

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: THE W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST, DATED
MAY 18, 1972,

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,

Appellants,

vs.

ELEANOR C. AHERN A/K/A
ELEANOR CONNELL HARTMAN
AHERN,

Respondent.

No 71577

**DOCKETING STATEMENT
CIVIL APPEALS**

Electronically Filed
Nov 22 2016 02:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT EXHIBITS
SUBMISSION PART 2 OF 3**

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

)

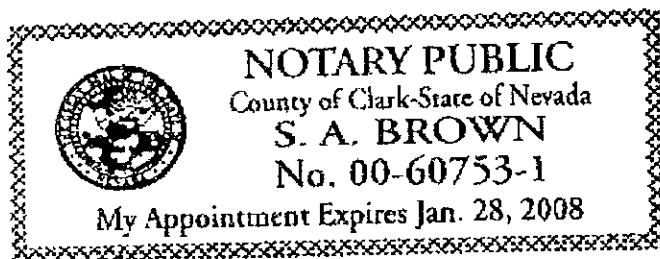
) ss.

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

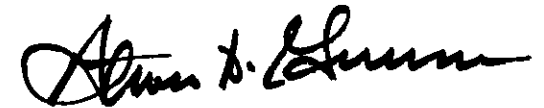
Schedule A

Ten Dollars cash

A-1

Exhibit E

Exhibit E



CLERK OF THE COURT

ANS

JOHN R. MUGAN, Esquire

Nevada Bar No. 10690

john@jeffreyburr.com

MICHAEL D. LUM, Esquire

Nevada Bar No. 12997

michael@jeffreyburr.com

JEFFREY BURR, LTD.

2600 Paseo Verde Parkway, Suite 200

Henderson, NV 89074

Telephone: (702) 433-4455

Facsimile: (702) 451-1853

Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

THE W. N. CONNELL AND MARJORIE T. CONNELL

LIVING TRUST,

Dated May 18, 1972

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:

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

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

1 **COUNTERCLAIMS AGAINST JACQUELINE M. MONTOYA**

2 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

3 6. There exist valid contracts between ELEANOR as Trustee of the TRUST and
4 Apache Corporation, Plains Marketing, L.P., and Drag A Cattle Company, LLC.

5 7. Petitioner knew of the contracts.

6 8. It is undisputed that ELEANOR is entitled to at least thirty-five percent (35%) of the
7 income from the Upton County, Texas, Oil rights as beneficiary of the TRUST, which Petitioner
8 acknowledges in her Petition.

9 9. Petitioner committed intentional acts intended or designed to disrupt the contractual
10 relationship, including but not limited to the following:

11 A. Texas legal counsel for Petitioner on September 30, 2013, three (3) days after the filing
12 of this action, sent a demand letter to Apache Corporation, Plains Marketing, L.P., and
13 Drag A Cattle Company, LLC informing them of this Nevada case and demanding that
14 not only the disputed sixty-five percent (65%) of royalties and rent be withheld, but all
15 of the royalties and rent be withheld including the thirty-five percent (35%) to which
16 there is no dispute that ELEANOR is entitled to as a beneficiary of the TRUST. Copies
17 of such letters are attached hereto as Exhibit 1 and by this reference incorporated herein.

18 B. Texas legal counsel for Petitioner on November 14, 2013, sent an email to Apache
19 Corporation, "renew[ing] [their] request that Apache continue to hold *all* interest
20 payments to the Trust in suspense." A copy of the email is attached hereto as Exhibit 2
21 and by this reference made a part hereof.

22 10. There was an actual disruption of the contracts as a result of such communications.

23 11. By reason of the aforesaid and as a direct and proximate result thereof, ELEANOR
24 as Trustee (and individually) has sustained damages as a result of such disruption and the actions of
25 Petitioner, including but not limited to interest, fees, costs, expenses, attorneys' fees, loss of use of
26 monies and property, and expert witness fees in a sum in excess of Ten Thousand Dollars
27 (\$10,000.00).
28

1 12. Petitioner's aforesaid actions constitute wanton and willful, reckless, or malicious
2 acts and conduct and/or omissions with fraud, malice and conscious disregard for the consequences
3 thereof and with ulterior motives and purposes in the use of the legal process not proper in regular
4 proceedings.

5 **ENFORCEMENT OF NO CONTEST PROVISIONS**

6 13. Paragraphs 6-12, inclusive, set forth above are hereby realleged herein.

7 14. Article TENTH, *NON-CONTEST PROVISION*, of the TRUST sets forth a lengthy a
8 no-contest clause evincing the intent of the settlers, W.N. CONNELL and MARJORIE T.
9 CONNELL, and states:

10 **"The Grantors specifically desire that these trusts created herein be administered and**
11 **distributed without litigation or dispute of any kind.** If any beneficiary of these trusts or
12 any other person, whether stranger, relatives or heirs, or any legatees or devisees under the
13 Last Will and Testament of the Grantors or the successors in interest of any such persons,
14 including any person who may be entitled to receive any portion of the Grantors' estate
15 under the intestate laws of the State of Nevada, **seek or establish to assert any claim to the**
16 **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." (emphasis added)

17 15. NRS 163.00195, Enforcement of no-contest clauses; exceptions, states in relevant
18 part:

- 19 1. Except as otherwise provided in subsections 3 and 4, **a no-contest clause in a trust**
20 **must be enforced by the court.**
- 21 2. **A no-contest clause must be construed to carry out the settlor's intent...** Except as
22 otherwise provided in subsection 3 and 4, **a beneficiary's share may be reduced or**
eliminated under a no-contest clause based upon conduct that is set forth by the settlor
in the trust....
- 23 3. Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not
24 be reduced or eliminated if the beneficiary seeks only to:
- 25 (a) Enforce the terms of the trust, any document referenced in or affected by the trust, or any
26 other trust-related instrument;
- 27 (b) Enforce the beneficiary's legal rights related to the trust, any document referenced in or
28 affected by the trust, or any trust-related instrument;
- 27 (c) Obtain a court ruling with respect to the construction or legal effect of the trust, any
document referenced in or affected by the trust, or any other trust-related instrument.
(emphasis added)

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.

PRAAYER

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
ELEANOR CONNELL HARTMAN AHERN

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

Kari A. Lomprey
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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
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.	13
2	Email of Texas Legal Counsel of Jacqueline M. Montoya dated November 14, 2013 to Apache Corporation	14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

13 OCT 3 PM 4:46

SMG:mg
Enclosures



R
CC
0004705201
0004557201
02

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

Confidentiality Notice: The information contained in this e-mail is legally privileged and confidential information intended only for the use of the intended recipients. If you are not an intended recipient, and you have received this e-mail in error, any review, dissemination, distribution or copying is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and permanently delete the copy you received. *IRS circular 230 Notice: IRS Regulations require that we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used and may not be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code not (ii) promoting, marketing or recommending to another party and transaction or tax-related matter(s).*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 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

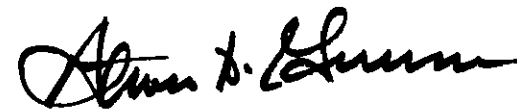
Confidentiality Notice: The information contained in this e-mail is legally privileged and confidential information intended only for the use of the intended recipients. If you are not an intended recipient, and you have received this e-mail in error, any review, dissemination, distribution or copying is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and permanently delete the copy you received. *IRS circular 230 Notice: IRS Regulations require that we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used and may not be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code not (ii) promoting, marketing or recommending to another party and transaction or tax-related matter(s).*

Exhibit F

Exhibit F

1 **MTN**
 2 **WHITNEY B. WARNICK, ESQ.**
 3 Nevada Bar No. 001573
 4 **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**
 5 801 South Rancho Drive, Suite D-4
 6 Las Vegas, Nevada 89106
 7 Tel: (702) 384-7111
 8 Fax: (702) 384-0605
 9 gma@albrightstoddard.com
 10 *Attorneys for Kathryn A. Bouvier*

Electronically Filed
 06/03/2015 03:21:19 PM



CLERK OF THE COURT

11 **JOSEPH J. POWELL, ESQ.**
 12 Nevada Bar No. 008875
 13 **THE RUSHFORTH FIRM, LTD.**
 14 9505 Hillwood Drive, Suite 100
 15 Las Vegas, Nevada 89134
 16 Tel: (702) 255-4552
 17 Fax: (702) 255-4677
 18 joey@rushforth.net
 19 *Attorneys for Jacqueline M. Montoya*

20 **DISTRICT COURT**
 21 **CLARK COUNTY, NEVADA**

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

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

Date of Hearing: ~~June~~ ^{July 22}, 2015
 Time of Hearing: 9:00am

26 An Inter Vivos Irrevocable Trust.

27 **MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR**
 28 **AHERN; ENFORCEMENT OF NO-CONTEST CLAUSE; AND**
SURCHARGE OF ELEANOR'S TRUST INCOME

Jacqueline M. Montoya ("Jacqueline") and Kathryn A. Bouvier ("Kathryn"), by and through their undersigned counsel, submit the following Motion for Assessment of Damages against Eleanor Ahern; Enforcement of No-Contest Clause; and, Surcharge of Eleanor's Trust Income.


This Motion is based upon the Affidavits and Points and Authorities submitted herewith, the pleadings and documents filed in this proceeding, and the argument of

counsel at the hearing to consider this Motion.

DATED this 3rd day of June, 2015.

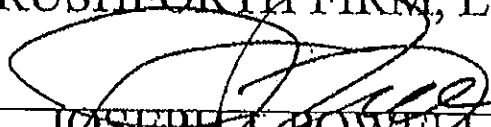
ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT

By


WHITNEY B. WARNICK, ESQ.
Nevada Bar No. 001573
801 S. Rancho Drive, Suite D-4
Las Vegas, Nevada 89016
Attorneys for Kathryn A. Bouvier

THE RUSHEORTH FIRM, LTD.

By


JOSEPH J. POWELL, ESQ.
Nevada Bar No. 008875
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134
Attorneys for Jaqueline M. Montoya


NOTICE OF MOTION

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN; ENFORCEMENT OF NO CONTEST CLAUSE; AND SURCHARGE OF ELEANOR'S TRUST**, on for hearing before the above entitled Court on the 22 day of July, 2015, at the hour of 9:00 o'clock am on said date, or as soon thereafter as counsel can be heard.

DATED this 3rd day of June, 2015

ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT

By


WHITNEY B. WARNICK, ESQ.
Nevada Bar No. 001573
801 S. Rancho Drive, Suite D-4
Las Vegas, Nevada 89016
Attorneys for Kathryn A. Bouvier

OVERVIEW

When Jacqueline, as trustee of the MTC Living Trust, filed her initial Petition in this proceeding to recover the 65% share of trust income she and her sister, Kathryn, were entitled to receive from The W. N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (the "Trust"), she and Kathryn were not aware of the extensive damages that Eleanor Connell Hartman Ahern ("Eleanor") would be causing them to incur. Now that nearly two years have elapsed since the filing of the Petition, the damages that Eleanor has caused to them far exceed the loss of their use and benefit of their 65% share of Trust income. In addition to the loss of interest they could have earned on the 65% share, as well as other financial losses and detriment they suffered due to being deprived of the income in meeting their living needs, they now are faced with a loss of most of the actual funds making up their 65% share, due to Eleanor's tortious and criminal conversion thereof. It is also apparent that the total amount due them as their 65% share has been mis-reported by Eleanor and she has failed to account for all Trust income and properly resolve the tax liability relating thereto with the IRS. Added to this is the extensive litigation fees and costs Eleanor forced Jacqueline and Kathryn to incur due to her filing and asserting frivolous claims and positions in this proceeding, including appealing several Court decisions to the Nevada Supreme Court without a justifiable basis for her appeals. All this has been done by Eleanor, while acting as trustee of the Trust for most of the time period in question, in an attempt to cower and force Jacqueline and Kathryn to either accept unfair settlement terms dictated by Eleanor, or face financial ruin due to the cost of continual litigation.

The Court has helped to rectify some of the damages Jacqueline and Kathryn have suffered due to Eleanor's wrongful conduct, in the Court's Summary Judgment rendered herein on April 16, 2015, in its Order entered on April 20, 2015, determining Eleanor breached her duties and should therefor be removed as trustee of the Trust, and in awarding them judgment against Eleanor for attorney's fees they have incurred in these proceedings. However, Eleanor's defiant and contemptuous behavior is still

1 impacting Jacqueline and Kathryn adversely, due to her refusal to cooperate with the
2 new trustee, Fredrick P. Waid, in recovering Trust funds she converted, and in
3 accounting for all of the Trust income received while she was trustee. Mr. Waid, as
4 noted in his reports, has also discovered that Eleanor has mismanged the Trust assets,
5 spent Trust funds improperly to pay her own litigating attorney fees, and has invested
6 or spent Trust funds on her own personal ventures in association with her cadre of close
7 personal advisors. Her perjurious misrepresentations to the Court made during the
8 course of these proceedings continues to mount as well.

9 In summary, Eleanor has made a complete mockery of the position of a trustee
10 with her tortious and criminal behavior. Eleanor, in complete bad faith and without any
11 justification whatsoever, unilaterally decided to cut off the income stream that was due
12 and payable to Jacqueline in her capacity as trustee of the MTC Living Trust, which is
13 the rightful owner of an approximate 65% interest in land located in Upton County,
14 Texas, together with the oil, gas, and mineral rights located in and on such land.
15 Eleanor took such action with the sole motive of financially crippling Jacqueline and
16 Kathryn, by cutting off and blocking the flow through of the income that rightfully
17 belonged to the MTC Living Trust, in hopes that she could then procure a favorable
18 settlement from Jacqueline and Kathryn which would reward her despicable behavior.

19 As light has been shed on this matter through the investigation of Fredrick P.
20 Waid, who this Court appointed after its removal of Eleanor, it has now been
21 established that Eleanor has wrongfully stolen and converted assets that did not belong
22 to her and which were mandated by this Court to be held in trust until her behavior
23 could be sorted through and the frivolous, bad faith nature of her actions could clearly
24 be seen by this Court. Eleanor has violated multiple orders of this Court, and in so
25 doing has also perjured herself on multiple occasions in a blatant attempt to cover her
26 misdeeds. While Eleanor may be facing criminal penalties for her actions, she must
27 also face the music from a damages perspective as well for her conversion and theft of
28 assets that did not belong to her. Not only should it now be declared that Eleanor has

1 forfeited her income interest share of the Trust as her conduct has directly violated the
2 terms of the Trust's no-contest clause, but she must also be held liable for treble
3 damages as well as punitive damages for her conduct.

4 The most reprehensible theft is theft which is the result of an "inside job" and
5 in this case Eleanor has not only financially harmed her own daughters, but she has
6 attempted as well to thwart the intentions and desires of her parents (who established
7 the Trust) by directly seeking to inflict damage on her daughters, the beloved
8 granddaughters of the Connells, in direct contravention of what her mother, Mrs.
9 Connell, expressly wanted. When a trustee, who is placed in such a position because
10 of an abundance of trust and faith that she will honor the wishes and directions of the
11 trust's creators, steals assets that do not belong to her, action must be taken to restore
12 and honor the intentions of the grantors and to fulfill the purpose of the Trust they
13 created. To leave such tortious behavior unpunished would encourage others to defy
14 their fiduciary duties and be contrary to public policy.

15 RELEVANT PROCEDURAL HISTORY

16 As this Court is intimately familiar with the complete procedural history that
17 has occurred in this matter, it is unnecessary to once again go through the whole history
18 of these proceedings. Rather, only the relevant history will be discussed herein.

19 In this Court's Order, titled "Order Denying Motion to Refer Contested Probate
20 Matter to Master-probate Commissioner per Edcr 4.16; Directing Payment of All Oil,
21 Gas, Mineral and Interest Roy a Ties and Rent to Eleanor C. Hartman, Also Known as
22 Eleanor C. Ahern, as Trustee of Trust No.2 of the W. N. Connell and Marjorie T.
23 Connell Living Trust Dated May 18, 1972; and Setting Calendar Call and Hearing",
24 which was signed on December 20, 2013, this Court ordered the following:

25 *IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ELEANOR C.*
26 *AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas,*
27 *mineral and interest royalties and surface rent and the remaining sixty-five percent*
28 *(65%) of such oil, gas, mineral and interest royalties and surface rent shall be held*
in the Trust by ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as
Trustee, until final resolution of this matter. [Emphasis Added]

1 Eleanor has clearly violated this Court's mandate and directive, by not only
2 misappropriating 65% of the funds which were to be locked up and simply held in trust
3 until a final case resolution, but by directly using the funds for her own personal
4 benefit. Mr. Waid, in taking over as the court appointed trustee of the Trust, and based
5 upon the still incomplete accounting made by Eleanor, has estimated that the gross sum
6 of monies that should have been held in the Trust's bank account, representing 65% of
7 the Trust income, should be in the neighborhood of \$2,660,000. Instead, Mr. Waid has
8 discovered that only \$10,000 was being held in the Trust's bank account with Wells
9 Fargo, thereby representing an approximate shortfall of \$2,650,000. Therefore, it
10 appears that Eleanor has converted or otherwise misappropriated approximately
11 \$2,650,000, in direct violation of this Court's order. The actual sum will ultimately
12 be determined by Mr. Waid when he has finally obtained access to all of the records
13 relating to the Trust income and the Trust account, which conveniently, but
14 contemptuously, Eleanor has declined to produce to him.

15 Eleanor during the course of these proceedings up to the time of her removal
16 as trustee, always represented to this Court and to the attorneys for Jacqueline and
17 Kathryn, that the monies that she was ordered to hold in trust were completely safe and
18 secure. It was only after Mr. Waid's appointment that he immediately began
19 discovering the fraud that has been perpetrated by Eleanor on this Court and Jacqueline
20 and Kathryn. Eleanor, herself, finally confessed that she misappropriated and owes to
21 the Trust (actually to Jacqueline and Kathryn) \$800,000. See "Affidavit of Fredrick
22 P. Waid, Trustee", executed May 6, 2015, which states in relevant part that "*I spoke*
23 *with Ms. Ahem on Thursday April 16, 2015, and was informed by her that she believed*
24 *she "owed" the Trust \$800,000.*" However, it appears her own estimate of funds she
25 converted and misappropriated is understated, and that as of the date of this filing,
26 despite orders compelling her to return all funds to the Trust immediately, Mr. Waid
27 still has not been able to recover over \$1,100,000 of missing Trust funds.

28 ///

LAW AND ARGUMENT

1
2 1. *Eleanor breached her duties as trustee toward the Trust in accordance with*
3 *NRS 163.115 by misappropriating Trust assets for her personal benefit and relief is*
4 *sought pursuant to NRS 164.010 and 164.015.*

5 This Court has previously assumed jurisdiction of this Trust in accordance with
6 NRS 164.010.

7 Under the laws of the state of Nevada, a trustee of a trust has a fiduciary duty
8 towards the trust and its beneficiaries. See *Bank of Nevada v. Speirs*, 603 P. 2d 1074,
9 1076 (1979) ("*A. . . trustee is a fiduciary who must act in good faith and with fidelity*
10 *to the beneficiary of the trust. He should not place himself in a position where it would*
11 *be for his own benefit to violate his duty to the beneficiary.*"). For that reason, the law
12 discourages self-dealing and interested transactions by the trustee in which the trustee
13 personally benefits to the detriment of the trust and its beneficiaries. See *Hoopes v.*
14 *Hammargren*, 725 P. 2d 238, 242 (1986) ("*The essence of a fiduciary . . . is that the*
15 *parties do not deal on equal terms, since the person in whom trust and confidence is*
16 *reposed and who accepts that trust and confidence is in a superior position to exert*
17 *unique influence.*")

18 The Court has expressly found that Eleanor breached her trustee duties. She
19 not only tortiously converted Trust funds to her own use, but she also violated the
20 prudent investor rule by investing Trust funds improperly. Pursuant to NRS 164.740,
21 "*a trustee who invests and manages trust property owes a duty to the beneficiaries of*
22 *the trust to comply with the prudent investor rule as set forth in NRS 164.700 to*
23 *164.775, inclusive.*" Furthermore, NRS 164.715 states that a "*trustee shall invest and*
24 *manage the trust property solely in the interest of the beneficiaries.*" The damages
25 caused to the Trust and its other beneficiaries (Jacqueline and Kathryn) includes the
26 loss of income which could have been earned by the Trust through wise and proper
27 investment of Trust funds.

28 ///

2. *The No-Contest provision of the Trust requires this Court to reduce Eleanor's share in the Trust to \$1.00.*

The Trust contains a No-Contest Clause in Article TENTH, that states as follows:

*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 any 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. [Emphasis Added]*

With the tortious conversion of the assets constituting 65% of the trust income, rightfully belonging to Jacqueline and Kathryn, Eleanor has made a substantial “attack” on the administration of the Trust. This wrongful taking of assets was also done directly in contravention to a court order mandating the opposite. Eleanor’s wrongful misappropriation of Trust assets has contravened the distribution provisions of the Trust as established and intended by the grantors, W.N Connell and Marjorie T. Connell. There should be no question whatsoever that reasonable and right minded grantors, such as the Connells, would never want a beneficiary who, while acting as trustee of the Trust, has stolen assets they placed into their Trust, depriving other beneficiaries thereof, to remain as a beneficiary of their trust. By stealing assets that did not belong to her, and failing to distribute the assets to the rightful beneficiaries, Eleanor has reprehensibly attacked and set aside the grantors’ wishes and intended administration and distribution of the Trust. When grantors state that they wish that the administration of their trust shall run smoothly, they obviously have in mind that theft of the Trust assets by the trustee is simply intolerable.

With this said, the Connells as grantors, and specifically Mrs. Connell who directly gifted the 65% of Upton County, Texas, land and income to the MTC Living

1 Trust for the benefit of Jacqueline and Kathryn, would want action taken to rectify the
2 breaches in the Trust administration by enforcement of the Trust's no-contest clause.
3 Otherwise, the Trust's no-contest clause would be rendered entirely toothless,
4 superfluous and of no effect.

5 A no-contest clause, like all other provisions contained in a trust or a will, is
6 to be interpreted in a logical and sensible manner. The Trust's no-contest provision,
7 quoted above, uses broad, expansive terms to convey the grantors' desire that "any
8 person" who "attacks" and disrupts the Trust administration and distribution shall
9 forfeit his or her benefits under the Trust. The Trust's no contest clause, as typically
10 do all such no-contest clauses, is intended to deter all misconduct which threatens the
11 proper administration and distribution of the Trust assets intended by the grantors. For
12 this reason, a laundry list of unacceptable actions is never given in a no-contest clause
13 because it is not intended to be viewed as a restrictive measure that is narrowly
14 construed.

15 With the discovery of the theft and conversion of the assets mandated to be
16 held by Eleanor in trust by this Court, the deceitful and fraudulent "accounting"
17 rendered by Eleanor to this Court in March of 2015, together with Eleanor's refusal to
18 cooperate with Mr. Waid, and in light of this Court's mandate for the immediate return
19 of assets, it has become crystal clear that Eleanor has attacked and intends to continue
20 to attack and oppose the proper administration of this Trust. Further, Eleanor has done
21 nothing but subject the Trust to ongoing administrative hassle, litigation, and game
22 playing both before and since being removed as trustee. Eleanor also now refuses to
23 cooperate in accounting for and tracing back all of the Trust income and expenditures
24 by her during her tenure as trustee of the Trust.

25 As the Court is aware, Jacqueline and Kathryn are also ultimate beneficiaries,
26 upon Eleanor's death, of the present entitlement Eleanor has to 35% of the Trust
27 income under subtrust 2. While terminating Eleanor's right to receive income at this
28 time may cause some financial issues for her, she has admitted that she has substantial

1 other assets, including monthly Social Security income of approximately \$1,800.00, to
2 meet her support needs. However, if the Court deemed it best to not declare a total
3 forfeiture of Eleanor's Trust income benefits, it could order that a sufficient amount of
4 her benefits be forfeited to Jacqueline and Kathryn until they have been fully
5 reimbursed for all the damages they have suffered due to her misconduct.

6 **3. Nevada Law Requires Enforcement of No-Contest Provisions to Carry Out the**
7 **Grantors' Intent**

8 NRS 163.00195, titled "Enforcement of no-contest clauses; exceptions",
9 provides for the following:

10 *1. Except as otherwise provided in subsections 3 and 4, a no-contest clause*
11 *in a trust must be enforced by the court.*

12 *2. A no-contest clause must be construed to carry out the settlor's intent.*
13 *Except to the extent the no-contest clause in the trust is vague or ambiguous,*
14 *extrinsic evidence is not admissible to establish the settlor's intent concerning*
15 *the no-contest clause. The provisions of this subsection do not prohibit such*
16 *evidence from being admitted for any other purpose authorized by law. Except*
17 *as otherwise provided in subsections 3 and 4, a beneficiary's share may be*
18 *reduced or eliminated under a no-contest clause based upon conduct that is*
19 *set forth by the settlor in the trust. Such conduct may include, without*
20 *limitation:*

21 *(a) Conduct other than formal court action; and*

22 *(b) Conduct which is unrelated to the trust itself, including, without*
23 *limitation:*

24 *(1) The commencement of civil litigation against the settlor's probate*
25 *estate or family members;*

26 *(2) Interference with the administration of another trust or a*
27 *business entity;*

28 *(3) Efforts to frustrate the intent of the settlor's power of*
attorney; and

(4) Efforts to frustrate the designation of beneficiaries related to
a nonprobate transfer by the settlor.

3. Notwithstanding any provision to the contrary in the trust, a beneficiary's
share must not be reduced or eliminated if the beneficiary seeks only to:

(a) Enforce the terms of the trust, any document referenced in or
affected by the trust, or any other trust-related instrument;

(b) Enforce the beneficiary's legal rights related to the trust, any
document referenced in or affected by the trust, or any trust-related

instrument; or

(c) Obtain a court ruling with respect to the construction or legal effect of the trust, any document referenced in or affected by the trust, or any other trust-related instrument.

4. Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated under a no-contest clause in a trust because the beneficiary institutes legal action seeking to invalidate a trust, any document referenced in or affected by the trust, or any other trust-related instrument if the legal action is instituted in good faith and based on probable cause that would have led a reasonable person, properly informed and advised, to conclude that the trust, any document referenced in or affected by the trust, or other trust-related instrument is invalid.

5. As used in this section:

(a) "No-contest clause" means one or more provisions in a trust that express a directive to reduce or eliminate the share allocated to a beneficiary or to reduce or eliminate the distributions to be made to a beneficiary if the beneficiary takes action to frustrate or defeat the settlor's intent as expressed in the trust or in a trust-related instrument.

(b) "Trust" means the original trust instrument and each amendment made pursuant to the terms of the original trust instrument.

(c) "Trust-related instrument" means any document purporting to transfer property to or from the trust or any document made pursuant to the terms of the trust purporting to direct the distribution of trust assets or to affect the management of trust assets, including, without limitation, documents that attempt to exercise a power of appointment.

As established, in Nevada, a no-contest clause *"must be enforced by the court."* NRS 163.00195(1). With a few narrow exceptions, addressed below, *"a beneficiary's share may be reduced or eliminated under a no-contest clause based upon conduct that is set forth by the settlor in the trust."* Id. at (2).

Nevada law is not unique. The majority of states hold that *"no-contest clauses are not only valid but also favored as a matter of public policy - because they discourage litigation and give effect to the purposes expressed by the testator or trustor."* *Colburn v. N Trust Co.*, 151 Cal. App. 4th 439,447,59 Cal. Rptr. 3d 828,834 (2007); see also *Burch v. George*, 7 Cal. 4th 246,255,866 P.2d 92,97 (1994) (*"[I]t is the testator's intentions that control, and a court must not rewrite the testator's will in such a way as to immunize legal proceedings plainly intended to frustrate the testator's unequivocally expressed intent from the reach of the no-contest clause."*) (internal

quotations omitted).

As noted above, Nevada has narrow safe harbor provisions that allow a trust beneficiary to seek some court intervention without violating no-contest provisions. See NRS 163.00195(3) and (4). However, none of these exceptions apply to Eleanor's breaches of the no-contest provisions. NRS 163.00195(3) (a), (b), (c) and (4) provide four exceptions to enforcing a no- contest clause. The four exceptions are as follows:

(3) Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated if the beneficiary seeks only to:

a) Enforce the terms of the trust, any document referenced in or affected by the trust, or any other trust-related instrument;

b) Enforce the beneficiary's legal rights related to the trust, any document referenced in or affected by the trust, or any trust-related instrument; or

c) Obtain a court ruling with respect to the construction or legal effect of the trust, any document referenced in or affected by the trust, or any other trust-related instrument.

(4) Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated under a no contest clause in a trust because the beneficiary institutes legal action seeking to invalidate a trust, any document referenced in or affected by the trust, or any other trust-related instrument if the legal action is instituted in good faith and based on probable cause that would have led a reasonable person, properly informed and advised, to conclude that the trust, any document referenced in or affected by the trust, or other trust-related instrument is invalid.

Eleanor's actions of theft and conversion of trust funds for her personal use that were mandated to be held in trust by this Court most certainly do not fall within any of the three exceptions quoted above under NRS 163.00195(3) (a), (b) and (c). Further, Eleanor cannot claim an exception to enforcement of the no-contest clause under the good faith and probable cause exception of NRS 163.00195(4) because that provision is strictly limited to "*legal action seeking to invalidate a trust, any document referenced in or affected by the trust, or any other trust-related instrument.*" This statutory provision is primarily intended to carve out good faith challenges to a trustor's capacity and competency in establishing the trust, and is also a codification of the exception to enforcement previously recognized and set forth in *Hannam v. Brown*, 956 P. 2d 794 (1998), prior to the Legislature's passage of the statute.

1 The "probable cause" exception to enforcement of no-contest provisions found
2 in NRS 163.00195(4), as explained in *Hannam v. Brown*, excepts "good faith actions
3 based on probable cause." *Id.* at 798. Clearly, however, there is simply no good faith
4 reason or any probable cause to justify Eleanor's disturbing and tortious behavior with
5 regard to the Trust and the administration thereof.

6 Accordingly, Jacqueline and Kathryn respectfully submit that proper
7 enforcement of the Trust's provisions requires this Court to enforce the no-contest
8 provision against Eleanor, in compliance with the explicit desires of Grantors, the
9 Connells, reducing her share in the Trust to \$1.00.

10 ***4. Damages incurred by the Trust and its beneficiaries due to Eleanor's***
11 ***conversion of Trust assets should be trebled.***

12 The Supreme Court of Nevada, in *Evans v. Dean Witter Reynolds, Inc.*, 116
13 Nev. 598 (2000), discussed conversion as follows:

14 *Conversion is "a distinct act of dominion wrongfully exerted over another's personal*
15 *property in denial of, or inconsistent with his title or rights therein or in derogation,*
16 *exclusion, or defiance of such title or rights." Wantz v. Redfield, 74 Nev. 196, 198,*
17 *326 P.2d 413, 414 (1958). Further, conversion is an act of general intent, which does*
18 *not require wrongful intent and is not excused by care, good faith, or lack of*
19 *knowledge. 116 Nev. 598, 606*

20 Eleanor has clearly committed conversion against the Trust and its beneficiaries by
21 converting assets of the Trust in an amount believed to be approximately \$2,650,000
22 for her own personal benefit and use. In addition to having committed a serious tort,
23 Eleanor's misconduct also constitutes the crime of embezzlement as defined in NRS
24 205.300.

25 NRS 143.120(2) provides that a personal representative may seek to recover
26 treble damages against a person who has converted property belonging to the estate of
27 the personal representative. The definition of a "personal representative" under NRS
28 132.265 includes not only executors and administrators, but also a person "who
performs substantially the same function under the law governing their status" as that
of an executor or administrator. In the instant case, current trustee, Mr. Waid,

1 functioning in a capacity similar to that of a personal representative, has the right to
2 seek treble damages against Eleanor for her refusal and failure to return and reimburse
3 to the Trust the funds she has misappropriated and converted to her own use. His
4 office as trustee involves the same fiduciary duties over management of assets of
5 another for the benefit of another. If Eleanor's damages to the trust, which at present
6 it is believed total approximately \$2,650,000 which she has converted, are reduced to
7 judgment and trebled, that amount would equal approximately \$7,950,000. This
8 amount should be used to surcharge Eleanor's share in the Trust, for the benefit of
9 Jacqueline and Kathryn, if Eleanor's share is not otherwise reduced to \$1.00 through
10 the enforcement of the no-contest clause, which as previously stated is mandatory
11 under Nevada law based on the actions taken by Eleanor and the circumstances
12 surrounding such action.

13 ***5. Imposition of Punitive Damages against Eleanor***

14 Punitive damages are also warranted against Eleanor as she intentionally and
15 fraudulently breached her fiduciary duty and committed tortious and criminal acts in
16 converting and embezzling Trust funds. This Court has the authority to award punitive
17 damages "*in an action for the breach of an obligation not arising from contract, where*
18 *it is proven by clear and convincing evidence that the defendant has been guilty of*
19 *oppression, fraud, or malice.*" See, NRS 42.005(1). Once shown, a petitioner, "*in*
20 *addition to the compensatory damages, may recover damages for the sake of example*
21 *and by way of punishing the defendantan amount equal to three times the amount*
22 *of compensatory damages awarded to [Petitioner] if the amount of compensatory*
23 *damages is \$100,000 or more.*" Id.

24 In this context, fraud is defined as "*an intentional misrepresentation, deception*
25 *or concealment of a material fact known to the person with the intent to deprive*
26 *another person of his or her rights or property or otherwise injure another person.*"
27 See, NRS 42.001(2).

28 As such, Jacqueline and Kathryn request that this Court treble the approximate

1 \$2,650,000 that was improperly stolen and converted by Eleanor, resulting in the
2 amount now owed to them to be approximately \$7,950,000. This amount should be
3 used to offset Eleanor's share in the Trust, if Eleanor's share is not reduced to \$1.00
4 through the enforcement of the no-contest clause.

5 **6. *In the event Eleanor's Trust Benefits are not Forfeited under the Trust's No-***
6 ***Contest Provisions, Surcharging Eleanor's Trust Income to Reimburse the Damages***
7 ***she has Caused would be Proper***

8 NRS 21.320 provides that "a judge or master may order property of the
9 judgment debtor not exempt from execution, in the hands of such debtor or any other
10 person, or due to the judgment debtor, to be applied toward the satisfaction of the
11 judgment." Thus, Jacqueline and Kathryn do not need to obtain and serve a Writ of
12 Execution and a Writ of Garnishment upon the trustee in order to have Eleanor's Trust
13 income benefits paid over to them towards satisfaction of the debts she now owes to
14 them. Rather, the Court is authorized to enter and order directing this equitable relief.
15 While the "spendthrift" provision in the Trust and NRS 21.090(dd) and NRS 21.080(2)
16 would normally prevent any execution upon her Trust income rights by general
17 creditors, under the facts of this case said clause and statutes should not prevent the
18 Court from ordering that restitution to Jacqueline and Kathryn of all damages caused
19 to them by Eleanor be made by surcharging Eleanor's Trust income benefits, assuming
20 such benefits were not otherwise forfeited under the Trust's no-contest provisions as
21 discussed above.

22 In the present case, it would be highly inequitable to allow the "spendthrift"
23 clause in the Trust to protect Eleanor from her tortious and criminal behavior. She has
24 clearly breached her duties as a trustee, and illegally converted Trust funds to her own
25 use. While the intent of a spendthrift clause is to ensure that the grantors' bequest goes
26 to those the grantors wish to benefit, a spendthrift clause is not intended by the grantors
27 to be used as a shield by a trustee, who is also a beneficiary, to thumb her nose at the
28 other beneficiaries that she has harmed and effectively say "You can't touch me!". No

1 right minded grantor would ever tolerate such a result.

2 Jacqueline and Kathryn submit that the present case of Eleanor's tortious and
3 criminal behavior justifies overriding the exemption from execution otherwise provided
4 under NRS 21.090(dd) and NRS 21.080(2). While the issue of a spendthrift trust's
5 exemption in cases where the beneficiary has committed a tortious or criminal act has
6 not come before the Nevada Supreme Court, case law from other jurisdictions where
7 this issue has arisen and the opinions of legal scholars on the issue, hold that execution
8 may proceed under public policy considerations.

9 In *Chinchurreta v. Evergreen Management, Inc.*, 117 Idaho 588 (App. Ct.
10 1989), the Court held a statutory exemption from attachment did not protect a
11 beneficiary healthcare provider against attachment by a judgment creditor of Medicare
12 payments. In numerous cases through the United States, and based upon public policy
13 reasons, the Courts have held that a statutory exemption from execution does not
14 protect a beneficiary from having his or her benefits garnished to pay child support or
15 alimony obligations. See, *Sokolsky v. Kuhn*, 405 So. 2d 975 (Fla. 1981); and, *Ward v.*
16 *Ward*, 164 N. J. Sup;er 354 (Sup. Ct. N.J. 1978. Jacqueline and Kathryn submit that
17 public policy would also bar Eleanor from attempting to isolate her Trust income
18 benefits from execution and garnishment, because Eleanor stole monies from them and
19 committed serious breaches of her fiduciary duties owing to them while acting as
20 trustee of the same Trust whereunder they all are beneficiaries.

21 Therefore, in the event the Court does not determine that Eleanor has forfeited
22 her Trust income benefits as above requested, Jacqueline and Kathryn respectfully
23 request that the Court enter an order, pursuant to NRS 21.320, directing that Fredrick
24 P. Waid, as trustee of the Trust pay over to Jacqueline and Kathryn the 35% share of
25 Trust income otherwise payable to Eleanor hereafter, until such time as full restitution
26 has been made to them of all the damages Eleanor has caused them as adjudged by the
27 Court.

28 This concept of not allowing a beneficiary to receive further assets from a trust

1 where the beneficiary has misappropriated trust assets, until the adversely affected
2 other beneficiaries are back to square one is not a foreign concept. As a court of
3 equity, this Court is empowered with the authority to right the wrong and make things
4 just and equitable. A good analysis of this authority is found in the early case of
5 *Koerner v. Pfaff*, 15 Ohio Dec. 81 (1904), the Court of Common Pleas of Ohio,
6 Franklin County, where the court of equity concluded that a trustee/beneficiary, who
7 had wrongfully taken assets not belonging to him, would receive no further entitlement
8 to trust assets until the other, innocent beneficiaries were made whole and received
9 what they were entitled to receive under trust. Following are relevant excerpts from
10 that case:

11 *"Where there are several beneficiaries and one of them takes a part in a breach of*
12 *trust, whereby a loss is occasioned, his interest in the trust property may be reached,*
13 *retained, and applied to make good the loss for the benefit of the other beneficiaries;*
14 *and this equity extends, not only to the interest while in the hands of the wrongdoing*
15 *cestui que trust, but also to those claiming it under or through him."* 2 Pomeroy, Eq.
16 *Jurisp. Sec. 1083, note.*

17 *"If a cestui que trust, whether tenant for life, or other person having a partial interest,*
18 *be responsible for having joined in a breach of trust, all the benefit that would have*
19 *accrued to him either directly or derivatively, either from that trust fund or in any*
20 *other estate comprised in the same settlement, may be stopped by the cestui que trust*
21 *or other person having a similar equity as against him, his assignees in bankruptcy,*
22 *or judgment creditors, the general creditors, and (except so far as the defense of*
23 *purchase for value without notice may be applicable) against all who claim under him,*
24 *until the amount impounded, with the accumulations has compensated the trust estate*
25 *for the loss for which that cestui que trust is responsible."* 2 Hill's Lewin, Trusts 112.

26 Underhill says:

27 *"The rule that a beneficiary in default shall take nothing out while in default applies*
28 *all the more to the case of a beneficiary who is also a trustee. In both cases he must*
29 *make good his indebtedness to the trust estate before he can obtain a share in it."*
30 *Underhill, Trusts 36.*

31 *Any other conclusion in my opinion would not only be contrary to the best*
32 *authorities both in this country and England, but it would be unjust and inequitable,*
33 *and would in addition defeat the purpose and intention of said testator, which was*
34 *to give each cestui que trust the full one-fourth of his estate remaining at the death*
35 *of Mrs. Bruck. To permit Philip to take out more than one-fourth of said entire estate*
36 *before the date of Mrs. Bruck's death, no part of which he has paid back to the*
37 *estate, and now to permit him to take in addition one-fourth of that which remains*
38 *of the estate, would not only give him a decided advantage over the others, but would*

1 *be giving him more than his father by express terms bequeathed and devised to him*
2 *in his said will, and would be giving to the other three beneficiaries much less than*
3 *was devised to them by said will.* [Emphasis Added]

4 The logic applied in the *Koerner v. Pfaff* case could not be more appropriately
5 stated by Jacqueline or Kathryn. Jacqueline and Kathryn implore this Court, as a court
6 of equity to apply the same logic and conclusion to this matter and reach the only
7 reasonable conclusion that can be made which is that, to the extent Eleanor's share is
8 not completely forfeited under the Trust's no-contest clause, her trust share should then
9 be surcharged, and Eleanor receive no further Trust income, until Jacqueline and
10 Kathryn have been fully reimbursed for the damages she has caused them.

11 **7. The Trust's "no-contest" provisions supersede the Trust's "spendthrift"**
12 **provisions.**

13 In addition to the public policy reasons for overriding Nevada's exemption laws,
14 should the Court deem it best to not fully enforce the no-contest provisions causing a
15 total forfeiture of Eleanor's benefit, then the Court should still use the "no-contest"
16 provisions against Eleanor to override the Trust's spendthrift provisions, and order a
17 surcharge of her income benefits to provide the means for Jacqueline and Kathryn to
18 recover the damages Eleanor has caused to them.

19 Enforcement of "no-contest" clauses in Wills and Trusts was well recognized
20 in the United States, prior to the enactment of NRS 137.005 and NRS 163.00195.
21 These statutes did not overturn the common law recognition of no-contest clauses in
22 Nevada as approved in *Hannam v. Brown*, 114 Nev. 350, 956 P.2d 794, 798 (1998).
23 Eleanor in her own briefing to the Court has previously noted that by law, the intent of
24 the grantors establishing the Trust should provide the guideline for how Trust
25 provisions are interpreted and applied. See, also, *Hannam v. Brown*, at 798, where the
26 Court states: "This court has historically construed trusts in a manner effecting the
27 apparent intent of the settlor." While W.N. Connell and Marjorie T. Connell in
28 establishing their Trust included a "spendthrift" clause in Article SIXTH of the Trust
to protect the Trust beneficiaries from creditor claims, they also most clearly and