2015
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

SUMMARY JUDGMENT

The current proceedings were commenced with the filing on September 27, 2013, of a 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). This Petition was filed by Jacqueline M. Montoya ("Jacqueline") as Trustee of the MTC Living Trust, and on her behalf and that of Kathryn A. Bouvier ("Kathryn"), her sister, as beneficiaries under the MTC Living Trust. During these proceedings several other Petitions, Motions, and Pleadings have been filed by the parties, including those summarized in the chart attached hereto as Exhibit "A".

On December 23, 2014, Jacqueline and Kathryn filed an OPPOSITION TO ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES. Thereafter, on January 2, 2015, Eleanor Connell Hartman Ahern ("Eleanor") filed an OMNIBUS OPPOSITION TO (1) PETITION FOR DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2, AND (2) PETITION FOR CONSTRUCTION EFFECT OF PROBATE COURT ORDER; AND COUNTERMOTION FOR SUMMARY JUDGMENT. The parties agreed at the hearing on January 30, 2015, that their above-denominated Countermotions for Summary Judgment, and the claims and defenses asserted therein, subsumed all of the prior Petitions, Motions and Pleadings, and their defenses and claims asserted therein, as well as those briefed and discussed in the further replies, oppositions and supplements to their Countermotions, ~~as listed on the chart attached hereto as Exhibit "A"~~ (other than Jacqueline's and Kathryn's Motion for Leave to Amend Pleadings filed herein on January 12, 2015). Therefore, it was agreed, and the Court recognized, that the parties' claims and defenses in these proceedings could be resolved summarily by the Court in its adjudication of the parties' said Countermotions for Summary Judgment.

After reviewing the Countermotions for Summary Judgment, and the presentation of argument for and rebuttal against the Countermotions by the parties, the Court finds as follows:

1. A proceeding involving the subject Trust was initially commenced in 2009 by Eleanor, as Trustee of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (herein referred to as the "Trust"), with an unopposed Petition to

1 obtain a Court order clarifying to whom subtrust benefits would be paid upon her
2 death. The Court assumed jurisdiction over the Trust, recognizing that Eleanor, as
3 Trustee, was a Nevada resident, and the Trust provisions provided that it would be
4 administered pursuant to Nevada law. The unopposed Petition was consented to by
5 Jacqueline and Kathryn as contingent beneficiaries of subtrust No. 2 under the Trust,
6 and the Court approved the Petition by Order filed herein on September 4, 2009.
7 Pursuant to the Order, the Trust was reformed to provide that Jacqueline and Kathryn
8 were designated as the beneficiaries under subtrust No. 2 upon the death of Eleanor,
9 which had not theretofore been clearly delineated in the Trust provisions. In addition,
10 Jacqueline was designated as the successor Trustee under the Trust upon the death or
11 removal of Eleanor as the Trustee.

12 2. When the Trust was created in 1972, community property of W.N. Connell
13 ("William") and Marjorie T. Connell ("Marjorie"), along with two parcels of William's
14 separate real property, were transferred to the Trust. One parcel of William's separate
15 property was located in Clark County, Nevada. The other parcel consisted of a parcel
16 of real property and oil, gas and mineral rights relating thereto, located in Upton
17 County, Texas (hereinafter "Texas oil property"). In 1975, William and Marjorie, as
18 Trustees, deeded the Clark County, Nevada, separate property from their Trust to
19 Eleanor, personally, it having ^{declared} a value at the time, based upon the transfer tax paid, of
20 approximately \$55,000.00.

21 3. The dispute in these Trust proceedings relates to the ownership of and
22 entitlement to income from the Texas oil property. At the time of William's death on
23 November 24, 1979, the Texas oil property was the only remaining separate property
24 of William which had been titled in the Trust. The Trust provisions created two
25 subtrusts upon the death of William in 1979 (referred to in the Trust as Trust No. 2 and
26 Trust No. 3, and hereinafter referred to as "subtrust 2" and "subtrust 3"). Income
27 allocated to subtrust 2 was payable to Eleanor during her lifetime. Marjorie was the
28 beneficiary of the income and assets under subtrust 3, including the right during her

1 lifetime, at her election, to receive the assets outright free of trust. She was also given
2 the option of appointing the benefits under subtrust 3 in her Will to whomever she
3 desired. If she failed to remove the assets from subtrust 3 during her lifetime, or to
4 appoint them under her will, the benefits and assets under subtrust 3 would have
5 devolved by default to Eleanor.

6 4. Under the Trust provisions, Article SECOND, Section C.3, subtrust 3 was
7 to be funded with Marjorie's separate property, her share of the community property,
8 and a portion of William's separate property. The portion of William's separate
9 property to be allocated to subtrust 3 is determined by the provisions in Article THIRD
10 of the Trust. These provisions state:

11 "THIRD: MARITAL DEDUCTION. The Trustee shall allocate to Trust No. 3
12 from the Decedent's separate property the fractional share of the said assets which is
13 equal to the maximum marital deduction allowed for federal estate tax purposes . . . In
14 making the computations and allocations of the said property to Trust No. 3 as herein
15 required, the determination of the character and ownership of the said property and the
16 value thereof shall be as finally established for federal estate tax purposes."

17 5. Federal and Texas Estate Tax Returns were filed for William's estate
18 following his death. At the time of these proceedings, a copy of the Federal Estate Tax
19 Return could not be located, even the IRS no longer maintaining a copy thereof.
20 However, a copy of William's Texas Estate Tax Return, and a copy of the Closing
21 Letter for his Federal Estate Tax Return were available. The Texas Estate Tax Return
22 basically duplicated the information provided on the Federal Estate Tax Return, thereby
23 providing how William's estate was allocated and distributed on the Federal Estate Tax
24 Return. Daniel T. Gerety, CPA, an expert witness for Jacqueline and Kathryn, also
25 verified in his Report that the Texas Estate Tax Return used the property allocations
26 made on the Federal Estate Tax Return, and that the two Returns were consistent.

27 6. Under these two Estate Tax Returns, a 64.493% interest in the Texas oil
28 property was allocated to Marjorie, the beneficiary under subtrust 3, and the remaining
35.507% interest in the Texas oil property was allocated to Eleanor, the beneficiary
under subtrust 2. Further, as provided under Article THIRD, quoted above, this

1 allocation of interests in the Texas oil property determined the allocation of interests
2 in that property between subtrust 2 and subtrust 3 under the Trust. For purposes of
3 convenience, the interests in the Texas oil property are rounded to 65% and 35%. The
4 title to the Texas oil property has remained in the main Trust to the present day.

5 7. Upon William's death, Marjorie became the sole acting Trustee for the
6 main Trust, and the subtrusts thereunder. Pursuant to Article SECOND, Section C.6
7 of the Trust, and shortly after William's death in 1980, Eleanor was appointed by
8 Marjorie to be the co-trustee with her over William's separate property remaining in
9 the Trust; that is, over the Texas oil property which had been allocated between
10 subtrust 2 and subtrust 3. A copy of Eleanor's appointment as co-trustee, along with
11 a copy of the Trust, was recorded with the Upton County Texas Recorder's Office.

12 8. Thereafter, Marjorie sent letters to the oil companies with whom the Trust
13 had leases, advising them of William's death and that she and Eleanor were co-trustees
14 over the Texas oil property owned by the Trust. She directed that all further documents
15 which needed to be signed with the oil companies thereafter recognize the need for her
16 and Eleanor's signature.

17 9. From the time of William's death and the allocation of interests in the
18 Texas oil property between subtrust 2 and subtrust 3, until Marjorie's death on May 1,
19 2009, Eleanor was paid 35% of the Texas oil property income and Marjorie was paid
20 the remaining 65% of the income. Each was allocated a K-1 showing her receipt of her
21 share of the income, and each included the income in her annual Federal Income Tax
22 Returns.

23 10. Prior to her death, on January 7, 2008, Marjorie executed her last Will
24 and Testament, wherein she exercised her Power of Appointment over the assets and
25 benefits under subtrust 3, appointing them to Jacqueline and Kathryn as beneficiaries
26 under her MTC Living Trust. Following Marjorie's death, Eleanor, Jacqueline and
27 Kathryn met with David Strauss, Esq, Marjorie's estate planning attorney. Mr. Strauss
28 had previously provided Eleanor with a copy of Marjorie's Will containing the exercise

1 of her Power of Appointment over subtrust 3. In their meeting, he discussed with them
2 Marjorie's exercise of the Power of Appointment transferring to Jacqueline and
3 Kathryn the rights and interests of Marjorie under subtrust 3 of the Trust, thereby
4 entitling Jacqueline and Kathryn to receive the approximate 65% share of income being
5 generated by the Texas oil property going forward.

6 11. No one expressed any objection to what Mr. Strauss had advised them.
7 Thereafter, in the filing of Marjorie's Federal Estate Tax Return, the value of the 65%
8 interest in the Texas oil property allocated to Marjorie under the Trust was included
9 within her Federal taxable estate and Estate Tax Return, increasing the value of her
10 estate to a taxable estate, requiring the payment of over \$140,000.00 in Federal Estate
11 taxes. Most of Marjorie's estate at the time of her death, through her MTC Living
12 Trust, went to Jacqueline and Kathryn in equal shares. However, in addition to several
13 smaller bequests to friends, Marjorie also bequeathed to Eleanor, through the MTC
14 Living Trust, the sum of \$300,000.00.

15 12. From the time of Marjorie's death until approximately June, 2013, the
16 income from the Texas oil property was allocated with Eleanor continuing to receive
17 a 35% share, and Jacqueline and Kathryn receiving the remaining 65% share. In June,
18 2013, Eleanor as the sole acting Trustee of the Trust, stopped further income
19 distributions to Jacqueline and Kathryn, asserting at that time that she was entitled to
20 100% of the income from the Texas oil property. This led to the filing by Jacqueline
21 on September 27, 2013, of the PETITION FOR DECLARATORY JUDGMENT
22 REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS
23 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A).

24 13. Prior to asserting her right to 100% of the income from the Texas oil
25 property in June, 2013, and the cutting off of any further income distributions from the
26 Trust to Jacqueline and Kathryn, Eleanor had never asserted a claim or right to more
27 than 35% of the Texas oil property income as the lifetime beneficiary to income under
28 subtrust 2. However, in her pleadings and documents filed in these proceedings, she

1 claims she was aware of an alleged mistake made in the allocation of the Texas oil
2 property between subtrust 2 and subtrust 3 shortly after the death of William in 1979.
3 However, rather than assert a claim to all of the income, or otherwise make a claim or
4 start a legal action, Eleanor testified that she decided to do nothing. At one point in
5 these proceedings she testified in her pleadings and documents filed that her inaction
6 was motivated by a fear that it would upset Marjorie if she made a claim to more than
7 a 35% interest. She also testified in these proceedings that her inaction was due to the
8 fact she was happy to allow Marjorie to have 65% of the Texas oil property income,
9 feeling she was being generous and helping to support her mother. She asserted the
10 same motivation of generosity as the basis for her allowing Jacqueline and Kathryn to
11 continue receiving a 65% share of the Texas oil property income following the death
12 of Marjorie in 2009, and until her stoppage of income distributions to them in June,
13 2013.

14 14. However, in 1983, as testified to by Robert Hartman in his affidavit, in the
15 course of Eleanor's divorce proceeding from him, her right to only 35% of the Texas
16 oil property income was asserted and relied upon by the Court in its division of
17 property and determination of his support rights and obligations to Eleanor and their
18 two children. Then, a few years later, as shown on an estate planning intake sheet,
19 when Eleanor met with her own estate planning attorney, she advised him that she was
20 only entitled to 35% of the Texas oil property income, and that Marjorie was the owner
21 of the remaining 65% interest.

22 15. Although Eleanor claims she was being generous in giving to Marjorie
23 65% of the Texas oil property income during the balance of Marjorie's life following
24 the death of William in 1979, Marjorie's communications and conduct supported her
25 belief that she owned the rights to 65% of the Texas oil property income as the
26 beneficiary under subtrust 3. This is confirmed in several memoranda/letters prepared
27 by Marjorie, and in the inclusion of the 65% interest in her taxable estate at the time
28 of her death.

1 16. To summarize, no evidence was produced by Eleanor of any claim or
2 assertion being made by her to anyone else to a right to more than 35% of the Texas oil
3 property income from the time of William's death until June, 2013, when she first
4 asserted her claim to 100% of the income by cutting off income distributions to
5 Jacqueline and Kathryn. Further, Marjorie never communicated or acknowledged to
6 anyone else that she was not entitled to 65% of the Texas oil property income, always
7 acting consistently with owning a right to the income under the Trust allocation of the
8 Texas oil property made following William's death in 1979.

9 17. As purported evidence supporting her claim to 100% of the Trust income
10 from the Texas oil property, Eleanor presented copies of Division Orders and Leases
11 between the oil companies and the Trust relating to the Texas oil property. From the
12 time that Eleanor was made co-trustee with Marjorie over William's separate property
13 owned by the Trust until approximately 1989, it appears that in signing the Division
14 Orders and Leases with the oil companies, Marjorie and Eleanor provided their
15 personal Social Security Numbers as a tax identification number when such a number
16 was requested by the oil companies. However, apparently after it was brought to their
17 attention by an oil company that the Trust was the owner of the Texas oil property and
18 not themselves personally, and the oil company requested and recommended that a tax
19 identification number for a Trust be provided, in approximately 1989, Marjorie and
20 Eleanor started providing a tax identification number to the oil companies which had
21 been assigned by the IRS to subtrust 2. They never provided the tax identification
22 number which had been assigned by the IRS to subtrust 3. However, the Court was not
23 provided with any dates on when subtrust 2 and subtrust 3 were first assigned tax
24 identification numbers.

25 18. Nevertheless, and notwithstanding a tax identification number for subtrust
26 2 was the only tax identification number apparently given to the oil companies from
27 and after 1989, in the actual allocation of income received from the Texas oil property,
28 and in the issuance of K-1's and the filing of their Federal Income Tax Returns,

1 Eleanor's share of the income was always a 35% share and Marjorie, while she was
2 alive, always received the remaining 65% share. Following Marjorie's death, the 65%
3 share went to Jacqueline and Kathryn until the cessation of distributions by Eleanor in
4 June, 2013.

5 19. Eleanor also asserted that the Trust was a special Trust created to retain
6 the Texas oil property for the benefit of only William and his blood descendants.
7 However, since at the time of William's death, the only separate property of his that
8 remained in the Trust was the Texas oil property, pursuant to the Trust provisions, a
9 portion of that property had to be allocated to subtrust 3 in order to obtain the
10 maximum Marital Deduction for Federal Estate Tax savings. In following the Trust
11 provisions, the Texas oil property could not all be allocated to subtrust 2. Further,
12 whatever William's intent may have been when he and Marjorie first created the Trust
13 in 1972, by their deeding the Clark County, Nevada, separate property to Eleanor in
14 1975, William knew that the only remaining separate property of his in the Trust at the
15 time of his death would be the Texas oil property.

16 20. Lastly, in support of her position, Eleanor asserted that Jacqueline and
17 Kathryn acknowledged that she owned rights to all of the income from the Texas oil
18 property by their consents to and verifications of the 2009 Petition Eleanor filed to
19 clarify ownership of subtrust 2 upon her death. Eleanor asserted that in this Petition
20 there are statements averring that she owned the rights to all of the Texas oil property
21 income. However, the Petition's language can also be read as asserting that Eleanor's
22 right to income from the Texas oil property only refers to her 35% interest. More
23 significantly, the 2009 Petition was not filed to clarify rights to the Texas oil property
24 income. Rather, it was a consentient Petition with the purpose only of clarifying
25 entitlement to the benefits of subtrust 2 upon Eleanor's death, and to designate a
26 successor Trustee for the Trust upon her death.

27 21. Based upon the foregoing undisputed facts presented to the Court with the
28 Affidavits and documentary evidence submitted by the parties with their

1 Countermotions and briefs, and from the argument of counsel at the hearing, the Court
2 finds that Eleanor's interest in the Texas oil property income, as the beneficiary under
3 subtrust 2 of the Trust, is limited to a 35% share, and her claim to all of the income is
4 not supported in any way by the facts in this case. The remaining 65% share belongs
5 to subtrust 3 and Jacqueline and Kathryn, equally, as the beneficiaries under the MTC
6 Living Trust, as bequeathed and appointed to them by Marjorie in her Will. While title
7 to the Texas oil property remains titled in the main Trust, in the event a division of the
8 title now needs to be made between the two subtrusts, such division should be made
9 as recognized in the Trust administration, with the filing of William's Estate Tax
10 Returns, and the allocation between the subtrusts resulting therefrom, with a 35%
11 interest being deeded to subtrust 2, and a 65% interest being deeded to subtrust 3 (and
12 thereafter said 65% interest being deeded to the MTC Living Trust, with Jacqueline and
13 Kathryn as equal beneficiaries, should that be their request). Accordingly, Jacqueline's
14 and Kathryn's Countermotion for Summary Judgment regarding ownership of the
15 Texas oil property should be granted; and, Eleanor's Countermotion for Summary
16 Judgment should be denied.

17 22. While the Court finds that Jacqueline's and Kathryn's claim to 65% of the
18 Texas oil property and income is supported by the facts and merits of the case, and that
19 Eleanor's claim to more than 35% is not supported by the facts and merits of the case,
20 regardless of the merits of Eleanor's position, her claim to more than 35% of the
21 income from the Texas oil property cannot be supported or allowed for equitable
22 reasons because she has been guilty of laches in asserting her claim. Her assertion of
23 a claim to 100% of the income in June, 2013, makes no sense after failing in anyway
24 to assert a claim to more than 35% of the income prior to that time. During
25 approximately 34 years, from the death of William and her admitted awareness of the
26 allocation of the Texas oil property under the Trust provisions, until her first assertion
27 of a claim to more than 35% of the income in June, 2013, Eleanor never filed a claim
28 in any court, or otherwise asserted a claim or right to more than 35% of the income.

1 During this time, material documentary evidence, such as William's Federal Estate Tax
2 Return has been lost. During this time key witnesses, such as the accountant and other
3 professionals who prepared and filed William's Estate Tax Returns, as well as Marjorie
4 herself, have died. During this time period Jacqueline and Kathryn, and Marjorie while
5 she was living, made decisions affecting their personal and financial well-being in
6 reliance upon Eleanor's acceptance of the Texas oil property allocation under the Trust,
7 based upon her conduct and failure to make any challenge of the allocation. Eleanor's
8 claim to all of the income first asserted in approximately June, 2013, is made far too
9 late and has caused prejudice to Jacqueline and Kathryn because of the loss of evidence
10 and testimony of key witnesses, clearly requiring a rejection of Eleanor's position and
11 claim in these proceedings under the equitable doctrine of laches.

12 23. Concern was expressed by Jacqueline and Kathryn to Eleanor, through
13 counsel, during 2014 as to the status of funds Eleanor was required to hold in trust on
14 their behalf should the Court rule in their favor in these proceedings. An accounting
15 was requested from Eleanor's former counsel, and they were in the process of preparing
16 the same when Eleanor dismissed her former counsel and engaged new counsel.
17 *is ordered to provide by March 2, 2015, an*
~~Eleanor needs to follow through with the providing of this accounting for the Texas oil~~
18 property income, including the providing of information to Jacqueline and Kathryn
19 showing the total income received, expenses incurred, and distributions made of the
20 income from the beginning of 2012 to the present. Any income which should have
21 been distributed to Jacqueline and Kathryn during this time period, shall be accounted
22 for and reimbursed to them by Eleanor within 30 days from the date this judgment is
23 entered.

24 24. As noted in the chart attached hereto as Exhibit "A", Jacqueline and
25 Kathryn filed a Motion for Leave to Amend Pleadings, which was set for hearing on
26 January 30, 2015. As noted in this Motion and the Supplement thereto, they filed their
27 Motion out of an abundance of caution in that Eleanor in her briefing in support of her
28 Countermotion indicated that she did not feel Jacqueline and Kathryn had properly

1 pleaded all of their claims for relief and defenses for consideration by the Court at the
2 scheduled hearing. While Jacqueline and Kathryn disagreed with Eleanor's pleading
3 concerns, the pleadings and hearings in these proceedings had become disjointed in that
4 a companion Will Contest case, filed with this Court by Eleanor in Case No. P-14-
5 080595-E, intervened to suspend and continue the Trust matters until after the Will
6 Contest case was resolved. The Will Contest was resolved with a Stipulation for
7 Dismissal in early January, 2015. Further, Eleanor has been represented by three
8 different sets of attorney's in these proceedings. Her current attorneys only
9 commencing representation in late November, 2014, and they were not initially familiar
10 with the prior proceedings in this case and the effect of the Will Contest case
11 intervention. In any event, the Court finds that the initial pleadings filed on behalf of
12 Jacqueline and Kathryn in these proceedings properly plead the claims for relief and
13 the defense that the Court has relied upon in granting Judgment to them in these
14 proceedings. Eleanor clearly had notice of the pleadings and in fact the parties
15 negotiated over all of the claims for relief and the affirmative defenses alleged by
16 Jacqueline and Kathryn in concerted settlement negotiations in October, 2014, and such
17 claims and defenses were contained in the several Petitions and Motions filed during
18 the proceedings. In particular the defense of laches was mentioned in the context of
19 equitable defenses mentioned in the initial pleading, and was the subject of a Motion
20 to Dismiss and resolve the case summarily both in late 2013 and in early 2014.
21 Accordingly, the Court finds that there is no reason to file an Amended Pleading in
22 these proceedings and Jacqueline and Kathryn's Motion seeking permission to file the
23 same is considered moot and resolved.

24 25. There are still some claims and issues that the Court is not resolving at this
25 time. Eleanor filed a counterclaim for wrongful interference with contract with her
26 Answer and Counterclaim filed herein on February 10, 2014. The Court finds that this
27 Counterclaim should be dismissed without prejudice at this time, since the issues
28 therein were not addressed by the Court in the January 30, 2015, hearing, but it seems

1 that the issues would be resolved with its decision herein on the Countermotions.
2 Nevertheless, if Eleanor believes she has a valid claim still against Jacqueline for
3 wrongful interference with contract, as asserted in her Answer and Counterclaim, she
4 is free to reassert the same.

5 26. Each of the parties asserted a claim against the other in these proceedings
6 seeking to have the Court enforce the no-contest clause contained in the Trust against
7 the other party. The Court finds that the positions of each of the parties, seeking the
8 correct interpretation of the Trust provisions as to entitlement to the Texas oil property,
9 were not asserted in bad faith, and that therefore good cause to impose the no-contest
10 penalties does not exist and such claims are denied with respect to both parties, Eleanor
11 on the one hand, and Jacqueline and Kathryn on the other hand.

12 27. There still remains the issues and concerns of who will serve hereafter as
13 the Trustee of the Trust, and whether or not the interests of subtrust 2 and subtrust 3
14 in the Texas oil property should now be formally split and allocated with deeds from
15 the main Trust to the subtrusts, so the parties can go their separate ways in dealing with
16 their interests in the Texas oil properties, subject to the terms of the Trust with respect
17 to subtrust 2. Clearly, under the Trust provisions, the beneficiaries under subtrust 3 are
18 granted the right to remove their interest in the Texas oil property out of the main Trust
19 and subtrust 3, to be owned independently by the MTC Living Trust and Jacqueline
20 and Kathryn as beneficiaries thereunder. However, the Court is directing the parties
21 to submit to the Court, on or before March 2, 2015, information regarding the
22 feasibility and effect of now splitting the Texas oil property between subtrust 2 and
23 subtrust 3 (or the MTC Living Trust), and whether or not such division of interests
24 could adversely affect the value and future ownership of the interests hereafter. The
25 Court will set a hearing to consider this issue on March 20, 2015, at 10:00a.m.

26 28. With respect to whether or not Eleanor should be able to continue serving
27 as Trustee, to address both Jacqueline's and Kathryn's position that she should be
28 removed for breach of her duties as Trustee, and Eleanor's position that she is not

1 disqualified from serving, the Court also is directing the parties to provide a brief in
2 support of their positions, filed on or before March 2, 2015, with the issue to then be
3 addressed by the Court at the hearing on March 20, 2015.

4 29. Lastly, with respect to the claim Jacqueline and Kathryn have made for an
5 award of attorney's fees against Eleanor, the Court is directing that the parties file with
6 their briefs due on or before March 2, 2015, their argument and basis for their positions
7 on the award of attorney's fees and costs against Eleanor for the Court to then resolve
8 at the hearing on March 20, 2015.

9 30. In addition to the matters addressed at the hearing on January 30, 2015,
10 there is a pending appeal to the Nevada Supreme Court, assigned Case No. 66231, filed
11 by Eleanor, appealing a portion of the Court's Order in these proceedings entered on
12 July 7, 2014. With the resolution of issues in this case as herein provided, the matter
13 on appeal is now rendered moot. Therefore, the parties should submit a stipulation to
14 the Nevada Supreme Court dismissing that appeal.

15 JUGMENT

16 Pursuant to NRCP Rule 56, the Court finds that the pleadings and other
17 documents filed herein, together with the affidavits and documentary evidence
18 presented, show there is no genuine issue as to any material fact and that Jacqueline
19 and Kathryn are entitled to judgment against Eleanor as a matter of law in these
20 proceedings. Therefore, and based upon the foregoing findings, good cause exists to
21 now render judgment against Eleanor, in favor of Jacqueline and Kathryn, as follows:

22 A. Jacqueline's and Kathryn's Countermotion for Summary Judgment is
23 granted in part as hereinafter provided. The Court hereby declares, adjudges and
24 determines that the allocation of interests in the Texas oil property between subtrust 2
25 and subtrust 3, under the W.N. Connell and Marjorie T. Connell Living Trust, dated
26 May 18, 1972, was properly made under the Trust provisions, with subtrust 2 receiving
27 a 35.507% interest in the Texas oil property and subtrust 3 receiving a 64.493%
28 interest in the Texas oil property.

1 B. The Court adjudges and determines that even if the allocation of the Texas
2 oil property made following the death of William in 1979, in conjunction with the
3 filing of his Federal and Texas Estate Tax Returns, was not properly or accurately made
4 between the two subtrusts, Eleanor's claim and effort to now challenge the allocation
5 and assert an interest greater than 35.507% in the Texas oil property being in subtrust
6 2, is too late and barred under the doctrine of laches, thereby making the actual division
7 made final and binding upon her.

8 C. Eleanor's Countermotion for Summary Judgment is hereby denied.

9 D. On or before March 2, 2015, Eleanor shall provide to Jacqueline and
10 Kathryn an accounting of the Texas oil property income received by the Trust from
11 January 1, 2012, through the entry of this Summary Judgment, showing the total
12 income received, expenses incurred, and any distributions made of the income. Within
13 30 days following the entry of this Summary Judgment, Eleanor shall reimburse and
14 pay to Jacqueline and Kathryn any portion of their 65% share of the Texas oil property
15 income which was not distributed to them during this period of time. From and after
16 the entry of this Summary Judgment, 35% of the Texas oil property income shall be
17 distributed to Eleanor as beneficiary under subtrust 2, and 65% of the income shall be
18 distributed equally between Jacqueline and Kathryn as beneficiaries under subtrust 3
19 and the MTC Living Trust.

20 E. Eleanor's Counterclaim for wrongful interference with contract asserted
21 with her Answer and Counterclaim filed herein on February 10, 2014, is hereby
22 dismissed without prejudice.

23 F. The Court adjudges and determines that the positions of each of the
24 parties, seeking the correct interpretation of the Trust provisions as to entitlement to
25 the Texas oil property, were not asserted in bad faith, and that therefore good cause to
26 impose the no-contest penalties does not exist and such claims, both Eleanor's claim
27 on the one hand, and Jacqueline's and Kathryn's claim on the other hand, are denied
28 with prejudice.

1 G. Each of the parties is directed to file further briefing on the following
2 issues with the Court on or before March 2, 2015, which issues and matters will be
3 resolved by the Court at the next hearing in these proceedings, hereby set on March 20,
4 2015, at 10:00a.m.:

5 1) In the event there is no formal splitting of the Texas oil property between
6 subtrust 2 and subtrust 3 at this time, is there cause to remove Eleanor as Trustee and
7 appoint Jacqueline as the successor Trustee of the Trust and the subtrusts thereunder?
8 If cause does not exist for Eleanor's removal, would it still be better to appoint a
9 neutral successor Trustee?

10 2) Should the interests of subtrust 2 and subtrust 3 in the Texas oil property
11 now be formally split and allocated with deeds from the main Trust to the subtrusts, so
12 the parties can go their separate ways in dealing with their interests in the Texas oil
13 properties, subject to the terms of the Trust with respect to subtrust 2? The Court wants
14 the parties to provide recommendations from qualified persons knowledgeable with
15 respect to the Texas oil and mineral rights and the potential harm or benefit that could
16 result in a splitting of the interests between the parties, and whether or not such
17 division of interests could adversely affect the value and future ownership of the
18 interests hereafter.

19 3) Lastly, with respect to the claim Jacqueline and Kathryn have made for an
20 award of attorney's fees against Eleanor, the Court directs the parties to provide their
21 argument and basis for their positions on the award of attorney's fees and costs against
22 Eleanor in briefing filed on or before March 2, 2015, for the Court to then resolve at
23 the scheduled hearing on March 20, 2015.

24 H. The parties shall each sign a Stipulation and Order for Dismissal of the
25 Appeal presently pending in Nevada Supreme Court Case No. 66231, filed by Eleanor,
26 appealing a portion of the Court's Order in these proceedings entered on July 7, 2014.

27 I. The Court retains jurisdiction over the Trust pending the finalization and
28 resolution of the remaining issues mentioned above, to be addressed hereafter at the

hearing scheduled on March 20, 2015, at 10:00a.m. Until that date, Eleanor shall continue to exercise and fulfill her duties as Trustee of the Trust, and the parties shall all cooperate, in the best interest of the Trust and its beneficiaries, in any dealings with the oil companies affecting the Texas oil property.

SO ORDERED AND ADJUDGED this 15 day of April, 2015.


DISTRICT COURT JUDGE

Submitted by:

ALBRIGHT, STODDARD,
WARNICK & ALBRIGHT

Submitted by:

THE RUSHFORTH FIRM, LTD.

By: 

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Approved by:

MARQUIS AURBACH COFFING

By: 

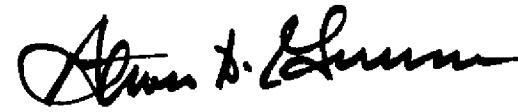
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EXHIBIT 4

EXHIBIT 4



CLERK OF THE COURT

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Ahern, as Trustee

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.: 26

Date of Hearing: March 20, 2015
Time of Hearing: 10:00 a.m.

**ORDER REGARDING THE ACCOUNTING, BREACH OF FIDUCIARY DUTY
CLAIMS AND AWARD OF ATTORNEY FEES**

This matter, having come before the Honorable Gloria Sturman on March 20, 2015, 2015 for summary judgment, Whitney B. Warnick, Esq. of the law firm Albright Stoddard, Warnick & Albright appearing on behalf of Kathryn A. Bouvier, Joseph J. Powell, Esq. of the Rushforth Firm, Ltd. appearing on behalf of Jacqueline M. Montoya, and Dale A. Hayes, Esq. and Liane K. Wakayama, Esq. of the law firm Marquis Aurbach Coffing appearing on behalf of Eleanor Connell Hartman Ahern, as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972, the Court having considered the Brief Regarding Pending Issues; the Brief Regarding Accounting, Fiduciary Duties, and Trust Administration; the Supplement to Brief Regarding Pending Issues; the Supplement to Brief Regarding Accounting, Fiduciary Duties, and Trust Administration; the Second Supplement to Brief Regarding Pending Issues, and the underlying papers and pleadings, as well as the oral arguments of counsel, and good cause appearing therefore, the Court FINDS and ORDERS as follows:

UNDISPUTED FACTS

The Accounting

4. Attached to Eleanor's Brief was an Accounting prepared by Certified Public Accountants, Gamett and King, for the time period of June 2013 through January 2015 (the "Accounting").

5. All expenses identified in the Accounting except for the \$218,760.17 in Trustee fees are approved. The Court finds the Trustee fees unreasonable and not supported in any way. The Court further finds that it is improper for a Trustee to charge a 6% fee plus overhead expenses for staff and office space. The Court therefore finds that the easiest solution is to back out the Trustee's Fee from the Accounting as an unapproved expense; however, Eleanor may be entitled to compensation for her time in serving as Trustee.

6. The \$37,000 distribution to Jacqueline and Kathryn in June 2013 was for income earned and received by the Trust prior to June 2013. The Court therefore finds that the \$37,000 distribution should not be included in the Accounting as a credit to the 65% share that is to be held in trust for the benefit of Jacqueline and Kathryn.

7. Based on removing the \$218,760.17 in Trustee fees and not crediting the \$37,000 distribution, the Court finds that a total of \$2,163,758.88 shall be held in trust for the benefit of Jacqueline and Kathyryn, which represents their 65% share of the total net income received by the Trust from June 1, 2013 through January 31, 2015.

1 8. The \$500,000 on deposit with Fidelity Capital Inc. ("Fidelity Capital") is not a
2 prudent investment. *NRS 164.640 et seq.*

3 9. Aside from the \$218,760.17 Trustee fees, the \$37,000 distribution and the
4 \$500,000 on deposit with Fidelity Capital, the Accounting is approved.

5 **Cutting Off the 65% Income**

6 10. As Trustee of the Trust, Eleanor owed fiduciary duties to Jacqueline and Kathryn
7 as beneficiaries of the Trust.

8 11. In June 2013, Eleanor cut off the 65% income stream of the net oil revenue in her
9 capacity as Trustee of the Trust, *without first seeking instruction from*
10 *the Court.*

11 **CONCLUSIONS OF LAW**

12 12. Pursuant to Nev. R. Civ. P. 56(b), "[a] party against whom a claim, counterclaim,
13 or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or
14 without supporting affidavits for a summary judgment in the party's favor as to all or any part
15 thereof." "The judgment sought shall be rendered forthwith if the pleadings . . . show that there
16 is no genuine issue as to any material fact that the moving party is entitled to judgment as a
17 matter of law." NRCP 56(c). The burden for demonstrating the absence of a genuine issue of
18 material fact lies with the moving party, and the material lodged by the moving party must be
19 viewed in the light most favorable to the non-moving party. Hoopes v. Hammargren, 102 Nev.
20 425, 429, 725 P.2d 238, 241 (1986). It is well settled in Nevada that the party opposing
21 summary judgment is entitled to all favorable inferences from the pleadings and documentary
22 evidence. See Mullis v. Nev. Nat'l Bank, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982). The non-
23 moving party, however, "must, by affidavit or otherwise, set forth specific facts demonstrating
24 the existence of a genuine issue for trial or have summary judgment entered against him."
Bulbman, Inc. v. Nev. Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

25 13. To prevail on a breach of fiduciary duty claim in Nevada, Jacqueline and Kathryn
26 bear the burden of showing that: (1) Eleanor owed them a fiduciary duty; (2) Eleanor breached
27 that duty; and (3) Jacqueline and Kathryn sustained damages as a proximate cause of the breach.
28 See Mosier v. S. Cal. Physicians Ins. Exch., 74 Cal.Rptr.2d 550, 565 (Cal. Ct. App. 1998).

1 14. The Court concludes as a matter of law that Eleanor did not breach any fiduciary
2 duties as it relates to the Accounting.

3 15. The Court concludes as a matter of law that Eleanor breached her fiduciary duties
4 owed to Jacqueline and Kathryn by failing to retain a third-party trustee and petition the Court to
5 allow the 65% income stream to Jacqueline and Kathryn to be cut off. As a result of Eleanor's
6 breach of fiduciary duties, Eleanor shall be removed as Trustee only over the 65% share of the
7 Upton County, Texas oil assets. Eleanor shall remain as Trustee over her 35% share of the
8 Upton County, Texas oil assets; however, a temporary successor Trustee shall be appointed over
9 the entire Trust until this litigation is finally resolved.

10 16. Based on Eleanor breaching her fiduciary duties, the Court will award Jacqueline
11 and Kathryn their attorney fees and costs pursuant to NRS 153.031(3)(b). The Court reserves for
12 a later date the exact amount of attorney fees and costs to be awarded.

13 BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND
14 DECREED that:

15 1. The \$500,000 currently on deposit with Fidelity Capital shall be deposited into an
16 FDIC insured bank account;

17 2. Jacqueline and Kathryn's claim for breach of fiduciary duty against Eleanor, as
18 Trustee of the Trust, is DENIED as it relates to the Accounting *based on the information*
available to the Court as of March 20, 2015;

19 3. Summary judgment on Jacqueline and Kathryn's claim for breach of fiduciary
20 duty against Eleanor, as Trustee of the Trust, is GRANTED as it relates to Eleanor cutting of
21 their 65% distributions of the oil income in June 2013;

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4. Jacqueline and Kathryn shall submit an Application for their award of attorney fees and costs pursuant to NRS 153.031(3)(b), which shall include a proper analysis of the factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969) as well as their redacted billing statements. The deadlines for the briefing schedule shall comply with E.D.C.R. 2.20. The hearing on the Application shall be set for May 13, 2015 at 9:00 a.m.

IT IS SO ORDERED this 7 day of April, 2015.

~~DISTRICT COURT JUDGE~~

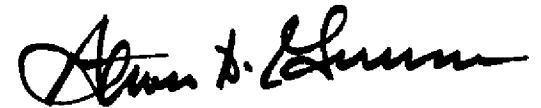
Submitted by:

MARQUIS AURBACH COFFING

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EXHIBIT 5

EXHIBIT 5



CLERK OF THE COURT

NEOJ

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DISTRICT COURT

CLARK COUNTY, NEVADA

In 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

**NOTICE OF ENTRY OF
ORDER ON SUMMARY JUDGMENT**

NOTICE IS HEREBY GIVEN THAT:

The "Order On Summary Judgment" was entered April 15, 2015 and filed

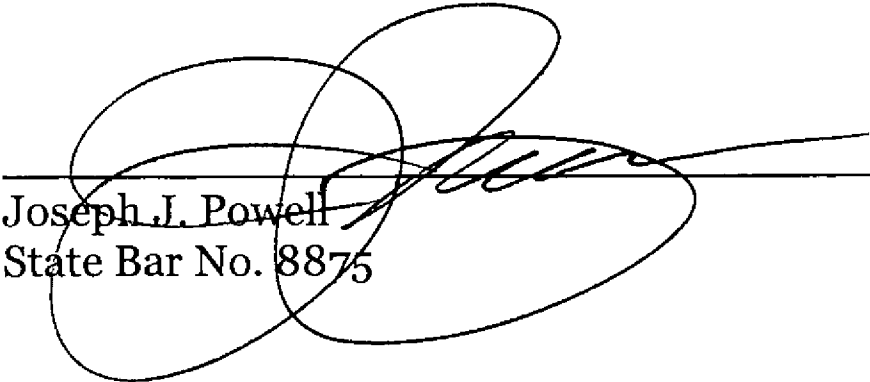
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April 16, 2015 in the above entitled matter, a copy of which is attached hereto.

Respectfully submitted by:



Joseph J. Powell
State Bar No. 8875

4/17/15

Date

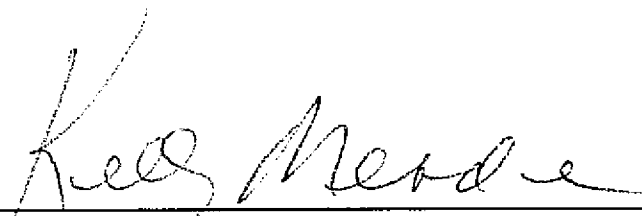
Certificate of Mailing

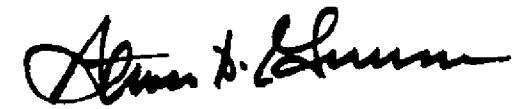
I, the undersigned, hereby certify that on April 17, 2015, I mailed a copy of the
"Notice of Entry of Order On Summary Judgment" that has been filed in this proceeding,
to each person named below by first-class mail, addressed as follows:

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An employee of,
THE RUSHFORTH FIRM, LTD.



CLERK OF THE COURT

JUDGE

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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,

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

Date of Hearing: January 30, 2015
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

SUMMARY JUDGMENT

The current proceedings were commenced with the filing on September 27, 2013, of a 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). This Petition was filed by Jacqueline M. Montoya ("Jacqueline") as Trustee of the MTC Living Trust, and on her behalf and that of Kathryn A. Bouvier ("Kathryn"), her sister, as beneficiaries under the MTC Living Trust. During these proceedings several other Petitions, Motions, and Pleadings have been filed by the parties, including those summarized in the chart attached hereto as Exhibit "A".

On December 23, 2014, Jacqueline and Kathryn filed an OPPOSITION TO ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES. Thereafter, on January 2, 2015, Eleanor Connell Hartman Ahern ("Eleanor") filed an OMNIBUS OPPOSITION TO (1) PETITION FOR DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2, AND (2) PETITION FOR CONSTRUCTION EFFECT OF PROBATE COURT ORDER; AND COUNTERMOTION FOR SUMMARY JUDGMENT. The parties agreed at the hearing on January 30, 2015, that their above-denominated Countermotions for Summary Judgment, and the claims and defenses asserted therein, subsumed all of the prior Petitions, Motions and Pleadings, and their defenses and claims asserted therein, as well as those briefed and discussed in the further replies, oppositions and supplements to their Countermotions, ~~as listed on the chart attached hereto as Exhibit "A"~~ (other than Jacqueline's and Kathryn's Motion for Leave to Amend Pleadings filed herein on January 12, 2015). Therefore, it was agreed, and the Court recognized, that the parties' claims and defenses in these proceedings could be resolved summarily by the Court in its adjudication of the parties' said Countermotions for Summary Judgment.

After reviewing the Countermotions for Summary Judgment, and the presentation of argument for and rebuttal against the Countermotions by the parties, the Court finds as follows:

1. A proceeding involving the subject Trust was initially commenced in 2009 by Eleanor, as Trustee of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (herein referred to as the "Trust"), with an unopposed Petition to

1 obtain a Court order clarifying to whom subtrust benefits would be paid upon her
2 death. The Court assumed jurisdiction over the Trust, recognizing that Eleanor, as
3 Trustee, was a Nevada resident, and the Trust provisions provided that it would be
4 administered pursuant to Nevada law. The unopposed Petition was consented to by
5 Jacqueline and Kathryn as contingent beneficiaries of subtrust No. 2 under the Trust,
6 and the Court approved the Petition by Order filed herein on September 4, 2009.
7 Pursuant to the Order, the Trust was reformed to provide that Jacqueline and Kathryn
8 were designated as the beneficiaries under subtrust No. 2 upon the death of Eleanor,
9 which had not theretofore been clearly delineated in the Trust provisions. In addition,
10 Jacqueline was designated as the successor Trustee under the Trust upon the death or
11 removal of Eleanor as the Trustee.

12 2. When the Trust was created in 1972, community property of W.N. Connell
13 ("William") and Marjorie T. Connell ("Marjorie"), along with two parcels of William's
14 separate real property, were transferred to the Trust. One parcel of William's separate
15 property was located in Clark County, Nevada. The other parcel consisted of a parcel
16 of real property and oil, gas and mineral rights relating thereto, located in Upton
17 County, Texas (hereinafter "Texas oil property"). In 1975, William and Marjorie, as
18 Trustees, deeded the Clark County, Nevada, separate property from their Trust to
19 Eleanor, personally, it having a ^{declared} value at the time, based upon the transfer tax paid, of
20 approximately \$55,000.00.

21 3. The dispute in these Trust proceedings relates to the ownership of and
22 entitlement to income from the Texas oil property. At the time of William's death on
23 November 24, 1979, the Texas oil property was the only remaining separate property
24 of William which had been titled in the Trust. The Trust provisions created two
25 subtrusts upon the death of William in 1979 (referred to in the Trust as Trust No. 2 and
26 Trust No. 3, and hereinafter referred to as "subtrust 2" and "subtrust 3"). Income
27 allocated to subtrust 2 was payable to Eleanor during her lifetime. Marjorie was the
28 beneficiary of the income and assets under subtrust 3, including the right during her

1 lifetime, at her election, to receive the assets outright free of trust. She was also given
2 the option of appointing the benefits under subtrust 3 in her Will to whomever she
3 desired. If she failed to remove the assets from subtrust 3 during her lifetime, or to
4 appoint them under her will, the benefits and assets under subtrust 3 would have
5 devolved by default to Eleanor.

6 4. Under the Trust provisions, Article SECOND, Section C.3, subtrust 3 was
7 to be funded with Marjorie's separate property, her share of the community property,
8 and a portion of William's separate property. The portion of William's separate
9 property to be allocated to subtrust 3 is determined by the provisions in Article THIRD
10 of the Trust. These provisions state:

11 "THIRD: MARITAL DEDUCTION. The Trustee shall allocate to Trust No. 3
12 from the Decedent's separate property the fractional share of the said assets which is
13 equal to the maximum marital deduction allowed for federal estate tax purposes . . . In
14 making the computations and allocations of the said property to Trust No. 3 as herein
15 required, the determination of the character and ownership of the said property and the
16 value thereof shall be as finally established for federal estate tax purposes."

17 5. Federal and Texas Estate Tax Returns were filed for William's estate
18 following his death. At the time of these proceedings, a copy of the Federal Estate Tax
19 Return could not be located, even the IRS no longer maintaining a copy thereof.
20 However, a copy of William's Texas Estate Tax Return, and a copy of the Closing
21 Letter for his Federal Estate Tax Return were available. The Texas Estate Tax Return
22 basically duplicated the information provided on the Federal Estate Tax Return, thereby
23 providing how William's estate was allocated and distributed on the Federal Estate Tax
24 Return. Daniel T. Gerety, CPA, an expert witness for Jacqueline and Kathryn, also
25 verified in his Report that the Texas Estate Tax Return used the property allocations
26 made on the Federal Estate Tax Return, and that the two Returns were consistent.

27 6. Under these two Estate Tax Returns, a 64.493% interest in the Texas oil
28 property was allocated to Marjorie, the beneficiary under subtrust 3, and the remaining
35.507% interest in the Texas oil property was allocated to Eleanor, the beneficiary
under subtrust 2. Further, as provided under Article THIRD, quoted above, this

1 allocation of interests in the Texas oil property determined the allocation of interests
2 in that property between subtrust 2 and subtrust 3 under the Trust. For purposes of
3 convenience, the interests in the Texas oil property are rounded to 65% and 35%. The
4 title to the Texas oil property has remained in the main Trust to the present day.

5 7. Upon William's death, Marjorie became the sole acting Trustee for the
6 main Trust, and the subtrusts thereunder. Pursuant to Article SECOND, Section C.6
7 of the Trust, and shortly after William's death in 1980, Eleanor was appointed by
8 Marjorie to be the co-trustee with her over William's separate property remaining in
9 the Trust; that is, over the Texas oil property which had been allocated between
10 subtrust 2 and subtrust 3. A copy of Eleanor's appointment as co-trustee, along with
11 a copy of the Trust, was recorded with the Upton County Texas Recorder's Office.

12 8. Thereafter, Marjorie sent letters to the oil companies with whom the Trust
13 had leases, advising them of William's death and that she and Eleanor were co-trustees
14 over the Texas oil property owned by the Trust. She directed that all further documents
15 which needed to be signed with the oil companies thereafter recognize the need for her
16 and Eleanor's signature.

17 9. From the time of William's death and the allocation of interests in the
18 Texas oil property between subtrust 2 and subtrust 3, until Marjorie's death on May 1,
19 2009, Eleanor was paid 35% of the Texas oil property income and Marjorie was paid
20 the remaining 65% of the income. Each was allocated a K-1 showing her receipt of her
21 share of the income, and each included the income in her annual Federal Income Tax
22 Returns.

23 10. Prior to her death, on January 7, 2008, Marjorie executed her last Will
24 and Testament, wherein she exercised her Power of Appointment over the assets and
25 benefits under subtrust 3, appointing them to Jacqueline and Kathryn as beneficiaries
26 under her MTC Living Trust. Following Marjorie's death, Eleanor, Jacqueline and
27 Kathryn met with David Strauss, Esq, Marjorie's estate planning attorney. Mr. Strauss
28 had previously provided Eleanor with a copy of Marjorie's Will containing the exercise

1 of her Power of Appointment over subtrust 3. In their meeting, he discussed with them
2 Marjorie's exercise of the Power of Appointment transferring to Jacqueline and
3 Kathryn the rights and interests of Marjorie under subtrust 3 of the Trust, thereby
4 entitling Jacqueline and Kathryn to receive the approximate 65% share of income being
5 generated by the Texas oil property going forward.

6 11. No one expressed any objection to what Mr. Strauss had advised them.
7 Thereafter, in the filing of Marjorie's Federal Estate Tax Return, the value of the 65%
8 interest in the Texas oil property allocated to Marjorie under the Trust was included
9 within her Federal taxable estate and Estate Tax Return, increasing the value of her
10 estate to a taxable estate, requiring the payment of over \$140,000.00 in Federal Estate
11 taxes. Most of Marjorie's estate at the time of her death, through her MTC Living
12 Trust, went to Jacqueline and Kathryn in equal shares. However, in addition to several
13 smaller bequests to friends, Marjorie also bequeathed to Eleanor, through the MTC
14 Living Trust, the sum of \$300,000.00.

15 12. From the time of Marjorie's death until approximately June, 2013, the
16 income from the Texas oil property was allocated with Eleanor continuing to receive
17 a 35% share, and Jacqueline and Kathryn receiving the remaining 65% share. In June,
18 2013, Eleanor as the sole acting Trustee of the Trust, stopped further income
19 distributions to Jacqueline and Kathryn, asserting at that time that she was entitled to
20 100% of the income from the Texas oil property. This led to the filing by Jacqueline
21 on September 27, 2013, of the PETITION FOR DECLARATORY JUDGMENT
22 REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS
23 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A).

24 13. Prior to asserting her right to 100% of the income from the Texas oil
25 property in June, 2013, and the cutting off of any further income distributions from the
26 Trust to Jacqueline and Kathryn, Eleanor had never asserted a claim or right to more
27 than 35% of the Texas oil property income as the lifetime beneficiary to income under
28 subtrust 2. However, in her pleadings and documents filed in these proceedings, she

1 claims she was aware of an alleged mistake made in the allocation of the Texas oil
2 property between subtrust 2 and subtrust 3 shortly after the death of William in 1979.
3 However, rather than assert a claim to all of the income, or otherwise make a claim or
4 start a legal action, Eleanor testified that she decided to do nothing. At one point in
5 these proceedings she testified in her pleadings and documents filed that her inaction
6 was motivated by a fear that it would upset Marjorie if she made a claim to more than
7 a 35% interest. She also testified in these proceedings that her inaction was due to the
8 fact she was happy to allow Marjorie to have 65% of the Texas oil property income,
9 feeling she was being generous and helping to support her mother. She asserted the
10 same motivation of generosity as the basis for her allowing Jacqueline and Kathryn to
11 continue receiving a 65% share of the Texas oil property income following the death
12 of Marjorie in 2009, and until her stoppage of income distributions to them in June,
13 2013.

14 14. However, in 1983, as testified to by Robert Hartman in his affidavit, in the
15 course of Eleanor's divorce proceeding from him, her right to only 35% of the Texas
16 oil property income was asserted and relied upon by the Court in its division of
17 property and determination of his support rights and obligations to Eleanor and their
18 two children. Then, a few years later, as shown on an estate planning intake sheet,
19 when Eleanor met with her own estate planning attorney, she advised him that she was
20 only entitled to 35% of the Texas oil property income, and that Marjorie was the owner
21 of the remaining 65% interest.

22 15. Although Eleanor claims she was being generous in giving to Marjorie
23 65% of the Texas oil property income during the balance of Marjorie's life following
24 the death of William in 1979, Marjorie's communications and conduct supported her
25 belief that she owned the rights to 65% of the Texas oil property income as the
26 beneficiary under subtrust 3. This is confirmed in several memoranda/letters prepared
27 by Marjorie, and in the inclusion of the 65% interest in her taxable estate at the time
28 of her death.

1 16. To summarize, no evidence was produced by Eleanor of any claim or
2 assertion being made by her to anyone else to a right to more than 35% of the Texas oil
3 property income from the time of William's death until June, 2013, when she first
4 asserted her claim to 100% of the income by cutting off income distributions to
5 Jacqueline and Kathryn. Further, Marjorie never communicated or acknowledged to
6 anyone else that she was not entitled to 65% of the Texas oil property income, always
7 acting consistently with owning a right to the income under the Trust allocation of the
8 Texas oil property made following William's death in 1979.

9 17. As purported evidence supporting her claim to 100% of the Trust income
10 from the Texas oil property, Eleanor presented copies of Division Orders and Leases
11 between the oil companies and the Trust relating to the Texas oil property. From the
12 time that Eleanor was made co-trustee with Marjorie over William's separate property
13 owned by the Trust until approximately 1989, it appears that in signing the Division
14 Orders and Leases with the oil companies, Marjorie and Eleanor provided their
15 personal Social Security Numbers as a tax identification number when such a number
16 was requested by the oil companies. However, apparently after it was brought to their
17 attention by an oil company that the Trust was the owner of the Texas oil property and
18 not themselves personally, and the oil company requested and recommended that a tax
19 identification number for a Trust be provided, in approximately 1989, Marjorie and
20 Eleanor started providing a tax identification number to the oil companies which had
21 been assigned by the IRS to subtrust 2. They never provided the tax identification
22 number which had been assigned by the IRS to subtrust 3. However, the Court was not
23 provided with any dates on when subtrust 2 and subtrust 3 were first assigned tax
24 identification numbers.

25 18. Nevertheless, and notwithstanding a tax identification number for subtrust
26 2 was the only tax identification number apparently given to the oil companies from
27 and after 1989, in the actual allocation of income received from the Texas oil property,
28 and in the issuance of K-1's and the filing of their Federal Income Tax Returns,

1 Eleanor's share of the income was always a 35% share and Marjorie, while she was
2 alive, always received the remaining 65% share. Following Marjorie's death, the 65%
3 share went to Jacqueline and Kathryn until the cessation of distributions by Eleanor in
4 June, 2013.

5 19. Eleanor also asserted that the Trust was a special Trust created to retain
6 the Texas oil property for the benefit of only William and his blood descendants.
7 However, since at the time of William's death, the only separate property of his that
8 remained in the Trust was the Texas oil property, pursuant to the Trust provisions, a
9 portion of that property had to be allocated to subtrust 3 in order to obtain the
10 maximum Marital Deduction for Federal Estate Tax savings. In following the Trust
11 provisions, the Texas oil property could not all be allocated to subtrust 2. Further,
12 whatever William's intent may have been when he and Marjorie first created the Trust
13 in 1972, by their deeding the Clark County, Nevada, separate property to Eleanor in
14 1975, William knew that the only remaining separate property of his in the Trust at the
15 time of his death would be the Texas oil property.

16 20. Lastly, in support of her position, Eleanor asserted that Jacqueline and
17 Kathryn acknowledged that she owned rights to all of the income from the Texas oil
18 property by their consents to and verifications of the 2009 Petition Eleanor filed to
19 clarify ownership of subtrust 2 upon her death. Eleanor asserted that in this Petition
20 there are statements averring that she owned the rights to all of the Texas oil property
21 income. However, the Petition's language can also be read as asserting that Eleanor's
22 right to income from the Texas oil property only refers to her 35% interest. More
23 significantly, the 2009 Petition was not filed to clarify rights to the Texas oil property
24 income. Rather, it was a consentient Petition with the purpose only of clarifying
25 entitlement to the benefits of subtrust 2 upon Eleanor's death, and to designate a
26 successor Trustee for the Trust upon her death.

27 21. Based upon the foregoing undisputed facts presented to the Court with the
28 Affidavits and documentary evidence submitted by the parties with their

1 Countermotions and briefs, and from the argument of counsel at the hearing, the Court
2 finds that Eleanor's interest in the Texas oil property income, as the beneficiary under
3 subtrust 2 of the Trust, is limited to a 35% share, and her claim to all of the income is
4 not supported in any way by the facts in this case. The remaining 65% share belongs
5 to subtrust 3 and Jacqueline and Kathryn, equally, as the beneficiaries under the MTC
6 Living Trust, as bequeathed and appointed to them by Marjorie in her Will. While title
7 to the Texas oil property remains titled in the main Trust, in the event a division of the
8 title now needs to be made between the two subtrusts, such division should be made
9 as recognized in the Trust administration, with the filing of William's Estate Tax
10 Returns, and the allocation between the subtrusts resulting therefrom, with a 35%
11 interest being deeded to subtrust 2, and a 65% interest being deeded to subtrust 3 (and
12 thereafter said 65% interest being deeded to the MTC Living Trust, with Jacqueline and
13 Kathryn as equal beneficiaries, should that be their request). Accordingly, Jacqueline's
14 and Kathryn's Countermotion for Summary Judgment regarding ownership of the
15 Texas oil property should be granted; and, Eleanor's Countermotion for Summary
16 Judgment should be denied.

17 22. While the Court finds that Jacqueline's and Kathryn's claim to 65% of the
18 Texas oil property and income is supported by the facts and merits of the case, and that
19 Eleanor's claim to more than 35% is not supported by the facts and merits of the case,
20 regardless of the merits of Eleanor's position, her claim to more than 35% of the
21 income from the Texas oil property cannot be supported or allowed for equitable
22 reasons because she has been guilty of laches in asserting her claim. Her assertion of
23 a claim to 100% of the income in June, 2013, makes no sense after failing in anyway
24 to assert a claim to more than 35% of the income prior to that time. During
25 approximately 34 years, from the death of William and her admitted awareness of the
26 allocation of the Texas oil property under the Trust provisions, until her first assertion
27 of a claim to more than 35% of the income in June, 2013, Eleanor never filed a claim
28 in any court, or otherwise asserted a claim or right to more than 35% of the income.

1 During this time, material documentary evidence, such as William's Federal Estate Tax
2 Return has been lost. During this time key witnesses, such as the accountant and other
3 professionals who prepared and filed William's Estate Tax Returns, as well as Marjorie
4 herself, have died. During this time period Jacqueline and Kathryn, and Marjorie while
5 she was living, made decisions affecting their personal and financial well-being in
6 reliance upon Eleanor's acceptance of the Texas oil property allocation under the Trust,
7 based upon her conduct and failure to make any challenge of the allocation. Eleanor's
8 claim to all of the income first asserted in approximately June, 2013, is made far too
9 late and has caused prejudice to Jacqueline and Kathryn because of the loss of evidence
10 and testimony of key witnesses, clearly requiring a rejection of Eleanor's position and
11 claim in these proceedings under the equitable doctrine of laches.

12 23. Concern was expressed by Jacqueline and Kathryn to Eleanor, through
13 counsel, during 2014 as to the status of funds Eleanor was required to hold in trust on
14 their behalf should the Court rule in their favor in these proceedings. An accounting
15 was requested from Eleanor's former counsel, and they were in the process of preparing
16 the same when Eleanor dismissed her former counsel and engaged new counsel.
17 *is ordered to provide by March 2, 2015, an*
~~Eleanor needs to follow through with the providing of this accounting for the Texas oil~~
18 property income, including the providing of information to Jacqueline and Kathryn
19 showing the total income received, expenses incurred, and distributions made of the
20 income from the beginning of 2012 to the present. Any income which should have
21 been distributed to Jacqueline and Kathryn during this time period, shall be accounted
22 for and reimbursed to them by Eleanor within 30 days from the date this judgment is
23 entered.

24 24. As noted in the chart attached hereto as Exhibit "A", Jacqueline and
25 Kathryn filed a Motion for Leave to Amend Pleadings, which was set for hearing on
26 January 30, 2015. As noted in this Motion and the Supplement thereto, they filed their
27 Motion out of an abundance of caution in that Eleanor in her briefing in support of her
28 Countermotion indicated that she did not feel Jacqueline and Kathryn had properly

1 pleaded all of their claims for relief and defenses for consideration by the Court at the
2 scheduled hearing. While Jacqueline and Kathryn disagreed with Eleanor's pleading
3 concerns, the pleadings and hearings in these proceedings had become disjointed in that
4 a companion Will Contest case, filed with this Court by Eleanor in Case No. P-14-
5 080595-E, intervened to suspend and continue the Trust matters until after the Will
6 Contest case was resolved. The Will Contest was resolved with a Stipulation for
7 Dismissal in early January, 2015. Further, Eleanor has been represented by three
8 different sets of attorney's in these proceedings. Her current attorneys only
9 commencing representation in late November, 2014, and they were not initially familiar
10 with the prior proceedings in this case and the effect of the Will Contest case
11 intervention. In any event, the Court finds that the initial pleadings filed on behalf of
12 Jacqueline and Kathryn in these proceedings properly plead the claims for relief and
13 the defense that the Court has relied upon in granting Judgment to them in these
14 proceedings. Eleanor clearly had notice of the pleadings and in fact the parties
15 negotiated over all of the claims for relief and the affirmative defenses alleged by
16 Jacqueline and Kathryn in concerted settlement negotiations in October, 2014, and such
17 claims and defenses were contained in the several Petitions and Motions filed during
18 the proceedings. In particular the defense of laches was mentioned in the context of
19 equitable defenses mentioned in the initial pleading, and was the subject of a Motion
20 to Dismiss and resolve the case summarily both in late 2013 and in early 2014.
21 Accordingly, the Court finds that there is no reason to file an Amended Pleading in
22 these proceedings and Jacqueline and Kathryn's Motion seeking permission to file the
23 same is considered moot and resolved.

24 25. There are still some claims and issues that the Court is not resolving at this
25 time. Eleanor filed a counterclaim for wrongful interference with contract with her
26 Answer and Counterclaim filed herein on February 10, 2014. The Court finds that this
27 Counterclaim should be dismissed without prejudice at this time, since the issues
28 therein were not addressed by the Court in the January 30, 2015, hearing, but it seems

1 that the issues would be resolved with its decision herein on the Countermotions.
2 Nevertheless, if Eleanor believes she has a valid claim still against Jacqueline for
3 wrongful interference with contract, as asserted in her Answer and Counterclaim, she
4 is free to reassert the same.

5 26. Each of the parties asserted a claim against the other in these proceedings
6 seeking to have the Court enforce the no-contest clause contained in the Trust against
7 the other party. The Court finds that the positions of each of the parties, seeking the
8 correct interpretation of the Trust provisions as to entitlement to the Texas oil property,
9 were not asserted in bad faith, and that therefore good cause to impose the no-contest
10 penalties does not exist and such claims are denied with respect to both parties, Eleanor
11 on the one hand, and Jacqueline and Kathryn on the other hand.

12 27. There still remains the issues and concerns of who will serve hereafter as
13 the Trustee of the Trust, and whether or not the interests of subtrust 2 and subtrust 3
14 in the Texas oil property should now be formally split and allocated with deeds from
15 the main Trust to the subtrusts, so the parties can go their separate ways in dealing with
16 their interests in the Texas oil properties, subject to the terms of the Trust with respect
17 to subtrust 2. Clearly, under the Trust provisions, the beneficiaries under subtrust 3 are
18 granted the right to remove their interest in the Texas oil property out of the main Trust
19 and subtrust 3, to be owned independently by the MTC Living Trust and Jacqueline
20 and Kathryn as beneficiaries thereunder. However, the Court is directing the parties
21 to submit to the Court, on or before March 2, 2015, information regarding the
22 feasibility and effect of now splitting the Texas oil property between subtrust 2 and
23 subtrust 3 (or the MTC Living Trust), and whether or not such division of interests
24 could adversely affect the value and future ownership of the interests hereafter. The
25 Court will set a hearing to consider this issue on March 20, 2015, at 10:00a.m.

26 28. With respect to whether or not Eleanor should be able to continue serving
27 as Trustee, to address both Jacqueline's and Kathryn's position that she should be
28 removed for breach of her duties as Trustee, and Eleanor's position that she is not

1 disqualified from serving, the Court also is directing the parties to provide a brief in
2 support of their positions, filed on or before March 2, 2015, with the issue to then be
3 addressed by the Court at the hearing on March 20, 2015.

4 29. Lastly, with respect to the claim Jacqueline and Kathryn have made for an
5 award of attorney's fees against Eleanor, the Court is directing that the parties file with
6 their briefs due on or before March 2, 2015, their argument and basis for their positions
7 on the award of attorney's fees and costs against Eleanor for the Court to then resolve
8 at the hearing on March 20, 2015.

9 30. In addition to the matters addressed at the hearing on January 30, 2015,
10 there is a pending appeal to the Nevada Supreme Court, assigned Case No. 66231, filed
11 by Eleanor, appealing a portion of the Court's Order in these proceedings entered on
12 July 7, 2014. With the resolution of issues in this case as herein provided, the matter
13 on appeal is now rendered moot. Therefore, the parties should submit a stipulation to
14 the Nevada Supreme Court dismissing that appeal.

15 JUGMENT

16 Pursuant to NRCP Rule 56, the Court finds that the pleadings and other
17 documents filed herein, together with the affidavits and documentary evidence
18 presented, show there is no genuine issue as to any material fact and that Jacqueline
19 and Kathryn are entitled to judgment against Eleanor as a matter of law in these
20 proceedings. Therefore, and based upon the foregoing findings, good cause exists to
21 now render judgment against Eleanor, in favor of Jacqueline and Kathryn, as follows:

22 A. Jacqueline's and Kathryn's Countermotion for Summary Judgment is
23 granted in part as hereinafter provided. The Court hereby declares, adjudges and
24 determines that the allocation of interests in the Texas oil property between subtrust 2
25 and subtrust 3, under the W.N. Connell and Marjorie T. Connell Living Trust, dated
26 May 18, 1972, was properly made under the Trust provisions, with subtrust 2 receiving
27 a 35.507% interest in the Texas oil property and subtrust 3 receiving a 64.493%
28 interest in the Texas oil property.

1 B. The Court adjudges and determines that even if the allocation of the Texas
2 oil property made following the death of William in 1979, in conjunction with the
3 filing of his Federal and Texas Estate Tax Returns, was not properly or accurately made
4 between the two subtrusts, Eleanor's claim and effort to now challenge the allocation
5 and assert an interest greater than 35.507% in the Texas oil property being in subtrust
6 2, is too late and barred under the doctrine of laches, thereby making the actual division
7 made final and binding upon her.

8 C. Eleanor's Countermotion for Summary Judgment is hereby denied.

9 D. On or before March 2, 2015, Eleanor shall provide to Jacqueline and
10 Kathryn an accounting of the Texas oil property income received by the Trust from
11 January 1, 2012, through the entry of this Summary Judgment, showing the total
12 income received, expenses incurred, and any distributions made of the income. Within
13 30 days following the entry of this Summary Judgment, Eleanor shall reimburse and
14 pay to Jacqueline and Kathryn any portion of their 65% share of the Texas oil property
15 income which was not distributed to them during this period of time. From and after
16 the entry of this Summary Judgment, 35% of the Texas oil property income shall be
17 distributed to Eleanor as beneficiary under subtrust 2, and 65% of the income shall be
18 distributed equally between Jacqueline and Kathryn as beneficiaries under subtrust 3
19 and the MTC Living Trust.

20 E. Eleanor's Counterclaim for wrongful interference with contract asserted
21 with her Answer and Counterclaim filed herein on February 10, 2014, is hereby
22 dismissed without prejudice.

23 F. The Court adjudges and determines that the positions of each of the
24 parties, seeking the correct interpretation of the Trust provisions as to entitlement to
25 the Texas oil property, were not asserted in bad faith, and that therefore good cause to
26 impose the no-contest penalties does not exist and such claims, both Eleanor's claim
27 on the one hand, and Jacqueline's and Kathryn's claim on the other hand, are denied
28 with prejudice.

1 G. Each of the parties is directed to file further briefing on the following
2 issues with the Court on or before March 2, 2015, which issues and matters will be
3 resolved by the Court at the next hearing in these proceedings, hereby set on March 20,
4 2015, at 10:00a.m.:

5 1) In the event there is no formal splitting of the Texas oil property between
6 subtrust 2 and subtrust 3 at this time, is there cause to remove Eleanor as Trustee and
7 appoint Jacqueline as the successor Trustee of the Trust and the subtrusts thereunder?
8 If cause does not exist for Eleanor's removal, would it still be better to appoint a
9 neutral successor Trustee?

10 2) Should the interests of subtrust 2 and subtrust 3 in the Texas oil property
11 now be formally split and allocated with deeds from the main Trust to the subtrusts, so
12 the parties can go their separate ways in dealing with their interests in the Texas oil
13 properties, subject to the terms of the Trust with respect to subtrust 2? The Court wants
14 the parties to provide recommendations from qualified persons knowledgeable with
15 respect to the Texas oil and mineral rights and the potential harm or benefit that could
16 result in a splitting of the interests between the parties, and whether or not such
17 division of interests could adversely affect the value and future ownership of the
18 interests hereafter.

19 3) Lastly, with respect to the claim Jacqueline and Kathryn have made for an
20 award of attorney's fees against Eleanor, the Court directs the parties to provide their
21 argument and basis for their positions on the award of attorney's fees and costs against
22 Eleanor in briefing filed on or before March 2, 2015, for the Court to then resolve at
23 the scheduled hearing on March 20, 2015.

24 H. The parties shall each sign a Stipulation and Order for Dismissal of the
25 Appeal presently pending in Nevada Supreme Court Case No. 66231, filed by Eleanor,
26 appealing a portion of the Court's Order in these proceedings entered on July 7, 2014.

27 I. The Court retains jurisdiction over the Trust pending the finalization and
28 resolution of the remaining issues mentioned above, to be addressed hereafter at the

ASWA

ALBRIGHT-STODDARD-WARNICK-ALBRIGHT
LAW OFFICES
A PROFESSIONAL CORPORATION

1 hearing scheduled on March 20, 2015, at 10:00a.m. Until that date, Eleanor shall
2 continue to exercise and fulfill her duties as Trustee of the Trust, and the parties shall
3 all cooperate, in the best interest of the Trust and its beneficiaries, in any dealings with
4 the oil companies affecting the Texas oil property.

5 SO ORDERED AND ADJUDGED this 15 day of February, 2015.

6
7 
DISTRICT COURT JUDGE

8 Submitted by:

9 ALBRIGHT, STODDARD,
10 WARNICK & ALBRIGHT

11 By: 

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13 Nevada Bar No. 001573
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14 *Attorneys for Kathryn A. Bouvier*

15 Approved by:

16 MARQUIS AURBACH COFFING

17 By:

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Submitted by:

THE RUSHFORTH FIRM, LTD.

By: 

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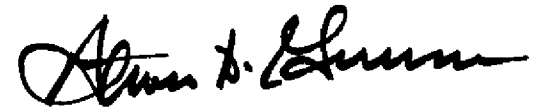
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Attorneys for Jacqueline M. Montoya

EXHIBIT 6

EXHIBIT 6



CLERK OF THE COURT

Marquis Aurbach Coffing

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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.: 26

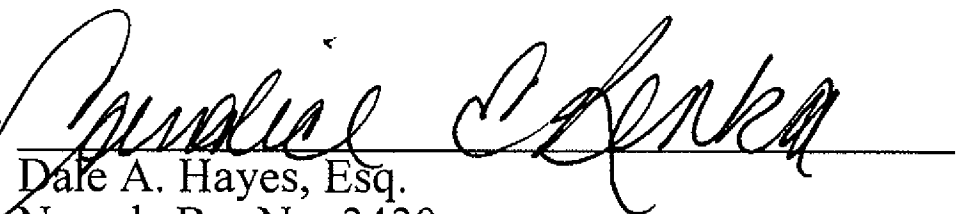
NOTICE OF ENTRY OF ORDER

Please take notice that an Order Regarding the Accounting, Breach of Fiduciary Duty Claims and Award of Attorney Fees was entered in the above-captioned matter on the 20th day of April, 2015, a copy of which is attached hereto.

Dated this 20th day of April, 2015.

MARQUIS AURBACH COFFING

By



Dale A. Hayes, Esq.
Nevada Bar No. 3430
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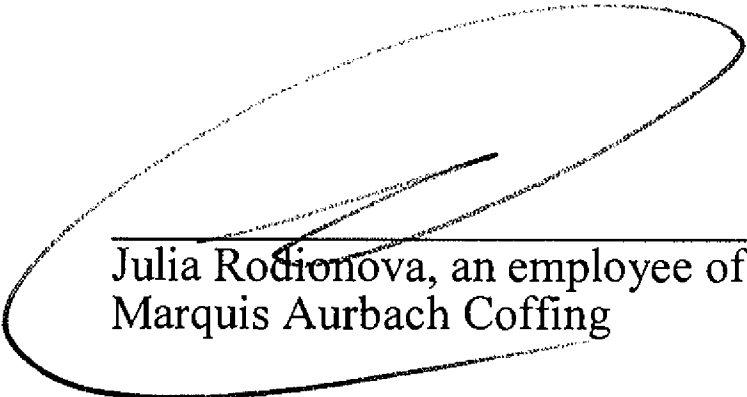
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 20th day of April, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

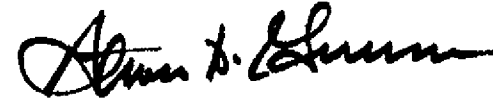
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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Eleanor Connell Hartman Ahern
8635 W. Sahara Ave., #549
Las Vegas, Nevada 89117-5838


Julia Rodionova, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



CLERK OF THE COURT

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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.: 26

Date of Hearing: March 20, 2015
Time of Hearing: 10:00 a.m.

ORDER REGARDING THE ACCOUNTING, BREACH OF FIDUCIARY DUTY
CLAIMS AND AWARD OF ATTORNEY FEES

This matter, having come before the Honorable Gloria Sturman on March 20, 2015, 2015 for summary judgment, Whitney B. Warnick, Esq. of the law firm Albright Stoddard, Warnick & Albright appearing on behalf of Kathryn A. Bouvier, Joseph J. Powell, Esq. of the Rushforth Firm, Ltd. appearing on behalf of Jacqueline M. Montoya, and Dale A. Hayes, Esq. and Liane K. Wakayama, Esq. of the law firm Marquis Aurbach Coffing appearing on behalf of Eleanor Connell Hartman Ahern, as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972, the Court having considered the Brief Regarding Pending Issues; the Brief Regarding Accounting, Fiduciary Duties, and Trust Administration; the Supplement to Brief Regarding Pending Issues; the Supplement to Brief Regarding Accounting, Fiduciary Duties, and Trust Administration; the Second Supplement to Brief Regarding Pending Issues, and the underlying papers and pleadings, as well as the oral arguments of counsel, and good cause appearing therefore, the Court FINDS and ORDERS as follows:

2. The Court set a hearing on the remaining issues to be held on March 20, 2015.

3. On March 13, 2015, Eleanor filed a Brief regarding the Accounting, fiduciary duties and trust administration ("Eleanor's Brief").

4. Attached to Eleanor's Brief was an Accounting prepared by Certified Public Accountants, Gamett and King, for the time period of June 2013 through January 2015 (the "Accounting").

5. All expenses identified in the Accounting except for the \$218,760.17 in Trustee fees are approved. The Court finds the Trustee fees unreasonable and not supported in any way. The Court further finds that it is improper for a Trustee to charge a 6% fee plus overhead expenses for staff and office space. The Court therefore finds that the easiest solution is to back out the Trustee's Fee from the Accounting as an unapproved expense; however, Eleanor may be entitled to compensation for her time in serving as Trustee.

6. The \$37,000 distribution to Jacqueline and Kathryn in June 2013 was for income earned and received by the Trust prior to June 2013. The Court therefore finds that the \$37,000 distribution should not be included in the Accounting as a credit to the 65% share that is to be held in trust for the benefit of Jacqueline and Kathryn.

7. Based on removing the \$218,760.17 in Trustee fees and not crediting the \$37,000 distribution, the Court finds that a total of \$2,163,758.88 shall be held in trust for the benefit of Jacqueline and Kathryn, which represents their 65% share of the total net income received by the Trust from June 1, 2013 through January 31, 2015.

1 8. The \$500,000 on deposit with Fidelity Capital Inc. ("Fidelity Capital") is not a
2 prudent investment. *NRS 164.640 et seq.*

3 9. Aside from the \$218,760.17 Trustee fees, the \$37,000 distribution and the
4 \$500,000 on deposit with Fidelity Capital, the Accounting is approved.

5 Cutting Off the 65% Income

6 10. As Trustee of the Trust, Eleanor owed fiduciary duties to Jacqueline and Kathryn
7 as beneficiaries of the Trust.

8 11. In June 2013, Eleanor cut off the 65% income stream of the net oil revenue in her
9 capacity as Trustee of the Trust, *without first seeking instruction from*
10 *the Court.*

10 CONCLUSIONS OF LAW

11 12. Pursuant to Nev. R. Civ. P. 56(b), "[a] party against whom a claim, counterclaim,
12 or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or
13 without supporting affidavits for a summary judgment in the party's favor as to all or any part
14 thereof." "The judgment sought shall be rendered forthwith if the pleadings . . . show that there
15 is no genuine issue as to any material fact that the moving party is entitled to judgment as a
16 matter of law." NRCP 56(c). The burden for demonstrating the absence of a genuine issue of
17 material fact lies with the moving party, and the material lodged by the moving party must be
18 viewed in the light most favorable to the non-moving party. Hoopes v. Hammargren, 102 Nev.
19 425, 429, 725 P.2d 238, 241 (1986). It is well settled in Nevada that the party opposing
20 summary judgment is entitled to all favorable inferences from the pleadings and documentary
21 evidence. See Mullis v. Nev. Nat'l Bank, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982). The non-
22 moving party, however, "must, by affidavit or otherwise, set forth specific facts demonstrating
23 the existence of a genuine issue for trial or have summary judgment entered against him."
24 Bulbman, Inc. v. Nev. Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

25 13. To prevail on a breach of fiduciary duty claim in Nevada, Jacqueline and Kathryn
26 bear the burden of showing that: (1) Eleanor owed them a fiduciary duty; (2) Eleanor breached
27 that duty; and (3) Jacqueline and Kathryn sustained damages as a proximate cause of the breach.
28 See Mosier v. S. Cal. Physicians Ins. Exch., 74 Cal.Rptr.2d 550, 565 (Cal. Ct. App. 1998).

1 14. The Court concludes as a matter of law that Eleanor did not breach any fiduciary
2 duties as it relates to the Accounting.

3 15. The Court concludes as a matter of law that Eleanor breached her fiduciary duties
4 owed to Jacqueline and Kathryn by failing to retain a third-party trustee and petition the Court to
5 allow the 65% income stream to Jacqueline and Kathryn to be cut off. As a result of Eleanor's
6 breach of fiduciary duties, Eleanor shall be removed as Trustee only over the 65% share of the
7 Upton County, Texas oil assets. Eleanor shall remain as Trustee over her 35% share of the
8 Upton County, Texas oil assets; however, a temporary successor Trustee shall be appointed over
9 the entire Trust until this litigation is finally resolved.

10 16. Based on Eleanor breaching her fiduciary duties, the Court will award Jacqueline
11 and Kathryn their attorney fees and costs pursuant to NRS 153.031(3)(b). The Court reserves for
12 a later date the exact amount of attorney fees and costs to be awarded.

13 BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND
14 DECREED that:

15 1. The \$500,000 currently on deposit with Fidelity Capital shall be deposited into an
16 FDIC insured bank account;

17 2. Jacqueline and Kathryn's claim for breach of fiduciary duty against Eleanor, as
18 Trustee of the Trust, is DENIED as it relates to the Accounting *based on the information*
available to the Court on March 20, 2015;

19 3. Summary judgment on Jacqueline and Kathryn's claim for breach of fiduciary
20 duty against Eleanor, as Trustee of the Trust, is GRANTED as it relates to Eleanor cutting of
21 their 65% distributions of the oil income in June 2013;

22
23
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1 4. Jacqueline and Kathryn shall submit an Application for their award of attorney
2 fees and costs pursuant to NRS 153.031(3)(b), which shall include a proper analysis of the
3 factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969) as well
4 as their redacted billing statements. The deadlines for the briefing schedule shall comply with
5 E.D.C.R. 2.20. The hearing on the Application shall be set for May 13, 2015 at 9:00 a.m.

6 **IT IS SO ORDERED** this 17th day of April, 2015.

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9 
DISTRICT COURT JUDGE

10 Submitted by:

11 MARQUIS AURBACH COFFING

12 By 

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