

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD BAYUK LIVING TRUST; SALVATORE MORABITO, an individual; and SNOWSHOE PETROLEUM, INC., a New York corporation,

Appellants,

vs.

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito,

Respondent.

Case No. 79355

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Appeal from the Second Judicial
District Court, the Honorable Connie
J. Steinheimer Presiding

APPELLANTS' APPENDIX, VOLUME 54
(Nos. 9377–9529)

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11	September 20, 2010 email string RE: Attorney client privileged communication	Vol. 12, 1871–1875
12	Appraisal of Real Property: 370 Los Olivos, Laguna Beach, CA, as of Sept. 24, 2010	Vol. 12, 1876–1903
13	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 12, 1904–1919
14	P. Morabito Redacted Investment and Bank Report from Sept. 1 to Sept. 30, 2010	Vol. 12, 1920–1922
15	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 12, 1923–1927
16	Excerpted Transcript of December 5, 2015 Deposition of P. Morabito	Vol. 12, 1928–1952
17	Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 27, 2010	Vol. 12, 1953–1961
18	First Amendment to Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 28, 2010	Vol. 12, 1962–1964
19	Appraisal Report providing market value estimate of real property located at 8355 Panorama Drive, Reno, NV as of Dec. 7, 2011	Vol. 12, 1965–1995

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
20	An Appraisal of a vacant .977± Acre Parcel of Industrial Land Located at 49 Clayton Place West of the Pyramid Highway (State Route 445) Sparks, Washoe County, Nevada and a single-family residence located at 8355 Panorama Drive Reno, Washoe County, Nevada 89511 as of October 1, 2010 a retrospective date	Vol. 13, 1996–2073
21	APN: 040-620-09 Declaration of Value (dated 12/31/2012)	Vol. 14, 2074–2075
22	Sellers Closing Statement for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2076–2077
23	Bill of Sale for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2078–2082
24	Operating Agreement of Baruk Properties LLC	Vol. 14, 2083–2093
25	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust’s Answer to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 14, 2094–2104
26	Summary Appraisal Report of real property located at 1461 Glenneyre Street, Laguna Beach, CA 92651, as of Sept. 25, 2010	Vol. 14, 2105–2155
27	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2156–2185
28	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2186–2216

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
29	Membership Interest Transfer Agreement between Arcadia Trust and Bayuk Trust entered effective as of Oct. 1, 2010	Vol. 15, 2217–2224
30	PROMISSORY NOTE [Edward William Bayuk Living Trust (“Borrower”) promises to pay Arcadia Living Trust (“Lender”) the principal sum of \$1,617,050.00, plus applicable interest] (dated 10/01/2010)	Vol. 15, 2225–2228
31	Certificate of Merger dated Oct. 4, 2010	Vol. 15, 2229–2230
32	Articles of Merger Document No. 20100746864-78 (recorded date 10/04/2010)	Vol. 15, 2231–2241
33	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 15, 2242–2256
34	Grant Deed for real property 1254 Mary Fleming Circle, Palm Springs, CA 92262; APN: 507-520-015 (recorded 11/04/2010)	Vol. 15, 2257–2258
35	General Conveyance made as of Oct. 31, 2010 between Woodland Heights Limited (“Vendor”) and Arcadia Living Trust (“Purchaser”)	Vol. 15, 2259–2265
36	Appraisal of Real Property as of Sept. 24, 2010: 371 El Camino Del Mar, Laguna Beach, CA 92651	Vol. 15, 2266–2292
37	Excerpted Transcript of December 6, 2016 Deposition of P. Morabito	Vol. 15, 2293–2295
38	Page intentionally left blank	Vol. 15, 2296–2297
39	Ledger of Edward Bayuk to P. Morabito	Vol. 15, 2298–2300

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
40	Loan Calculator: Payment Amount (Standard Loan Amortization)	Vol. 15, 2301–2304
41	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 15, 2305–2308
42	November 10, 2011 email from Vacco RE: Baruk Properties, LLC/P. Morabito/Bank of America, N.A.	Vol. 15, 2309–2312
43	May 23, 2012 email from Vacco to Steve Peek RE: Formal Settlement Proposal to resolve the Morabito matter	Vol. 15, 2313–2319
44	Excerpted Transcript of March 12, 2015 Deposition of 341 Meeting of Creditors	Vol. 15, 2320–2326
45	Shareholder Interest Purchase Agreement between P. Morabito and Snowshoe Petroleum, Inc. (dated 09/30/2010)	Vol. 15, 2327–2332
46	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 15, 2333–2334
47	March 10, 2010 email from Naz Afshar, CPA to Darren Takemoto, CPA RE: Current Personal Financial Statement	Vol. 15, 2335–2337
48	March 10, 2010 email from P. Morabito to Jon RE: ExxonMobil CIM for Florida and associated maps	Vol. 15, 2338–2339
49	March 20, 2010 email from P. Morabito to Vacco RE: proceed with placing binding bid on June 22nd with ExxonMobil	Vol. 15, 2340–2341

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
50	P. Morabito Statement of Assets & Liabilities as of May 30, 2010	Vol. 15, 2342–2343
51	June 28, 2010 email from P. Morabito to George R. Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 15, 2344–2345
52	Plan of Merger of Consolidated Western Corp. with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 15, 2346–2364
53	Page intentionally left blank	Vol. 15, 2365–2366
54	BBVA Compass Proposed Request on behalf of Superpumper, Inc. (dated 12/15/2010)	Vol. 15, 2367–2397
55	Business Valuation Agreement between Matrix Capital Markets Group, Inc. and Superpumper, Inc. (dated 09/30/2010)	Vol. 15, 2398–2434
56	Expert report of James L. McGovern, CPA/CFF, CVA (dated 01/25/2016)	Vol. 16, 2435–2509
57	June 18, 2014 email from Sam Morabito to Michael Vanek RE: SPI Analysis	Vol. 17, 2510–2511
58	Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring, or Disposing of or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee; Case No. BK-N-13-51237 (filed 07/01/2013)	Vol. 17, 2512–2516

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
59	State of California Secretary of State Limited Liability Company – Snowshoe Properties, LLC; File No. 201027310002 (filed 09/29/2010)	Vol. 17, 2517–2518
60	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 17, 2519–2529
61	PROMISSORY NOTE [Superpumper, Inc. (“Maker”) promises to pay Compass Bank (the “Bank” and/or “Holder”) the principal sum of \$3,000,000.00] (dated 08/13/2010)	Vol. 17, 2530–2538
62	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 17, 2539–2541
63	Page intentionally left blank	Vol. 17, 2542–2543
64	Edward Bayuk’s Answers to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 17, 2544–2557
65	October 12, 2012 email from Stan Bernstein to P. Morabito RE: 2011 return	Vol. 17, 2558–2559
66	Page intentionally left blank	Vol. 17, 2560–2561
67	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 17, 2562–2564
68	Snowshoe Petroleum, Inc.’s letter of intent to set out the framework of the contemplated transaction between: Snowshoe Petroleum, Inc.; David Dwelle, LP; Eclipse Investments, LP; Speedy Investments; and TAD Limited Partnership (dated 04/21/2011)	Vol. 17, 2565–2572

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
69	Excerpted Transcript of July 10, 2017 Deposition of Dennis C. Vacco	Vol. 17, 2573–2579
70	April 15, 2011 email from P. Morabito to Christian Lovelace; Gregory Ivancic; Vacco RE: \$65 million loan offer from Cerberus	Vol. 17, 2580–2582
71	Email from Vacco to P. Morabito RE: \$2 million second mortgage on the Reno house	Vol. 17, 2583–2584
72	Email from Vacco to P. Morabito RE: Tim Haves	Vol. 17, 2585–2586
73	Settlement Agreement, Loan Agreement Modification & Release dated as of Sept. 7, 2012, entered into by Bank of America and P. Morabito	Vol. 17, 2587–2595
74	Page intentionally left blank	Vol. 17, 2596–2597
75	February 10, 2012 email from Vacco to Paul Wells and Timothy Haves RE: 1461 Glenneyre Street, Laguna Beach – Sale	Vol. 17, 2598–2602
76	May 8, 2012 email from P. Morabito to Vacco RE: Proceed with the corporate set-up with Ray, Edward and P. Morabito	Vol. 17, 2603–2604
77	September 4, 2012 email from Vacco to Edward Bayuk RE: Second Deed of Trust documents	Vol. 17, 2605–2606
78	September 18, 2012 email from P. Morabito to Edward Bayuk RE: Deed of Trust	Vol. 17, 2607–2611
79	October 3, 2012 email from Vacco to P. Morabito RE: Term Sheet on both real estate deal and option	Vol. 17, 2612–2614

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
80	March 14, 2013 email from P. Morabito to Vacco RE: BHI Hinckley	Vol. 17, 2615–2616
81	Page intentionally left blank	Vol. 17, 2617–2618
82	November 11, 2011 email from Vacco to P. Morabito RE: Trevor’s commitment to sign	Vol. 17, 2619–2620
83	November 28, 2011 email string RE: Wiring \$560,000 to Lippes Mathias	Vol. 17, 2621–2623
84	Page intentionally left blank	Vol. 17, 2624–2625
85	Page intentionally left blank	Vol. 17, 2626–2627
86	Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/22/2014)	Vol. 17, 2628–2634
87	Report of Undisputed Election (11 U.S.C § 702); Case No. BK-N-13-51237 (filed 01/23/2015)	Vol. 17, 2635–2637
88	Amended Stipulation and Order to Substitute a Party to NRCP 17(a) (filed 06/11/2015)	Vol. 17, 2638–2642
89	Membership Interest Purchase Agreement, entered into as of Oct. 6, 2010 between P. Morabito and Edward Bayuk	Vol. 17, 2643–2648
90	Complaint; Case No. BK-N-13-51237 (filed 10/15/2015)	Vol. 17, 2649–2686
91	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 17, 2687–2726

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)		Vol. 18, 2727–2734
Exhibit to Objection to Recommendation for Order		
Exhibit	Document Description	
1	Plaintiff’s counsel’s Jan. 24, 2017, email memorializing the discovery dispute agreement	Vol. 18, 2735–2736
Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)		Vol. 18, 2737–2748
Exhibit to Opposition to Objection to Recommendation for Order		
Exhibit	Document Description	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)	Vol. 18, 2749–2752
Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)		Vol. 18, 2753–2758
Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2759–2774
Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2775–2790

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants' Separate Statement of Disputed Facts in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment		
Exhibit	Document Description	
1	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 18, 2791–2793
2	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 18, 2794–2810
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013)	Vol. 18, 2811–2814
4	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 18, 2815–2826
5	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 18, 2827–2857
6	Appraisal	Vol. 18, 2858–2859
7	Budget Summary as of Jan. 7, 2016	Vol. 18, 2860–2862
8	Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks	Vol. 18, 2863–2871
9	Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz	Vol. 18, 2872–2879
10	Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble	Vol. 18, 2880–2883

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
11	Copies of cancelled checks from Edward Bayuk made payable to P. Morabito	Vol. 18, 2884–2892
12	CBRE Appraisal of 14th Street Card Lock Facility (dated 02/26/2010)	Vol. 18, 2893–2906
13	Bank of America wire transfer from P. Morabito to Salvatore Morabito in the amount of \$146,127.00; and a wire transfer from P. Morabito to Lippes for \$25.00 (date 10/01/2010)	Vol. 18, 2907–2908
14	Excerpted Transcript of October 21, 2015 Deposition of Christian Mark Lovelace	Vol. 18, 2909–2918
15	June 18, 2014 email from Sam Morabito to Michael Vanek RE: Analysis of the Superpumper transaction in 2010	Vol. 18, 2919–2920
16	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 18, 2921–2929
17	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 18, 2930–2932
18	TERM NOTE [P. Morabito (“Borrower”) promises to pay Consolidated Western Corp. (“Lender”) the principal sum of \$939,000.00, plus interest] (dated 09/01/2010)	Vol. 18, 2933–2934
19	SUCCESSOR PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$492,937.30, plus interest] (dated 02/01/2011)	Vol. 18, 2935–2937

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
20	Edward Bayuk's wire transfer to Lippes in the amount of \$517,547.20 (dated 09/29/2010)	Vol. 18, 2938–2940
21	Salvatore Morabito Bank of Montreal September 2011 Wire Transfer	Vol. 18, 2941–2942
22	Declaration of Salvatore Morabito (dated 09/21/2017)	Vol. 18, 2943–2944
23	Edward Bayuk bank wire transfer to Superpumper, Inc., in the amount of \$659,000.00 (dated 09/30/2010)	Vol. 18, 2945–2947
24	Edward Bayuk checking account statements between 2010 and 2011 funding the company with transfers totaling \$500,000	Vol. 18, 2948–2953
25	Salvatore Morabito's wire transfer statement between 2010 and 2011, funding the company with \$750,000	Vol. 18, 2954–2957
26	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 18, 2958–2961
27	September 15, 2010 email from Vacco to Yalamanchili and P. Morabito RE: Follow Up Thoughts	Vol. 18, 2962–2964
Reply in Support of Motion for Partial Summary Judgment (dated 10/10/2017)		Vol. 19, 2965–2973
Order Regarding Discovery Commissioner's Recommendation for Order dated August 17, 2017 (filed 12/07/2017)		Vol. 19, 2974–2981

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Order Denying Motion for Partial Summary Judgment (filed 12/11/2017)		Vol. 19, 2982–2997
Defendants’ Motions in Limine (filed 09/12/2018)		Vol. 19, 2998–3006
Exhibits to Defendants’ Motions in Limine		
Exhibit	Document Description	
1	Plaintiff’s Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016)	Vol. 19, 3007–3016
2	Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard	Vol. 19, 3017–3023
3	Plaintiff, Jerry Herbst’s Responses to Defendant Snowshoe Petroleum, Inc.’s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst’s Responses to Defendant, Salvatore Morabito’s Set of Interrogatories (dated 02/12/2015)	Vol. 19, 3024–3044
Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018)		Vol. 19, 3045–3056
Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich		
Exhibit	Document Description	
1	Defendants’ Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 19, 3057–3071
2	Condensed Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 19, 3072–3086

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Opposition to Defendants' Motions in Limine (filed 09/28/2018)		Vol. 19, 3087–3102
Exhibits to Opposition to Defendants' Motions in Limine		
Exhibit	Document Description	
A	Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Defendants' Motions in Limine (filed 09/28/2018)	Vol. 19, 3103–3107
A-1	Plaintiff's February 19, 2016, Amended Disclosures Pursuant to NRCP 16.1(A)(1)	Vol. 19, 3108–3115
A-2	Plaintiff's January 26, 2016, Expert Witnesses Disclosures (without exhibits)	Vol. 19, 3116–3122
A-3	Defendants' January 26, 2016, and February 29, 2016, Expert Witness Disclosures (without exhibits)	Vol. 19, 3123–3131
A-4	Plaintiff's August 17, 2017, Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3132–3175
A-5	Plaintiff's August 17, 2017, Statement of Undisputed Facts in Support of his Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3176–3205
Defendants' Reply in Support of Motions in Limine (filed 10/08/2018)		Vol. 20, 3206–3217
Exhibit to Defendants' Reply in Support of Motions in Limine		
Exhibit	Document Description	

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
1	Chapter 7 Trustee, William A. Leonard's Responses to Defendants' First Set of Interrogatories (dated 05/28/2015)	Vol. 20, 3218–3236
Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich (filed 10/08/2018)		Vol. 20, 3237–3250
Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich		
Exhibit	Document Description	
1	Excerpt of Matrix Report (dated 10/13/2010)	Vol. 20, 3251–3255
2	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 20, 3256–3270
3	November 9, 2009 email from P. Morabito to Daniel Fletcher; Jim Benbrook; Don Whitehead; Sam Morabito, etc. RE: Jan Friederich entered consulting agreement with Superpumper	Vol. 20, 3271–3272
4	Excerpted Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 20, 3273–3296
Defendants' Objections to Plaintiff's Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3297–3299
Objections to Defendants' Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3300–3303
Reply to Defendants' Opposition to Plaintiff's Motion in Limine to Exclude the Testimony of Jan Friederich (filed 10/12/2018)		Vol. 20, 3304–3311

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Minutes of September 11, 2018, Pre-trial Conference (filed 10/19/2018)		Vol. 20, 3312
Stipulated Facts (filed 10/29/2018)		Vol. 20, 3313–3321
Defendants’ Points and Authorities RE: Objection to Admission of Documents in Conjunction with the Depositions of P. Morabito and Dennis Vacco (filed 10/30/2018)		Vol. 20, 3322–3325
Plaintiff’s Points and Authorities Regarding Authenticity and Hearsay Issues (filed 10/31/2018)		Vol. 20, 3326–3334
Clerk’s Trial Exhibit List (filed 02/28/2019)		Vol. 21, 3335–3413
Exhibits to Clerk’s Trial Exhibit List		
Exhibit	Document Description	
1	Certified copy of the Transcript of September 13, 2010 Judge’s Ruling; Case No. CV07-02764	Vol. 21, 3414–3438
2	Findings of Fact, Conclusions of Law, and Judgment; Case No. CV07-02764 (filed 10/12/2010)	Vol. 21, 3439–3454
3	Judgment; Case No. CV07-0767 (filed 08/23/2011)	Vol. 21, 3455–3456
4	Confession of Judgment; Case No. CV07-02764 (filed 06/18/2013)	Vol. 21, 3457–3481
5	November 30, 2011 Settlement Agreement and Mutual Release	Vol. 22, 3482–3613
6	March 1, 2013 Forbearance Agreement	Vol. 22, 3614–3622

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
8	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013)	Vol. 22, 3623–3625
19	Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220	Vol. 22, 3626–3627
20	Stipulation and Order to Substitute a Party Pursuant to NRCF 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff's First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff's First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689
30	September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication	Vol. 22, 3690–3692
31	September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3693–3694
32	September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3695–3696
33	September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc.	Vol. 22, 3697–3697
34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
35	September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010	Vol. 22, 3699–3701
36	November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication	Vol. 22, 3702–3703
37	Morabito BMO Bank Statement – September 2010	Vol. 22, 3704–3710
38	Lippes Mathias Trust Ledger History	Vol. 23, 3711–3716

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
39	Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010	Vol. 23, 3717–3755
42	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 23, 3756–3756
43	March 10, 2010 email chain between Afshar and Takemoto RE: Current Personal Financial Statement	Vol. 23, 3757–3758
44	Salazar Net Worth Report (dated 03/15/2011)	Vol. 23, 3759–3772
45	Purchase and Sale Agreement	Vol. 23, 3773–3780
46	First Amendment to Purchase and Sale Agreement	Vol. 23, 3781–3782
47	Panorama – Estimated Settlement Statement	Vol. 23, 3783–3792
48	El Camino – Final Settlement Statement	Vol. 23, 3793–3793
49	Los Olivos – Final Settlement Statement	Vol. 23, 3794–3794
50	Deed for Transfer of Panorama Property	Vol. 23, 3795–3804
51	Deed for Transfer for Los Olivos	Vol. 23, 3805–3806
52	Deed for Transfer of El Camino	Vol. 23, 3807–3808
53	Kimmel Appraisal Report for Panorama and Clayton	Vol. 23, 3809–3886
54	Bill of Sale – Panorama	Vol. 23, 3887–3890
55	Bill of Sale – Mary Fleming	Vol. 23, 3891–3894
56	Bill of Sale – El Camino	Vol. 23, 3895–3898

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
57	Bill of Sale – Los Olivos	Vol. 23, 3899–3902
58	Declaration of Value and Transfer Deed of 8355 Panorama (recorded 12/31/2012)	Vol. 23, 3903–3904
60	Baruk Properties Operating Agreement	Vol. 23, 3905–3914
61	Baruk Membership Transfer Agreement	Vol. 24, 3915–3921
62	Promissory Note for \$1,617,050 (dated 10/01/2010)	Vol. 24, 3922–3924
63	Baruk Properties/Snowshoe Properties, Certificate of Merger (filed 10/04/2010)	Vol. 24, 3925–3926
64	Baruk Properties/Snowshoe Properties, Articles of Merger	Vol. 24, 3927–3937
65	Grant Deed from Snowshoe to Bayuk Living Trust; Doc No. 2010-0531071 (recorded 11/04/2010)	Vol. 24, 3938–3939
66	Grant Deed – 1461 Glenneyre; Doc No. 2010000511045 (recorded 10/08/2010)	Vol. 24, 3940–3941
67	Grant Deed – 570 Glenneyre; Doc No. 2010000508587 (recorded 10/08/2010)	Vol. 24, 3942–3944
68	Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust	Vol. 24, 3945–3980
69	October 24, 2011 email from P. Morabito to Vacco RE: Attorney Client Privileged Communication	Vol. 24, 3981–3982

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
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75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055
76	March 10, 2010 email chain between P. Morabito and jon@aim13.com RE: Strictly Confidential	Vol. 24, 4056–4056
77	May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil	Vol. 24, 4057–4057
78	Morabito Personal Financial Statement May 2010	Vol. 24, 4058–4059
79	June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 24, 4060–4066
80	Shareholder Interest Purchase Agreement	Vol. 24, 4067–4071
81	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4072–4075

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84	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation	Vol. 24, 4081–4083
85	Arizona Corporation Commission Letter dated October 21, 2010	Vol. 24, 4084–4091
86	Nevada Articles of Merger	Vol. 24, 4092–4098
87	New York Creation of Snowshoe	Vol. 24, 4099–4103
88	April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI	Vol. 24, 4104–4106
90	September 30, 2010 Matrix Retention Agreement	Vol. 24, 4107–4110
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
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105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197

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106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<i>Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry- Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee, Case 13-51237, ECF No. 22 (filed 07/01/2013)</i>	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
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110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
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112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
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122	Salvatore Morabito Term Note \$2,563,542.00 as of December 31, 2010	Vol. 26, 4324–4325
123	Edward Bayuk Term Note \$2,580,500.00 as of December 31, 2010	Vol. 26, 4326–4327
125	April 21, 2011 Management letter	Vol. 26, 4328–4330
126	Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011	Vol. 26, 4331–4332
127	January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit	Vol. 26, 4333–4335
128	January 6, 2012 email from Vacco to Bernstein	Vol. 26, 4336–4338
129	January 7, 2012 email from Bernstein to Lovelace	Vol. 26, 4339–4343
130	March 18, 2012 email from P. Morabito to Vacco	Vol. 26, 4344–4344
131	April 21, 2011 Proposed Acquisition of Nella Oil	Vol. 26, 4345–4351
132	April 15, 2011 email chain between P. Morabito and Vacco	Vol. 26, 4352

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134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
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137	August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves	Vol. 26, 4366
138	November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign	Vol. 26, 4367
139	November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter	Vol. 26, 4368
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141	December 7, 2011 email from Vacco to P. Morabito RE: Moreno	Vol. 26, 4371
142	February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale	Vol. 26, 4372–4375
143	April 20, 2012 email from P. Morabito to Bayuk RE: BofA	Vol. 26, 4376
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148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
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152	September 3, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4435
153	March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley	Vol. 26, 4436
154	Paul Morabito 2009 Tax Return	Vol. 26, 4437–4463
155	Superpumper Form 8879-S tax year ended December 31, 2010	Vol. 26, 4464–4484
156	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation	Vol. 27, 4485–4556
157	Snowshoe form 8879-S for year ended December 31, 2010	Vol. 27, 4557–4577
158	Snowshoe Form 1120S 2011 Amended Tax Return	Vol. 27, 4578–4655

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161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
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174	October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman’s Response to Subpoena	Vol. 27, 4670
175	Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13-51237-gwz (filed 02/03/2016)	Vol. 27, 4671–4675
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189	Mortgage – Mary Fleming	Vol. 28, 4864
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191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
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193	Mortgage – 8355 Panorama Drive	Vol. 28, 4869–4870
194	Compass – Certificate of Custodian of Records (dated 12/21/2016)	Vol. 28, 4871–4871
196	June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4872–4874
197	June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4875–4877
198	September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants’ SSOF in Support of Opposition to Plaintiff’s MSJ – filed in Case No. CV13-02663	Vol. 28, 4878–4879

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225	Bank of America Records for Edward Bayuk (dated 09/05/2012)	Vol. 28, 4887–4897
226	June 11, 2007 Wholesale Marketer Agreement	Vol. 29, 4898–4921
227	May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement	Vol. 29, 4922–4928
228	June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc.	Vol. 29, 4929–4983
229	Superpumper Inc 2008 Financial Statement (dated 12/31/2008)	Vol. 29, 4984–4996
230	November 9, 2009 email from P. Morabito to Bernstein, Yalaman RE: Jan Friederich – entered into Consulting Agreement	Vol. 29, 4997
231	September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC RE: reducing face amount of the revolving note	Vol. 29, 4998–5001
232	October 15, 2010, letter from Quarles & Brady to Vacco RE: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank	Vol. 29, 5002–5006

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235	August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis	Vol. 29, 5014–5059
236	June 18, 2014 email from S. Morabito to Vanek (WF) RE: Analysis of Superpumper Acquisition in 2010	Vol. 29, 5060–5061
241	Superpumper March 2010 YTD Income Statement	Vol. 29, 5062–5076
244	Assignment Agreement for \$939,000 Morabito Note	Vol. 29, 5077–5079
247	July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank	Vol. 29, 5080–5088
248	Superpumper Cash Contributions January 2010 thru September 2015 – Bayuk and S. Morabito	Vol. 29, 5089–5096
252	October 15, 2010 Letter from Quarles & Brady to Vacco RE: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank	Vol. 29, 5097–5099
254	Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance	Vol. 29, 5100
255	Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV	Vol. 29, 5101
256	September 30, 2010 Raffles Insurance Limited Member Summary	Vol. 29, 5102

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257	Equalization Spreadsheet	Vol. 30, 5103
258	November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County	Vol. 30, 5104–5105
260	January 7, 2016 Budget Summary – Panorama Drive	Vol. 30, 5106–5107
261	Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery	Vol. 30, 5108–5116
262	Photos of 8355 Panorama Home	Vol. 30, 5117–5151
263	Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012)	Vol. 30, 5152–5155
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
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270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
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277	Assessor's Map/Home Comparisons for 8355 Panorama Drive, Reno, NV	Vol. 32, 5401–5437
278	December 3, 2007 Case Docket for CV07-02764	Vol. 32, 5438–5564
280	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011)	Vol. 33, 5565–5570
281	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV	Vol. 33, 5571–5628
283	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	Vol. 33, 5629–5652
284	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	Vol. 33, 5653–5666
294	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito	Vol. 33, 5667–5680
295	P. Morabito 2010 Tax Return (dated 10/16/2011)	Vol. 33, 5681–5739
296	December 31, 2010 Superpumper Inc. Note to Financial Statements	Vol. 33, 5740–5743
297	December 31, 2010 Superpumper Consultations	Vol. 33, 5744

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301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
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Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
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Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
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Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
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Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen	Vol. 46, 7909–7913
1-A	September 21, 2017 Declaration of Salvatore Morabito	Vol. 46, 7914–7916
1-B	Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	Vol. 46, 7917–7957
1-C	Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)	Vol. 46, 7958–7962
1-D	Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs’ First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018)	Vol. 46, 7963–7994
1-E	Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018)	Vol. 46, 7995–8035

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1-F	Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 229 (Jan. 3, 2019)	Vol. 46, 8036–8039
1-G	Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019)	Vol. 46, 8040–8067
1-H	Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015)	Vol. 46, 8068–8076
Errata to: Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)		Vol. 47, 8077–8080
Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence		
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1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096
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Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019)		Vol. 47, 8103–8105
Supplement to Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)		Vol. 47, 8106–8110

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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Exhibit	Document Description	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
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Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
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[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
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Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
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Exhibit	Document Description	
1	Ledger of Costs	Vol. 48, 8348–8370
Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)		Vol. 48, 8371–8384
Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Plaintiff’s Application for Attorney’s Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)	Vol. 48, 8385–8390
2	Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)	Vol. 48, 8391–8397
3	Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)	Vol. 48, 8398–8399
4	Log of time entries from June 1, 2016 to March 28, 2019	Vol. 48, 8400–8456

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
5	Plaintiff's Memorandum of Costs and Disbursements (filed 04/11/2019)	Vol. 48, 8457–8487
Motion to Retax Costs (filed 04/15/2019)		Vol. 49, 8488–8495
Plaintiff's Opposition to Motion to Retax Costs (filed 04/17/2019)		Vol. 49, 8496–8507
Exhibits to Plaintiff's Opposition to Motion to Retax Costs		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Opposition to Motion to Retax Costs (filed 04/17/2019)	Vol. 49, 8508–8510
2	Summary of Photocopy Charges	Vol. 49, 8511–8523
3	James L. McGovern Curriculum Vitae	Vol. 49, 8524–8530
4	McGovern & Greene LLP Invoices	Vol. 49, 8531–8552
5	Buss-Shelger Associates Invoices	Vol. 49, 8553–8555
Reply in Support of Motion to Retax Costs (filed 04/22/2019)		Vol. 49, 8556–8562
Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/25/2019)		Vol. 49, 8563–8578
Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Plaintiff's Bill Dispute Ledger	Vol. 49, 8579–8637

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Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019)		Vol. 49, 8638–8657
Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019)		Vol. 50, 8658–8676
Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60		
Exhibit	Document Description	
1	February 27, 2019 email with attachments	Vol. 50, 8677–8768
2	Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)	Vol. 50, 8769–8771
3	February 27, 2019 email from Marcy Trabert	Vol. 50, 8772–8775
4	February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial	Vol. 50, 8776–8777
Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)		Vol. 50, 8778–8790
Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)		Vol. 51, 8836–8858
Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCp 52, 59, and 60 (filed 05/14/2019)		Vol. 51, 8859–8864
Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)		Vol. 51, 8865–8870
Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution		
Exhibit	Document Description	
1	Copy of June 22, 2019 Notice of Execution and two Write of Executions	Vol. 51, 8871–8896
2	Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019)	Vol. 51, 8897–8942
Notice of Claim of Exemption from Execution (filed 06/28/2019)		Vol. 51, 8943–8949
Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)		Vol. 51, 8950–8954
Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution		
Exhibit	Document Description	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970
Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)		Vol. 51, 8971–8972
Salvatore Morabito’s Notice of Claim of Exemption from Execution (filed 07/02/2019)		Vol. 51, 8973–8976
Edward Bayuk’s Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)		Vol. 51, 8977–8982
Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)		Vol. 51, 8983–8985
Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)		Vol. 51, 8986–8988
Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019)		Vol. 52, 8989–9003
Exhibits to Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 52, 9004–9007
2	11/30/2011 Tolling Agreement – Edward Bayuk	Vol. 52, 9008–9023
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	Vol. 52, 9024–9035

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	Vol. 52, 9036–9041
5	Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust’s Responses to Plaintiff’s First Set of Requests for Production, served 9/24/2015	Vol. 52, 9042–9051
6	8/26/2009 Grant Deed (Los Olivos)	Vol. 52, 9052–9056
7	8/17/2018 Grant Deed (El Camino)	Vol. 52, 9057–9062
8	Trial Ex. 4 (Confession of Judgment)	Vol. 52, 9063–9088
9	Trial Ex. 45 (Purchase and Sale Agreement, dated 9/28/2010)	Vol. 52, 9089–9097
10	Trial Ex. 46 (First Amendment to Purchase and Sale Agreement, dated 9/29/2010)	Vol. 52, 9098–9100
11	Trial Ex. 51 (Los Olivos Grant Deed recorded 10/8/2010)	Vol. 52, 9101–9103
12	Trial Ex. 52 (El Camino Grant Deed recorded 10/8/2010)	Vol. 52, 9104–9106
13	Trial Ex. 61 (Membership Interest Transfer Agreement, dated 10/1/2010)	Vol. 52, 9107–9114
14	Trial Ex. 62 (\$1,617,050.00 Promissory Note)	Vol. 52, 9115–9118
15	Trial Ex. 65 (Mary Fleming Grant Deed recorded 11/4/2010)	Vol. 52, 9119–9121
Notice of Entry of Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/16/2019)		Vol. 52, 9122–9124

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment		
Exhibit	Document Description	
1	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 52, 9125–9127
Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/16/2019)		Vol. 52, 9128–9130
Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 52, 9131–9134
Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019)		Vol. 52, 9135–9137
Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs		
Exhibit	Document Description	
1	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 52, 9138–9141

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing (filed 07/16/2019)		Vol. 52, 9142–9146
Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon (filed 07/17/2019)		Vol. 52, 9147–9162
Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon		
Exhibit	Document Description	
1	March 3, 2011 Deposition Transcript of P. Morabito	Vol. 52, 9163–9174
2	Mr. Bayuk's September 23, 2014 responses to Plaintiff's first set of requests for production	Vol. 52, 9175–9180
3	September 28, 2015 Deposition Transcript of Edward Bayuk	Vol. 52, 9181–9190
Reply to Plaintiff's Objection to Notice of Claim of Exemption from Execution (filed 07/18/2019)		Vol. 52, 9191–9194
Declaration of Service of Till Tap, Notice of Attachment and Levy Upon Property (filed 07/29/2019)		Vol. 52, 9195
Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 52, 9196–9199
Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim		
Exhibit	Document Description	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9200–9204

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
2	Bayuk and the Bayuk Trust's proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9205–9210
3	July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.	Vol. 52, 9211–9212
4	July 31, 2019 email from Teresa M. Pilatowicz, Esq. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff's counsel on July 31, 2019	Vol. 52, 9213–9219
5	A true and correct copy of the original Order and Bayuk Changes	Vol. 52, 9220–9224
6	A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes	Vol. 52, 9225–9229
7	Email evidencing that after review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agree to certain proposed revisions, but the majority of the changes were unacceptable as they did not reflect the Court's findings or evidence before the Court.	Vol. 52, 9230–9236
Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 53, 9237–9240

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		
Exhibit	Document Description	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9241–9245
2	Defendant's comments on Findings of Fact	Vol. 53, 9246–9247
3	Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9248–9252
Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)		Vol. 53, 9253
Order Denying Claim of Exemption (filed 08/02/2019)		Vol. 53, 9254–9255
Bayuk's Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9256–9260
Bayuk's Notice of Appeal (filed 08/05/2019)		Vol. 53, 9261–9263
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9264–9269
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal (filed 08/05/2019)		Vol. 53, 9270–9273

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal		
Exhibit	Document Description	
1	Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)	Vol. 53, 9274–9338
2	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 53, 9339–9341
3	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 53, 9342–9345
4	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 53, 9346–9349
Plaintiff's Reply to Defendants' Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		Vol. 53, 9350–9356
Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)		Vol. 53, 9357–9360
Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)		Vol. 53, 9361–9364
Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)	Vol. 53, 9365–9369

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
Exhibit to Notice of Entry of Order Denying Claim of Exemption		
Exhibit	Document Description	
1	Order Denying Claim of Exemption (08/02/2019)	Vol. 53, 9374–9376
Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)		Vol. 54, 9377–9401
Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	Vol. 54, 9407–9447
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	Vol. 54, 9448–9484
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	Vol. 54, 9485–9524
5	P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	Vol. 54, 9525–9529

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
6	Transcript of March 3, 2011 Deposition of P. Morabito	Vol. 55, 9530–9765
7	Documents Conveying Real Property	Vol. 56, 9766–9774
8	Transcript of July 22, 2019 Hearing	Vol. 56, 9775–9835
9	Tolling Agreement JH and P. Morabito (partially executed 11/30/11)	Vol. 56, 9836–9840
10	Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11)	Vol. 56, 9841–9845
11	Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19)	Vol. 56, 9846–9848
12	Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13)	Vol. 56, 9849–9853
13	Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11)	Vol. 56, 9854–9858
14	Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11)	Vol. 56, 9859–9863
15	Declaration of Mark E. Lehman, Esq. (dated 03/21/11)	Vol. 56, 9864–9867
16	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 56, 9868–9871
17	Assignment and Assumption Agreement (dated 07/03/07)	Vol. 56, 9872–9887
18	Order Denying Morabito's Claim of Exemption (filed 08/02/19)	Vol. 56, 9888–9890

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)		Vol. 57, 9891–9893
Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9894–9910
Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9911–9914
Exhibits to Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 57, 9915–9918
2	Plaintiff's Amended NRCP 16.1 Disclosures (February 19, 2016)	Vol. 57, 9919–9926
3	Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)	Vol. 57, 9927–9930
4	Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)	Vol. 57, 9931–9934
5	Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)	Vol. 57, 9935–9938

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019)		Vol. 57, 9939–9951
Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs		
Exhibit	Document Description	
19	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9952–9993
20	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9994–10010
Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019)		Vol. 57, 10011–10019
Bayuk’s Case Appeal Statement (filed 12/06/2019)		Vol. 57, 10020–10026
Bayuk’s Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Bayuk's Notice of Appeal		
Exhibit	Document Description	
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	Vol. 57, 10031–10033
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 57, 10034–10038
3	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10039–10048
Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019)		Vol. 57, 10049–10052
Exhibit to Notice of Entry of Order		
Exhibit	Document Description	
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10053–10062
Docket Case No. CV13-02663		Vol. 57, 10063–10111

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14 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**

15 **IN AND FOR THE COUNTY OF WASHOE**

16 WILLIAM A. LEONARD, Trustee for the
17 Bankruptcy Estate of Paul Anthony Morabito,
18
19 Plaintiff,

20 vs.

21 SUPERPUMPER, INC., an Arizona corporation;
22 EDWARD BAYUK, individually and as Trustee
23 of the EDWARD BAYUK LIVING TRUST;
24 SALVATORE MORABITO, an individual; and
25 SNOWSHOE PETROLEUM, INC., a New York
26 corporation,

27 Defendants.
28

Case No.: CV13-02663
Dept. No.: 4

MOTION TO MAKE AMENDED OR
ADDITIONAL FINDINGS UNDER
NRCP 52(b), OR, IN THE
ALTERNATIVE, MOTION FOR
RECONSIDERATION

1 Defendants Edward Bayuk (“Bayuk”) individually and Bayuk as Trustee (“Trustee
2 Bayuk”) of the Edward William Bayuk Living Trust (collectively “Bayuk Trust”), by and
3 through Hartman & Hartman and Marquis Aurbach Coffing; and Defendants, Superpumper, Inc.;
4 Salvatore Morabito; and Snowshoe Petroleum, Inc. by and through their counsel of record,
5 Marquis Aurbach Coffing, hereby file this motion to make amended or additional findings
6 pursuant to NRC 52(b), or, in the alternative, motion for reconsideration. The findings sought
7 to be amended are those set forth in this Court’s August 9, 2019 Order Denying Claim of
8 Exemption and Third Party Claim (“Denial Order”). A copy of the Denial Order is attached as
9 “Exhibit 1.” This motion also challenges the August 2, 2019 Order Denying Salvatore
10 Morabito’s Claim of Exemption (“Morabito Denial Order”). A copy of the Morabito Denial
11 Order is attached as “Exhibit 18.”

12 **I. INTRODUCTION**

13 The property that Plaintiff seeks to execute upon is the exempt property of the Bayuk
14 Trust, itself an Irrevocable Nevada Self-Settled Spendthrift Trust (“SSST”), evidenced as a
15 signed and written agreement with valid and unambiguous language that manifested a clear
16 intention by Bayuk to create the Bayuk Trust as Settlor, Grantor, and Co-Trustee on
17 November 12, 2005 (“Exhibit 2”) pursuant to Chapter 166 of the Nevada Revised Statutes.
18 Plaintiff seeks to illegally execute upon statutorily-exempt assets owned by the SSST Bayuk
19 Trust.

20 The Bayuk Trust exchanged exempt assets with the Arcadia Living Trust, an Irrevocable
21 Nevada SSST established on October 14, 2005 (“Arcadia Trust”) (“Exhibit 3”) or, per
22 NRS 163.025 created the Arcadia Trust’s nominee, per NRS 163.026 by the Trustee of the
23 Arcadia Trust, naming it the Arcadia Living Trust, a revocable Nevada inter vivos trust
24 established on February 14, 2006 (“Arcadia Nominee Trust”) (“Exhibit 4”). The Trustee,
25 Grantor and Settlor of the Arcadia Trust and of the Arcadia Nominee Trust were each Paul
26 Morabito (“Morabito”).

27 This motion specifically concerns paragraphs 2, 3, 4, 5, and 6 of the Denial Order, and
28 the Court’s conclusion in the Morabito Denial Order.

¶2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk Trust was established in 1998. As set forth in the Judgment, the Bayuk Trust received fraudulently transferred property which was established by clear and convincing evidence.

¶3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the name “the Edward William Bayuk Living Trust” and that is the Bayuk Trust.

¶4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada spendthrift trust under NRS 166.015 because Bayuk is the settlor and beneficiary during his lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to California in September 2010.

¶5. Contrary to assertions by Bayuk, there was no credible evidence presented that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.

¶6. Even if the claims asserted against the Bayuk Trust were subject to the time periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within two years after the fraudulent transfers were made and (2) also within six months of discovery of, or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

This motion relates to six issues that were brought before this Court at the hearing on July 22, 2019 that resulted in the Denial Order, as well as the Morabito Denial Order. Each of the six issues regards black letter law in NRS Chapter 166, the Nevada Spendthrift Trust Act, and the record needs to accurately reflect the true and correct amended and additional findings pursuant to NRCP 52(b). Defendants, alternatively, move this Court for the same relief under the reconsideration standard outlined in the Washoe District Court Rules, Rule 12. Yet, as the Nevada Supreme Court has clarified, the reconsideration standard is the functional equivalent of an NRCP 59(e) motion. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d

1 1190, 1193–1194 (2010). In *Primo Builders*, the Nevada Supreme Court also explained that
2 although the standard to alter or amend under NRCP 59(e) is discretionary, courts do not defer to
3 “legal error.” *Id.*, 126 Nev. at 589, 245 P.3d at 1197.

4 First, did the Bayuk Trust exchange or receive fraudulently transferred property or
5 exchange and transfer exempt Nevada SSST assets? Was the SSST Bayuk Trust a judgment
6 debtor under this Court’s March 29, 2019 judgment or a stranger to the Court?

7 Second, was the existence of the Bayuk Trust and the revocable Bayuk Nominee Trusts
8 hidden? If Trustee Bayuk gave extrinsic or parol evidence, does it contradict or vary the terms of
9 an unambiguous written instrument? Was the Bayuk Trust valid under NRS 166.170(4) when
10 used for arranging financing by a mortgage or deed of trust and then reconveying to the Nevada
11 Irrevocable SSST the asset—whether in original form or through the financing contemplated by
12 NRS 166.170(4) receiving substantially the exact same valued asset back?

13 Third, did Trustee Bayuk breach trust formalities of the Bayuk Trust under
14 NRS 166.040(2)(f), (g) & (h)(3)? Did the Bayuk Trust meet the requirements for enforcement as
15 a Nevada SSST under NRS 166.015? Since neither Morabito nor Bayuk are domiciles of
16 Nevada today, does NRS 166.015 apply under the SSST construction, operation, and
17 enforcement provisions?

18 Fourth, the Court, under the Denial Order and during the July 22, 2019 hearing,
19 disregarded the burial plot as insufficient to invoke the protections of NRS Chapter 166. Has the
20 Bayuk Trust breached the trust formalities of an otherwise validly created Irrevocable Nevada
21 SSST?

22 Fifth, the Denial Order states that the (page 3) “subject fraudulent transfers occurred in
23 September 2010 and thereafter.” Was the statute of limitations contained in NRS 166.170(1)
24 and/or NRS 166.170(2) tolled by the alleged concealment by Trustee Bayuk of the SSST Bayuk
25 Trust or failure by Trustee Bayuk to disclose the Bayuk Trust documents or the exempt assets the
26 Bayuk Trust held?

1 Sixth, should the Court reject Plaintiff's general writ of execution as to Sam Morabito for
2 lack of specificity? Upon these issues, Defendants respectfully request that this Court grant them
3 relief under NRCP 52(b), WDCR 12, and NRCP 59(e).

4
5 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

6 **A. THE RELEASE OF THE ARCADIA TRUST AND THE ARCADIA
NOMINEE TRUST.**

7 Both the Arcadia Trust and the Arcadia Nominee Trust were disclosed by Morabito to
8 JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (together the "Herbst Parties") on March 1,
9 2011 ("Exhibit 5") in a Supplement to NRCP 16.1 Disclosures by Morabito's counsel, Barry
10 Breslow, Esq., to Herbst Parties' counsel, John Desmond, Esq.

11 On March 3, 2011, Mr. Desmond conducted a deposition of Morabito in Los Angeles,
12 California with Mr. Breslow present ("Exhibit 6"). Morabito went into minute detail regarding
13 the exchanges of exempt assets of the Irrevocable Nevada SSST Arcadia Trust or by its agent-in-
14 fact, the Arcadia Nominee Trust with its beneficiaries, Salvatore Morabito and Edward Bayuk, as
15 well as with Trustee Bayuk, the Bayuk Trust, and the Bayuk Nominee Trust.

16 A series of exchanges of exempt SSST assets occurred on October 1 and on November 4,
17 2010. The exchanges were all valid and enforceable acts by any reading of the four corners of
18 the Arcadia Trust or the Bayuk Trust—contemplated since the manifest intention of Morabito on
19 October 14, 2005 and by Bayuk on November 12, 2005. The exempt SSST exchanges were
20 completed and made known through public record on September 28 and October 1, 2010 such
21 that the claims against "Debtor" made by Plaintiff in the Findings of Fact and Conclusions of
22 Law ("FF&CL") and the resulting judgment ("Superpumper Judgment") when viewed from the
23 prism of these truthful facts and chronology as well as NRS Chapter 166 are binding on the
24 parties as Nevada law under the Settlement Agreement.

25 **B. THE TRANSFERS MADE ON THE PUBLIC RECORD.**

26 The Herbst Parties were already aware through the public record on October 1, 2010 and
27 on November 4, 2010 of the conveyance of real property ("Exhibit 7") per NRS 166.170(2),
28 which governs the transfer, including, without limitation, the conveyance of the real property that

1 was recorded in the office of the county recorder in which the property is located. Plaintiff has
2 erroneously used these same exhibits as proof of malfeasance or failure to disclose information.
3 The findings were based upon the arguments and comments at the July 22, 2019 hearing of
4 which the transcript is attached ("Exhibit 8").

5 The first issue before the Court is that the record should reflect specific facts regarding
6 the statute of limitations set forth in NRS 166.170(1)(a)(1) & (2) and NRS 166.170(2) that the
7 Bayuk Trust was established on November 12, 2005 and that the initial two-year transfer period
8 ended on November 12, 2007; and the six-month period ended April 1, 2011. The date falls
9 within a claim by the Herbst Parties or Plaintiff against Bayuk, Trustee Bayuk, the Bayuk Trust,
10 or the Bayuk Nominee Trust.

11 The language in the Bayuk Trust of November 12, 2005 is clear and unambiguous;
12 therefore, NRS 166.170(1)(a)(1) determines the two-year anniversary date after the creation of
13 the SSST and the transfer of assets as November 12, 2007. Neither the Herbst Parties nor
14 Plaintiff made any claim against the Bayuk Trust prior to November 12, 2007. The SSST Bayuk
15 Trust is not a judgment debtor.

16 In the Nevada Supreme Court case, *Klabacka v Nelson*, 394 P.3d 940, 947 (Nev. 2017),
17 the Court unanimously concluded that "[w]here a written contract is clear and unambiguous on
18 its face, extraneous evidence cannot be introduced to explain its meaning." (citing *Kaldi v.*
19 *Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (internal quotation marks
20 omitted)). "Extrinsic or parol evidence is not admissible to contradict or vary the terms of an
21 unambiguous written instrument, since all prior negotiations and agreements are deemed to have
22 been merged therein." *Frei v. Goodsell*, 129 Nev. 403, 409, 305 P.3d 70, 73 (2013) (internal
23 quotation marks omitted).

24 In furtherance of NRS 166.170(1)(a)(2), the public record on October 1 and November 4,
25 2010 was further detailed to the Herbst Parties on March 3, 2011 by Morabito. The six-month
26 anniversary date of public notice of a conveyance was April 1, 2011. Neither the Herbst Parties
27 nor Plaintiff made any claim against the Bayuk Trust prior to April 1, 2011, despite being given
28

1 a detailed roadmap on March 3, 2011 of what were already public filings in October 2010. But,
2 the Denial Order states that the underlying complaint was filed in December 2013.

3 **C. THE SETTLEMENT AGREEMENT AND THE TOLLING AGREEMENT.**

4 A settlement was reached between Morabito and the Herbst Parties (“Settlement
5 Agreement”) and executed on November 30, 2011. The Herbst Parties’ attorney, John Desmond,
6 was fully cognizant of the Nevada Spendthrift Trust Act (“NSTA”) and, as of March 1, 2011,
7 had the Breslow-provided discovery of the Arcadia Trust, which by its terms was irrevocable and
8 all-consuming, and the revocable spending vehicles in the form of the Arcadia Nominee Trust, of
9 which versions existed prior to November 2005 and (Exhibit 4) in a February 2006 version
10 revised at least five times.

11 As part of the Settlement Agreement, on November 30, 2011, Morabito executed a tolling
12 agreement (“Tolling Agreement”) with JH, Inc. and Jerry Herbst (“Herbst”) (“Exhibit 9”).
13 Trustee Morabito of the revocable nominee trust executed a Tolling Agreement (“Exhibit 10”)
14 also on November 30, 2011. Neither the Arcadia Nominee Trust nor the Arcadia Trust was a
15 party to the Settlement Agreement other than executing each Tolling Agreement. In the
16 Superpumper Judgment of March 29, 2019, this Court (pages 8–9) (“Exhibit 11”) stated, “On
17 May 15, 2015, Plaintiff (Trustee William A. Leonard) was substituted in place of the Herbst
18 Parties in the case, and Paul Morabito and his revocable Arcadia Trust were dismissed from the
19 action.” Note on Exhibit 11, page 8, ¶18, the thematic reference to Morabito and Bayuk’s “close
20 personal relationship hallmarked by Bayuk’s seemingly unwavering support of Paul Morabito”
21 that the March 1, 2011 release of trust documents by Breslow and the March 3, 2011 deposition
22 outlining exchanges from what on the face was called the Arcadia Living Trust to what on the
23 face was called the Edward William Bayuk Living Trust and the October 1, 2010 public notice
24 of conveyances (Exhibit 7).

25 On March 13, 2013, in bankruptcy “petitioners’ first set of interrogatories to Debtor, Paul
26 Morabito” (“Exhibit 12”), the bankruptcy counsel including Gabrielle A. Hamm, Esq., who
27 actively participated in the underlying Denial Order matter, asked as “Interrogatory No. 1: Please
28 identify each and every trust in which you are or have been a grantor, settlor, beneficiary and/or

1 trustee including but not limited to the Arcadia Living Trust and the Arcadia Spendthrift Trust,
2 for the past two (2) years.”

3 Bayuk signed a Tolling Agreement (“Exhibit 13”) as did the Trustee Bayuk (“Exhibit
4 14”). No Tolling Agreement was signed by the Bayuk Trust, Trustee Morabito, or the Arcadia
5 Trust.

6 Why would Plaintiff have the Arcadia Nominee Trust sign the Tolling Agreement and
7 having full subpoena power after March 3, 2011 and by April 1, 2011 to query Trustee Bayuk,
8 the Bayuk Trust, and the Bayuk Nominee Trust?

9 Plaintiff took no action up and until November 30, 2011 with the Tolling Agreements—
10 eight months after learning of the Morabito Irrevocable Nevada SSST and the revocable nominee
11 trusts.

12 Paragraph 6 of the Denial Order asserts that the statute of limitation on JH, Inc., Jerry
13 Herbst, and Berry-Hinckley Industries (together the “Herbst Parties”) was stayed until June 18,
14 2013.

15 **D. POST-BRESLOW LITIGATION AND VACCO.**

16 Defendants’ counsel, Frank C. Gilmore, Esq., assumed this matter from Breslow in 2013
17 and could not rely upon Breslow’s institutional memory after he was appointed by Governor
18 Brian Sandoval to the bench on April 7, 2017.

19 On March 21, 2011, California attorney Mark E. Lehman, Esq., acting as California
20 counsel to Bayuk, Trustee Bayuk, and the Bayuk Trust, executed a declaration (“Exhibit 15”) less than three weeks after Morabito’s March 3, 2011 deposition. As an officer of the court,
21 Lehman declared that “the financial interests of Mr. Bayuk and Mr. Morabito, as well as the two
22 Trusts are now completely separate and each individual and Trust has been left with equity
23 interests that are substantially the same to their respective interests held prior to the
24 September 13, 2010 decision.” Breslow was accompanied at the March 3, 2011 deposition by
25 Dennis C. Vacco, Esq., as counsel to Bayuk, Trustee Bayuk, the Bayuk Trust, the Bayuk
26 Nominee Trusts, Salvatore Morabito, Morabito, Trustee Morabito, the Arcadia Trust, and the
27 Arcadia Nominee Trusts (the “Defendant Clients”). Breslow and his firm met the Defendant
28

1 Clients in December 2010 and entered into a retention agreement with Breslow's firm on
2 January 12, 2011. Prior to being counsel to the Defendant Clients, Vacco was the Attorney
3 General of New York State and, prior to that, was the U.S. Attorney for the Western District of
4 New York.

5 Much has been made by Plaintiff of the cherry-picked e-mails whose privilege was
6 removed by order of U.S. Bankruptcy Judge Gregg Zive. Vacco was deposed under penalty of
7 perjury on October 20, 2015 in this matter ("Exhibit 16") with Gilmore present. Vacco stated
8 (page 50, 53) that "the goal, after researching Nevada law and consulting with Nevada counsel"
9 was to start in "mid to late September of 2010" on "separating assets." When asked "was there
10 anyone else that you discussed the separation of assets with?" Vacco answered, "It might have
11 come from me, mostly because I was fixated on the fact that Edward and Sam had been
12 exonerated." When asked who was on these September and October 2010 phone calls, Vacco
13 answered: "and the Breslow people, too. Belaustegui people."

14 Again (page 56), Vacco references "the Belaustegui people." He then testified (pages
15 56-57): "We ... we were researching Nevada law on these types of transfers. We were ... we
16 were ... we were spend ... obviously, we weren't Nevada attorneys, so we were researching
17 Nevada law, and we wanted a better understanding of what the, you know, body of caselaw was
18 out there. So it was more technical nature with ... with ... whether it was Leif (Reid) or with the
19 Belaustegui firm, although, eventually, the Belaustegui firm got more involved in the mechanics
20 if you will." On page 58, when Vacco was asked what "specific work that Mr. Gilmore's law
21 firm did with respect to the separation of assets you've been describing," Vacco testified: "I
22 don't ... I don't think that they were that deep in the weeds."

23 The public notice of the conveyance of real property was made by New York state and a
24 California attorney on October 1 and November 4, 2011—by First American Title Co. located on
25 Sunset Boulevard in West Hollywood, California (Exhibit 7). Vacco and Lehman received no
26 input or advice from Nevada counsel with regard to the transfers—First American Title Co.
27 relied on their Las Vegas office to assist with the actual October 1 and November 4, 2010
28 transactions. Breslow and the "Belaustegui firm" did not meet the Client Defendants until

1 December 2010 and were not retained until January 12, 2011. Gilmore was not introduced to the
2 Defendant Clients until 2013—unaware that Vacco and Lehman had not received advice or
3 counsel from any Nevada attorneys on their 2010 actions.

4 **E. PLAINTIFF’S SUPPRESSION OF EVIDENCE.**

5 Evidence was willfully suppressed by Plaintiff, knowing that Mr. Gilmore was not the
6 original counsel to the Defendants and did not have the reliance on the institutional knowledge
7 from 2011 of Barry Breslow who, since April 2017, is a Washoe County District Court Judge.
8 Plaintiff, by deed and word, acknowledged and affirmed that the Arcadia Trust was a stranger to
9 the Court, despite absolute and full knowledge that NRS 166.170 which precludes a creditor
10 taking actions with respect to “limitations of actions with respect to transfer of property to trust;
11 certain transfers of properties disregarded; limitations of actions against advisers to settlors or
12 trustees and against trustees; transfers to trust.”

13 “Clear and convincing evidence requires a finding of high probability.” *In re Angelia P.*,
14 28 Cal.3d 908, 919, 171 Cal.Rptr. 637, 623 P.2d 198 (1981). Considering the concealment and
15 suppression of evidence by Plaintiff, including but not limited to the Breslow March 2011
16 discovery and depositions, and the Lehman declaration—which when taken together and red-
17 lined into the FF&CL makes untruthful the dates and assumptions sold to the Court by Plaintiff
18 as fact.

19 The question is why Desmond, Hamm, Gerald M. Gordon, and Plaintiff did not inform
20 the Court of the March 1, 2011 discovery and March 3, 2011 Morabito deposition, or release of
21 the privileged Vacco emails and communications to tell the whole truth to the Court? Lehman’s
22 declaration made no mention of seeking Nevada counsel or advice, whereas Vacco did. “[T]he
23 rule has long been settled in this state that although one may be under no duty to speak as to a
24 matter, “if he undertakes to do so, either voluntarily or in response to inquiries, he is bound not
25 only to state truly what he tells but also not to suppress or conceal any facts within his
26 knowledge which materially qualify those stated. If he speaks at all he must make a full and fair
27 disclosure.” *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.*, 6 Cal.App.4th 603, 613,
28 7 Cal.Rptr.2d 859 (1992).

1 **F. THIS COURT INVITES ADDITIONAL DOCUMENTATION TO**
2 **CLARIFY TRANSFERS.**

3 The record should reflect that per NRS 166.170(4) certain properties were conveyed to
4 the Arcadia Trust Settlor and/or a beneficiary for the purpose of arranging a loan secured by a
5 deed of trust and then reconveyed to the SSST Bayuk Trust. The record should also reflect that
6 the SSST Bayuk Trust was not a judgment debtor as no *in rem* action was filed against it.

7 Paragraph 4 of the Denial Order states that the Bayuk Trust does not meet the
8 requirement for enforcement as a Nevada spendthrift trust under NRS 166.015. But, Bayuk is
9 not a beneficiary of the Bayuk Trust, so NRS 166.015(2) does not apply. That is clear and
10 unambiguous to any finder of fact who reads the Bayuk Trust. As such, the finding made in
11 paragraph 4 that Bayuk “is the settlor and beneficiary during his lifetime” is without any basis in
12 Nevada law.

13 In the July 22, 2019 hearing (page 56), the Court being offered the testimony of Bayuk as
14 personal knowledge making him qualified, replied: “He would be qualified if he told the truth.”
15 As such, the Court improperly prejudged the truthfulness of Bayuk showing bias and complete
16 disregard for the rights of all parties in the Court to have the finder of fact unbiased and fair. The
17 Court (page 57) on July 22, 2019 stated that Defendants could certainly make amended or
18 additional filings: THE COURT: “I am not going to entertain any more evidence. you want to
19 try to do something in the future with some documentary evidence, you can certainly do that, but
20 not today.”

21 **G. THE ASSIGNMENT AND ASSUMPTION AGREEMENT.**

22 Present in the Court on July 22, 2019 was former U.S. Member of the House of
23 Representatives for Nevada’s Second District and former Governor James A. Gibbons.
24 Governor Gibbons, who resides at his ranch property in Lamoille, Nevada, drove to Reno that
25 day to give evidence to the Court that he is the Co-Trustee of the Bayuk Trust and the Arcadia
26 Trust. The Court did not entertain any more evidence after the biased treatment of Bayuk.

27 On July 3, 2007, an assignment and assumption agreement (“A&AA”) was entered by
28 P.A. Morabito & Co., Limited (“PAMCO”) (“Exhibit 17”) and the Arcadia Trust and the Bayuk

1 Trust. Governor Gibbons executed the A&AA as Co-Trustee of the Arcadia Trust and Co-
2 Trustee of the Bayuk Trust more than three years prior to the Court's disregard for the NSTA as
3 shown in paragraphs 4 and 5.

4
5 **H. THE COURT'S LEGAL CONCLUSIONS IN THE DENIAL ORDER AND
THE MORABITO DENIAL ORDER.**

6 The Denial Order in paragraph 2 states that Bayuk transferred all of his personal assets
7 since 1998 to the Bayuk Trust. Paragraph 3 concludes that the purported nature of the Bayuk
8 Trust as an Irrevocable Nevada SSST was not disclosed prior to the Claim of Exemption.
9 Specifically, in response to discovery requests, the Denial Order asserted that Bayuk, Trustee
10 Bayuk, and the Bayuk Trust produced contradictory evidence regarding the date and the purpose
11 of the Bayuk Trust.

12 The Denial Order in paragraph 3 asserts that "the purported nature of the Bayuk Trust ...
13 was not disclosed prior to the Claim of Exemption." Trustee Bayuk per NRS 166.120(4) "is
14 required to disregard and defeat every assignment or other act, voluntary or involuntary, that is
15 attempted contrary to the provisions of this chapter" and did exactly as Nevada law requires him
16 to do as Trustee.

17 The record should be amended to show that the Court exceeded its authority as clearly
18 outlined by the Legislature in NRS Chapter 166 and by consistently and constantly disregarding
19 the clear and unambiguous ruling of the Nevada Supreme Court in *Klabacka*. The Nevada
20 Supreme Court ruled in *Klabacka*, "Where, as here, a valid SSST agreement is clear and
21 unambiguous, the district court may not consider the parties' testimony regarding their purported
22 intent when fashioning remedies related to that SSST." *Id.* at 949 (citing 76 Am. Jur. 2d Trusts
23 § 30 (2016)).

24 The Court uses the term "purported" in paragraph 3 ("the purported nature of the Bayuk
25 Trust") and twice in paragraph 6 ("the existence of the purported spendthrift trust" and "The
26 purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not
27 disclosed until the Claim of Exemption."). The record should be amended to withdraw the term
28 "purported" in these determinations, as the Court disregarded the clear and unambiguous

1 language of the Nevada Supreme Court. As it stands, the Denial Order is a violation of the intent
2 of the Legislature and the specific directions provided by the Nevada Supreme Court. The
3 Nevada Supreme Court was clear that the Court “may not consider the parties’ testimony
4 regarding their purported intent when fashioning remedies related to that SSST” as the Court did
5 in paragraphs 3 and 6 directly, and in paragraphs 2, 4, and 5 by remedies and conclusions
6 reached by the Court.

7 The Court’s position in paragraph 3 is further addressed by the Nevada Supreme Court in
8 *Klabacka*, which states, “Breaching trust formalities of an otherwise validly created SSST does
9 not invalidate a spendthrift trust; rather, it creates liability upon the trustee(s) for that breach.
10 Indeed, if, after an SSST is validly formed, the trust formalities are breached by a trustee, the
11 proper remedy is a civil suit against the trustee—not an invalidation of the trust itself.” *Id.* at 948
12 (citing NRS 163.115). The Denial Order further runs contrary to the unanimous Nevada
13 Supreme Court *Klabacka* opinion in that the Denial Order is “such a court order [that] would
14 require the trustee to make a distribution outside the scope of the trust agreement and, perhaps
15 more importantly, would run afoul of NRS 166.120(2), which prohibits payments made pursuant
16 to or by virtue of any legal process.” *Id.* at 950 (citing NRS 163.417(1)(c)(1)).

17 In *Klabacka*, the Nevada Supreme Court explained, “The legislative history of SSSTs in
18 Nevada supports this conclusion. It appears that the Legislature enacted the statutory framework
19 allowing SSSTs to make Nevada an attractive place for wealthy individuals to invest their assets,
20 which, in turn, provides Nevada increased estate and inheritance tax revenues. *See* Hearing on
21 A.B. 469 Before the Assembly Judiciary Comm., 70th Leg. (Nev., Mar. 26, 1999) (statement of
22 Assemblyman David Goldwater). When crafting the language to allow SSSTs, the Legislature
23 contemplated a statutory framework that protected trust assets from unknown, future creditors, as
24 opposed to debts known to the settlor at the time the trust was created.” *See id.* at 951. “This
25 rigid scheme makes Nevada’s self-settled spendthrift framework unique; indeed, the “key
26 difference” among Nevada’s self-settled spendthrift statutes and statutes of other states with
27 SSSTs, including Florida, South Dakota, and Wyoming, is that Nevada abandoned the interests
28 of child- and spousal-support creditors, as well as **involuntary tort creditors**, seemingly in an

1 effort to attract the trust business of those individuals seeking maximum asset protection.” *Id.*
2 (emphasis added) (citing Michael Sjuggerud, Defeating the Self-Settled Spendthrift Trust in
3 Bankruptcy, 28 Fla. St. U. L. Rev. 977, 986 (2001)).

4 Paragraph 6 of the Denial Order determines that the tolling agreement tolled the time
5 period to file until June 18, 2013 and that the Complaint was filed in December 2013. The
6 nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until
7 the Claim of Exemption. The Denial Order further states that the true nature of the trust was
8 concealed until the claim of exemption was filed, notwithstanding discovery in the 2013 case;
9 the 2010 public notice of conveyance; the 2011 Morabito deposition and Lehman declaration.
10 The Arcadia Trust and the Bayuk Trust are valid Nevada SSSTs—and the concept of
11 concealment of the Bayuk Trust when there are public records of conveyance and declarations by
12 Officers of the Court all before the expiration of the April 1, 2011 six-month deadline—is
13 baseless.

14 Neither the Arcadia Trust, Trustee Morabito, the Bayuk Trust, or Trustee Bayuk is a legal
15 party to the Denial Order, and the Court should amend its findings to comport with Nevada law
16 and release Trustee Bayuk and the Bayuk Trust from the Denial Order.

17 Although the execution documents related to the Morabito Denial Order did not identify
18 specific property to execute, the Court improperly shifted the burden to Salvatore Morabito by
19 requiring him to provide a more specific objection to vague execution language (Exhibit 18).
20 The result is that Plaintiff has retained what amounts to a general execution order against
21 Salvatore Morabito.

22 **I. THE COURT’S CONCLUSIONS REGARDING TOLLING OF THE**
23 **STATUTE OF LIMITATIONS.**

24 The following comments are relevant to the issue of whether or not the statute of
25 limitations was tolled by concealment of the Bayuk Trust or fraud.

26 MR. LEHNERS: Your Honor, what happened, the Living Trust ceased to exist.

27 THE COURT: I understand your argument. But what your argument is, is that
28 you in fact could have a Living Trust --

1 MR. LEHNERS: Yes.

2 THE COURT: -- in secret, change it to a Spendthrift Trust and not tell your
3 creditors that you have changed it to a Spendthrift Trust until after the Statute of
4 Limitations may have run and a full-blown litigation that took five years could
5 take place.

6 MR. LEHNERS: And I also know, after reading Mr. Morabito's March 3, 2011
7 deposition, he talked about the Bayuk Trust. Now I wasn't there in 2011, but
8 when I read that, I scratched my head. I thought why didn't those guys serve a
9 subpoena on him. Why didn't they do a request for production for all of it? Why
10 didn't they depose him? Why didn't they --

11 THE COURT: They did.

12 MR. LEHNERS: The specific 2005 Trust, I mean it was there. And he was also
13 under an obligation not --

14 THE COURT: But there was discovery in the case I tried for it to be disclosed.

15 Exhibit 8, pgs. 14-15.

16 THE COURT: But you already disclosed with that name of the Trust, you
17 disclosed the contents of it. You disclosed the content of the Trust, what existed
18 and what it was with that name. Then you secretly, as you say, created a novation
19 by the Amendment in 2005, and then never provided, using the exact same name,
20 then you never provided discovery as to what that new Trust even though it says it
21 is a Living Trust, you never gave any -- so on its name it didn't give anybody
22 notice of this Amendment and the content of it.

23 *Id.* at pg. 39.

24 MR. LEHNERS: They knew, well there is a Bayuk Trust out there.

25 THE COURT: They knew there was a Bayuk Trust?

26 MR. LEHNERS: Well they also knew the address and county of the Del Mar
27 property. Dig out the public record, look at that. Say I want a copy of the Trust
28 Agreement that owns this property.

THE COURT: I am saying I assume the request for the copy of the Trust
Agreement was made and discovered.

MR. LEHNERS: Your Honor, I can't speak to that. I don't have that in the
record. I just can't speak to that. What I am telling you is if somebody says hey
give me a copy of the Trust Agreement or they send something over, it is like,
well, I am under an obligation not to disclose it as a Trustee. I've been a Trustee
of a Trust once. Your obligation is to that beneficiary, not the creditors.

THE COURT: Well certainly if the request for production was responded to that I
cannot give you that information, then the person would be on notice to go follow
up and get a court order to produce. When you say here it is and what you get
isn't the right one, how can you then claim protection?

28 *Id.* at pgs. 40-41.

1 THE COURT: I am not discussing anything about the name. But assuming that
2 you said you have an obligation to ask for it and you asked for it and you weren't
3 given it, it was I'm not giving it to you because I can't. It was here you go and it
was the Trust that was no longer in existence based on your argument. What is
remedy then?

4 MR. LEHNERS: Your Honor, the Trust that is no longer in existence and the
5 Trust that replaced it are the same names. It is a novation. One replaced the
other.

6 THE COURT: I understand your argument. What if he didn't produce it.

7 MR. LEHNERS: Well, the discovery request should have been as follows: Here's
8 the Deed, it says the Edward Bayuk Living Trust. I want the Trust Agreement, all
9 amendments with respect to the Trust that owns this property. Give me that. That
is what should have happened.

10 THE COURT: I am just asking you to assume that was made.

11 *Id.* at pgs. 41–42.

12 This dialogue touches upon whether or not the existence and nature of the trust was
13 disclosed to Plaintiff. The following portion of the transcript relates to whether or not the
14 spendthrift trust was a judgment debtor.

15 MS. TURNER: We talked to the clerk and All assets that were transferred to
16 the Edward William Bayuk Living Trust. Even though the Deeds or the
17 testimony may indicate there was a 2008-2009 Trust, there is but one. There is
the Edward William Bayuk Living Trust which is a judgment debtor which is a
18 judgment debtor. This is a judgment debtor. We are not dealing with a claim of
exemption by a beneficiary of a trust. This is where the Trust, itself, is a
judgment debtor.

19 *Id.* at pgs. 3–4.

20 MR. LEHNERS: Well, Your Honor, maybe not directly, but clearly, if the assets
21 of the spendthrift trust are gobbled up, it is going to affect the rights of the
22 beneficiary. And Mr. Bayuk, under the Trust, has a duty to stop that. And again,
the Trust is a thing, so it is an in rem action not an in personam action. You don't
23 bring the Trust in by suing the Trustee. You bring the Trust in by filing an action
to determine whether or not there has been a fraud. If there has, the Court can do
24 something about it. But it is restricted procedurally. I understand and it is very
difficult for me to argue to you. You were the trial Judge. I was not. I have never
25 even had a jury trial. But I went through a lot of history on this, and I am
somewhat of a Johnny come lately, and it is difficult for me to argue why they
26 didn't you raise it then, Mr. Lehnrs. Well, because it is jurisdictional. The law
states I get to raise it at any time, and I will raise it now because I was brought in
on this case to represent Mr. Bayuk, and I have to make that argument. And I also
27 believe in the argument. So again –

28 *Id.* at pg. 23.

1 **III. LEGAL ARGUMENT**

2 **A. STANDARDS FOR GRANTING RELIEF.**

3 NRCPP 52(a) states that in an action tried on the facts without a jury, the court must find
4 the facts specially and state its conclusions of law separately. NRCPP 52(b) provides, in relevant
5 part, that on a party's motion filed no later than 28 days after service of written notice of entry of
6 judgment, the court may amend its findings—or make additional findings—and may amend the
7 judgment accordingly. When a final order or judgment is appealed, the findings must be clear
8 and specific. The appellate court will not imply findings to support the judgment where the
9 record is not clear. If the record is not clear, then the usual practice is to remand the matter to the
10 district court to set forth the basis for its award. *See Commercial Cabinet Co. v. Mort Wallin of*
11 *Lake Tahoe, Inc.*, 103 Nev. 238, 240, 737 P.2d 515, 517 (1987). If the record is not clear on the
12 issues, then the argument cannot be made on appeal where no Rule 52 motion was filed.
13 *See Solar, Inc. v. Elec. Smith Constr. & Equip. Co.*, 88 Nev. 457, 459, 499 P.2d 649, 649–650
14 (1972).

15 “A district court may reconsider a previously decided issue if substantially different
16 evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry and Tile*
17 *Contractors Ass’n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489
18 (1997). “Unless and until an order is appealed, the district court retains jurisdiction to reconsider
19 the matter.” *Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 199 (1980).

20 The purpose of an NRCPP 59(e) motion to alter or amend judgment is to seek correction at
21 the trial court level of an order or judgment that contains legal errors. *See Chiara v. Belaustegui*,
22 86 Nev. 856, 858, 477 P.2d 857, 859 (1970). A motion to alter or amend the judgment is proper
23 where there has been judicial error, as opposed to clerical error, in a court judgment. *See AA*
24 *Primo Builders, LLC v. Washington*, 126 Nev. 578, 582–583, 245 P.3d 1190, 1193 (2010).

1 **B. THE COURT SHOULD CORRECT THE RECORD TO REFLECT**
2 **SPECIFIC FACTS REGARDING THE STATUTE OF LIMITATIONS**
3 **OUTLINED IN NRS 166.170.**

4 NRS 166.170 is the controlling statute of limitations with respect to alleged fraudulent
5 transfers to a spendthrift trust. This statute states in relevant part that:

6 1. A person may not bring an action with respect to a transfer of property to a
7 spendthrift trust:

8 (a) If the person is a creditor when the transfer is made, unless the action is
9 commenced within:

10 (1) Two years after the transfer is made; or

11 (2) Six months after the person discovers or reasonably should have discovered
12 the transfer, whichever is later.

13 (b) If the person becomes a creditor after the transfer is made, unless the action is
14 commenced within two (2) years after the transfer is made or six (6) months after
15 the person discovers or reasonably should have discovered the transfer.

16 2. A person shall be deemed to have discovered a transfer at the time a public
17 record is made of the transfer, including, without limitation, the conveyance of
18 real property that is recorded in the office of the county recorder of the county in
19 which the property is located or the filing of a financing statement pursuant to
20 chapter 104 of NRS.

21 When construing statutes, courts first look to the plain language of the statute. *See A.F.*
22 *Constr. Co. v. Virgin River Casino*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002). When a
23 statute's language is plain and its meaning clear, the courts will apply that plain language.
24 *See International Game Tech. v. Dist. Ct.*, 122 Nev. 132, 152, 127 P.3d 1088, 1102 (2006).
25 Statutes outlining "time and manner" requirements must be strictly construed. *See Leven v.*
26 *Frey*, 123 Nev. 399, 407–408, 168 P.3d 712, 717–719 (2007). "[I]t is not the business of this
27 court to fill in alleged legislative omissions based on conjecture as to what the legislature would
28 or should have done." *S. Nev. Homebuilders Ass'n v. Clark Cnty.*, 121 Nev. 446, 451, 117 P.3d
 171, 174 (2005)

 At the July 22, 2019 hearing, Bayuk's counsel referenced the March 3, 2011 deposition
 of Morabito. In that deposition, Morabito was fully candid about Bayuk's trust as well as his
 own. Morabito disclosed property that had been transferred to the Bayuk Trust. Morabito

1 specifically testified that the Bayuk Trust was a co-purchaser of the real property located at
2 371 El Camino Del Mar property in Laguna Beach.

3 The Lehman Declaration (Exhibit 15) is dated March 21, 2011, giving Plaintiff time to
4 beat the six-month clock, which expired on April 1, 2011, and subpoena Bayuk, Trustee Bayuk,
5 the Bayuk Trust, and the Bayuk Nominee Trust. *See Rock Bay, LLC v. Dist. Ct.*, 129 Nev. 205,
6 298 P.3d 441 (2013) (permitting a judgment creditor to subpoena documents from a third party
7 for purposes of judgment discovery). Despite public notice in October 2010, detailed copies of
8 Morabito's Irrevocable Nevada SSST and revocable Nevada Nominee Trust on March 1, 2011,
9 and the detailed deposition on March 3, 2011, Plaintiff did nothing. In fact, Plaintiff did less
10 than nothing. The Tolling Agreement failed to name the Nevada Irrevocable SSST Arcadia
11 Living Trust and specifically only named the revocable Nevada Arcadia Nominee Trust. In May
12 2015, even that Trust and Morabito were removed. Plaintiff knew that the complaint in this
13 matter, as well as the Settlement Agreement itself, knowingly runs afoul of Nevada law.

14 As of March 3, 2011, the instant lawsuit had not been filed. No tolling agreement had
15 been signed. No settlement had been made. There was no confession of judgment. At that
16 moment in time, there was only a judgment against Morabito for approximately \$149 million
17 dollars. So when the Bayuk Trust was subpoenaed is critical with regard to the release of files
18 on the property it owned, what could Plaintiff have done if it had acted in the time prescribed by
19 statute in NRS 166.170(2)? If Plaintiff requested discovery after April 1, 2011 not in compliance
20 with NRS 166.170(2) and the October 1, 2010 publication date by First American Title Co., then
21 NRS 166.120(4) dictates the actions, or inaction, of Trustee Bayuk.

22 NRCP 69(a)(2) states:

23 **Obtaining Discovery.** In aid of the judgment or execution, the judgment creditor
24 or a successor in interest whose interest appears of record may obtain discovery
25 from any person--including the judgment debtor--as provided in these rules or by
26 state law.

26 There is no doubt that, as of March 3, 2011, Plaintiff knew about the Bayuk Trust and
27 that it owned property. By March 21, 2011, the Plaintiff had the Lehman Declaration—and
28 10 days to file a subpoena. NRS 166.170(a) identifies the limitation of actions as either two

1 years from the creation of the SSST and the transfer or six months from the discovery after
2 public notice of a conveyance or transfer. That gave Plaintiff six months, or until April 1, 2011,
3 to depose Bayuk and demand production of the Bayuk Trust. Under NRS 166.120(4), Trustee
4 Bayuk would have sought to “disregard and defeat every assignment or other act, voluntary or
5 involuntary, that is attempted contrary to the provisions of this Chapter.” But, Trustee Bayuk did
6 not have to take a position since the discovery was never done.

7 Breslow responded to Plaintiff’s interrogatories in 2015, cognizant of the April 1, 2011
8 deadline having long passed. Breslow knew that New York and California counsel had
9 undertaken a legal exchange under NRS Chapter 166, but an unnecessary one. Then, as now,
10 NRS Chapter 166 protects the Arcadia Trust and the Bayuk Trust as the Nevada Legislature
11 intended, and the Nevada Supreme Court unanimously enforced in *Klabacka*. The Court should
12 now make amended and additional findings, and vacate the Denial Order.

13 This Court stated that (1) Bayuk was deposed, and (2) there was discovery in the case.
14 None occurred before April 1, 2011. Bayuk acknowledged the existence of the Bayuk Trust in
15 response to interrogatories in 2015, but in accordance with NRS 166.120(4), refused to release
16 the Bayuk Trust documents. The Court’s findings should be amended to reflect that (1) the
17 Tolling Agreement signed by Trustee Bayuk and Bayuk on November 30, 2011 was not
18 enforceable on the Bayuk Trust, and (2) there is no evidence of any discovery requests filed by
19 Plaintiff with respect to the Bayuk Trust until the instant case was filed in December of 2013—
20 well after NRS 166.170(2) on April 1, 2011.

21 **C. THE RECORD SHOULD REFLECT THAT BAYUK TRUST WAS NOT A**
22 **JUDGMENT DEBTOR AS NO *IN REM* ACTION WAS FILED AGAINST**
IT.

23 This is a request for clarification. A review of the transcript does not reveal a specific
24 finding by the Court that the Bayuk Trust was a judgment debtor. Rather, the point was argued
25 by counsel. Plaintiff’s counsel argued that the trust was a judgment debtor because there is a
26 judgment against Bayuk in his capacity as Trustee Bayuk. Bayuk’s counsel argued that it was an
27 *in personam* judgment against the trustee, which was not the same as an *in rem* judgment against
28 the trust. NRS 166.170(1) and (8) establish clear time limits to bring an action under

1 NRS 164.010. And, NRS 164.010 specifies that the action must be one *in rem* against the trust.
2 *See also In re Aboud Inter Vivos Tr.*, 129 Nev. 915, 922, 314 P.3d 941, 945–946 (2013).

3 NRS 164.010(1) confers *in rem* jurisdiction on a district court over trust property in all
4 trust administration actions. NRS 164.015(6) also provides that a district court’s order in a trust
5 administration action is binding *in rem* upon the trust estate and upon the interests of all
6 beneficiaries. A trustee in his representative capacity is a different legal personage than the
7 person in his individual capacity. *Mona v. Eighth Judicial Dist. Court*, 132 Nev. Adv. Op. 72,
8 380 P.3d 836, 842–843 (2016) (“[Petitioner], in her individual capacity, is a distinct legal person
9 and is a stranger to [Petitioner] in her representative capacity as a trustee of the Mona Family
10 Trust.”). Thus, Trustee Bayuk is not the same as Bayuk (individually) or the Bayuk Trust.

11 In light of the foregoing, Bayuk respectfully requests that the findings be amended to
12 reflect that: (1) the existence of the Bayuk Trust was disclosed by public notice of conveyance by
13 First American Title Co. to the world and Plaintiff on October 1, 2010; and (2) notwithstanding
14 the entry of a judgment against Morabito and the discovery rules allowed by NRCP 69, Plaintiff
15 failed to propound any discovery requests to ascertain the nature or character of the Bayuk Trust
16 until after the instant case was filed in December of 2013. This is well after the NRS 166.170(2)
17 deadline of April 1, 2011.

18 **D. THE MORABITO DENIAL ORDER IMPERMISSIBLY SHIFTS THE**
19 **BURDEN TO MORABITO AND UNNECESSARILY CREATES A**
GENERAL EXECUTION ORDER AGAINST SALVATORE MORABITO.

20 Salvatore Morabito claimed an exemption from Plaintiff’s vague execution because it
21 amounted to a general execution order against him. NRS 21.020(1) requires a writ of execution
22 to identify the judgment debtor’s real or personal property. NRS 21.070 similarly requires the
23 writ of execution to be issued in the county where the real or personal property is located.
24 Unfortunately, Plaintiff did not specifically identify any property belonging to Salvatore
25 Morabito upon which it would seek execution. This is a valid concern for Salvatore Morabito
26 because Plaintiff now has a general execution order to seek assets from Salvatore Morabito, even
27 though Plaintiff cannot reach Canadian assets since an appeal is pending. Under the principle of
28 international comity, courts should give effect to executive, legislative, or judicial acts of another

1 nation. *See Philadelphia Gear Corp. v. Philadelphia Gear de Mexico*, 44 F.3d 187, 191 (3d Cir.
2 1994). Comity is the “recognition which one nation allows within its territory to the legislative,
3 executive, or judicial acts of another nation, having due regard both to international duty and
4 convenience, and to the rights of its own citizens or of other persons who are under the
5 protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 163, 16 S.Ct. 139 (1895).

6 With Plaintiff’s general execution order, however, Salvatore Morabito could be subject to
7 unlawful extraterritorial execution, which he would have to again challenge. Instead of unfairly
8 shifting the burden to Salvatore Morabito, the Court should require Plaintiff to identify real or
9 personal property that it is seeking to execute. Since Plaintiff has not identified such property in
10 its current execution filings, the Court should vacate the Morabito Denial Order.

11 **IV. CONCLUSION**

12 In summary, the Court should vacate the Denial Order and the Morabito Denial Order on
13 the basis of NRCP 52(b), WDCR 12, and NRCP 59(e). Despite Plaintiff’s knowledge of the
14 Nevada SSSTs, it chose to do nothing and should be barred by the statute of limitations from
15 seeking execution. Further, Plaintiff never initiated an *in rem* proceeding against the Bayuk
16 Trust, such that this Court never had jurisdiction over the Bayuk Trust. Finally, the Court should
17 require Plaintiff to specify the real or personal property it seeks to execute against Salvatore
18 Morabito instead of shifting the burden.

19 ///

20 ///

21 ///

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned affirms that the pleading or document now being present to the Court in the above-entitled action does **not** contain any Personal Information (as defined in NRS 603A.040).

Dated this 19th day of August, 2019.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
Micah S. Echols, Esq.
Nevada Bar No. 8437
Kathleen A. Wilde, Esq.
Nevada Bar No. 12522
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO MAKE AMENDED OR ADDITIONAL FINDINGS UNDER NRCP 52(b), OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION** was submitted electronically for filing and/or service with the Second Judicial District Court on the 19th day of August, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

ERIKA TURNER, ESQ.
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ.
for SALVATORE R. MORABITO, SNOWSHOE PETROLEUM, INC.,
and SUPERPUMPER, INC.

MARK WEISENMILLER, ESQ.
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

JEFFREY HARTMAN, ESQ.
for EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

TERESA PILATOWICZ, ESQ.
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ.
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

MICHAEL LEHNERS, ESQ.
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK and
SALVATORE R. MORABITO

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

GERALD M. GORDON, ESQ.
Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
SPECIAL COUNSEL TO TRUSTEE

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

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Exhibit 1

2840

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WILLIAM A. LEONARD, Trustee for the
Bankruptcy Estate of Paul Anthony
Morabito,

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiff,

vs.

SUPERPUMPER, INC., an Arizona
corporation; EDWARD BAYUK,
individually and as Trustee of the EDWARD
WILLIAM BAYUK LIVING TRUST;
SALVATORE MORABITO, and individual;
and SNOWSHOE PETROLEUM, INC., a
New York corporation,

Defendants.

ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM

Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of Exemption") filed on June 28, 2019 by Edward Bayuk ("Bayuk"), individually and as trustee of the Edward William Bayuk Living Trust (the "Bayuk Trust"), and the *Third Party Claim to Property Levied Upon [NRS 31.070]* (the "Third Party Claim") filed on July 3, 2019 by the Bayuk Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward Bayuk Claiming Exemption from Execution* (the "Bayuk Declaration"), filed on July 2, 2019. *Plaintiff's Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)* (the "Objection") was filed on July 11, 2019, and Bayuk and the Bayuk Trust's *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon* (the "Reply") was filed on July 17, 2019.

1 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,
2 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnars and Jeffrey
3 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,
4 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

5 The Court has reviewed and considered the arguments made in the Claim of Exemption
6 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all
7 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and
8 exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law, and Judgment,
9 entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made at the hearing.
10 The Court, persuaded by the argument and authorities in Plaintiff's Objection and the arguments
11 of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the trial record,
12 and the findings and conclusions set forth in the Judgment, finds as follows:

13 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as
14 trustee of the Bayuk Trust.

15 2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk
16 Trust was established in 1998. As set forth in the Judgment, the Bayuk Trust received fraudulently
17 transferred property which was established by clear and convincing evidence.

18 3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not
19 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in
20 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced
21 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of
22 Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the name
23 "the Edward William Bayuk Living Trust" and that is the Bayuk Trust.

24 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada
25 spendthrift trust under NRS 166.015 because Bayuk is the settlor and beneficiary during his
26 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of
27 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to
28 California in September 2010.

5. Contrary to assertions by Bayuk, there was no credible evidence presented that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.

6. Even if the claims asserted against the Bayuk Trust were subject to the time periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within two years after the fraudulent transfers were made and (2) also within six months of discovery of, or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the June 28, 2019 Claim of Exemption filed by Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust is DENIED.

IT IS HEREBY FURTHER ORDERED that the July 3, 2019 Third Party Claim to Property Levied Upon [NRS 31.070] filed by the Bayuk Trust is DENIED.

Dated this 9 day of August, 2019.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of August, 2019, I filed the **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 f **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

ERIKA TURNER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

MICAH ECHOLS, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST et al

JEFFREY HARTMAN, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

MARK WEISENMILLER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ. for SNOWSHOE PETROLEUM, INC., SALVATORE R. MORABITO, SUPERPUMPER, INC.

MICHAEL LEHNERS, ESQ. for SALVATORE R. MORABITO

TERESA PILATOWICZ, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 9 day of August, 2019.

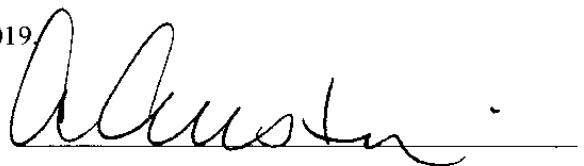


Exhibit 2

**SPENDTHRIFT TRUST AMENDMENT TO THE
EDWARD WILLIAM BAYUK LIVING TRUST**

This **FIRST AMENDMENT TO THE EDWARD BAYUK LIVING TRUST** (this "**Amendment**"), is made and entered into effective as of November 12, 2005 (the "**Effective Date**"), between and among **EDWARD W. BAYUK** individually and in his capacity as **TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUST** (the "**Bayuk Trust**") and **EDWARD WILLIAM BAYUK** ("**Bayuk**") individually shall become by way of this Amendment a qualified **Irrevocable Nevada Spendthrift Trust** now to be known as the **EDWARD BAYUK LIVING TRUST** (referred to herein as the "**Nevada Trust**" or the "**Trust Agreement**" or the "**Nevada Trust**"). Each of those parties is sometimes referred to herein as a "**Party**" and collectively as the "**Parties**" to this Agreement.

RECITALS

- A.** The Bayuk Trust was executed in Miami Beach, Florida on August 23, 1998 as a Florida Living Trust. Bayuk was a resident of Miami Beach, Florida in 1998.
- B.** Bayuk is now a resident of Reno, Nevada. It is Bayuk's manifest intention to amend the Bayuk Trust to establish it as a qualified Irrevocable Nevada Spendthrift Trust ("**Nevada Trust**").
- C.** Bayuk as Settlor/Grantor and Co-Trustee of the Nevada Trust declares that Bayuk has executed this Amendment to the Bayuk Trust to become the Nevada Trust effective as of the date first written above.
- D.** This Amendment shall constitute the entire and exclusive statement of the terms of the Nevada Trust, nullifying all prior and subsuming all future versions of the Bayuk Trust.
- E.** This Amendment establishes an Irrevocable Spendthrift Nevada Trust and as the Settlor/Grantor Bayuk understand that by executing this Nevada Trust, all of the assets that Bayuk has contributed to the Bayuk Trust today, *and will contribute in the future*, are all the irrevocable property of the Nevada Trust. The property transferred and all property subsequently transferred into the Nevada Trust shall be administered in this Trust Agreement, which shall be known as the Nevada Trust and can also be referred to as the **Edward William Bayuk Living Trust** so as to eliminate any confusion and consolidate all assets of the Bayuk Trust into the Nevada Trust.
- F.** Successor trusts ("**Successor Trusts**") established under this Amendment shall be known by the names designated in this Amendment or as named by the Co-Trustees. Any Successor Trusts, whether created as an affiliate of the Nevada Trust or by further amendment or restatement of the Nevada Trust, or independent of the Nevada Trust, shall be revocable, be of no force or

effect, be subsumed by the Nevada Trust upon execution, and shall not in any way supersede or replace the provisions of the Nevada Trust.

G. As Co-Trustee of the Nevada Trust, Bayuk names Paul A. Morabito ("Morabito"), also a resident of Reno, Nevada. Morabito is not a beneficiary of the Nevada Trust.

H. The Nevada Trust restrains and prohibits generally the assignment, alienation, acceleration and anticipation of any interest of the beneficiary as named herein or by operation of law or any process at all. The Nevada Trust estate, or corpus or capital thereof, shall never be assigned, aliened, diminished or impaired by any alienation, transfer or seizure so as to cut off or diminish the payments, or the rents, profits, earnings or income of the Nevada Trust estate that would otherwise be currently available for the benefit of the beneficiary as named herein.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged, the Parties agree to the following:

1. **DECLARATIONS** Bayuk is not married and is a resident of Reno, Nevada.
2. **RIGHTS RESERVED BY ME & RESTRICTIONS** As Settlor/Grantor, Bayuk reserve the rights under this Amendment to:
 - (a) add property to the Nevada Trust estate Bayuk reserves the right to transfer additional property into the Trust during Bayuk's lifetime and at Bayuk's death. All such property transferred to the Trustees shall be added to the Nevada Trust estate and administered as provided in this Trust Agreement. The Trustees are authorized and directed to accept the additions to the Nevada Trust estate. Any other person may transfer property to the Trustees to be added to the Nevada Trust estate, provided the property is acceptable to me (if living) and the majority of the Trustees.
 - (b) The right to exchange property from the Nevada Trust for property of like kind The Trustees may withdraw at any time all or any portion of the property held in the Nevada Trust estate in exchange for property of like kind value. The property described in any notice of withdrawal shall be delivered immediately.
 - (c) The right to amend the Nevada Trust without giving any notice or consent to any beneficiary with the restriction that no amendment may modify, alter, rescind, replace

or change in any way directly or indirectly the provisions of this Amendment as the Nevada Trust that qualify it as a Nevada Spendthrift Trust.

(d) **No Right to Revoke the Trust Agreement.** This Trust Agreement, and all trusts established under this Trust Agreement, upon execution herein, below, shall become irrevocable and not subject to or bound by any amendment. The Trust have nor creates no right to revoke the Nevada Trust agreement (Amendment) which is upon execution irrevocable and not subject to or bound by any amendment.

(e) Reserve the right to appoint and designate trustees.

(f) The rights reserved by me as described herein are personal to me and shall not be exercisable on Bayuk's behalf to any other person.

(g) Bayuk reserves the right to appoint, designate and terminate Trustees.

(h) Bayuk may exercise the rights reserved to me directly as Co-Trustee, or in accordance with applicable law. This Irrevocable Spendthrift Trust Agreement, the Nevada Trust, established by this Amendment, may not, however, be revoked or amended by me in Bayuk's Last Will and Testament in any way.

3. **GRANTOR'S TRUST** The following provisions shall apply to the distribution of the Nevada Trust estate during Bayuk's lifetime. During Bayuk's lifetime at Bayuk's sole discretion the Trustee may distribute to Bayuk, or Bayuk may distribute other than to Bayuk, such amount of net income and principal as deemed appropriate, if at all. No distribution is required other than at the discretion of the Trustee. Further, if Bayuk becomes incapacitated, the Trustee is authorized to distribute to any person that Bayuk is legally obligated to support or who has been receiving support from me that amount of net income and principal as the Trustee deems appropriate in his discretion to continue to support. The Trustee shall exercise this discretion in a liberal manner, and the rights of the remainder beneficiaries shall be of no importance. The Trustee shall accumulate and add any undistributed net income to principal.

4. **GIFTS** The Trustee is authorized to make distributions directly to persons designated by me. Furthermore, the Trustee is authorized to make gifts to continue any gift program that Bayuk may have started, including gifts made to use any federal gift tax

annual exclusion amounts or lifetime exemptions or exclusion amounts at the same level and to the same persons as Bayuk made gifts to.

5. **QUALIFICATION FOR GOVERNMENT BENEFITS** Bayuk authorizes the Trustee to take any actions that the Trustee determines to be appropriate or necessary in connection with Bayuk's qualification for or receipt of government benefits, including benefits (whether income, medical, disability, or otherwise) from any government agency such as Social Security, Medicare or supplemental security income/state supplement programs.
6. **ALLOCATION AND DISPOSITION OF THE TRUST ESTATE** It is Bayuk's irrevocable intention as the Settlor/Grantor that the Nevada Trust upon Bayuk's demise have as its beneficiaries, irrelevant of any future amendment or restatement the following beneficiaries: Bayuk's mother, Gail Bayuk Knowles; and Bayuk's step-mother, Elizabeth Bayuk, in amounts as Bayuk will determine in a direction ("Direction") attached to this Amendment as instructions to Bayuk's Last Will and Testament. No gifts will be made other than as described herein.
7. **RESIDUARY TRUST** All Nevada Trust property allocated to the Residuary Trust shall be held by the Trustee in Nevada Trust and shall be administered according to the terms of the Nevada Trust, specifically including the following provisions, until the date ten (10) years following Bayuk's death. On the date ten (10) years after Bayuk's death, all Nevada Trust assets remaining in the Residuary Trust shall be distributed in accordance with the provisions of Section 6 above. All references in this Nevada Trust Amendment to the "Residuary Trust" shall be to the Nevada Trust established under this article.
8. **TRUST & ALLOCATIONS PROVISIONS** General Power of Appointment Conferred by Trustees: The Trustees may grant a beneficiary a general power of appointment, as that term is defined in the Internal Revenue Code, over that beneficiary's share of the Nevada Trust estate, pursuant to which that beneficiary may appoint the principal and or undistributed income of that share to one or more persons and entities, including his or her own estate, and on those terms and conditions, either outright or in Nevada Trust, as he or she may appoint by a Will (whether or not admitted to probate) or other written instrument expressly referring to and exercising this general power of appointment. A grant of power may limit the amount subject to any general power of appointment, require that it

be exercised jointly with another person or persons, or otherwise impose limits or conditions on its exercise. The Trustees may also eliminate or modify, at any time and for any reason, a general power of appointment granted by the Trustees. The Trustees shall promptly notify the beneficiary in writing that they have granted a general power of appointment to the beneficiary over Nevada Trust assets. The foregoing provisions shall not apply to a beneficiary who is serving as a Trustees or Co-Trustees except that a Co-Trustees or successor Trustees may exercise the foregoing power to grant a general power of appointment in favor of the beneficiary who is a Trustees. No beneficiary shall have the power under this Section to amend his or her share of the Nevada Trust estate in a manner that would increase his or her benefits, or to grant himself or herself a general power of appointment.

9. **GIFTS OF TANGIBLE PERSONAL PROPERTY:** Upon Bayuk's death, subject to the payment of, or satisfactory provision being made for, all debts incurred in the ordinary course of the maintenance and protection of the Trust's assets, and taxes (including all Estate taxes) , the following distributions shall be made by the Trustees from the Nevada Trust estate: All Bayuk's interest in Bayuk's tangible personal property, together with any insurance on such property, shall be distributed by the Trustees outright to Bayuk's step-mother, Elizabeth Bayuk. If Elizabeth Bayuk dies, all of the proceeds of the Trust Agreement shall be donated to the U.S. Humane Society to support programs that fund no-kill animal shelters in Nevada and California.
10. **GIFTS OF MONEY AND OTHER PROPERTY** Upon Bayuk's death, subject to the payment of or satisfactory provision being made for, all debts incurred in the ordinary course of the maintenance and protection of the Trust's assets, and taxes (including all Estate taxes), the following distributions shall be made by the Trustees: All Bayuk's interest in Bayuk's tangible personal property, together with any insurance on such property, shall be distributed by the Trustees outright to Bayuk's step-mother, Elizabeth Bayuk.
11. **DISCLAIMERS ALLOWED** In addition to any rights granted by law, any person granted any right, title , interest, benefit, privilege, or power under this Trust Agreement may at any time renounce , release, or disclaim all or any part of that right, title, interest, benefit, privilege, or power, including his or her right, title, and interest in and to Nevada Trust income or principal. The natural or legal guardians of a minor shall have the authority and power to disclaim the interests of the minor; the

conservator of the estate of the person shall have the authority and power to disclaim the interests of the conservatee; the fiduciary of a Nevada Trust or estate shall have the authority and power to disclaim the interests of the Nevada Trust or estate; and the youngest adult ancestor of any unborn, unknown, or unascertained issue shall have the power to disclaim the interests of those issue.

12. **DISCLAIMERS OF PROPERTY INTERESTS** In general, a disclaimer or renunciation of a property interest shall accelerate the succeeding interest. Except as otherwise expressly provided in this Trust Agreement, any interest in property so disclaimed shall be allocated or distributed as if the beneficiary had predeceased the person from whom the interest in the property would have been received. Further, except as otherwise expressly provided in this Trust Agreement, if a beneficiary disclaims his or her entire interest in one or more specific assets held in any Nevada Trust, the assets shall be distributed from the Nevada Trust as if the beneficiary predeceased the person from whom the interest in the assets would have been received. If all living current and contingent beneficiaries disclaim their interests in the Nevada Trust, any contingent remainder interest shall be destroyed and the remaining Nevada Trust property shall pass as provided for herein.
13. **DISCLAIMERS BY TRUSTEES** Any person granted any fiduciary power, authority, right, privilege, or discretion ("Fiduciary Power") under this Trust Agreement or under the law applicable to this Nevada Trust may at any time renounce, release, or disclaim all or any part of such Fiduciary Power. Unless otherwise expressly provided in the disclaimer, if any Fiduciary Power shall be disclaimed, the power shall cease to exist and shall not pass to any successor fiduciary. The disclaimer may expressly provide that the Fiduciary Power shall be exercisable by the remaining Trustees, if any, or any successor Trustees.
14. **EFFECTIVE DISCLAIMERS** To be effective, disclaimers must be in writing, signed by the disclaiming person, and irrevocable. Disclaimers shall be effective only upon delivery to the Trustees or to a court having jurisdiction over the administration of the Nevada Trust.
15. **PAYMENT OF DEBTS AND EXPENSES** The following provisions shall apply upon Bayuk's death to the payment of Bayuk's debts and expenses. Upon death, the Trustees may pay on Bayuk's behalf, in the manner and at the time the Trustees determines, any and all of outstanding unsecured debts incurred in the ordinary course

of the maintenance and protection of the Trust's assets (including unpaid tax liabilities arising prior to death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of estate.

16. **PAYMENT FROM TRUST** The Trustees are authorized to pay from the assets of the Nevada Trust debts and expenses that Morabito as the Executor may request. If there are insufficient assets in probate estate to make any gifts provided under Will or to pay debts and expenses, or if there are sufficient assets in probate estate but, in the sole judgment of the Trustees, it would be to the advantage of the estate that those gifts or payments be made from the assets in the Nevada Trust, the Trustees may pay from the assets of the Nevada Trust all of those gifts, debts, and expenses. If the assets of probate estate (exclusive of residential real property and tangible personal property) are insufficient to pay all unsecured debts, funeral expenses, and expenses of administration, the Trustees may pay to estate from the principal of the Nevada Trust estate that amount that Executor may request for those purposes. The Trustees shall not be under any duty to take part in determining the amount of those debts or expenses and may rely upon the written certification of Executor for the amount to be paid as authorized by these provisions. The Trustees shall be under no duty to see to the application of any such payment. The Trustees shall not require any reimbursement for payments made to Executor.
17. **PAYMENT OF ESTATE TAXES** All Estate taxes and charges imposed upon any property by reason of death, whether passing under the Will or not, shall be paid (1) first, by Executor out of the residue of probate estate, to the extent funds are sufficient, and (2) second, by the Trustees out of the residue of the Nevada Trust estate. All Estate taxes shall be paid without proration or reimbursement from any other property or person.
18. **NO PRORATION** No portion of the Estate taxes payable under these provisions shall be charged against, prorated among, or recovered from any person entitled to benefits under this instrument.
19. **RESERVES** The Trustees may establish reserves from Nevada Trust income and principal that he or she considers necessary for the payment of Estate taxes.

20. **TAX ELECTIONS** The Trustees shall have the power, in his or her discretion, to take any action and to make any election to minimize the tax liabilities of probate estate, any Nevada Trust, and the beneficiaries. The Trustees may make those elections and allocations under the tax laws as he or she deems advisable. The Trustees may, but shall not be required to, allocate the benefits of an election among the various beneficiaries or make adjustments in the rights of any beneficiaries or between the income and principal accounts to compensate for the consequences of any tax election or any investment or administrative decision made by the Trustees that may have had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over another.
21. **THE APPOINTMENT OF TRUSTEES** The following provisions shall apply to the appointment, designation, and removal of the Trustees. Pursuant to powers to appoint Trustees, Bayuk appoints himself along with Morabito as the Co-Trustee & Morabito as the Executor under this Trust Agreement. Morabito shall serve as the Distribution Trustee with additional power to prepare income tax returns and maintain records for the Nevada Trust.
22. **SUCCESSOR TRUSTEES** Upon death or incapacity, or that of Morabito, Bayuk shall appoint Robert Bertram Burke, Esq., to serve as Co-Trustee & Executor. If Bayuk ceases to make his principal residence in Nevada, Bayuk shall then appoint an additional Co-Trustee that is a full-time resident of Nevada.
23. **FILLING VACANCIES** If after death a vacancy in a Trustee's position is not filled as otherwise provided in this Trust Agreement, the Nevada court having jurisdiction over the Nevada Trust shall appoint one or more Trustees upon the application, advice and direction of the Distribution Trustee, Morabito.
24. **REMOVAL OF TRUSTEES** During Bayuk's lifetime, Bayuk may remove and replace a Trustee. Following Bayuk's death Morabito may remove any Trustees of the Trust and appoint a Trustee or Trustees other than himself to succeed the removed Trustee(s).
25. **TEMPORARY INCAPACITY OF A TRUSTEE** If, due to illness or other cause, an individual Trustee is temporarily, but not permanently, unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trusts for which he or she serves as Trustees, the other Trustees may, during such

temporary incapacity, make any and all decisions regarding the Nevada Trust estate as though the incapacitated Trustees were not then serving. In determining the temporary incapacity of an individual Trustee, the other Trustees may rely on a certificate or other "Written statement from a licensed physician who has examined the incapacitated individual Trustees. The other Trustees shall incur no liability whatsoever to any beneficiary as a result of any action taken under this section.

26. **EFFECTIVE DATES** Any and all appointments, designations, removals, or revocations affecting a Trustees position shall be made by a written instrument executed by the person entitled to make the appointment, designation, removal, or revocation. The written instrument shall be effective upon its delivery to the current Trustees; provided, however, that the appointment of a successor Trustees or Co-Trustees shall become effective only upon the new Trustee's acceptance of the appointment and the delivery of this **written** acceptance to the person who appointed him or her, the other Trustees, or the current beneficiaries.
27. **NO BOND** No bond or other security shall be required of any Trustees named in this Trust Agreement or of any Trustees appointed or designated in the manner provided under this Trust Agreement unless the terms of the appointment or designation require a bond. The foregoing provisions shall apply whether the Trustees serves alone or together with one or more other Trustees.
28. **ADMINISTRATOR** The Administrator shall provide such services to the Trustees by way of accounting, tax and planning purposes, and advise the Trustees and the Beneficiaries as to the intent and implementation of each and every provision of this Trust. The Administrator shall be reimbursed based on his normal hourly rate, as well as receive an annual base stipend of one dollar (\$1.00).
29. **THE PROTECTION PROVIDED THE TRUSTEES** The following provisions shall apply to each of the Trustees serving under this Trust Agreement:
30. **RESIGNATION** Each Trustee shall have the right to resign his or her position at any time without the consent of any beneficiary or the approval of any court. A Trustee may resign for any reason by delivering a written resignation signed by him or her to the successor Trustees. The resignation shall be effective according to its terms. But, if the resigning Trustees is the sole Trustees, the resigning Trustees shall continue to be responsible for the Nevada Trust property until it is delivered to the

successor Trustees and shall continue to hold title and custody to the Nevada Trust assets and administer the Nevada Trust assets and perform the actions that are reasonably necessary to preserve the Nevada Trust property and to complete the Trustee's administration of the Nevada Trust, until a successor Trustees has been appointed and has accepted the position of Trustees.

31. **COMPENSATION** Upon Bayuk's death, Morabito as the Executor and Co-Trustee shall be entitled to be paid an annual fee of three hundred and sixty thousand dollars (\$360,000) in 2005 U.S. dollar value for the performance of his duties and services rendered as Executor and as Co-Trustee. This compensation may be paid without prior court approval. The Trustees shall be reimbursed for reasonable expenses actually and properly incurred by him or her in the administration of the Nevada Trust. The Trustee also is authorized to pay to the attorneys and accountants retained by the Trustees to advise him or her in the administration of the Nevada Trust those amounts for fees and costs as the Trustees shall determine in his or her discretion. The Trustees is authorized to pay these fees and costs without first obtaining approval of the Nevada Trust beneficiaries or the court having jurisdiction over the Nevada Trust. These fees and costs shall not be offset against the compensation payable to the Trustees. A Trustee may waive his or her right to compensation for his or her services to be rendered to the Nevada Trust estate. The waiver must be in writing and signed by the person in advance of rendering the services for which compensation is being waived. A waiver may be limited in duration or limited to specific services.

32. **DUAL COMPENSATION** A Trustee serving as a director, officer, partner, or employee of any corporation, partnership, or other business in which the Nevada Trust owns or has an interest in shall also be entitled to receive reasonable compensation for his or her services rendered as Trustee in addition to the compensation being paid to him or her by such business. The compensation paid to the Trustee in either capacity shall not be offset against the other. A Trustee who is an investment advisor, attorney, accountant, or other professional shall not be disqualified from rendering professional services to the Nevada Trust and being compensated on a reasonable basis therefore in addition to any compensation that he or she otherwise is entitled to receive as Trustee. Neither shall a firm with which a Trustee is associated as a partner, officer, or employee be disqualified from dealing with, rendering services to, or discharging duties for the Nevada Trust and being compensated therefore on a reasonable basis. A

Trustee is authorized to retain himself or herself or any firm with which he or she is associated to render investment, legal, accounting, or other professional services.

33. **RIGHT OF INDEMNIFICATION AND REIMBURSEMENT** A Trustee shall be entitled to indemnification and reimbursement for any expense, loss, damage, liability, costs, or claim (including, without limitation, attorney's fees and costs of litigation) incurred by the Trustees by reason of any act performed or omitted to be performed by the Trustees, acting in good faith, in the administration of the Nevada Trust. The Trustee shall be deemed to have acted in good faith on behalf of the Nevada Trust if the Trustee acted in a manner reasonably believed by the Trustees to be within the scope of his or her authority and in the best interest of the Nevada Trust and its beneficiaries. Notwithstanding the foregoing, a Trustee shall not be indemnified or reimbursed with respect to any expense, loss, damage, or claim incurred by reason of any breaches of Nevada Trust, by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries.
34. **NOTICE TO THE TRUSTEES** Until the Trustees receives written notice of any birth, marriage, death, or other event affecting the rights of beneficiaries to payments or distributions from the Nevada Trust, the Trustees shall incur no liability to any persons whose interests may have been affected by that event for payments or distributions made by the Trustees in good faith as though the event had not occurred.
35. **CONFIDENTIALITY OF TRUST AGREEMENT** Except as otherwise provided in this Trust Agreement, the Trustees shall not disclose the contents of this Trust Agreement, or the fact of its existence unless required to do so by law or applicable regulation, regulatory authorities, or legal process, without prior written consent. The Trustees may, however, disclose the terms of this Trust Agreement where necessary to carry out his or her powers, to enforce the rights and remedies belonging to the Nevada Trust, or as required by a court in its supervision of the Nevada Trust. The Trustees may also disclose the contents of this Trust Agreement to persons employed by him or her to advise or assist him or her in the administration of the trusts, including attorneys and accountants, provided these professionals agree to keep the disclosed information confidential on the same terms as provided in this section.

36. **DISCLOSURE TO THE BENEFICIARIES** During Bayuk's lifetime, the Trustees shall have no duty to provide any information regarding the Nevada Trust to anyone other than me.
37. **REPORTS AND ACCOUNTS** Bayuk hereby waive all statutory requirements, that the Trustees render a report or account to the beneficiaries of the Nevada Trust. The Trustees shall not be required to make any current reports or to render any annual or other periodic accounts to any Nevada Trust beneficiary or to any court, whether or not required by statute, except pursuant to court order. The Trustees may take action for the approval of his or her accounts at the times and before the courts, or without court proceedings, as he or she determines in the exercise of his or her discretion. The Trustees shall pay the costs and expenses of such action, including the compensation and expenses of accountants, attorneys, and guardians, from the principal or income, or both, of the Nevada Trust as he or she determines.
38. **RIGHT TO RELEASE TRUSTEES** Bayuk reserves the right to execute a release, with or without an account, approving the administration of the Nevada Trust by the Trustees. A release shall discharge the Trustees from any accountability and liability to me or estate or to any other persons interested or claiming to be interested in the Nevada Trust as to all matters covered by the release or in the account, if any, with the same effect as if an account of the Trustees for the period concerned had been judicially settled and allowed in a proceeding to which these other persons (including all interested persons) were parties. No beneficiary other than me or the Executor shall have the right to question or assert any liability by the Trustees for the Trustee's acts or omissions during Bayuk's lifetime.
39. **RIGHT OF TRUSTEES TO SECURE RELEASES** The Trustees are authorized to secure from any beneficiary a full and complete release from any and all liabilities arising from the Trustee's administration of the Trust and the beneficiary's written approval of any account or report of the Trustees. The release or approval shall be binding and (inclusive upon the beneficiary and upon all of the beneficiary's issue (including then unborn, unknown, and unascertained issue) and other successors in interest who may then have or later acquire any interest in the separate Nevada Trust. All written instruments to be delivered to or executed by a beneficiary may be delivered to or executed by the legally appointed

conservator of any incompetent beneficiary or a parent or legal guardian of a minor beneficiary. When so delivered or executed, the written instrument shall be binding upon the beneficiary and shall be of the same force and effect as if delivered to or executed by a beneficiary acting under no legal disability. The foregoing provisions shall apply to all reports, statements, accounts, releases, and notices, as well as documents appointing, removing, or designating Trustees. However, the Trustees may not condition the performance of his or her duties on the delivery of such a release.

40. **CONSULTATION WITH LEGAL COUNSEL** The Trustees may retain and consult with Nevada and/or California based legal counsel on any matters related to the administration of the Nevada Trust or the construction or interpretation of this Trust Agreement, and Bayuk encourages the Trustees to do so. The Trustees may select the legal counsel to advise or represent him or her, and the Trustees is expressly authorized to pay the fees and costs of the legal counsel from the Nevada Trust estate. The time, place, subject matter, and content of any such consultation with legal counsel, all communication (written or oral) between the Trustees and legal counsel, and all work product of legal counsel shall be privileged and confidential and shall be absolutely protected and free from any duty or right of disclosure to any successor Trustees or any beneficiary and any duty to account. The Trustees shall, however, include the amount of any disbursement for the legal counsel fees and costs in any report or account prepared by the Trustees for the period during which the expenses were paid.
41. **RELIANCE ON EXPERTS AND OTHERS** The Trustees shall be entitled to rely on the information, opinions, reports, or statements (including financial statements and other financial data) prepared by his or her managers, attorneys, accountants, brokers, investments counselors, and other experts, even if they are associated with a Trustees, prepared by such persons as to matters which the Trustees reasonably believes to be within that person's profession or expert competence, and shall not be liable for losses resulting there from. The Trustees may act without independent investigation upon the recommendations of any attorneys, auditors, accountants, investment advisers, appraisers, or other qualified experts retained by the Trustees, even if they are associated or affiliated -with the Trustees. The written opinion of any such expert submitted to the Trustees shall be a full and complete authorization and protection with respect to any action taken or not taken by the Trustees in good faith.

42. **EXTENT OF LIABILITY** Bayuk does not want the Trustees to be personally liable for his or her good faith efforts in administering the Nevada Trust estate.
43. **LIABILITY** In general a Trustee shall not be personally liable to the Nevada Trust or its beneficiaries, and shall be held harmless, for any loss, expense, damage, or claim incurred by the Trustees by reason of any act performed or omitted to be performed by the Trustees, acting in good faith, in the administration of the Nevada Trust. The Trustees shall be deemed to have acted in good faith on behalf of the Nevada Trust if the Trustees acted in a manner reasonably believed by the Trustees to be within the scope of his or her authority and in the best interest of the Nevada Trust and its beneficiaries. Further, a Trustee shall not be personally liable for obligations arising from the Trustee's ownership or control of Nevada Trust property or for torts committed in the course of the Trustee's administration of the Nevada Trust unless the Trustees is personally at fault. Notwithstanding the foregoing, a Trustees shall be personally liable for his or her breach of Nevada Trust by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries, and as to any profit that the Trustees derives from any breach of Nevada Trust.
44. **TRUST IS IRREVOCABLE** During Bayuk's lifetime, the Trustees shall follow all written directions given from time to time to him or her by me or by the person or persons to whom Bayuk delegates the right to direct the Trustees. In consenting to and carrying out those directions, the Trustees shall not be liable to any person having a vested or contingent interest in the Nevada Trust for any act performed or omitted pursuant to those directions. Moreover, the Trustees may follow those directions regardless of any fiduciary obligations to which the directing party may also be subject.
45. **AS TO OTHER TRUSTEES** The liability of the Trustees is further limited as follows. (i) As to prior Trustees: No successor Trustees shall be responsible or liable for any acts, omissions, or default of any prior Trustees. Unless requested in writing by a beneficiary within 60 days of the appointment of the successor Trustees, no successor Trustees shall be required or have any duty to review or investigate the actions or omissions of a prior Trustees. A successor Trustees shall not be required or have any duty or obligation to review, audit, or examine the transactions, accounts, or records of any prior Trustees, or any allocation of the Nevada Trust estate made by any prior Trustees. (ii) No successor Trustees shall have any obligation to take any action

to obtain redress for any breach of Nevada Trust by any prior Trustees unless instructed by a court to do so. Each Trustee is responsible only for those assets that are actually delivered to the Trustee's custody or control. (iii) As to Co-Trustees: A Trustee shall be liable to the beneficiaries for the acts or omissions of a Co-Trustee only as provided required by law. (iv) As to agents and investment managers: Bayuk wants the Trustees to be able to rely on the advice of professionals hired to advise him or her. Accordingly, the Trustee's liability is further limited as follows: As to agents, a Trustee shall be liable to the beneficiaries for the acts or omissions of an agent only as provided by applicable law. As to investment managers, a Trustee shall not be liable for the acts or omissions of any investment manager or be under an obligation to invest or otherwise manage any asset that is subject to the management of an investment manager. As to taxes, Bayuk wants the Trustees to be aggressive in minimizing the taxes, including estate and income taxes, imposed on the Nevada Trust estate. Accordingly, the Trustees shall not be liable for any accuracy- related penalty, such as is currently imposed under Internal Revenue Code, arising from the preparation and filing of any income tax or estate tax return.

46. **LIABILITY INSURANCE** Individual Trustees may carry errors and omissions or fiduciary liability insurance and may charge the premiums to Nevada Trust income or principal, or both, as a cost of administration.
47. **THE AUTHORITY OF THE TRUSTEES** The following provisions shall apply to each of the Trustees serving under this Trust Agreement. A successor Trustees shall be vested with all the rights, powers, and authority of an original Trustees
48. **TRUSTEES AUTHORITY** Except as otherwise expressly provided, a successor Trustees upon commencing to serve as Trustees shall immediately become vested with all the rights, titles, Powers (including discretionary powers), and obligations, with like effect as if named as an initial Trustees. Where this Trust Agreement states that the Trustees "shall" perform an act, the Trustees are required to perform that act. Where this Trust Agreement states that the Trustees "may" do an act or Trustees is "authorized" to act, the Trustees is expressly permitted or authorized to do the act described, and his or her decision to do or not to do the act shall be made in the Trustee's sole and absolute discretion in the exercise of his or her fiduciary powers and duties. The decision of the Trustees as to all discretionary actions and decisions shall be conclusive and binding on all persons.

49. **NEVADA SPENDTHRIFT ACT** The Trustees are **required** to disregard and defeat every assignment or other act, voluntary or involuntary, intended or unintended, that is attempted by any Party or anyone contrary to the provisions of the Nevada Spendthrift Act upon which the Nevada Trust is based.
50. **TRUSTEES DISCRETION** The discretionary powers granted to the Trustees under this Trust Agreement shall be absolute. This means that the Trustees can act arbitrarily, so long as he or she does not act in bad faith, and that no requirement of reasonableness shall apply to the exercise of his or her absolute discretion. This does not mean that the Trustees may do as he or she pleases, but rather that Bayuk wants the Trustees to use his or her own personal, subjective best judgment. For this purpose, Bayuk waives the requirement that the Trustee's conduct at all times must satisfy the standard of judgment and care exercised by a reasonable, prudent person. In particular, the decision of the Trustees as to the distributions to be made to beneficiaries under the distribution standards provided in this Trust Agreement shall be conclusive on all persons.
51. **RELEASE OF POWER OR AUTHORITY BY A TRUSTEES** The Trustees may at any time release, surrender, disclaim, relinquish, either in whole or in part, or may reduce or restrict in scope, any of the powers, rights, authority, or discretion granted to the Trustees under this Trust Agreement, either expressly or implied. Such action shall be taken by means of a written notice filed in the records of the Nevada Trust, signed and dated by the releasing Trustees, and mailed to all of the current beneficiaries. Unless otherwise specified by the releasing Trustees, any such action as it affects the Trustees shall be irrevocable. Such action shall be effective only as to the Trustees giving such written notice and shall in no way affect the rights, powers, authority, and discretion of successor Trustees. The powers, rights, authority, or discretion released or restricted shall continue to exist as to all Trustees and successor Trustees other than the releasing Trustees.
52. **TRUSTEE'S CONSIDERATION OF BENEFICIARY'S OTHER ASSETS** Except as otherwise provided in this Trust Agreement, in exercising his or her discretion to distribute Nevada Trust funds to any beneficiary, the Trustees may, but shall not be required or have any duty to, consider all income and assets, including other sources of income or financial support, reasonably available to the beneficiary, as are actually known to the Trustees. The Trustees shall have no duty of inquiry as to

the property owned by or held for the benefit of the beneficiary. In making discretionary distributions from any Nevada Trust created under this Trust Agreement, the Trustees may rely absolutely upon a declaration executed under penalty of perjury by the beneficiary describing his or her expenses and financial needs and any other financial resources available to him or her, without further investigation. The Trustees may continue to rely upon a declaration until otherwise advised in another declaration from the beneficiary.

53. **LIMITATION ON DISCRETION OF A BENEFICIARY SERVING AS TRUSTEES**

Notwithstanding any other provisions of this Trust Agreement, a Trustee (other than Bayuk or the Distribution Trustee) who is also a beneficiary of the Nevada Trust shall not have, and shall not participate in the exercise of, the power to use, apply, or distribute Nevada Trust principal for his or her own benefit, except as necessary to provide for his or her health, education, maintenance, and support in his or her accustomed manner of living. Further, a Trustee who is also a beneficiary of the Nevada Trust shall not participate in the exercise of any power to advance or loan funds to himself or herself or to guarantee or secure any debt of such beneficiary/Trustees.

54. **VOTING** While more than two Trustees are serving, the decision of the majority of the Trustees shall prevail and be binding with respect to all matters affecting the Nevada Trust estate. If one or more Trustees are excluded or precluded from participating in making a decision with respect to a particular matter, the remaining Trustees acting by majority vote shall make the decision. Any act by or instrument executed by the majority of the Trustees shall constitute the action of the Trustees as if done by all Trustees. Any dissenting or non-concurring Trustees shall not be liable to any person for the action or failure to act of the other Trustees acting by majority vote.

55. **DELEGATION BY ONE TRUSTEE** Each Trustee may at any time, by a signed revocable instrument, delegate to another Trustee the exercise of all or less than all of the powers conferred on a Trustee - other than the Distribution Trustee. Nonetheless, the delegating Trustees shall be liable for the proper exercise of the delegated powers by the other Trustees.

56. **DELEGATION BY ALL TRUSTEES** The Trustees may delegate their powers to one or more of the Trustees in a writing signed by all of them. The writing

must state the powers delegated to the particular Trustees and provide a date when the delegation will terminate automatically if not previously terminated. Any delegation shall be revocable by any one Trustees in a writing delivered to the delegate. A Trustees acting pursuant to a delegation shall have the authority to bind the Nevada Trust and third persons may rely on his or her authority to act for the Nevada Trust. Any act by or instrument executed by a Trustees acting pursuant to this delegation shall constitute the action of the Trustees as if done by all Trustees.

57. **DELEGATION OF POWER TO EXPEND** The Trustees may delegate to one or more of the Trustees, for any period, the power to bind the Nevada Trust in any transaction obligating the Nevada Trust to expend up to or less than a certain sum of money as specified by the delegating Trustees. The Trustees to whom the power is delegated may be the sole signor of all checks necessary to accomplish the expenditure. The Trustees may also delegate to a property management company authority to be the sole signatory of all checks written on behalf of the Nevada Trust relating to real estate owned by the Nevada Trust or on checks written on behalf of the Nevada Trust in an amount less than the amount specified by the Trustees.
58. **DELEGATION OF INVESTMENT AUTHORITY** The Trustees, acting by majority vote, may delegate to one or more Trustees or to agents (including independent investment advisors, investment counsel or managers, banks, or Nevada Trust companies) the power and authority to act for the Trustees in the investment and reinvestment of Nevada Trust assets. The Trustees, acting by majority vote, may also authorize the payment of compensation for investment advisory or management services. The Trustees may delegate to the retained investment counsel the power to instruct the custodian of Nevada Trust property with respect to all matters affecting the property, and the custodian shall comply with those instructions.
59. **AGENTS** The Trustees may act under this Trust Agreement through an agent or attorney-in-fact acting under a power of attorney duly executed by the Trustees.
60. **DEALING WITH THE TRUSTEES** If a third person dealing with the Trustees or assisting him or her in the conduct of a transaction acts in good faith and for a valuable consideration and without actual knowledge that the Trustees is exceeding the Trustee's powers or improperly exercising them, the third person is not bound to inquire whether the Trustees has power to act or is properly exercising a power and may assume without inquiry the existence of a Nevada Trust power

and its proper exercise. That third person shall be fully protected in dealing with or assisting the Trustees just as if the Trustees has and is properly exercising the powers the Trustees purports to exercise. In addition, that person has no duty to see to the application of any money paid or property transferred to or upon the order of one or more Trustees.

61. **RELIANCE ON REPRESENTATIONS BY THE TRUSTEES** A third person dealing with the Trustees also shall be fully protected in relying on written statements of fact, certified or declared under penalty of perjury by any one or more of the persons who appear from the original or certified copy of this Trust Agreement (or documents of appointment) to be a Trustees or successor Trustees, regarding the Trustee's authority to act under this Trust Agreement, the calling of any meeting of the Trustees, the giving of any notice of a meeting, the action taken at a meeting, and other facts concerning the trusts established under this Trust Agreement. Anyone may rely on a copy of this Trust Agreement certified by a Trustee, by the Trustee's legal counsel, or by a Notary Public, to be a counterpart or true copy of this Trust Agreement
62. **RELIANCE ON THE AUTHORITY OF TRUSTEES** No persons or organizations employed by the Trustees or retained by the Trustees as provided in this article shall be required to oversee or supervise the activities of the Trustees or to inquire into the Trustee's powers, authority, or discretion. Each person or organization so employed or retained may rely implicitly upon the written instructions of the Trustees with respect to the property and business of the Nevada Trust, including instructions of the Trustees to deal directly with investment counsel employed by the Trustees. In no event shall any person or organization so employed or retained be liable for any act or omission of any Trustees in which that person or organization may also have participated.
63. **THE POWERS OF THE TRUSTEES** Subject in all instances to his or her fiduciary duties and the limitations set forth elsewhere in this Trust Agreement, with regard to the entire Nevada Trust estate and all trusts established under this Trust Agreement, the Trustees shall have all the powers described below, all powers granted by law, and all powers reasonably necessary to carry out his or her duties as Trustees to administer, manage, protect, and invest the Nevada Trust estate. The

Trustees in his or her discretion, without court approval, authorization, or supervision, may exercise these powers except as expressly required in this Trust Agreement.

64. **TO ACCEPT PROPERTY** The Trustees may accept or receive additions and contributions to the Nevada Trust estate from me or any other person and hold the property in Nevada Trust under the provisions of this Trust Agreement. If the Trustees receives property from another fiduciary and if the Trustees believes the action to be in the best interests of the Nevada Trust estate, the Trustees is authorized to waive an accounting from the fiduciary, to approve his or her actions, to consent to his or her proposed actions, and to consent to his or her discharge. Specifically, any Property bought by me in any capacity, under any legal title, is deemed and understood to be the Property of the Nevada Trust unless such Property is specifically disclaimed or rejected by the Trustees in writing to me.
65. **TO DISCLAIM OR REJECT PROPERTY** The Trustees may renounce or otherwise disclaim all or any part of any interest in property passing to the Nevada Trust, by gift or bequest, and any right, power, privilege, or discretion granted the Trustees under this Trust Agreement. The Trustees may reject any property or interest in property passing to the Nevada Trust, including property that by reason of hazardous materials or substance the Trustees determines (after investigation at the expense of the Nevada Trust) would be detrimental to the Nevada Trust purpose.
66. **TO RETAIN PROPERTY** The Trustees may retain Nevada Trust property received at the inception of the Nevada Trust or at any other time, from me or any other person, or any future corporate entity, partnership, limited liability company interest, revocable Nevada Trust or any form of corporate, legal and/or personal basis until, in the judgment of the Trustees, disposition or distribution of the property should be made. The property may be retained even though the property is unproductive, is property in which a Trustees is personally interested or in which the Trustees owns an undivided interest personally or as Trustees of another Nevada Trust, or there is known or later discovered to be hazardous materials or substances requiring remedial action pursuant to environmental laws. The Trustees shall have no duty to dispose of any part of the Nevada Trust property included in the Nevada Trust at the time of its creation, or later added to the Nevada Trust by me or another person, that would not be a proper investment for the Trustees to make. The Trustees may, without liability, continue to hold that property. The Trustees may hold Nevada Trust property in bearer form so

that title may pass by delivery, or in the name of any one Trustees or a nominee without indication of any fiduciary capacity by the nominee. The Trustees may keep all or part of the Nevada Trust property at any place within the United States or abroad.

67. **TO OPERATE A BUSINESS** The Trustees may continue or participate in the operation of any business or other enterprise (including a partnership as a general or limited partner) that is part of the Nevada Trust property for as long as the Trustees deems advisable, at the risk of the Nevada Trust estate and not at the risk of the Trustees. The Trustees may incorporate, dissolve, or change the form of the organization of the business or enterprise, or operate it as a partnership or in any other form. The profits and losses from any business or other enterprise shall be chargeable to and borne by the Nevada Trust, and not the Trustees. A Trustee, as an individual, may continue to be a shareholder, director, officer, employee, or partner of any business or enterprise in which the Nevada Trust holds any interest.

68. **TO INVEST AND REINVEST TRUST PROPERTY** The Trustees may invest and reinvest Nevada Trust property (including income and principal) in any kind of property, whether real, personal, or mixed, including (1) real property (including leaseholds; royalty interests; interests in mines, oil and gas wells, timberlands, and other wasting assets), (2) intangible personal property (including common and preferred stock and all other kinds of securities (on margin or otherwise); investment company shares, mutual funds, index funds, common Nevada Trust funds (including any common Nevada Trust fund under the management of a corporate Trustees) and other collective investment vehicles; interests in partnerships (whether as a general or limited partner); commodities; governmental obligations of every kind; obligations of corporations or unincorporated associations; and patents, copyrights, trademarks, and other intangible rights), and (3) tangible personal property (including precious metals, works of art, and other collectibles). The Trustees is authorized to establish and maintain brokerage accounts, including margin accounts, for the purpose of purchasing, acquiring, possessing, pledging, hypothecating, selling and otherwise disposing of, and generally dealing in and with any of the foregoing types of investments.

69. **TO ADMINISTER SECURITIES** The Trustees may purchase, exchange, or sell stocks, bonds, futures contracts, and other securities, and puts, calls, straddles, and other options. The Trustees may maintain brokerage accounts, including

margin and commodity accounts, and in connection with such accounts, may borrow, pledge securities, make short sales, and sell on margin or otherwise. With respect to all securities held by in the Nevada Trust estate, the Trustees may exercise the rights, powers, and privileges, and responsibilities of an owner, including the right to vote; to give general or limited proxies; to pay calls, assessments, and other sums; to participate in voting trusts, pooling arrangements, foreclosures, reorganizations, consolidations, mergers, and liquidations; to deposit securities with and transfer title to any protective or other committee; and to exchange, exercise, or sell stock subscription or conversion rights. The Trustees may also accept and retain as an investment any securities received through the exercise of any of the foregoing powers.

70. **TO CONDUCT ALL BANKING ACTIVITIES** The Trustees shall and may establish financial accounts of any kind, including checking, money market, and savings accounts, with any bank, savings and loan association, credit union, brokerage firm, or other financial institution (including such accounts in the banking department of a Trustees that is a corporation or partnership). The Trustees may deposit Nevada Trust funds into such accounts, withdraw funds from such accounts, and transfer funds among such accounts. The Trustees may designate in writing the persons, whether or not Trustees, who may conduct such banking activities, and the financial institutions may rely, without liability, on such designations.
71. **TO PURCHASE AND SELL TRUST PROPERTY** The Trustees or me authorized by the Trustees may buy, purchase, acquire, sell, convey, dispose of, exchange, or otherwise transfer any Nevada Trust property, or any interest in property, for cash or on credit, at public or private sale, with or without notice, and for the prices and upon the terms as the Trustees determines. The Trustees may grant or acquire options and rights of first refusal involving the acquisition or disposition of any Nevada Trust property. The Trustees may also subdivide or develop land; create restrictions, easements, and other servitudes, with or without consideration; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate real property to public use with or without consideration.
72. **TO MANAGE TRUST PROPERTY** The Trustees may manage, control, divide, develop, improve, repair, exchange, partition, change the character of, or abandon Nevada Trust property or any interest in Nevada Trust property. The Trustees

may enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the Nevada Trust. The Trustees may amend or extend existing leases. The Trustees may also demolish or remove buildings or other improvements on Nevada Trust property.

73. **TO BORROW MONEY AND ENCUMBER TRUST PROPERTY** The Trustees may borrow money for any Nevada Trust purpose from any person upon such terms and conditions as may be determined by the Trustees, and obligate the Nevada Trust to make repayment from Nevada Trust property. Bayuk or the Trustees may loan or advance funds to the Nevada Trust, and the loans or advances together with the interest charged shall be treated as a first lien on the Nevada Trust estate until repaid. The Trustees may also encumber, mortgage, or pledge Nevada Trust property for a term within or extending beyond the term of the Nevada Trust in connection with the exercise of any power vested in the Trustees, or to create restrictions, easements, or other servitudes on Nevada Trust property.
74. **PROVIDING GUARANTEES** The Trustees other than me may NOT guarantee any indebtedness incurred by me, or by any entity owned directly or indirectly by me or by the Nevada Trust.
75. **TO MAKE LOANS** The Trustees may loan or advance Nevada Trust property of any kind (including money) for any Nevada Trust purpose to any person on terms and conditions as determined by the Trustees, subject to limitations stated in this Trust Agreement. The Trustees may make loans out of Nevada Trust property to the current beneficiary on terms and conditions that the Trustees determines are fair and reasonable under the circumstances, and guarantee loans to the current beneficiary by encumbrances on Nevada Trust property.
76. **TO PURCHASE LIABILITY INSURANCE** The Trustees may purchase and pay the premiums on policies to insure the property of the Nevada Trust estate against damage or loss and to insure the Trustees against liability with respect to third persons. The Trustees shall not be liable for any omission to purchase any type or amount of insurance. The premiums shall be a proper expense to be charged against the Nevada Trust.
77. **TO PURCHASE AND ADMINISTER LIFE INSURANCE** The Trustees may purchase, own, and pay the premiums on life insurance on life, and collect the

proceeds of life insurance policies payable to the Nevada Trust. The Trustees shall have the power to compromise, arbitrate, or otherwise adjust any claim, dispute, or controversy arising under any policy payable to the Nevada Trust and shall have authority to initiate, defend, settle, and compromise any legal proceeding necessary in the Trustee's discretion to collect the proceeds of any policy. The Trustee's receipt to any insurer shall be a sufficient release of the insurer. The insurer shall not be under any duty to inquire concerning the Trustee's application of the policy proceeds.

78. **TO PAY, CONTEST, AND SETTLE CLAIMS** The Trustees may pay or contest any claim; settle a claim by or against the Nevada Trust by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the Nevada Trust.
79. **TO LITIGATE** In accordance with his or her duties to enforce claims and defend actions, the Trustees may prosecute or defend actions, claims, or proceedings for the protection of the Nevada Trust estate and the Trustees in the performance of his or her duties.
80. **TO DEAL WITH ENVIRONMENTAL HAZARDS** The Trustees may deal with matters involving the actual or threatened contamination of Nevada Trust assets (whether real or personal) by hazardous substances, or involving compliance with environmental laws and regulations, including conducting environmental assessments, audits, and site monitoring, and taking remedial action (whether or not required by governmental authorities) to contain, clean up, or remove any environmental hazard.
81. **TO PAY AND ALLOCATE TRUST EXPENSES** The Trustees may pay taxes and other assessments imposed on the Nevada Trust estate or Nevada Trust income; reasonable compensation of the Trustees and of the employees and agents of the Nevada Trust; and other expenses incurred in the collection, care, management, administration, and protection of the Nevada Trust estate. In allocating the payment of expenses, the Trustees shall have the power to determine which expenses are chargeable to income or principal or partly to each. The Trustees is authorized, but not directed, to allocate and charge post-death expenses incurred in the administration of the trusts or sub-trusts to post-death income. In particular, all expenses of administration claimed as income tax deductions may be entirely allocated to and charged against post-death income. In making these determinations, the Trustees shall

be guided by the principles set forth in the Uniform Principal and Income Act, but his or her final determination shall be binding.

82. **TO HIRE AND EMPLOY PERSONS** The Trustees may hire and employ persons (including individuals, corporations, partnerships, associations, and other companies), including accountants, attorneys, auditors, investment advisers, appraisers, or other agents or experts, even if they are associated or affiliated with a Trustees, to advise or assist the Trustees in the performance of his or her duties and obligations. The Trustees may grant discretionary authority to such persons, but may not delegate either the administration of the Nevada Trust or acts that are not delegable except as expressly provided in this Trust Agreement.

83. **TO MAINTAIN CUSTODY** The Trustees may keep any or all of the Nevada Trust property at any place in Nevada or California or elsewhere, within the United States or abroad, or with a depository or custodian at those places. If no bank or Nevada Trust company is acting as sole or a Co-Trustees hereunder, the Trustees are authorized to appoint a bank or Nevada Trust company as custodian for securities and any other Nevada Trust assets. Any appointment shall terminate when a bank or Nevada Trust company begins to serve as sole or as a Co-Trustees under this Trust Agreement. The custodian shall keep the deposited property; collect and receive the income and principal; and hold, invest, disburse, or otherwise dispose of the property or its proceeds (specifically including selling and purchasing securities and delivering securities sold and receiving securities purchased) upon the order of the Trustees. The custodian shall not be liable to any person interested in the Nevada Trust for any action taken pursuant to the order or instructions of the Trustees or his or her authorized agents.

84. **TO USE A NOMINEE** The Trustees may hold securities or other property of the Nevada Trust estate in the name of the Trustees, in the name of a nominee, or in street name accounts with brokers, or in the name of a custodian (or its nominees) selected by the Trustees, with or without disclosure of this Trust Agreement. The Trustees shall be responsible for the acts of such custodian, broker, or nominee affecting such property. The Trustees may also acquire and retain securities in unregistered form so that ownership passes by delivery.

85. **TO EXECUTE AND DELIVER INSTRUMENTS** The Trustees may execute and deliver all documents and instruments (including checks withdrawing or

disbursing Nevada Trust funds, stock powers, deeds and other conveyances, receipts, releases, contracts, and other agreements and transfer documents) which are needed to accomplish or facilitate the exercise of the powers vested in the Trustees, and to disclose the provisions of this Trust Agreement whenever in the Trustee's discretion disclosure is appropriate.

86. **OTHER POWERS** The Trustees may invest in obligations of the United States Government. The Trustees may deposit Nevada Trust funds at reasonable interest in accounts, whether or not the account is insured by a government agency or collateralized. The accounts may be maintained in the name of any one of the Trustees or in the name of a nominee. The Trustees may make repairs, alterations, and improvements, and perform the other acts affecting Nevada Trust property. The Trustees may develop land. The Trustees may enter into leases and other arrangements regarding minerals. The Trustees may grant or take options. The Trustees may exercise the powers of voting rights, payment of calls and assessments, stock subscriptions and conversions, and consent to change in form of business and participation in voting trusts. The Trustees may hold securities and deposit securities in a securities depository.
87. **SPECIAL DISCRETIONARY POWERS OF THE TRUSTEES** The following provisions shall apply to each of the Trustees serving under this Trust Agreement.
88. **TO DEAL WITH ESTATE** The Trustees may loan money to and borrow money from, sell property to and buy property from, exchange property with, and otherwise deal with, on reasonable, arm's-length terms (including adequate security, fair market prices, and market rates of interest), estate or the Trustees of other trusts created by me, for the purpose of providing liquidity to the estate or trusts or for any other purpose. The Trustees shall not be obligated to make any such loans or purchases.
89. **TO MAKE PAYMENTS AND DISTRIBUTIONS** The Distribution Trustee shall have the sole discretion to make any payments or transfers of income or principal or other sums distributable to a beneficiary in any one or more of the following ways. The Trustees shall not be required to supervise or inquire into the application of any funds so paid or applied, and the receipt of the payee shall be full acquittance and discharge of the Trustees. The Distribution Trustee may withhold from distribution all or any part of any Nevada Trust property, so long as the Trustees, exercising its

discretion, determines that such property may be subject to conflicting claims, tax deficiencies, or liabilities (contingent or otherwise) properly incurred in the administration of the Nevada Trust. By payment directly to the beneficiary or by deposit in any bank or similar account designated by the beneficiary even if the beneficiary is a minor or under a legal disability, without the intervention of a custodian, guardian, or conservator. Payments may be made directly to minor beneficiaries who, in the Trustee's judgment, have attained sufficient age and discretion to manage their own funds. By payment to the legally appointed guardian or conservator of the beneficiary's person or estate or by payment for the benefit of the beneficiary to any person with whom the beneficiary resides or to any person who has custody of the beneficiary, without the intervention of a guardian or conservator. By payment to any person or organization furnishing health care, education, maintenance, or support of the beneficiary. By making expenditures directly for the benefit of the beneficiary or for the reasonable health, education, maintenance, and support of persons whom the beneficiary has a legal obligation to support. By purchasing an annuity contract or other property for the benefit of a beneficiary entitled to receive a distribution.

90. **TO SELL TRUST ASSETS** The Trustees may sell Nevada Trust assets to obtain cash with which to pay debts incurred in the ordinary course of the maintenance and protection of the Trust's assets (including unpaid tax liabilities arising prior to death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of estate, income taxes, Estate taxes, expenses of administration, and other liabilities of the Nevada Trust, or to satisfy pecuniary gifts provided for under this Trust Agreement. The Trustee's selection of assets to be sold for these purposes, and the tax effects of that selection, shall not be subject to question by any beneficiary. Property, assets, or funds otherwise excludable from gross estate for federal estate tax purposes shall not be used to make any of these payments.

91. **TO POSTPONE DISTRIBUTIONS** Notwithstanding other provisions of this Trust Agreement, the Distribution Trustee shall have the power to postpone the distribution of any fractional portion or part of the principal of any Nevada Trust estate or of an entire Nevada Trust estate of any Nevada Trust created under this Trust Agreement for any person other than me if the Trustees determines that there is a

compelling reason in his sole discretion to postpone the distribution. Compelling reasons shall include, but are not limited to, a serious disability, drug addiction or dependency, a pending divorce, a potential financial difficulty, pending or threatened litigation, a serious tax disadvantage, or similar substantial cause affecting the beneficiary who otherwise would be entitled to the distribution. In that event, the distribution from or termination of any Nevada Trust may be postponed, and any postponement may be continued from time to time, up to and including the entire Lifetime of the beneficiary. During the postponement, the retained portion or part of the Nevada Trust estate shall be administered under the same terms as applied immediately prior to the postponement.

92. **TO DETERMINE VALUES AND ALLOCATE PROPERTY** The Trustees, in their sole discretion and at any time, shall determine the valuations of Nevada Trust property for purposes of divisions, allocations, and distributions, and those valuations, reasonably determined, shall be final and binding on all beneficiaries and other persons having an interest in the Nevada Trust. The Trustees may adjust any valuations retroactively if a different valuation is finally determined for federal estate tax purposes. The Trustees are authorized to effect the division, allocation, or distribution of Nevada Trust property in divided or undivided interests, in cash or in kind or partly in both, pro rata or non-pro rata, as the Trustees shall determine, and to sell any property in connection with the division, allocation, or distribution if the Trustees deems that action necessary or appropriate. A distribution in kind may be made pro rata or non-pro rata, and a beneficiary may receive all or a portion of any asset as part of a distribution or allocation in kind. The Trustees may allocate or distribute property (or the right to receive property) which is subject to estate tax and federal income tax as income in respect of a decedent to any one or more of the trusts created under this Trust Agreement or the beneficiaries of any Nevada Trust. The Trustees shall not be under any obligation to equalize any disproportionate allocation or distribution of items of decedent to any one or more trusts or beneficiaries. In making such divisions, allocations, and distributions, the Trustees is not required to consider the income taxes bases of such assets or the potential income tax consequences to the beneficiaries receiving the assets.

93. **TO MAKE ALLOCATIONS BETWEEN PRINCIPAL AND INCOME**
The Trustees shall determine what is principal or income of the Nevada Trust estate, and what items shall be charged or credited to principal or income, or

both. For example, Trustees fees, attorney's fees, accounting fees, and custodian fees shall be charged against income or principal, or both, in such proportions (or all against either income or principal) as the Trustees determines. In exercising such discretion, the Trustees may use the Uniform Principal and Income Act as a guide. The Trustees shall not be required to establish any reserves. The Trustees may, however, establish reserves for depreciation, depletion, amortization, obsolescence, or repair and improvement of capital assets; for operating capital; or to amortize loans from income. If the Trustees determines to establish a reserve, he or she may fund the reserve by appropriate charges against the income of the Nevada Trust estate, in such amounts as the Trustees determines. If any security is purchased for a premium or at a discount, such premium or discount may be amortized in a reasonable manner. In addition, the Trustees may establish such reserves as he or she considers necessary for the payment of all taxes.

94. **TO RETAIN OR PURCHASE UNPRODUCTIVE OR UNDER-PRODUCTIVE PROPERTY** The Trustees may retain, purchase, or otherwise acquire property that is unproductive or under-productive of current income. Because of the substantial potential for appreciation presented by unproductive assets such as unimproved real estate and growth stocks, Bayuk want the Trustees to have broad discretion to acquire those assets. The Trustees shall have a duty to make the Nevada Trust property productive, but property may be made productive by appreciation in value as well as by the production of income. The Trustees may acquire and retain assets for appreciation as part of a portfolio that produces a reasonable level of current income.
95. **TO INVEST TRUST ASSETS TOGETHER** Each of the trusts and Nevada Trust shares created under this Trust Agreement shall be a separate Nevada Trust for Nevada Trust, accounting, tax, and all other purposes. The Trustees shall keep an account for each Nevada Trust and may, but shall not be required to, segregate Nevada Trust assets. Rather, the Trustees may invest together the property of the separate trusts, allotting to each separate Nevada Trust its proportionate undivided interest in the collective fund. The undivided interest always shall be equal to that Nevada Trust's proportionate contribution to the mingled assets.
96. **TO CONSOLIDATE TRUSTS** If a Nevada Trust is established or exists under this Trust Agreement for a beneficiary for whom another Nevada Trust has been

established under this Trust Agreement, the Trustees must allocate the property from the one Nevada Trust to the Nevada Trust. Similarly, if Bayuk have established a Nevada Trust for a beneficiary for whom a Nevada Trust is to be established or exists under this Trust Agreement, and the dispositive provisions of that Nevada Trust are substantially the same as the dispositive provisions of the Nevada Trust to be established or existing under this Trust Agreement, the Trustees may transfer the property for the Nevada Trust to be established or existing under this Trust Agreement to the Trustees of the other Nevada Trust, to be held on the terms of that other Nevada Trust. Further, where the dispositive provisions of each Nevada Trust or Nevada Trust share are substantially similar, the Trustees shall have the discretion to combine any trusts or Nevada Trust shares into one Nevada Trust because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for such a combination. A combination Nevada Trust not materially impair the interests of any beneficiaries. Trusts may be combined or consolidated whether created inter vivos or by will, by the same or different Nevada Trust instruments, whether the Trustees is the same, and regardless of where the trusts were created or administered. When combining trusts, however, the Trustees shall only combine Exempt Trusts with other Exempt Trusts.

97. **TO DIVIDE TRUSTS** With respect to all trusts established under this Trust Agreement, the Trustees shall have the discretionary power, exercisable without need of court approval, to divide the Nevada Trust into two or more separate trusts for any purpose, including, without limitation, any of the following purposes. To create one or more separate trusts that qualify as a qualified S corporation shareholder or as any other type of special Nevada Trust provided for under the Internal Revenue Code. To create one or more separate trusts to accomplish other proper tax planning purposes. To create a separate Nevada Trust as to any share or portion of a Nevada Trust disclaimed by a beneficiary, and to sever the disclaimed portion to be administered as a separate Nevada Trust. To create a separate Nevada Trust for each current income beneficiary of a Nevada Trust or Nevada Trust share, and to divide any Nevada Trust along family lines to be administered as separate trusts. To create one or more separate trusts because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for a division. The allocation of property between or among separate trusts created from a single Nevada Trust or Nevada Trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. The fair market values of the Nevada Trust property

at the date or dates of allocation shall be used in making the allocations. All trusts so established shall be designated and named by the Trustees and the property allocated to the divided trusts shall be held and administered under the same terms and provisions as would have applied to the undivided Nevada Trust or Nevada Trust share. With regard to planning for the S corporation election, or other tax purposes, this power to divide trusts shall be exercised in a manner that complies with the Internal Revenue Code and applicable Treasury regulations.

98. **TO PERMIT USE OF PERSONAL RESIDENCE** The Trustee is authorized to permit Bayuk and, following Bayuk's death, the current beneficiary of the Nevada Trust to occupy rent-free any residence held in the Nevada Trust and to use the furnishings in the residence. The Trustees shall pay from the Nevada Trust all taxes, insurance premiums, assessments, costs of repairs, and maintenance for these residences. The Trustees may sell the residence and, in his or her discretion, acquire other residences from Nevada Trust property.
99. **TO HOLD PERSONAL ARTICLES IN TRUST** If the Trustees of any Nevada Trust receives furniture or furnishings, household items, clothing and other personal effects, or vehicles or accessories to vehicles, the Trustees may distribute that property to the current beneficiary or beneficiaries of the Nevada Trust, at the times and in the manner the Trustees, in his or her discretion, determines to be proper. In addition, the Trustees may allow the current beneficiaries to use this property. Neither the Trustees nor any beneficiary who uses this property shall be liable to other beneficiaries for permitting the use of this property or for the loss or damage of this property.
100. **TO MAKE DISTRIBUTIONS FROM QUALIFIED S TRUSTS** The Trustees is authorized to distribute to the beneficiary of any Nevada Trust that has made a qualified S Corporation election from income or principal, or both, funds sufficient to pay the federal and state income taxes imposed on the beneficiaries for the income or gain passing to the beneficiary from the S Corporation. No such distribution is required and is at the sole discretion of the Distribution Trustee.
101. **DISINHERITANCE AND NO CONTEST** Bayuk has intentionally omitted from this Trust Agreement any provision for any of heirs, issue, relatives, or other persons who are not named, mentioned, designated, or described in this Trust Agreement. Bayuk have intentionally omitted any person who would be a pre-

permitted heir under applicable law. Bayuk generally and expressly disinherit each and every person whomsoever claiming to be and who may be determined to be heirs at law, except as they are otherwise expressly provided for in this Trust Agreement.

102. **NO CONTEST CLAUSE** Bayuk wants the greatest deterrence against interference with estate plan that the law allows. If any heir, issue, relative, legatee, devisee, beneficiary, or other interested person; or any person who is provided for under this Trust Agreement, Will, any beneficiary designation, or any Will substitute; or any person who would be entitled to any of property under the laws of succession or otherwise, alone or in conjunction with any other person or persons, directly or indirectly (1) institutes any legal proceeding that attacks or contests this Trust Agreement or Will (or any amendment or codicil to this Trust Agreement or Will), or seeks to impair, nullify, void, or invalidate such documents or any of their provisions; (2) asserts or pursues in any manner any claim, including any creditor's claim, against estate or property other than as permitted in this Trust Agreement and Will; (3) attacks or contests or seeks to change any beneficiary designation under an insurance policy, employee benefit plan, deferred compensation plan, retirement plan, annuity, or other Will substitute of mine; or (4) conspires with or voluntarily assists any person or persons attempting to do any of these things, Bayuk direct that that person (the "Contestant") and all persons conspiring with or assisting him or her shall take none of property and nothing from estate. All these persons are expressly disinherited. Any and all gifts or property that otherwise would have gone to these persons shall be forfeited and shall pass as if these persons had predeceased me without leaving living issue. The foregoing provisions shall apply to any persons who claim that Bayuk entered into an oral agreement providing for the disposition or transfer of property to those persons or others in any way inconsistent with the provisions of this Trust Agreement or Will. The foregoing provisions shall Bayuk also apply to any action or proceeding brought by any person, other than me (or authorized agents) during lifetime, to change the ownership title of property already characterized in a document signed by me (excluding any action by Executor or Trustees to confirm ownership of property in the Nevada Trust or estate) and any challenge to the validity of an instrument, contract, agreement, beneficiary designation, or other document providing for or directing the disposition of property. The foregoing provisions shall not be violated by (Bayuk) the disclaimer of any right or interest

in Nevada Trust property; (2) the assertion or submission of any creditors' claims, supported by consideration, by any person to Executor or the Trustees that are believed by such person, in good faith, to be owed by me to that person or the prosecution of an action based upon any such creditor's claims; (3) the participation in a mediation or settlement discussions or the filing of a petition for settlement or compromise affecting the terms of this Trust Agreement, Will, or other documents governing the disposition of estate or property, (4) the filing of any petition or the taking of other action by the Trustees or Executor seeking judicial construction or interpretation of this Trust Agreement or Will, or of any amendment or codicil to this Trust Agreement or Will, or (5) the commencement of any proceeding for declaratory relief to determine whether any action by any person would constitute a contest under these provisions.

103. **EXPENSES OF CONTEST** Executor and the Trustees serving under this Trust Agreement are expressly authorized to defend against any and all of the actions described in Section 18, including any contest or attack of any nature upon this Trust Agreement, Will, or any of their provisions. All expenses incurred in the defense of any of the actions or matters described herein shall be paid, as the Trustees determines, from either probate estate or the Nevada Trust estate as expenses of administration. If, however, a Contestant is or becomes entitled to receive any property or property interests included in probate estate or the Nevada Trust estate, whether under this Trust Agreement, Will, or any other instrument, then all expenses incurred by the Trustees or Executor in the defense of the actions undertaken by the Contestant shall be charged against and paid from the property or property interests that the Contestant otherwise would be entitled to receive, whether or not the Trustees or Executor was successful in the defense of the Contestant's actions.
104. **GENERAL TRUST PROVISIONS** The following provisions shall apply in all matters of construction and interpretation of this Trust Agreement.
105. **RULES OF CONSTRUCTION** Unless the specific provision or term being construed or the context of the provision or term otherwise requires, and except as otherwise expressly provided in this Trust Agreement, the general provisions and rules of construction and interpretation set forth in applicable law and in this article and the definitions set forth in Article 20 (Definitions) shall govern the construction and interpretation of this Trust Agreement. Where the provisions and

rules of construction or definitions set forth in applicable law and in this article and Article 20 conflict, the provisions and rules and definitions set forth in this article and Article 20 shall govern.

106. **GOVERNING LAW COURT SUPERVISION & JURISDICTION** This Trust Agreement has been executed in Nevada, and its validity and construction, including the determination of all rights of the beneficiaries, shall be governed by the laws of Nevada or if the Trustees determine it is more advantageous, in the State of Delaware regardless of where the trusts are administered. Further, except as otherwise provided in this section, the Trust(s) established under this Trust Agreement shall be administered in Nevada or Delaware regardless of where the Trustees or beneficiaries reside, and all matters and questions related to their administration shall be governed by the laws of Nevada or Delaware. The applicable court jurisdiction for the Trust shall be in that county where Bayuk reside in at the time of any suit, action, writ or other matter, whether that be in Nevada, Delaware, California or otherwise.
107. **SUCCESSORS IN INTEREST** This Trust Agreement shall be binding upon heirs, executors, successors, and assigns, the Trustees and the successor Trustees, and all the beneficiaries and interested persons under this Trust Agreement.
108. **REFERENCES TO STATUTES** Whenever a reference is made to any portion of the Internal Revenue Code or to any other law, the statutory reference shall be construed to refer to the statutory section mentioned, related successor or substitute sections, and corresponding provisions of any subsequent law, including all amendments and additions.
109. **GENDER, TENSE, AND NUMBERS** Unless the context clearly requires another construction, the masculine, feminine, and neuter genders shall each include the others as appropriate; the present tense shall include the past and future tenses, and the future tense shall include the present tense; and the singular number shall include the plural, and the plural shall include the singular.
110. **EFFECT OF HEADINGS** Article, section, and paragraph numbers and headings, as well as titles, used in this Trust Agreement are used for convenience of reference only and shall not be considered in the construction or interpretation of this

Trust Agreement. They are not intended to have any legal effect or to affect the scope, meaning, or intent of the provisions of this Trust Agreement.

111. **SEVERABILITY** If any part, clause, or provision of this Trust Agreement, or the application of any part, clause, or provision of this Trust Agreement to any person or circumstances, is held to be void, invalid, unenforceable, or inoperative, this invalidity shall not affect any other parts, clauses, or provisions or applications of this Trust Agreement that can be given effect without the invalid provision or application. The remaining provisions of this Trust Agreement shall be effective and fully operative as though the part, clause, or provision had not been contained in this Trust Agreement. To this end, the provisions of this Trust Agreement are severable.

112. **DEFINITIONS** The following definitions shall apply in all matters of construction and interpretation of this Trust Agreement.

Administer The term "administer" means to hold, manage, administer, allocate, and distribute.

Agent The term "agent" means (1) an individual's attorney-in-fact acting under a power of attorney, to the extent the power of attorney specifically authorizes the attorney-in-fact to take the proposed actions, or (2) an individual's court-appointed conservator or guardian, to the extent the conservator or guardian has obtained, from the court that appointed the agent as conservator or guardian, approval of its proposed actions at a hearing for which the Trustees received timely notice.

Beneficiary The terms "beneficiary" or "beneficiaries" mean a person to whom a donative transfer of property or a distribution from a Nevada Trust is or could be made or that person's successor in interest, and shall include an heir, devisee, legatee, a person with any interest in a Nevada Trust, and any person entitled to enforce a charitable Nevada Trust.

Charitable Organization The term "charitable organization" means an organization or Nevada Trust to which contributions or bequests are deductible for both federal income and estate tax purposes.

Estate Taxes The term "Estate taxes" means all estate, inheritance, transfer, succession, legacy, death, and other similar taxes, including any interest or penalties on

these taxes, that may be imposed by reason of death. "Estate taxes" excludes any income tax, generation-skipping transfer tax, excise tax, and other similar taxes.

Executor The term "Executor" means an executor, administrator, administrator with the will annexed, special administrator, personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status, including all successors or persons holding the office temporarily. If, however, there is no Executor serving within the United States, the term means the Trustees of this Nevada Trust for purposes of the property held in the Nevada Trust estate. The terms "Executor" and "Executors" each include both the singular and the plural.

Expenses of Estate Administration The term "expenses of estate administration" means those expenses incurred following death by estate or by the Trustees of the Nevada Trust that are deductible (whether or not so deducted) for estate tax purposes pursuant to Internal Revenue Code. Such expenses shall include attorney's, appraiser's, and accountant's fees and all expenses incurred in determining the amount of any Estate tax.

Federal Estate Tax Value The term "federal estate tax value" means the value of property included in gross estate, valued either as of date of death or the alternate valuation date, as finally determined for federal estate tax purposes. The federal estate tax value of any property acquired after death shall be deemed to be its adjusted basis at the time of its acquisition as finally determined for federal income tax purposes. References to "adjusted gross estate" shall mean gross estate as finally determined for federal estate tax purposes, but excluding property includible in gross estate pursuant to Internal Revenue Code, and subtracting allowable deductions

Gifts The term "gifts" mean devises, legacies, bequests, and all other types of donative transfers, inter vivos and testamentary.

Guardian The term "guardian" means the court-appointed guardian of the person or estate of a minor person. The term "natural guardian" means the child's parents.

Health The term "health" refers to all matters related to the health of the designated person, including medical, dental, hospital, and nursing expenses and expenses of home care and therapy incurred for the person's benefit.

Incapacity The term "incapacity" when used with respect to any person appointed to serve or serving as Trustees shall have the following meaning. A person shall be considered to be incapacitated, and unable to serve or continue to serve as a Trustees, if the person is under a legal disability or by reason of illness or mental or physical disability is or would be unable to give prompt and intelligent consideration to the financial and administrative matters affecting the Nevada Trust or trusts for which he or she serves as Trustees. The determination of a person's inability at any time shall be made by either (1) the person's primary physician, or (2) an order of a court appointing a conservator for that person.

Interested Person The term "interested person" includes (1) an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against the Nevada Trust estate; (2) any person having priority for appointment as a fiduciary under this Trust Agreement; and (3) a fiduciary representing an interested person.

Internal Revenue Code The term "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and corresponding provisions of any subsequent federal internal revenue law.

Investment Counsel The term "investment counsel" means reputable, professional, independent, and disinterested investment counsel that is (1) currently managing at least five other accounts of equal or larger size, (2) compensated for services on a fee basis, but not on any percentage of the price of assets purchased or sold, and (3) not personally or financially interested in the sale or purchase of assets to or by the Nevada Trust. The term "discretionary investment counsel" means investment counsel that has been given the authority to manage the investment of all or any portion of the Nevada Trust estate with full discretion to act without seeking the approval of the Trustees as to individual transactions.

May and Shall Wherever used in this Trust Agreement, the term "may" is discretionary and means the Executor or Trustees is authorized, at his or her option, to take or not take an action as he or she determines, in his or her sole and absolute discretion. The term "shall" is mandatory and means that the Executor or Trustees must take the designated action.

Property The term "property" means anything that may be the subject of ownership and includes real and personal property, tangible and intangible property, and any interest in such property. (a) The term "real property" (including any residence) includes the land (including all easements appurtenant to the land), all buildings and improvements on the land, all policies of insurance on the land and buildings and improvements on the land, and all oil, gas, mineral, and similar interests. A gift of real property, including any gift of a residence, shall be made subject to any and all liens, mortgages, deeds of Nevada Trust, or other encumbrances on the property or secured by the property, whether or not recorded in the official county records, unless otherwise provided in this Trust Agreement. (b) The term "tangible personal property" includes clothing, jewelry, and other personal effects; household furniture, furnishings, equipment, and appliances (including rugs, linen, and other household decorations); china, silverware, glassware, crystal, and other household items of use and decoration; books, pictures, works of art (including paintings, sculptures, and works on paper), antiques, stamp and coin collections, wine, and other collectibles; automobiles, boats, other vehicles, and accessories to vehicles; and other items of domestic, household, or personal use. "Tangible personal property" shall not include ordinary currency, cash, or bullion or property primarily held for investment purposes, such as investment funds, or any property held for use in a trade or business. (c) The term "intangible property" includes rights in literary or musical properties, rights in works of art, contract rights, copyrights, publishing rights, and rights to a deceased personality's name, voice, signature, photograph, or likeness.

Residence The term "residence" means that dwelling or dwellings, as the case may be, in which Bayuk normally lived prior to death. The term "residence" includes the fixtures, exterior planting, built-in appliances, and other items that in the ordinary course of the sale and purchase of the dwellings would remain in or be regarded as part of the dwellings.

Residue The term "residue" means the property remaining after the payment of all expenses of administration and debts and the distribution of all specific gifts and tangible personal property, and before the payment of Estate taxes. Estate taxes shall be handled separately and shall be paid and charged as specifically provided in this Trust Agreement.

Share The term "share" means a beneficiary's proportional interest as determined by the provisions of this Trust Agreement in the principal and accumulated income of the trusts established under this Trust Agreement.

Survivorship The term "survive" or "survivorship" means to live for at least thirty (30) days past the designated event. No beneficiary shall be considered to have survived death, the death of a prior beneficiary, or the event terminating any Nevada Trust (and be entitled to any Nevada Trust funds) unless the beneficiary survives for at least thirty (30) days after the event. Any beneficiary required to survive any other person, who fails to survive the other person by thirty (30) days, shall be deemed to have predeceased that person. If it cannot be established whether a beneficiary has survived by thirty (30) days, the beneficiary shall be deemed to have failed to survive for the required time. Except as otherwise expressly provided, any gift or bequest to any person made contingent upon the survivorship of that person shall lapse and shall not be made if the conditions of survivorship stated in this section or elsewhere in this Trust Agreement are not met. The lapsed gifts or bequests shall pass instead as part of the residue of the Nevada Trust.

Trust Estate The term "Nevada Trust estate" means property transferred to the Trustees, in Nevada Trust, to be administered under the terms of this Trust Agreement, including the property transferred to the Trustees following death, and all the income from and appreciation in the property transferred to the Trustees. As a matter of convenience, all property at any time subject to this Trust Agreement is collectively referred to as the "Nevada Trust estate."

Trustees The terms "Trustees" or "Trustees" mean the persons who are serving from time to time as the Trustees or Co-Trustees under this Trust Agreement, including each initial, additional, or successor Trustees, whether or not appointed or confirmed by any court. Unless otherwise expressly provided, all references in this Trust Agreement to the "Trustees" shall include all Trustees. The terms "Trustees" and "Trustees" each include both the singular and the plural. The term "corporate Trustees" means a corporation, a bank, a Nevada Trust company, or other entity that is authorized by law to serve as a professional Trustee.

RELIANCE ON CERTIFIED COPIES

To the same effect as if it were the original, anyone may rely upon a copy of this Trust Agreement, or any part of this Trust Agreement, certified by a Settlor, Grantor or Trustees or their legal counsel to be a true and correct copy of all or any part of this Trust Agreement, or of any document required to be filed with or maintained at the office of the Trustees. Anyone may rely upon any statements of fact concerning this Nevada Trust certified by anyone who appears from an original document, or a certified copy, to be serving as a Trustee under this Trust Agreement.

Bayuk has executed this Trust Agreement on November 12th, 2005 at Reno, Nevada.



EDWARD WILLIAM BAYUK
Settlor, Grantor and Co-Trustee

I JAMES A. GIBBONS HEREBY attest, witness and certify that the Settlor/Grant and Co-Trustee, Edward William Bayuk, is of sound mind, good health, and by advice, and the execution of this Trust Agreement, acknowledges and understands that he is creating an irrevocable Nevada Spendthrift Trust which may not be cancelled or revoked, and may only be amended in a way with the restriction that no amendment may modify, alter, rescind or change in any way, directly or indirectly, the provisions of this Trust Agreement that qualifies it as a Nevada Spendthrift Trust.

Executed at Reno, Nevada on this 12th day of November 2005:



JAMES A. GIBBONS

Exhibit 3

CONFIDENTIAL

**SPENDTHRIFT TRUST AGREEMENT
FOR THE
ARCADIA LIVING TRUST**

OCTOBER 14th, 2005

CONFIDENTIAL

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RBSL 001907

SPENDTHRIFT TRUST AGREEMENT FOR THE ARCADIA LIVING TRUST

I, PAUL ANTHONY MORABITO, as Settlor/Grantor and Co-Trustee, declare that I have entered into this Spendthrift Trust Agreement for the ARCADIA LIVING TRUST on this day, October 14th, 2005 in Reno, Nevada, witnessed and attested to by my attorney, JEFFREY ERIC LANGAN.

I originally established the ARCADIA LIVING TRUST on August 25th, 1998 as a revocable trust. I herein revoke the August 25th, 1998 ARCADIA LIVING TRUST.

It is my manifest intention that this new Nevada Spendthrift Trust, to be called the ARCADIA LIVING TRUST, is declared an Irrevocable Nevada Spendthrift Trust as of this day.

This Trust Document shall constitute the entire and exclusive statement of the terms of the ARCADIA LIVING TRUST, nullifying all prior versions of the ARCADIA LIVING TRUST.

This is an Irrevocable Trust, and as the Settlor/Grantor I understand that by executing this document, all of the assets that I have contributed today, and will contribute in the future, are the irrevocable property of the ARCADIA LIVING TRUST. The property I have transferred and all property subsequently transferred into the Trust shall be administered as provided in this Trust Agreement, which shall be known as the ARCADIA LIVING TRUST.

Successor trusts established under this Trust Agreement shall be known by the names designated below in this Trust Agreement or as named by the Trustees. The Trustees may refer to these trusts by reference to the name of the income beneficiaries of these trusts or the tax elections made with respect to these trusts. Any successor trusts, whether created as an affiliate of the ARCADIA LIVING TRUST, or by amendment or restatement of the ARCADIA LIVING TRUST, shall be revocable, be of no force or affect, and shall not in any way supersede or replace the provisions of this Trust Agreement.

**ARTICLE 1
DECLARATIONS**

Family Information

I am not married, and am a resident of the Reno, Nevada. I live with my longtime companion EDWARD WILLIAM BAYUK. I have no living or deceased children. My father is SALVATORE ROBERT MORABITO, SR, of St. Catharines, Ontario. My mother Mary Dora Lorraine Morabito is now deceased. I have one brother, SALVATORE ROBERT MORABITO, JR., also known as Sam Morabito, of St. Catharines, Ontario, Canada; SALVATORE is in a committed relationship with his longtime companion DR. ANNA KOBYLECKY, of St. Catharines, Ontario, Canada. I have two sisters, KATHARINE LYNN FAZZARI of St. Catharines, Ontario, Canada, and GLORIA JEAN MORABITO, also known as Goldie Morabito, of Belmont Shores, California. I have two nephews, the sons of my sister KATHARINE LYNN FAZZARI, SAMUEL FAZZARI and VINCENT FAZZARI, both of St. Catharines, Ontario, Canada.

Assets

All of my assets are titled and held in the August 25th, 1998 trust, and with execution of this Spendthrift Trust Agreement, are transferred in whole to the Nevada Spendthrift ARCADIA LIVING TRUST.

**ARTICLE 2
RIGHTS RESERVED BY ME & RESTRICTIONS**

As Settlor/Grantor, I reserve the following rights under this Trust Agreement.

Right to Add Property to the Trust Estate

I reserve the right to transfer additional property into the Trust during my lifetime and at my death. All such property transferred to the Trustees shall be added to the trust estate and administered as provided in this Trust Agreement. The Trustees are authorized and directed to accept the additions to the trust estate. Any other person may transfer property to the Trustees to be added to the trust estate, provided the property is acceptable to me (if living) and the majority of the Trustees.

Right to Exchange Property from the Trust Estate

The Trustees may withdraw at any time all or any portion of the property held in the trust estate in exchange for property of like kind value. The property described in any notice of withdrawal shall be delivered immediately.

Right to Amend the Trust Agreement

The Trustees reserve the right to amend at any time any part of this Trust Agreement, without obtaining the consent of or giving notice to any beneficiary, with the restriction that no amendment may modify, alter, rescind or change in any way, directly or indirectly, the provisions of this Trust Agreement that qualify it as a Nevada Spendthrift Trust.

No Right to Revoke the Trust Agreement

This Trust Agreement, and all trusts established under this Trust Agreement, upon execution herein, below, shall become irrevocable and not subject to or bound by any amendment.

Special Power of Appointment and Removal of Trustees

I reserve the right to appoint and designate Trustees.

Exercise of My Reserved Rights by Others

The rights reserved to me as described above are personal to me and shall not be exercisable on my behalf by any other person.

Manner of Exercise of My Reserved Rights

I may exercise the rights reserved to me directly as Co-Trustee, or in accordance with applicable law. This Trust Agreement may not, however, be revoked or amended by me in my Will in any way.

**ARTICLE 3
THE GRANTOR'S TRUST**

The following provisions shall apply to the distribution of the trust estate during my lifetime.

Distributions of Income and Principal

During my lifetime, at his sole discretion, the Distribution Trustee may distribute to me, or I may distribute other than to myself, such amount of net income and principal as he deems appropriate, if at all. No distribution is required other than at the discretion of the Distribution Trustee. Further, if I become incapacitated, the Distribution Trustee is authorized to distribute to any person whom I am then legally obligated to support or who has been receiving support from me that amount of net income and principal as the Distribution Trustee deems appropriate in his discretion to continue this support. The Distribution Trustee shall exercise this discretion in a liberal manner, and the rights of remainder beneficiaries shall be of no importance. The Distribution Trustee shall accumulate and add any undistributed net income to principal.

Gifts

The Distribution Trustee is authorized to make distributions directly to persons designated by me. Furthermore, the Distribution Trustee is authorized to make gifts to continue any gift program I start, including gifts made to use my available federal gift tax annual exclusion amounts or lifetime exemption or exclusion amounts, at the same level and to the same persons as I made gifts. The Distribution Trustee may fulfill any charitable pledges made by me. Gifts may be made outright or in trust. In making the gifts authorized under this section, the Distribution Trustee may follow the directions given him by any agent acting for me under a durable power of attorney that expressly grants to the agent the power to continue my plan of giving. Also, the Distribution Trustee may distribute income or principal to an agent acting under a durable power of attorney executed by me to enable the agent to make gifts as provided under the durable power of attorney, including gifts to charitable organizations.

Qualification for Government Benefits

I authorize the Trustees to take any actions that the Trustees determines to be appropriate or necessary in connection with my qualification for or receipt of government benefits, including benefits (whether income, medical, disability, or otherwise) from any agency (whether state, federal, or otherwise), such as Social Security, Medicare, or supplemental security income/state supplemental programs.

**ARTICLE 4
ALLOCATION AND DISPOSITION OF THE TRUST ESTATE**

It is my irrevocable intention as the Settlor/Grantor that the ARCADIA LIVING TRUST upon my demise have as its' beneficiaries, irrelevant of any future amendment or restatement, the following beneficiaries: my longtime companion, EDWARD WILLIAM BAYUK and my brother, SALVATORE ROBERT MORABITO, Jr., in amounts as described herein, below.

Upon my death, subject to the payment of, or satisfactory provision being made for, all debts incurred in the ordinary course of the maintenance and protection of the Trust's assets, and taxes (including Estate taxes), the following allocations and dispositions of the trust estate shall be made by the Trustees.

Disposition Upon My Death

Upon my death, the Trustees shall allocate the entire trust estate, including the property held in the trust estate at the date of my death and the property transferred to the trust estate by reason of my death, as follows:

(a) Gifts of Tangible Personal Property

The Trustees shall make distributions of my tangible personal property as provided in Article 5.

(b) Gifts of Real Property

The Trustees shall make distributions of my real property as provided in Article 6.

(c) Gifts of Money and Other Property

The Trustees shall make distributions of money and other property as provided in Article 7.

(d) Balance of the Trust Estate

The balance of the trust estate shall be held in trust and administered as the Residuary Trust in accordance with the provisions of Article 8 below until the date ten (10) years following my death. On the tenth anniversary of my death, any remaining balance of the trust estate shall be distributed as follows:

- (i) Seventy percent (70%) to my longtime companion EDWARD WILLIAM BAYUK, provided he survives me. If EDWARD does not survive me, the gift shall be distributed to my brother SALVATORE ROBERT MORABITO, JR., if he is then living, and if he is not this distribution shall be made in equal shares to my nephews SALVATORE FAZZARI and VINCENT FAZZARI.
- (ii) Thirty percent (30%) to my brother SALVATORE ROBERT MORABITO, JR., provided he survives me. If SALVATORE does not survive me, the gift shall be distributed to my partner EDWARD WILLIAM BAYUK, if he is then living, and if he is not this distribution shall be made in equal shares to my nephews SAMUEL FAZZARI and VINCENT FAZZARI.

In selecting assets to satisfy gifts and fund shares, property that would produce income recognition if allocated to fund a pecuniary amount shall, if possible, be allocated to fund non-pecuniary shares. These assets should be allocated on a non-pro rata basis when funding

fractional shares. These assets include: items of income in respect of a decedent (particularly interests in pension plans or contracts of deferred compensation paid in installments); installment sale contracts; and life insurance contracts to which the transfer for value rule under the Internal Revenue Code may apply.

ARTICLE 5
GIFTS OF TANGIBLE PERSONAL PROPERTY

Upon my death, subject to the payment of, or satisfactory provision being made for, all debts incurred in the ordinary course of the maintenance and protection of the Trust's assets, and taxes (including all Estate taxes), the following distributions shall be made by the Trustees from the trust estate:

All my interest in my tangible personal property, together with any insurance on such property, shall be distributed by the Trustees outright to my longtime companion EDWARD WILLIAM BAYUK, if he is then living, and if he is not said tangible personal property shall be distributed to my brother SALVATORE ROBERT MORABITO, JR.

ARTICLE 6
GIFTS OF REAL PROPERTY

Upon my death, subject to the payment of, or satisfactory provision being made for, all debts incurred in the ordinary course of the maintenance and protection of the Trust's assets, and taxes (including all Estate taxes), the following distributions shall be made by the Trustees from the trust estate:

All my interest in my real property, together with any insurance on such property, shall be distributed by the Trustees outright to my longtime companion EDWARD WILLIAM BAYUK, if he is then living, and if he is not said real property shall be distributed to my brother SALVATORE ROBERT MORABITO, JR.

ARTICLE 7
GIFTS OF MONEY AND OTHER PROPERTY

Upon my death, subject to the payment of, or satisfactory provision being made for, all debts incurred in the ordinary course of the maintenance and protection of the Trust's assets, and taxes (including all Estate taxes), the following distributions shall be made by the Trustees:

All my interest in my money and other property, not including shares in privately held corporations, together with any insurance on such property, shall be distributed by the Trustees equally to my longtime companion EDWARD WILLIAM BAYUK, and to my brother SALVATORE ROBERT MORABITO, JR.

**ARTICLE 8
THE RESIDUARY TRUST**

All trust property allocated to the RESIDUARY TRUST shall be held by the Trustees in trust and shall be administered according to the terms of this Trust Agreement, specifically including the following provisions, until the date ten (10) years following my death. On the date ten (10) years after my death, all trust assets remaining in the Residuary Trust shall be distributed in accordance with the provisions of Section 4(d) above. All references in this Trust Agreement to the "RESIDUARY TRUST" shall be to the trust established under this article.

Maintenance of Real Property

None, addressed in Article 6, above

Distribution of Net Income

The Trustees shall distribute the remaining net income in monthly or other convenient installments, but at least annually, to the following beneficiaries in the percentages indicated until the trust terminates on the tenth anniversary of my death:

- (a) Seventy percent (70%) to my longtime companion EDWARD WILLIAM BAYUK
- (b) Thirty percent (30%) to my brother SALVATORE ROBERT MORABITO, JR.

If a beneficiary under this Section dies before the trust terminates on the tenth anniversary of my death, the deceased beneficiary's share of net income shall be reallocated on an ongoing basis to the other beneficiary named in this section if then living.

Final Distribution of Trust Estate

On the tenth anniversary of my death, or upon the earlier death of the last to survive of the beneficiaries named in Section 8, the Residuary Trust shall terminate and the Trustees shall distribute the remaining assets of the trust estate in accordance with the provisions of Section 4(d), above.

**ARTICLE 9
TRUSTS & ALLOCATIONS PROVISIONS**

General Power of Appointment Conferred by Trustees

The Trustees may grant a beneficiary a general power of appointment, as that term is defined in the Internal Revenue Code, over that beneficiary's share of the trust estate, pursuant to which that beneficiary may appoint the principal and or undistributed income of that share to one or more persons and entities, including his or her own estate, and on those terms and conditions, either outright or in trust, as he or she may appoint by a Will (whether or not admitted to probate) or other written instrument expressly referring to and exercising this general power of appointment. A grant of power may limit the amount subject to any general power of

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appointment, require that it be exercised jointly with another person or persons, or otherwise impose limits or conditions on its exercise. The Trustees may also eliminate or modify, at any time and for any reason, a general power of appointment granted by the Trustees. The Trustees shall promptly notify the beneficiary in writing that they have granted a general power of appointment to the beneficiary over trust assets.

The foregoing provisions shall not apply to a beneficiary who is serving as a Trustees or Co-Trustees, except that a Co-Trustees or successor Trustees may exercise the foregoing power to grant a general power of appointment in favor of the beneficiary who is a Trustees. No beneficiary shall have the power under this Section to amend his or her share of the trust estate in a manner that would increase his or her benefits, or to grant himself or herself a general power of appointment.

ARTICLE 10 DISCLAIMERS

Disclaimers Allowed

In addition to any rights granted by law, any person granted any right, title, interest, benefit, privilege, or power under this Trust Agreement may at any time renounce, release, or disclaim all or any part of that right, title, interest, benefit, privilege, or power, including his or her right, title, and interest in and to trust income or principal. The natural or legal guardians of a minor shall have the authority and power to disclaim the interests of the minor; the conservator of the estate of the person shall have the authority and power to disclaim the interests of the conservatee; the fiduciary of a trust or estate shall have the authority and power to disclaim the interests of the trust or estate; and the youngest adult ancestor of any unborn, unknown, or unascertained issue shall have the power to disclaim the interests of those issue.

Disclaimers of Property Interests

In general, a disclaimer or renunciation of a property interest shall accelerate the succeeding interest. Except as otherwise expressly provided in this Trust Agreement, any interest in property so disclaimed shall be allocated or distributed as if the beneficiary had predeceased the person from whom the interest in the property would have been received. Further, except as otherwise expressly provided in this Trust Agreement, if a beneficiary disclaims his or her entire interest in one or more specific assets held in any trust, the assets shall be distributed from the trust as if the beneficiary predeceased the person from whom the interest in the assets would have been received. If all living current and contingent beneficiaries disclaim their interests in the trust, any contingent remainder interest shall be destroyed and the remaining trust property shall pass as provided in Section 4.

Disclaimers by Trustees

Any person granted any fiduciary power, authority, right, privilege, or discretion ("Fiduciary Power") under this Trust Agreement or under the law applicable to this trust may at any time renounce, release, or disclaim all or any part of such Fiduciary Power. Unless otherwise expressly provided in the disclaimer, if any Fiduciary Power shall be disclaimed, the

power shall cease to exist and shall not pass to any successor fiduciary. The disclaimer may expressly provide that the Fiduciary Power shall be exercisable by the remaining Trustees, if any, or any successor Trustees.

Effective Disclaimers

To be effective, disclaimers must be in writing, signed by the disclaiming person, and irrevocable. Disclaimers shall be effective only upon delivery to the Trustees or to a court having jurisdiction over the administration of the trust.

**ARTICLE 11
PAYMENT OF DEBTS AND EXPENSES**

The following provisions shall apply upon my death to the payment of my debts and expenses.

Payment of Debts and Expenses

Upon my death, the Trustees may pay on my behalf, in the manner and at the time the Trustees determines, any and all of my outstanding unsecured debts incurred in the ordinary course of the maintenance and protection of the Trust's assets (including unpaid tax liabilities arising prior to my death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of my estate.

Payment from Trust

The Trustees are authorized to pay from the assets of the trust my debts and expenses that my Executor may request. If there are insufficient assets in my probate estate to make any gifts provided under my Will or to pay my debts and expenses, or if there are sufficient assets in my probate estate but, in the sole judgment of the Trustees, it would be to the advantage of the estate that those gifts or payments be made from the assets in the trust, the Trustees may pay from the assets of the trust all of those gifts, debts, and expenses. If the assets of my probate estate (exclusive of residential real property and tangible personal property) are insufficient to pay all unsecured debts, funeral expenses, and expenses of administration, the Trustees may pay to my estate from the principal of the trust estate that amount that my Executor may request for those purposes. The Trustees shall not be under any duty to take part in determining the amount of those debts or expenses, and may rely upon the written certification of my Executor for the amount to be paid as authorized by these provisions. The Trustees shall be under no duty to see to the application of any such payment. The Trustees shall not require any reimbursement for payments made to my Executor.

**ARTICLE 12
PAYMENT OF ESTATE TAXES**

Payment of Estate Taxes

All Estate taxes and charges imposed upon any property by reason of my death, whether passing under the Will or not, shall be paid (1) first, by my Executor out of the residue of my probate estate, to the extent funds are sufficient, and (2) second, by the Trustees out of the residue of the trust estate. All Estate taxes shall be paid without proration or reimbursement from any other property or person.

No Proration

No portion of the Estate taxes payable under these provisions shall be charged against, prorated among, or recovered from any person entitled to benefits under this instrument.

Reserves

The Trustees may establish reserves from trust income and principal that he or she considers necessary for the payment of Estate taxes.

Tax Elections

The Trustees shall have the power, in his or her discretion, to take any action and to make any election to minimize the tax liabilities of my probate estate, any trust, and the beneficiaries. The Trustees may make those elections and allocations under the tax laws as he or she deems advisable. The Trustees may, but shall not be required to, allocate the benefits of an election among the various beneficiaries or make adjustments in the rights of any beneficiaries or between the income and principal accounts to compensate for the consequences of any tax election or any investment or administrative decision made by the Trustees that may have had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over another.

**ARTICLE 13
THE APPOINTMENT OF TRUSTEES**

The following provisions shall apply to the appointment, designation, and removal of the Trustees.

Trustees

Pursuant to my powers to appoint Trustees, I appoint myself along with JEFFREY ERIC LANGAN as the Co-Trustee & Executor under this Trust Agreement. EDWARD WILLIAM BAYUK shall serve as the DISTRIBUTION TRUSTEE, with additional power to prepare income tax returns and maintain records for the ARCADIA LIVING TRUST.

Successor Trustees

Upon my death or incapacity, or that of JEFFREY ERIC LANGAN, I appoint ROBERT BERTRAM BURKE, ESQ. to serve as Co-Trustee & Executor.

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Filling Vacancies

If after my death a vacancy in a Trustee's position is not filled as otherwise provided in this Trust Agreement, the Nevada court having jurisdiction over the trust shall appoint one or more Trustees upon the application, advice and direction of the Distribution Trustee.

Removal of Trustees.

During my lifetime, I may remove and replace a Trustee. Following my death EDWARD WILLIAM BAYUK may remove any Trustees of the Trust and appoint a Trustee or Trustees other than himself to succeed the removed Trustee(s).

Temporary Incapacity of a Trustee

IF, due to illness or other cause, an individual Trustee is temporarily, but not permanently, unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trusts for which he or she serves as Trustees, the other Trustees may, during such temporary incapacity, make any and all decisions regarding the trust estate as though the incapacitated Trustees were not then serving. In determining the temporary incapacity of an individual Trustee, the other Trustees may rely on a certificate or other written statement from a licensed physician who has examined the incapacitated individual Trustees. The other Trustees shall incur no liability whatsoever to any beneficiary as a result of any action taken under this section.

Effective Dates

Any and all appointments, designations, removals, or revocations affecting a Trustees position shall be made by a written instrument executed by the person entitled to make the appointment, designation, removal, or revocation. The written instrument shall be effective upon its delivery to the current Trustees; provided, however, that the appointment of a successor Trustees or Co-Trustees shall become effective only upon the new Trustee's written acceptance of the appointment and the delivery of this written acceptance to the person who appointed him or her, the other Trustees, or the current beneficiaries.

No Bond

No bond or other security shall be required of any Trustees named in this Trust Agreement or of any Trustees appointed or designated in the manner provided under this Trust Agreement unless the terms of the appointment or designation require a bond. The foregoing provisions shall apply whether the Trustees serves alone or together with one or more other Trustees.

Administrator.

The Administrator shall provide such services to the Trustees by way of accounting, tax and planning purposes, and advise the Trustees and the Beneficiaries as to the intent and implementation of each and every provision of this Trust. The Administrator shall be reimbursed based on his normal hourly rate, as well as receive an annual base stipend of one dollar (\$1.00).

ARTICLE 14
THE PROTECTION PROVIDED THE TRUSTEES

The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

Resignation

Each Trustee shall have the right to resign his or her position at any time without the consent of any beneficiary or the approval of any court. A Trustee may resign for any reason by delivering a written resignation signed by him or her to the successor Trustees. The resignation shall be effective according to its terms. But, if the resigning Trustee is the sole Trustee, the resigning Trustee shall continue to be responsible for the trust property until it is delivered to the successor Trustees and shall continue to hold title and custody to the trust assets and administer the trust assets and perform the actions that are reasonably necessary to preserve the trust property and to complete the Trustee's administration of the trust, until a successor Trustee has been appointed and has accepted the position of Trustee.

Compensation

Upon my death, the Trustee shall be entitled to pay themselves an annual fee of one hundred and twenty thousand dollars (\$120,000) for the performance of his or her duties and services rendered as Trustee. A Trustee that is a corporation or partnership shall be entitled to compensation for its services in the amount and at the time specified in its Schedule of Fees and Charges established from time to time by it for the administration of trust accounts of a character similar to this one and in effect when services are rendered. This compensation may be paid without prior court approval. The Trustee shall be reimbursed for reasonable expenses actually and properly incurred by him or her in the administration of the trust.

The Trustee also is authorized to pay to the attorneys and accountants retained by the Trustee to advise him or her in the administration of the trust those amounts for fees and costs as the Trustee shall determine in his or her discretion. The Trustee is authorized to pay these fees and costs without first obtaining approval of the trust beneficiaries or the court having jurisdiction over the trust. These fees and costs shall not be offset against the compensation payable to the Trustee.

A Trustee may waive his or her right to compensation for his or her services to be rendered to the trust estate. The waiver must be in writing and signed by the person in advance of rendering the services for which compensation is being waived. A waiver may be limited in duration or limited to specific services.

Dual Compensation

A Trustee serving as a director, officer, partner, or employee of any corporation, partnership, or other business in which the trust owns an interest shall also be entitled to receive reasonable compensation for his or her services rendered as Trustee in addition to the compensation being paid to him or her by such business. The compensation paid to the Trustee in either capacity shall not be offset against the other. A Trustee who is an investment advisor,

attorney, accountant, or other professional shall not be disqualified from rendering professional services to the trust and being compensated on a reasonable basis therefore in addition to any compensation that he or she otherwise is entitled to receive as Trustee. Neither shall a firm with which a Trustee is associated as a partner, officer, or employee be disqualified from dealing with, rendering services to, or discharging duties for the trust and being compensated therefore on a reasonable basis. A Trustee is authorized to retain himself or herself or any firm with which he or she is associated to render investment, legal, accounting, or other professional services.

Right of Indemnification and Reimbursement

A Trustee shall be entitled to indemnification and reimbursement for any expense, loss, damage, liability, costs, or claim (including, without limitation, attorney's fees and costs of litigation) incurred by the Trustees by reason of any act performed or omitted to be performed by the Trustees, acting in good faith, in the administration of the trust. The Trustee shall be deemed to have acted in good faith on behalf of the trust if the Trustee acted in a manner reasonably believed by the Trustees to be within the scope of his or her authority and in the best interest of the trust and its beneficiaries. Notwithstanding the foregoing, a Trustee shall not be indemnified or reimbursed with respect to any expense, loss, damage, or claim incurred by reason of any breaches of trust, by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries.

Notice to the Trustees

Until the Trustees receives written notice of any birth, marriage, death, or other event affecting the rights of beneficiaries to payments or distributions from the trust, the Trustees shall incur no liability to any persons whose interests may have been affected by that event for payments or distributions made by the Trustees in good faith as though the event had not occurred.

Confidentiality of Trust Agreement

Except as otherwise provided in this Trust Agreement, the Trustees shall not disclose the contents of this Trust Agreement, or the fact of its existence unless required to do so by law or applicable regulation, regulatory authorities, or legal process, without my prior written consent. The Trustees may, however, disclose the terms of this Trust Agreement where necessary to carry out his or her powers, to enforce the rights and remedies belonging to the trust, or as required by a court in its supervision of the trust. The Trustees may also disclose the contents of this Trust Agreement to persons employed by him or her to advise or assist him or her in the administration of the trusts, including attorneys and accountants, provided these professionals agree to keep the disclosed information confidential on the same terms as provided in this section.

Disclosure to the Beneficiaries

During my lifetime, the Trustees shall have no duty to provide any information regarding the trust to anyone other than me.

Reports and Accounts

I hereby waive all statutory requirements, that the Trustees render a report or account to the beneficiaries of the trust. The Trustees shall not be required to make any current reports or

render any annual or other periodic accounts to any trust beneficiary or to any court, whether or not required by statute, except pursuant to court order. The Trustees may take action for the approval of his or her accounts at the times and before the courts, or without court proceedings, as he or she determines in the exercise of his or her discretion. The Trustees shall pay the costs and expenses of such action, including the compensation and expenses of accountants, attorneys, and guardians, from the principal or income, or both, of the trust as he or she determines.

My Right to Release Trustees

I reserve the right to execute a release, with or without an account, approving the administration of the trust by the Trustees. A release shall discharge the Trustees from any accountability and liability to me or my estate or to any other persons interested or claiming to be interested in the trust as to all matters covered by the release or in the account, if any, with the same effect as if an account of the Trustees for the period concerned had been judicially settled and allowed in a proceeding to which these other persons (including all interested persons) were parties. No beneficiary other than me or my Executor shall have the right to question or assert any liability by the Trustees for the Trustee's acts or omissions during my lifetime.

Right of Trustees to Secure Releases

The Trustees is authorized to secure from any beneficiary a full and complete release from any and all liabilities arising from the Trustee's administration of the trust and the beneficiary's written approval of any account or report of the Trustees. The release or approval shall be binding and conclusive upon the beneficiary and upon all of the beneficiary's issue (including then unborn, unknown, and unascertained issue) and other successors in interest who may then have or later acquire any interest in the separate trust. All written instruments to be delivered to or executed by a beneficiary may be delivered to or executed by the legally appointed conservator of any incompetent beneficiary or a parent or legal guardian of a minor beneficiary. When so delivered or executed, the written instrument shall be binding upon the beneficiary and shall be of the same force and effect as if delivered to or executed by a beneficiary acting under no legal disability. The foregoing provisions shall apply to all reports, statements, accounts, releases, and notices, as well as documents appointing, removing, or designating Trustees. However, the Trustees may not condition the performance of his or her duties on the delivery of such a release.

Consultation with Legal Counsel

The Trustees may retain and consult with Nevada, California and/or Ontario based legal counsel on any matters related to the administration of the trust or the construction or interpretation of this Trust Agreement, and I encourage the Trustees to do so. The Trustees may select the legal counsel to advise or represent him or her, and the Trustees is expressly authorized to pay the fees and costs of the legal counsel from the trust estate. The time, place, subject matter, and content of any such consultation with legal counsel, all communication (written or oral) between the Trustees and legal counsel, and all work product of legal counsel shall be privileged and confidential and shall be absolutely protected and free from any duty or right of disclosure to any successor Trustees or any beneficiary and any duty to account. The Trustees shall, however, include the amount of any disbursement for the legal counsel fees and costs in

any report or account prepared by the Trustees for the period during which the expenses were paid.

Reliance on Experts and Others

The Trustees shall be entitled to rely on the information, opinions, reports, or statements (including financial statements and other financial data) prepared by his or her managers, attorneys, accountants, brokers, investments counselors, and other experts, even if they are associated with a Trustees, prepared by such persons as to matters which the Trustees reasonably believes to be within that person's profession or expert competence, and shall not be liable for losses resulting there from. The Trustees may act without independent investigation upon the recommendations of any attorneys, auditors, accountants, investment advisers, appraisers, or other qualified experts retained by the Trustees, even if they are associated or affiliated with the Trustees. The written opinion of any such expert submitted to the Trustees shall be a full and complete authorization and protection with respect to any action taken or not taken by the Trustees in good faith.

Extent of Liability

I do not want the Trustees to be personally liable for his or her good faith efforts in administering the trust estate.

(a) In general

A Trustees shall not be personally liable to the trust or its beneficiaries, and shall be held harmless, for any loss, expense, damage, or claim incurred by the Trustees by reason of any act performed or omitted to be performed by the Trustees, acting in good faith, in the administration of the trust. The Trustees shall be deemed to have acted in good faith on behalf of the trust if the Trustees acted in a manner reasonably believed by the Trustees to be within the scope of his or her authority and in the best interest of the trust and its beneficiaries. Further, a Trustees shall not be personally liable for obligations arising from the Trustee's ownership or control of trust property or for torts committed in the course of the Trustee's administration of the trust unless the Trustees is personally at fault. Notwithstanding the foregoing, a Trustees shall be personally liable for his or her breach of trust by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries, and as to any profit that the Trustees derives from any breach of trust.

(b) Trust is irrevocable

During my lifetime, the Trustees shall follow all written directions given from time to time to him or her by me or by the person or persons to whom I delegate the right to direct the Trustees. In consenting to and carrying out those directions, the Trustees shall not be liable to any person having a vested or contingent interest in the trust for any act performed or omitted pursuant to those directions. Moreover, the Trustees may follow those directions regardless of any fiduciary obligations to which the directing party may also be subject.

(c) As to other Trustees

The liability of the Trustees is further limited as follows.

(i) As to prior Trustees

No successor Trustees shall be responsible or liable for any acts, omissions, or default of any prior Trustees. Unless requested in writing by a beneficiary within 60 days of the appointment of the successor Trustees, no successor Trustees shall be required or have any duty to review or

investigate the actions or omissions of a prior Trustees. A successor Trustees shall not be required or have any duty or obligation to review, audit, or examine the transactions, accounts, or records of any prior Trustees, or any allocation of the trust estate made by any prior Trustees. No successor Trustees shall have any obligation to take any action to obtain redress for any breach of trust by any prior Trustees unless instructed by a court to do so. Each Trustee is responsible only for those assets that are actually delivered to the Trustee's custody or control.

(ii) **As to Co-Trustees**

A Trustee shall be liable to the beneficiaries for the acts or omissions of a Co-Trustee only as provided required by law.

(d) **As to agents and investment managers**

I want the Trustees to be able to rely on the advice of professionals hired to advise him or her. Accordingly, the Trustee's liability is further limited as follows.

(i) **As to agents**

A Trustee shall be liable to the beneficiaries for the acts or omissions of an agent only as provided by applicable law.

(ii) **As to investment managers**

A Trustee shall not be liable for the acts or omissions of any investment manager, or be under an obligation to invest or otherwise manage any asset that is subject to the management of an investment manager.

(e) **As to taxes**

I want the Trustees to be aggressive in minimizing the taxes, including estate and income taxes, imposed on the trust estate. Accordingly, the Trustees shall not be liable for any accuracy-related penalty, such as is currently imposed under Internal Revenue Code, arising from the preparation and filing of any income tax or estate tax return.

(f) **Liability insurance**

Individual Trustees may carry errors and omissions or fiduciary liability insurance and may charge the premiums to trust income or principal, or both, as a cost of administration.

**ARTICLE 15
THE AUTHORITY OF THE TRUSTEES**

The following provisions shall apply to each of the Trustees serving under this Trust Agreement. A successor Trustees shall be vested with all the rights, powers, and authority of an original Trustees.

Trustees Authority

Except as otherwise expressly provided, a successor Trustees upon commencing to serve as Trustees shall immediately become vested with all the rights, titles, powers (including discretionary powers), and obligations, with like effect as if named as an initial Trustees. Where this Trust Agreement states that the Trustees "shall" perform an act, the Trustees are required to perform that act. Where this Trust Agreement states that the Trustees "may" do an act or Trustees is "authorized" to act, the Trustees is expressly permitted or authorized to do the act described, and his or her decision to do or not to do the act shall be made in the Trustee's sole and absolute discretion in the exercise of his or her fiduciary powers and duties. The decision of the Trustees as to all discretionary actions and decisions shall be conclusive and binding on all persons.

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The Trustees are required to disregard and defeat every assignment or other act, voluntary or involuntary that is attempted contrary to the provisions of the Nevada Spendthrift Act upon which the ARCADIA LIVING TRUST is based.

Trustees Discretion

The discretionary powers granted to the Trustees under this Trust Agreement shall be absolute. This means that the Trustees can act arbitrarily, so long as he or she does not act in bad faith, and that no requirement of reasonableness shall apply to the exercise of his or her absolute discretion. This does not mean that the Trustees may do as he or she pleases, but rather that I want the Trustees to use his or her own personal, subjective best judgment. For this purpose, I waive the requirement that the Trustee's conduct at all times must satisfy the standard of judgment and care exercised by a reasonable, prudent person. In particular, the decision of the Trustees as to the distributions to be made to beneficiaries under the distribution standards provided in this Trust Agreement shall be conclusive on all persons.

Release of Power or Authority by a Trustees

The Trustees may at any time release, surrender, disclaim, relinquish, either in whole or in part, or may reduce or restrict in scope, any of the powers, rights, authority, or discretion granted to the Trustees under this Trust Agreement, either expressly or implied. Such action shall be taken by means of a written notice filed in the records of the trust, signed and dated by the releasing Trustees, and mailed to all of the adult current beneficiaries. Unless otherwise specified by the releasing Trustees, any such action as it affects the Trustees shall be irrevocable. Such action shall be effective only as to the Trustees giving such written notice and shall in no way affect the rights, powers, authority, and discretion of successor Trustees. The powers, rights, authority, or discretion released or restricted shall continue to exist as to all Trustees and successor Trustees other than the releasing Trustees.

Trustee's Consideration of Beneficiary's Other Assets

Except as otherwise provided in this Trust Agreement, in exercising his or her discretion to distribute trust funds to any beneficiary, the Trustees may, but shall not be required or have any duty to, consider all income and assets, including other sources of income or financial support, reasonably available to the beneficiary, as are actually known to the Trustees. The Trustees shall have no duty of inquiry as to the property owned by or held for the benefit of the beneficiary. In making discretionary distributions from any trust created under this Trust Agreement, the Trustees may rely absolutely upon a declaration executed under penalty of perjury by the beneficiary describing his or her expenses and financial needs and any other financial resources available to him or her, without further investigation. The Trustees may continue to rely upon a declaration until otherwise advised in another declaration from the beneficiary.

Limitation on Discretion of a Beneficiary Serving as Trustees

Notwithstanding any other provisions of this Trust Agreement, a Trustee (other than me or the Distribution Trustee) who is also a beneficiary of the trust shall not have, and shall not participate in the exercise of, the power to use, apply, or distribute trust principal for his or her

own benefit, except as necessary to provide for his or her health, education, maintenance, and support in his or her accustomed manner of living. Further, a Trustee who is also a beneficiary of the trust shall not participate in the exercise of any power to advance or loan funds to himself or herself or to guarantee or secure any debt of such beneficiary/Trustees.

Voting

While more than two Trustees are serving, the decision of the majority of the Trustees shall prevail and be binding with respect to all matters affecting the trust estate. If one or more Trustees are excluded or precluded from participating in making a decision with respect to a particular matter, the remaining Trustees acting by majority vote shall make the decision. Any act by or instrument executed by the majority of the Trustees shall constitute the action of the Trustees as if done by all Trustees. Any dissenting or nonconcurring Trustees shall not be liable to any person for the action or failure to act of the other Trustees acting by majority vote.

Delegation by One Trustee

Each Trustee may at any time, by a signed revocable instrument, delegate to another Trustee the exercise of all or less than all of the powers conferred on a Trustee – other than the Distribution Trustee. Nonetheless, the delegating Trustees shall be liable for the proper exercise of the delegated powers by the other Trustees.

Delegation by All Trustees

The Trustees may delegate their powers to one or more of the Trustees in a writing signed by all of them. The writing must state the powers delegated to the particular Trustees and provide a date when the delegation will terminate automatically if not previously terminated. Any delegation shall be revocable by any one Trustees in a writing delivered to the delegate. A Trustees acting pursuant to a delegation shall have the authority to bind the trust and third persons may rely on his or her authority to act for the trust. Any act by or instrument executed by a Trustees acting pursuant to this delegation shall constitute the action of the Trustees as if done by all Trustees.

Delegation of Power to Expend

The Trustees may delegate to one or more of the Trustees, for any period, the power to bind the trust in any transaction obligating the trust to expend up to or less than a certain sum of money as specified by the delegating Trustees. The Trustees to whom the power is delegated may be the sole signor of all checks necessary to accomplish the expenditure. The Trustees may also delegate to a property management company authority to be the sole signatory of all checks written on behalf of the trust relating to real estate owned by the trust or on checks written on behalf of the trust in an amount less than the amount specified by the Trustees.

Delegation of Investment Authority

The Trustees, acting by majority vote, may delegate to one or more Trustees or to agents (including independent investment advisors, investment counsel or managers, banks, or trust companies) the power and authority to act for the Trustees in the investment and reinvestment of trust assets. The Trustees, acting by majority vote, may also authorize the payment of compensation for investment advisory or management services. The Trustees may delegate to

the retained investment counsel the power to instruct the custodian of trust property with respect to all matters affecting the property, and the custodian shall comply with those instructions.

Agents

The Trustees may act under this Trust Agreement through an agent or attorney-in-fact acting under a power of attorney duly executed by the Trustees.

Dealing with the Trustees

If a third person dealing with the Trustees or assisting him or her in the conduct of a transaction acts in good faith and for a valuable consideration and without actual knowledge that the Trustees is exceeding the Trustee's powers or improperly exercising them, the third person is not bound to inquire whether the Trustees has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise. That third person shall be fully protected in dealing with or assisting the Trustees just as if the Trustees has and is properly exercising the powers the Trustees purports to exercise. In addition, that person has no duty to see to the application of any money paid or property transferred to or upon the order of one or more Trustees.

Reliance on Representations by the Trustees

A third person dealing with the Trustees also shall be fully protected in relying on written statements of fact, certified or declared under penalty of perjury by any one or more of the persons who appear from the original or certified copy of this Trust Agreement (or documents of appointment) to be a Trustees or successor Trustees, regarding the Trustee's authority to act under this Trust Agreement, the calling of any meeting of the Trustees, the giving of any notice of a meeting, the action taken at a meeting, and other facts concerning the trusts established under this Trust Agreement. Anyone may rely on a copy of this Trust Agreement certified by a Trustee, by the Trustee's legal counsel, or by a Notary Public, to be a counterpart or true copy of this Trust Agreement.

Reliance on the Authority of Trustees

No persons or organizations employed by the Trustees or retained by the Trustees as provided in this article shall be required to oversee or supervise the activities of the Trustees or to inquire into the Trustee's powers, authority, or discretion. Each person or organization so employed or retained may rely implicitly upon the written instructions of the Trustees with respect to the property and business of the trust, including instructions of the Trustees to deal directly with investment counsel employed by the Trustees. In no event shall any person or organization so employed or retained be liable for any act or omission of any Trustees in which that person or organization may also have participated.

ARTICLE 16 THE POWERS OF THE TRUSTEES

Subject in all instances to his or her fiduciary duties and the limitations set forth elsewhere in this Trust Agreement, with regard to the entire trust estate and all trusts established

under this Trust Agreement, the Trustees shall have all the powers described below, all powers granted by law, and all powers reasonably necessary to carry out his or her duties as Trustees to administer, manage, protect, and invest the trust estate. The Trustees in his or her discretion, without court approval, authorization, or supervision, may exercise these powers except as expressly required in this Trust Agreement.

To Accept Property

The Trustees may accept or receive additions and contributions to the trust estate from me or any other person and hold the property in trust under the provisions of this Trust Agreement. If the Trustees receives property from another fiduciary and if the Trustees believes the action to be in the best interests of the trust estate, the Trustees is authorized to waive an accounting from the fiduciary, to approve his or her actions, to consent to his or her proposed actions, and to consent to his or her discharge.

To Disclaim or Reject Property

The Trustees may renounce or otherwise disclaim all or any part of any interest in property passing to the trust, by gift or bequest, and any right, power, privilege, or discretion granted the Trustees under this Trust Agreement. The Trustees may reject any property or interest in property passing to the trust, including property that by reason of hazardous materials or substance the Trustees determines (after investigation at the expense of the trust) would be detrimental to the trust purpose.

To Retain Property

The Trustees may retain trust property received at the inception of the trust or at any other time, from me or any other person until, in the judgment of the Trustees, disposition or distribution of the property should be made. The property may be retained even though the property is unproductive, is property in which a Trustees is personally interested or in which the Trustees owns an undivided interest personally or as Trustees of another trust, or there is known or later discovered to be hazardous materials or substances requiring remedial action pursuant to environmental laws. The Trustees shall have no duty to dispose of any part of the trust property included in the trust at the time of its creation, or later added to the trust by me or another person, that would not be a proper investment for the Trustees to make. The Trustees may, without liability, continue to hold that property. The Trustees may hold trust property in bearer form so that title may pass by delivery, or in the name of any one Trustees or a nominee without indication of any fiduciary capacity by the nominee. The Trustees may keep all or part of the trust property at any place within the United States or abroad.

To Operate a Business

The Trustees may continue or participate in the operation of any business or other enterprise (including a partnership as a general or limited partner) that is part of the trust property for as long as the Trustees deems advisable, at the risk of the trust estate and not at the risk of the Trustees. The Trustees may incorporate, dissolve, or change the form of the organization of the business or enterprise, or operate it as a partnership or in any other form. The profits and losses from any business or other enterprise shall be chargeable to and borne by the trust, and not the

Trustees. A Trustees, as an individual, may continue to be a shareholder, director, officer, employee, or partner of any business or enterprise in which the trust holds any interest.

To Invest and Reinvest Trust Property

The Trustees may invest and reinvest trust property (including income and principal) in any kind of property, whether real, personal, or mixed, including (1) real property (including leaseholds; royalty interests; interests in mines, oil and gas wells, timberlands, and other wasting assets), (2) intangible personal property (including common and preferred stock and all other kinds of securities (on margin or otherwise); investment company shares, mutual funds, index funds, common trust funds (including any common trust fund under the management of a corporate Trustees) and other collective investment vehicles; interests in partnerships (whether as a general or limited partner); commodities; governmental obligations of every kind; obligations of corporations or unincorporated associations; and patents, copyrights, trademarks, and other intangible rights), and (3) tangible personal property (including precious metals, works of art, and other collectibles). The Trustees is authorized to establish and maintain brokerage accounts, including margin accounts, for the purpose of purchasing, acquiring, possessing, pledging, hypothecating, selling and otherwise disposing of, and generally dealing in and with any of the foregoing types of investments.

To Administer Securities

The Trustees may purchase, exchange, or sell stocks, bonds, futures contracts, and other securities, and puts, calls, straddles, and other options. The Trustees may maintain brokerage accounts, including margin and commodity accounts, and in connection with such accounts, may borrow, pledge securities, make short sales, and sell on margin or otherwise. With respect to all securities held by in the trust estate, the Trustees may exercise the rights, powers, and privileges, and responsibilities of an owner, including the right to vote; to give general or limited proxies; to pay calls, assessments, and other sums; to participate in voting trusts, pooling arrangements, foreclosures, reorganizations, consolidations, mergers, and liquidations; to deposit securities with and transfer title to any protective or other committee; and to exchange, exercise, or sell stock subscription or conversion rights. The Trustees may also accept and retain as an investment any securities received through the exercise of any of the foregoing powers.

To Conduct Banking Activities

The Trustees may establish financial accounts of any kind, including checking, money market, and savings accounts, with any bank, savings and loan association, credit union, brokerage firm, or other financial institution (including such accounts in the banking department of a Trustees that is a corporation or partnership). The Trustees may deposit trust funds into such accounts, withdraw funds from such accounts, and transfer funds among such accounts. The Trustees may designate in writing the persons, whether or not Trustees, who may conduct such banking activities, and the financial institutions may rely, without liability, on such designations.

To Purchase and Sell Trust Property

The Trustees may buy, purchase, acquire, sell, convey, dispose of, exchange, or otherwise transfer any trust property, or any interest in property, for cash or on credit, at public or private sale, with or without notice, and for the prices and upon the terms as the Trustees

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determines. The Trustees may grant or acquire options and rights of first refusal involving the acquisition or disposition of any trust property. The Trustees may also subdivide or develop land; create restrictions, easements, and other servitudes, with or without consideration; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate real property to public use with or without consideration.

To Manage Trust Property

The Trustees may manage, control, divide, develop, improve, repair, exchange, partition, change the character of, or abandon trust property or any interest in trust property. The Trustees may enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust. The Trustees may amend or extend existing leases. The Trustees may also demolish or remove buildings or other improvements on trust property.

To Borrow Money and Encumber Trust Property

The Trustees may borrow money for any trust purpose from any person upon such terms and conditions as may be determined by the Trustees, and obligate the trust to make repayment from trust property. I or the Trustees may loan or advance funds to the trust, and the loans or advances together with the interest charged shall be treated as a first lien on the trust estate until repaid. The Trustees may also encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the Trustees, or to create restrictions, easements, or other servitudes on trust property.

Providing Guarantees

The Trustees other than me may NOT guarantee any indebtedness incurred by me, or by any entity owned directly or indirectly by me or by the trust.

To Make Loans

The Trustees may loan or advance trust property of any kind (including money) for any trust purpose to any person on terms and conditions as determined by the Trustees, subject to limitations stated in this Trust Agreement. The Trustees may make loans out of trust property to the current beneficiary on terms and conditions that the Trustees determines are fair and reasonable under the circumstances, and guarantee loans to the current beneficiary by encumbrances on trust property.

To Purchase Liability Insurance

The Trustees may purchase and pay the premiums on policies to insure the property of the trust estate against damage or loss and to insure the Trustees against liability with respect to third persons. The Trustees shall not be liable for any omission to purchase any type or amount of insurance. The premiums shall be a proper expense to be charged against the trust.

To Purchase and Administer Life Insurance

The Trustees may purchase, own, and pay the premiums on life insurance on my life, and collect the proceeds of life insurance policies payable to the trust. The Trustees shall have the power to compromise, arbitrate, or otherwise adjust any claim, dispute, or controversy arising under any policy payable to the trust and shall have authority to initiate, defend, settle, and compromise any legal proceeding necessary in the Trustee's discretion to collect the proceeds of any policy. The Trustee's receipt to any insurer shall be a sufficient release of the insurer. The insurer shall not be under any duty to inquire concerning the Trustee's application of the policy proceeds.

To Pay, Contest, and Settle Claims

The Trustees may pay or contest any claim; settle a claim by or against the trust by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the trust.

To Litigate

In accordance with his or her duties to enforce claims and defend actions, the Trustees may prosecute or defend actions, claims, or proceedings for the protection of the trust estate and the Trustees in the performance of his or her duties.

To Deal with Environmental Hazards

The Trustees may deal with matters involving the actual or threatened contamination of trust assets (whether real or personal) by hazardous substances, or involving compliance with environmental laws and regulations, including conducting environmental assessments, audits, and site monitoring, and taking remedial action (whether or not required by governmental authorities) to contain, clean up, or remove any environmental hazard.

To Pay and Allocate Trust Expenses

The Trustees may pay taxes and other assessments imposed on the trust estate or trust income; reasonable compensation of the Trustees and of the employees and agents of the trust; and other expenses incurred in the collection, care, management, administration, and protection of the trust estate. In allocating the payment of expenses, the Trustees shall have the power to determine which expenses are chargeable to income or principal or partly to each. The Trustees is authorized, but not directed, to allocate and charge post-death expenses incurred in the administration of the trusts or sub-trusts to post-death income. In particular, all expenses of administration claimed as income tax deductions may be entirely allocated to and charged against post-death income. In making these determinations, the Trustees shall be guided by the principles set forth in the Uniform Principal and Income Act, but his or her final determination shall be binding.

To Hire and Employ Persons

The Trustees may hire and employ persons (including individuals, corporations, partnerships, associations, and other companies), including accountants, attorneys, auditors, investment advisers, appraisers, or other agents or experts, even if they are associated or

affiliated with a Trustees, to advise or assist the Trustees in the performance of his or her duties and obligations. The Trustees may grant discretionary authority to such persons, but may not delegate either the administration of the trust or acts that are not delegable except as expressly provided in this Trust Agreement.

To Maintain Custody

The Trustees may keep any or all of the trust property at any place in Nevada, California, Ontario or elsewhere, within the United States or abroad, or with a depository or custodian at those places. If no bank or trust company is acting as sole or a Co-Trustees hereunder, the Trustees are authorized to appoint a bank or trust company as custodian for securities and any other trust assets. Any appointment shall terminate when a bank or trust company begins to serve as sole or as a Co-Trustees under this Trust Agreement. The custodian shall keep the deposited property; collect and receive the income and principal; and hold, invest, disburse, or otherwise dispose of the property or its proceeds (specifically including selling and purchasing securities and delivering securities sold and receiving securities purchased) upon the order of the Trustees. The custodian shall not be liable to any person interested in the trust for any action taken pursuant to the order or instructions of the Trustees or his or her authorized agents.

To Use a Nominee

The Trustees may hold securities or other property of the trust estate in the name of the Trustees, in the name of a nominee, or in street name accounts with brokers, or in the name of a custodian (or its nominees) selected by the Trustees, with or without disclosure of this Trust Agreement. The Trustees shall be responsible for the acts of such custodian, broker, or nominee affecting such property. The Trustees may also acquire and retain securities in unregistered form so that ownership passes by delivery.

To Execute and Deliver Instruments

The Trustees may execute and deliver all documents and instruments (including checks withdrawing or disbursing trust funds, stock powers, deeds and other conveyances, receipts, releases, contracts, and other agreements and transfer documents) which are needed to accomplish or facilitate the exercise of the powers vested in the Trustees, and to disclose the provisions of this Trust Agreement whenever in the Trustee's discretion disclosure is appropriate.

Other Powers

- (a) The Trustees may invest in obligations of the Canadian or United States Government.
- (b) The Trustees may deposit trust funds at reasonable interest in accounts, whether or not the account is insured by a government agency or collateralized. The accounts may be maintained in the name of any one of the Trustees or in the name of a nominee.

- (c) The Trustees may make repairs, alterations, and improvements, and perform the other acts affecting trust property.
- (d) The Trustees may develop land.
- (e) The Trustees may enter into leases and other arrangements regarding minerals.
- (f) The Trustees may grant or take options.
- (g) The Trustees may exercise the powers of voting rights, payment of calls and assessments, stock subscriptions and conversions, and consent to change in form of business and participation in voting trusts.
- (h) The Trustees may hold securities and deposit securities in a securities depository.

**ARTICLE 17
SPECIAL DISCRETIONARY POWERS OF THE TRUSTEES**

The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

To Deal with My Estate

The Trustees may loan money to and borrow money from, sell property to and buy property from, exchange property with, and otherwise deal with, on reasonable, arm's-length terms (including adequate security, fair market prices, and market rates of interest), my estate or the Trustees of other trusts created by me, for the purpose of providing liquidity to the estate or trusts or for any other purpose. The Trustees shall not be obligated to make any such loans or purchases.

To Make Payments and Distributions

The Distribution Trustee shall have the sole discretion to make any payments or transfers of income or principal or other sums distributable to a beneficiary in any one or more of the following ways. The Trustees shall not be required to supervise or inquire into the application of any funds so paid or applied, and the receipt of the payee shall be full acquittance and discharge of the Trustees. The Distribution Trustee may withhold from distribution all or any part of any trust property, so long as the Trustees, exercising its discretion, determines that such property may be subject to conflicting claims, tax deficiencies, or liabilities (contingent or otherwise) properly incurred in the administration of the trust.

- (a) By payment directly to the beneficiary or by deposit in any bank or similar account designated by the beneficiary even if the beneficiary is a minor or under a legal disability, without the intervention of a custodian, guardian, or conservator. Payments may be made directly to minor beneficiaries

who, in the Trustee's judgment, have attained sufficient age and discretion to manage their own funds.

- (b) By payment to the legally appointed guardian or conservator of the beneficiary's person or estate or by payment for the benefit of the beneficiary to any person with whom the beneficiary resides or to any person who has custody of the beneficiary, without the intervention of a guardian or conservator.
- (c) By payment to any person or organization furnishing health care, education, maintenance, or support of the beneficiary.
- (d) By making expenditures directly for the benefit of the beneficiary or for the reasonable health, education, maintenance, and support of persons whom the beneficiary has a legal obligation to support.
- (e) By purchasing an annuity contract or other property for the benefit of a beneficiary entitled to receive a distribution.

To Sell Trust Assets

The Trustees may sell trust assets to obtain cash with which to pay my debts incurred in the ordinary course of the maintenance and protection of the Trust's assets (including unpaid tax liabilities arising prior to my death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of my estate, income taxes, Estate taxes, expenses of administration, and other liabilities of the trust, or to satisfy pecuniary gifts provided for under this Trust Agreement. The Trustee's selection of assets to be sold for these purposes, and the tax effects of that selection, shall not be subject to question by any beneficiary. Property, assets, or funds otherwise excludable from my gross estate for federal estate tax purposes shall not be used to make any of these payments.

To Postpone Distributions

Notwithstanding other provisions of this Trust Agreement, the Distribution Trustee shall have the power to postpone the distribution of any fractional portion or part of the principal of any trust estate or of an entire trust estate of any trust created under this Trust Agreement for any person other than me if the Trustees determines that there is a compelling reason in his sole discretion to postpone the distribution. Compelling reasons shall include, but are not limited to, a serious disability, drug addiction or dependency, a pending divorce, a potential financial difficulty, pending or threatened litigation, a serious tax disadvantage, or similar substantial cause affecting the beneficiary who otherwise would be entitled to the distribution. In that event, the distribution from or termination of any trust may be postponed, and any postponement may be continued from time to time, up to and including the entire lifetime of the beneficiary. During the postponement, the retained portion or part of the trust estate shall be administered under the same terms as applied immediately prior to the postponement.

To Determine Values and Allocate Property

The Trustees, in their sole discretion and at any time, shall determine the valuations of trust property for purposes of divisions, allocations, and distributions, and those valuations, reasonably determined, shall be final and binding on all beneficiaries and other persons having an interest in the trust. The Trustees may adjust any valuations retroactively if a different valuation is finally determined for federal estate tax purposes. The Trustees are authorized to effect the division, allocation, or distribution of trust property in divided or undivided interests, in cash or in kind or partly in both, pro rata or non-pro rata, as the Trustees shall determine, and to sell any property in connection with the division, allocation, or distribution if the Trustees deems that action necessary or appropriate. A distribution in kind may be made pro rata or non-pro rata, and a beneficiary may receive all or a portion of any asset as part of a distribution or allocation in kind. The Trustees may allocate or distribute property (or the right to receive property) which is subject to estate tax and federal income tax as income in respect of a decedent to any one or more of the trusts created under this Trust Agreement or the beneficiaries of any trust. The Trustees shall not be under any obligation to equalize any disproportionate allocation or distribution of items of decedent to any one or more trusts or beneficiaries. In making such divisions, allocations, and distributions, the Trustees is not required to consider the income taxes bases of such assets or the potential income tax consequences to the beneficiaries receiving the assets.

To Make Allocations between Principal and Income

The Trustees shall determine what is principal or income of the trust estate, and what items shall be charged or credited to principal or income, or both. For example, Trustees fees, attorney's fees, accounting fees, and custodian fees shall be charged against income or principal, or both, in such proportions (or all against either income or principal) as the Trustees determines. In exercising such discretion, the Trustees may use the Uniform Principal and Income Act as a guide.

The Trustees shall not be required to establish any reserves. The Trustees may, however, establish reserves for depreciation, depletion, amortization, obsolescence, or repair and improvement of capital assets; for operating capital; or to amortize loans from income. If the Trustees determines to establish a reserve, he or she may fund the reserve by appropriate charges against the income of the trust estate, in such amounts as the Trustees determines. If any security is purchased for a premium or at a discount, such premium or discount may be amortized in a reasonable manner. In addition, the Trustees may establish such reserves as he or she considers necessary for the payment of all taxes.

To Retain or Purchase Unproductive or Under-productive Property

The Trustees may retain, purchase, or otherwise acquire property that is unproductive or under-productive of current income. Because of the substantial potential for appreciation presented by unproductive assets such as unimproved real estate and growth stocks, I want the Trustees to have broad discretion to acquire those assets. The Trustees shall have a duty to make the trust property productive, but property may be made productive by appreciation in value as well as by the production of income. The Trustees may acquire and retain assets for appreciation as part of a portfolio that produces a reasonable level of current income.

To Invest Trust Assets Together

Each of the trusts and trust shares created under this Trust Agreement shall be a separate trust for trust, accounting, tax, and all other purposes. The Trustees shall keep an account for each trust and may, but shall not be required to, segregate trust assets. Rather, the Trustees may invest together the property of the separate trusts, allotting to each separate trust its proportionate undivided interest in the collective fund. The undivided interest always shall be equal to that trust's proportionate contribution to the mingled assets.

To Consolidate Trusts

If a trust is to be established or exists under this Trust Agreement for a beneficiary for whom another trust has been established under this Trust Agreement, the Trustees may allocate the property for the one trust to the other trust. Similarly, if I have established a trust for a beneficiary for whom a trust is to be established or exists under this Trust Agreement, and the dispositive provisions of that trust are substantially the same as the dispositive provisions of the trust to be established or existing under this Trust Agreement, the Trustees may transfer the property for the trust to be established or existing under this Trust Agreement to the Trustees of the other trust, to be held on the terms of that other trust. Further, where the dispositive provisions of each trust or trust share are substantially similar, the Trustees shall have the discretion to combine any trusts or trust shares into one trust because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for such a combination. A combination must not materially impair the interests of any beneficiaries. Trusts may be combined or consolidated whether created inter vivos or by will, by the same or different trust instruments, whether the Trustees is the same, and regardless of where the trusts were created or administered. When combining trusts, however, the Trustees shall only combine Exempt Trusts with other Exempt Trusts.

To Divide Trusts

With respect to all trusts established under this Trust Agreement, the Trustees shall have the discretionary power, exercisable without need of court approval, to divide the trust into two or more separate trusts for any purpose, including, without limitation, any of the following purposes.

- (f) To create one or more separate trusts that qualify as a qualified S corporation shareholder or as any other type of special trust provided for under the Internal Revenue Code
- (g) To create one or more separate trusts to accomplish other proper tax planning purposes.
- (h) To create a separate trust as to any share or portion of a trust disclaimed by a beneficiary, and to sever the disclaimed portion to be administered as a separate trust.

- (i) To create a separate trust for each current income beneficiary of a trust or trust share, and to divide any trust along family lines to be administered as separate trusts.
- (j) To create one or more separate trusts because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for a division.

The allocation of property between or among separate trusts created from a single trust or trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. The fair market values of the trust property at the date or dates of allocation shall be used in making the allocations. All trusts so established shall be designated and named by the Trustees and the property allocated to the divided trusts shall be held and administered under the same terms and provisions as would have applied to the undivided trust or trust share. With regard to planning for the S corporation election, or other tax purposes, this power to divide trusts shall be exercised in a manner that complies with the Internal Revenue Code and applicable Treasury regulations.

To Permit Use of Personal Residence

The Trustees is authorized to permit me and, following my death, the current beneficiary of a trust to occupy rent-free any residence held in the trust and to use the furnishings in the residence. The Trustees shall pay from the trust all taxes, insurance premiums, assessments, costs of repairs, and maintenance for these residences. The Trustees may sell the residence and, in his or her discretion, acquire other residences from trust property. The Trustees may also permit the guardian of a minor current beneficiary of the trust, along with the guardian's family, to reside rent free with the minor beneficiary in the residence so long as the minor beneficiary is entitled to reside there.

To Hold Personal Articles in Trust

If the Trustees of any trust receives furniture or furnishings, household items, clothing and other personal effects, or vehicles or accessories to vehicles, the Trustees may distribute that property to the current beneficiary or beneficiaries of the trust, at the times and in the manner the Trustees, in his or her discretion, determines to be proper. In addition, the Trustees may allow the current beneficiaries to use this property. Neither the Trustees nor any beneficiary who uses this property shall be liable to other beneficiaries for permitting the use of this property or for the loss or damage of this property.

To Make Distributions from Qualified S Trusts

The Trustees is authorized to distribute to the beneficiary of any trust that has made a qualified S Corporation election from income or principal, or both, funds sufficient to pay the federal and state income taxes imposed on the beneficiaries for the income or gain passing to the beneficiary from the S Corporation. No such distribution is required and is at the sole discretion of the Distribution Trustee.

**ARTICLE 18
DISINHERITANCE AND NO CONTEST**

Disinheritance Clause

I have intentionally omitted from this Trust Agreement any provision for any of my heirs, issue, relatives, or other persons who are not named, mentioned, designated, or described in this Trust Agreement. I have intentionally omitted any person who would be a pre-termitted heir under applicable law. I generally and expressly disinherit each and every person whomsoever claiming to be and who may be determined to be my heirs at law, except as they are otherwise expressly provided for in this Trust Agreement.

No Contest Clause

I want the greatest deterrence against interference with my estate plan that the law allows. If any heir, issue, relative, legatee, devisee, beneficiary, or other interested person; or any person who is provided for under this Trust Agreement, my Will, any beneficiary designation, or any Will substitute; or any person who would be entitled to any of my property under the laws of succession or otherwise, alone or in conjunction with any other person or persons, directly or indirectly (1) institutes any legal proceeding that attacks or contests this Trust Agreement or my Will (or any amendment or codicil to this Trust Agreement or my Will), or seeks to impair, nullify, void, or invalidate such documents or any of their provisions; (2) asserts or pursues in any manner any claim, including any creditor's claim, against my estate or property other than as permitted in this Trust Agreement and my Will; (3) attacks or contests or seeks to change any beneficiary designation under an insurance policy, employee benefit plan, deferred compensation plan, retirement plan, annuity, or other Will substitute of mine; or (4) conspires with or voluntarily assists any person or persons attempting to do any of these things, I direct that that person (the "Contestant") and all persons conspiring with or assisting him or her shall take none of my property and nothing from my estate. All these persons are expressly disinherited. Any and all gifts or property that otherwise would have gone to these persons shall be forfeited and shall pass as if these persons had predeceased me without leaving living issue. The foregoing provisions shall apply to any persons who claim that I entered into an oral agreement providing for the disposition or transfer of property to those persons or others in any way inconsistent with the provisions of this Trust Agreement or my Will. The foregoing provisions shall also apply to any action or proceeding brought by any person, other than me (or my authorized agents) during my lifetime, to change the ownership title of my property already characterized in a document signed by me (excluding any action by my Executor or Trustees to confirm ownership of my property in the trust or my estate) and any challenge to the validity of an instrument, contract, agreement, beneficiary designation, or other document providing for or directing the disposition of my property.

The foregoing provisions shall not be violated by (1) the disclaimer of any right or interest in trust property; (2) the assertion or submission of any creditors' claims, supported by consideration, by any person to my Executor or the Trustees that are believed by such person, in good faith, to be owed by me to that person or the prosecution of an action based upon any such creditor's claims; (3) the participation in a mediation or settlement discussions or the filing of a petition for settlement or compromise affecting the terms of this Trust Agreement, my Will, or other documents governing the disposition of my estate or property, (4) the filing of any petition

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or the taking of other action by the Trustees or my Executor seeking judicial construction or interpretation of this Trust Agreement or my Will, or of any amendment or codicil to this Trust Agreement or my Will, or (5) the commencement of any proceeding for declaratory relief to determine whether any action by any person would constitute a contest under these provisions.

Expenses of Contest

My Executor and the Trustees serving under this Trust Agreement are expressly authorized to defend against any and all of the actions described in Section 18, including any contest or attack of any nature upon this Trust Agreement, my Will, or any of their provisions. All expenses incurred in the defense of any of the actions or matters described in Section 18 shall be paid, as the Trustees determines, from either my probate estate or the trust estate as expenses of administration. If, however, a Contestant is or becomes entitled to receive any property or property interests included in my probate estate or the trust estate, whether under this Trust Agreement, my Will, or any other instrument, then all expenses incurred by the Trustees or my Executor in the defense of the actions undertaken by the Contestant shall be charged against and paid from the property or property interests that the Contestant otherwise would be entitled to receive, whether or not the Trustees or my Executor was successful in the defense of the Contestant's actions.

ARTICLE 19 GENERAL TRUST PROVISIONS

The following provisions shall apply in all matters of construction and interpretation of this Trust Agreement.

Rules of Construction

Unless the specific provision or term being construed or the context of the provision or term otherwise requires, and except as otherwise expressly provided in this Trust Agreement, the general provisions and rules of construction and interpretation set forth in applicable law and in this article and the definitions set forth in Article 20 (Definitions) shall govern the construction and interpretation of this Trust Agreement. Where the provisions and rules of construction or definitions set forth in applicable law and in this article and Article 20 conflict, the provisions and rules and definitions set forth in this article and Article 20 shall govern.

Governing Law Court Supervision & Jurisdiction

This Trust Agreement has been executed in Nevada, and its validity and construction, including the determination of all rights of the beneficiaries, shall be governed by the laws of Nevada regardless of where the trusts are administered. Further, except as otherwise provided in this section, the Trust(s) established under this Trust Agreement shall be administered in Nevada regardless of where the Trustees or beneficiaries reside, and all matters and questions related to their administration shall be governed by the laws of Nevada.

The applicable court jurisdiction for the Trust shall be in that county where I reside in at the time of any suit, action, writ or other matter, whether that be in Nevada, California or otherwise.

Successors in Interest

This Trust Agreement shall be binding upon my heirs, executors, successors, and assigns, the Trustees and the successor Trustees, and all the beneficiaries and interested persons under this Trust Agreement.

References to Statutes

Whenever a reference is made to any portion of the Internal Revenue Code or to any other law, the statutory reference shall be construed to refer to the statutory section mentioned, related successor or substitute sections, and corresponding provisions of any subsequent law, including all amendments and additions.

Gender, Tense, and Numbers

Unless the context clearly requires another construction, the masculine, feminine, and neuter genders shall each include the others as appropriate; the present tense shall include the past and future tenses, and the future tense shall include the present tense; and the singular number shall include the plural, and the plural shall include the singular.

Effect of Headings

Article, section, and paragraph numbers and headings, as well as titles, used in this Trust Agreement are used for convenience of reference only and shall not be considered in the construction or interpretation of this Trust Agreement. They are not intended to have any legal effect or to affect the scope, meaning, or intent of the provisions of this Trust Agreement.

Severability

If any part, clause, or provision of this Trust Agreement, or the application of any part, clause, or provision of this Trust Agreement to any person or circumstances, is held to be void, invalid, unenforceable, or inoperative, this invalidity shall not affect any other parts, clauses, or provisions or applications of this Trust Agreement that can be given effect without the invalid provision or application. The remaining provisions of this Trust Agreement shall be effective and fully operative as though the part, clause, or provision had not been contained in this Trust Agreement. To this end, the provisions of this Trust Agreement are severable.

**ARTICLE 20
DEFINITIONS**

The following definitions shall apply in all matters of construction and interpretation of this Trust Agreement.

Administer

The term "administer" means to hold, manage, administer, allocate, and distribute.

Agent

The term "agent" means (1) an individual's attorney-in-fact acting under a power of attorney, to the extent the power of attorney specifically authorizes the attorney-in-fact to take the proposed actions, or (2) an individual's court-appointed conservator or guardian, to the extent the

conservator or guardian has obtained, from the court that appointed the agent as conservator or guardian, approval of its proposed actions at a hearing for which the Trustees received timely notice.

Beneficiary

The terms "beneficiary" or "beneficiaries" mean a person to whom a donative transfer of property or a distribution from a trust is or could be made or that person's successor in interest, and shall include an heir, devisee, legatee, a person with any interest in a trust, and any person entitled to enforce a charitable trust.

Charitable Organization

The term "charitable organization" means an organization or trust to which contributions or bequests are deductible for both federal income and estate tax purposes.

Estate Taxes

The term "Estate taxes" means all estate, inheritance, transfer, succession, legacy, death, and other similar taxes, including any interest or penalties on these taxes, that may be imposed by reason of my death. "Estate taxes" excludes any income tax, generation-skipping transfer tax, excise tax, and other similar taxes.

Executor

The term "Executor" means an executor, administrator, administrator with the will annexed, special administrator, personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status, including all successors or persons holding the office temporarily. If, however, there is no Executor serving within the United States, the term means the Trustees of this trust for purposes of the property held in the trust estate. The terms "Executor" and "Executors" each include both the singular and the plural.

Expenses of Estate Administration

The term "expenses of estate administration" means those expenses incurred following my death by my estate or by the Trustees of the trust that are deductible (whether or not so deducted) for estate tax purposes pursuant to Internal Revenue Code. Such expenses shall include attorney's, appraiser's, and accountant's fees and all expenses incurred in determining the amount of any Estate tax.

Federal Estate Tax Value

The term "federal estate tax value" means the value of property included in my gross estate, valued either as of my date of death or the alternate valuation date, as finally determined for federal estate tax purposes. The federal estate tax value of any property acquired after my death shall be deemed to be its adjusted basis at the time of its acquisition as finally determined for federal income tax purposes. References to "adjusted gross estate" shall mean my gross estate as finally determined for federal estate tax purposes, but excluding property includible in my gross estate pursuant to Internal Revenue Code, and subtracting allowable deductions.

Gifts

The term "gifts" mean devises, legacies, bequests, and all other types of donative transfers, inter vivos and testamentary.

Guardian

The term "guardian" means the court-appointed guardian of the person or estate of a minor person. The term "natural guardian" means the child's parents.

Health

The term "health" refers to all matters related to the health of the designated person, including medical, dental, hospital, and nursing expenses and expenses of home care and therapy incurred for the person's benefit.

Incapacity

The term "incapacity" when used with respect to any person appointed to serve or serving as Trustees shall have the following meaning. A person shall be considered to be incapacitated, and unable to serve or continue to serve as a Trustees, if the person is under a legal disability or by reason of illness or mental or physical disability is or would be unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trust or trusts for which he or she serves as Trustees. The determination of a person's inability at any time shall be made by either (1) the person's primary physician, or (2) an order of a court appointing a conservator for that person.

Interested Person

The term "interested person" includes (1) an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against the trust estate; (2) any person having priority for appointment as a fiduciary under this Trust Agreement; and (3) a fiduciary representing an interested person.

Internal Revenue Code

The term "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and corresponding provisions of any subsequent federal internal revenue law.

Investment Counsel

The term "investment counsel" means reputable, professional, independent, and disinterested investment counsel that is (1) currently managing at least five other accounts of equal or larger size, (2) compensated for services on a fee basis, but not on any percentage of the price of assets purchased or sold, and (3) not personally or financially interested in the sale or purchase of assets to or by the trust. The term "discretionary investment counsel" means investment counsel that has been given the authority to manage the investment of all or any portion of the trust estate with full discretion to act without seeking the approval of the Trustees as to individual transactions.

May and Shall

Wherever used in this Trust Agreement, the term "may" is discretionary and means the Executor or Trustees is authorized, at his or her option, to take or not take an action as he or she determines, in his or her sole and absolute discretion. The term "shall" is mandatory and means that the Executor or Trustees must take the designated action.

Property

The term "property" means anything that may be the subject of ownership and includes real and personal property, tangible and intangible property, and any interest in such property.

- (a) The term "real property" (including any residence) includes the land (including all easements appurtenant to the land), all buildings and improvements on the land, all policies of insurance on the land and buildings and improvements on the land, and all oil, gas, mineral, and similar interests. A gift of real property, including any gift of a residence, shall be made subject to any and all liens, mortgages, deeds of trust, or

other encumbrances on the property or secured by the property, whether or not recorded in the official county records, unless otherwise provided in this Trust Agreement.

- (b) The term "tangible personal property" includes clothing, jewelry, and other personal effects; household furniture, furnishings, equipment, and appliances (including rugs, linen, and other household decorations); china, silverware, glassware, crystal, and other household items of use and decoration; books, pictures, works of art (including paintings, sculptures, and works on paper), antiques, stamp and coin collections, wine, and other collectibles; automobiles, boats, other vehicles, and accessories to vehicles; and other items of domestic, household, or personal use. "Tangible personal property" shall not include ordinary currency, cash, or bullion or property primarily held for investment purposes, such as investment funds, or any property held for use in a trade or business.
- (c) The term "intangible property" includes rights in literary or musical properties, rights in works of art, contract rights, copyrights, publishing rights, and rights to a deceased personality's name, voice, signature, photograph, or likeness.

Residence

The term "residence" means that dwelling or dwellings, as the case may be, in which I normally lived prior to my death. The term "residence" includes the fixtures, exterior planting, built-in appliances, and other items that in the ordinary course of the sale and purchase of the dwellings would remain in or be regarded as part of the dwellings.

Residue

The term "residue" means the property remaining after the payment of all expenses of administration and debts and the distribution of all specific gifts and tangible personal property, and before the payment of Estate taxes. Estate taxes shall be handled separately, and shall be paid and charged as specifically provided in this Trust Agreement.

Share

The term "share" means a beneficiary's proportional interest as determined by the provisions of this Trust Agreement in the principal and accumulated income of the trusts established under this Trust Agreement.

Survivorship

The term "survive" or "survivorship" means to live for at least thirty (30) days past the designated event. No beneficiary shall be considered to have survived my death, the death of a prior beneficiary, or the event terminating any trust (and be entitled to any trust funds) unless the beneficiary survives for at least thirty (30) days after the event. Any beneficiary required to survive any other person, who fails to survive the other person by thirty (30) days, shall be deemed to have predeceased that person. If it cannot be established whether a beneficiary has survived by thirty (30) days, the beneficiary shall be deemed to have failed to survive for the required time. Except as otherwise expressly provided, any gift or bequest to any person made contingent upon the survivorship of that person shall lapse and shall not be made if the

conditions of survivorship stated in this section or elsewhere in this Trust Agreement are not met. The lapsed gifts or bequests shall pass instead as part of the residue of the trust.

Trust Estate

The term "trust estate" means property transferred to the Trustees, in trust, to be administered under the terms of this Trust Agreement, including the property transferred to the Trustees following my death, and all the income from and appreciation in the property transferred to the Trustees. As a matter of convenience, all property at any time subject to this Trust Agreement is collectively referred to as the "trust estate."

Trustees

The terms "Trustees" or "Trustees" mean the persons who are serving from time to time as the Trustees or Co-Trustees under this Trust Agreement, including each initial, additional, or successor Trustees, whether or not appointed or confirmed by any court. Unless otherwise expressly provided, all references in this Trust Agreement to the "Trustees" shall include all Trustees. The terms "Trustees" and "Trustees" each include both the singular and the plural. The term "corporate Trustees" means a corporation, a bank, a trust company, or other entity that is authorized by law to serve as a professional Trustee.

**ARTICLE 21
RELIANCE ON CERTIFIED COPIES**

To the same effect as if it were the original, anyone may rely upon a copy of this Trust Agreement, or any part of this Trust Agreement, certified by a Settlor, Grantor or Trustees or their legal counsel to be a true and correct copy of all or any part of this Trust Agreement, or of any document required to be filed with or maintained at the office of the Trustees. Anyone may rely upon any statements of fact concerning this trust certified by anyone who appears from an original document, or a certified copy, to be serving as a Trustee under this Trust Agreement.

I have executed this Trust Agreement on October 14th, 2005 at Reno, Nevada.


PAUL ANTHONY MORABITO

Settlor, Grantor and Co-Trustee

I HEREBY attest, witness and certify that the Settlor/Grant and Co-Trustee, Paul Anthony Morabito, is of sound mind, good health, and by my advice, and the execution of this Trust Agreement, acknowledges and understands that he is creating an irrevocable Nevada Spendthrift Trust which may not be cancelled or revoked, and may only be amended in a way with the restriction that no amendment may modify, alter, rescind or change in any way, directly or indirectly, the provisions of this Trust Agreement that qualify it as a Nevada Spendthrift Trust.

Executed at Reno, Nevada on this 14th day of October, 2005 in my capacity as Settlor/Grantor's Legal Counsel:


JEFFREY ERIC LANGAN

Exhibit 4

FIFTH AMENDMENT AND RESTATEMENT OF THE TRUST AGREEMENT FOR THE ARCADIA
LIVING TRUST

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**FIFTH AMENDMENT AND RESTATEMENT OF THE TRUST AGREEMENT FOR THE ARCADIA
SPENDTHRIFT TRUST HENCEFORTH TO BE KNOWN AS THE
ARCADIA LIVING TRUST**

I, PAUL A. MORABITO, as Grantor and Trustee, declare that I have entered into this FIFTH Amendment and Restatement of the Trust Agreement for the ARCADIA LIVING TRUST on Thursday, September 30th, 2010.

I established the ARCADIA LIVING TRUST on February 14, 2006 and amended and restated it its entirety – and changed its name to the Arcadia Spendthrift Trust – on November 17, 2009. In January, 2010, under Article 2 of the Trust Agreement, I reserved the right to amend, modify, or revoke the Trust Agreement or any of its provisions, in whole or in part, at any time by a writing signed by me. Exercising that right, I completely amended and restated the Trust Agreement in its entirety as set forth below in this document, so that none of the previous provisions shall continue to be in effect, and changed its name back to the ARCADIA LIVING TRUST. This complete amendment and restatement, and any subsequent amendments, shall constitute the entire and exclusive statement of the terms of the ARCADIA LIVING TRUST.

The property I have transferred to myself as Trustee and all property subsequently transferred to the Trustee shall be administered as provided in this FIFTH Amendment and Restatement and any subsequent amendments. The revocable trust established under this Trust Agreement shall now be known as the ARCADIA LIVING TRUST. Successor trusts established under this Trust Agreement shall be known by the names designated below in this Trust Agreement or as named by the Trustee. The Trustee may refer to these trusts by reference to the name of the income beneficiaries of these trusts or the tax elections made with respect to these trusts.

**ARTICLE 1
DECLARATIONS**

1.1 Family Information

I am not married, and am a resident of the City of West Hollywood, California. I live part time with my boyfriend and longtime companion EDWARD WILLIAM BAYUK. I have no living or deceased children. My father is SALVATORE ROBERT MORABITO, SR, of St. Catharines, Ontario. My mother Mary Dora Lorraine Morabito is now deceased. I have one brother, SALVATORE ROBERT MORABITO, JR., also known as Sam Morabito, of St. Catharines, Ontario, Canada; SALVATORE is in a committed relationship with my brother's longtime companion DR. ANNA KOBYLECKY, of St. Catharines, Ontario, Canada. I have two sisters, KATHARINE LYNN FAZZARI of St. Catharines, Ontario, Canada, and GLORIA JEAN MORABITO, also known as Goldie Morabito, of Belmont, California. I have two nephews, the sons of my sister KATHARINE LYNN FAZZARI, SAMUEL FAZZARI and VINCENT FAZZARI, both of St. Catharines, Ontario, Canada.

1.2 Property Information

. At this time, all my property is my separate property.

**ARTICLE 2
RIGHTS RESERVED BY ME**

As Grantor, I reserve the following rights under this Trust Agreement.

2.1 Right to Add Property to the Trust Estate

. I reserve the right to transfer additional property to the Trustee during my lifetime and at my death. All such property transferred to the Trustee shall be added to the trust estate and administered as provided in this Trust Agreement. The Trustee is authorized and directed to accept the additions to the trust estate. Any other person may transfer property to the Trustee to be added to the trust estate, provided the property is acceptable to me (if living) and the Trustee.

2.2 Right to Withdraw Property from the Trust Estate

. I reserve the right to withdraw at any time all or any portion of my property held in the trust estate.

The property described in any notice of withdrawal shall be delivered immediately to me. Upon any withdrawal, the property shall be transferred to me as if the trust had not been created.

2.3 Right to Amend the Trust Agreement

I reserve the right to amend at any time all or any part of this Trust Agreement, without obtaining the consent of or giving notice to any beneficiary.

2.4 Right to Revoke the Trust Agreement

I reserve the right to revoke at any time all or any part of this Trust Agreement, without obtaining the consent of or giving notice to any beneficiary. If this Trust Agreement is revoked in whole or in part during my lifetime, the Trustee shall immediately deliver to me the entire trust estate or the portion of the trust estate subject to revocation. Upon any such revocation, the property shall be transferred to me as if the trust had not been created. Upon my death, this Trust Agreement, and all trusts established under this Trust Agreement, shall become irrevocable and not subject to amendment.

2.5 Right to Appoint and Remove Trustees

I reserve the right to appoint, designate, and remove trustees.

2.6 Right to Direct and Approve the Trustee's Actions

I reserve the right to direct and approve the Trustee's actions, including the Trustee's investment decisions and the use of trust property as collateral for any personal obligations of mine. My approval of the Trustee's actions shall be binding upon all other beneficiaries.

2.7 Exercise of My Reserved Rights by Others

The rights reserved to me as described above are personal to me and shall not be exercisable on my behalf by any other person.

2.8 Manner of Exercise of My Reserved Rights

I may exercise the rights reserved to me only by a signed writing delivered to the Trustee. This Trust Agreement may not, however, be revoked or amended by me in my Will.

ARTICLE 3 THE GRANTOR'S TRUST

The following provisions shall apply to the distribution of the trust estate during my lifetime.

3.1 Distributions of Income and Principal

During my lifetime, the Trustee shall distribute to me that amount of net income and principal as I direct. Further, if I become incapacitated, the Trustee is authorized to distribute to any person whom I am then legally obligated to support or who has been receiving support from me that amount of net income and principal as the Trustee deems appropriate in his or her discretion to continue this support. Also, the Trustee is authorized to distribute to me that amount of net income and principal, up to the whole of the trust estate, as the Trustee deems appropriate in the exercise of his or her discretion, using my accustomed manner of living as a guide and without regard to my other sources of support. The Trustee shall exercise this discretion in a liberal manner, and the rights of remainder beneficiaries shall be of no importance. The Trustee shall accumulate and add any undistributed net income to principal.

3.2 Gifts

The Trustee is authorized to make distributions directly to persons designated by me. Furthermore, the Trustee is authorized to make gifts to continue any gift program I start, including gifts made to use my available federal gift tax annual exclusion amounts or lifetime exemption or exclusion amounts, at the same level and to the same persons as I made gifts. The Trustee may fulfill any charitable pledges made by me. Gifts may be made outright or in trust. In making the gifts authorized under this section, the Trustee may follow the directions given him or her by any agent acting for me under a durable power of attorney that expressly grants to the agent the power to continue my plan of giving. Also, the Trustee may distribute income or principal to an agent acting under a durable power of attorney executed by me to enable the agent to make gifts as provided under the durable power of attorney, including gifts to charitable organizations.

3.3 Qualification for Government Benefits

I authorize the Trustee to take any actions that the Trustee determines to be appropriate or necessary in connection with my qualification for or receipt of government benefits, including benefits (whether income, medical, disability, or otherwise) from any agency (whether state, federal, or otherwise), such as Social Security, Medicare, or supplemental security income/state supplemental programs.

ARTICLE 4

ALLOCATION AND DISPOSITION OF THE TRUST ESTATE

Upon my death, subject to the payment of, or satisfactory provision being made for, all debts and taxes (including Estate taxes), the following allocations and dispositions of the trust estate shall be made by the Trustee.

4.1 Disposition Upon My Death

Upon my death, the Trustee shall allocate the entire trust estate, including the property held in the trust estate at the date of my death and the property transferred to the trust estate by reason of my death, as follows:

- (a) **Gifts of Tangible Personal Property**
The Trustee shall make distributions of my tangible personal property as provided in Article 5.
- (b) **Gifts of Real Property**
The Trustee shall make distributions of my real property as provided in Article 6.
- (c) **Gifts of Money and Other Property**
The Trustee shall make distributions of money and other property as provided in Article 7.
- (d) **Balance of the Trust Estate**
The balance of the trust estate shall be held in trust and administered as the Residuary Trust in accordance with the provisions of Article 8 below until the date ten (10) years following my death. On the tenth anniversary of my death, any remaining balance of the trust estate shall be distributed as follows:
 - (i) Seventy percent (70%) to my longtime companion EDWARD WILLIAM BAYUK, provided he survives me. If EDWARD does not survive me, the gift shall be distributed to my brother SALVATORE ROBERT MORABITO, JR., if he is then living, and if he is not this distribution shall be made in equal shares to my nephews SALVATORE FAZZARI and VINCENT FAZZARI.
 - (ii) Thirty percent (30%) to my brother SALVATORE ROBERT MORABITO, JR., provided he survives me. If SALVATORE does not survive me, the gift shall be distributed to my partner EDWARD WILLIAM BAYUK, if he is then living, and if he is not this distribution shall be made in equal shares to my nephews SAMUEL FAZZARI and VINCENT FAZZARI.

In selecting assets to satisfy gifts and fund shares, property that would produce income recognition if allocated to fund a pecuniary amount shall, if possible, be allocated to fund non-pecuniary shares. These assets should be allocated on a non-pro rata basis when funding fractional shares. These assets include: items of income in respect of a decedent (particularly interests in pension plans or contracts of deferred compensation paid in installments); installment sale contracts; and life insurance contracts to which the transfer for value rule under I.R.C. §101 may apply.

ARTICLE 5

GIFTS OF TANGIBLE PERSONAL PROPERTY

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), the following distributions shall be made by the Trustee from the

trust estate.

All my interest in my tangible personal property, together with any insurance on such property, shall be distributed by the Trustee outright to my longtime companion EDWARD WILLIAM BAYUK, if he is then living, and if he is not said tangible personal property shall be distributed to my brother SALVATORE ROBERT MORABITO, JR.

ARTICLE 6 GIFTS OF REAL PROPERTY

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), no distributions shall be made by the Trustee.

ARTICLE 7 GIFTS OF MONEY AND OTHER PROPERTY

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), the following distributions shall be made by the Trustee.

7.1 Gifts of Money

& Publicly Traded Securities

None.

ARTICLE 8 THE RESIDUARY TRUST

All trust property allocated to the RESIDUARY TRUST shall be held by the Trustee in trust and shall be administered according to the terms of this Trust Agreement, specifically including the following provisions, until the date ten (10) years following my death. On the date ten (10) years after my death, all trust assets remaining in the Residuary Trust shall be distributed in accordance with the provisions of Section 4.1(d) above. All references in this Trust Agreement to the "RESIDUARY TRUST" shall be to the trust established under this article.

8.1 Maintenance of Real Property

None

8.2 Distribution of Net Income

After providing for the expenses outlined in Sections 8.1 and 8.2 above, the Trustee shall distribute the remaining net income in monthly or other convenient installments, but at least annually, to the following beneficiaries in the percentages indicated until the trust terminates on the tenth anniversary of my death:

- (a) Seventy percent (70%) to my longtime companion EDWARD WILLIAM BAYUK.
- (b) Thirty percent (30%) to my brother SALVATORE ROBERT MORABITO, JR.

If a beneficiary under this Section 8.3 dies before the trust terminates on the tenth anniversary of my death, the deceased beneficiary's share of net income shall be reallocated on an ongoing basis to the other beneficiary named in this section if then living.

8.3 Final Distribution of Trust Estate

On the tenth anniversary of my death, or upon the earlier death of the last to survive of the beneficiaries named in Section 8.3, the Residuary Trust shall terminate and the Trustee shall distribute the remaining assets of the trust estate in accordance with the provisions of Section 4.1(d) above.

ARTICLE 9 GENERATION-SKIPPING PROVISIONS

9.1 Generation-Skipping Transfer Tax

I intend to use effectively all available generation-skipping transfer tax exemptions, including the exemption available under the election authorized in I.R.C. §2652(a)(3). All provisions of my Will and this Trust Agreement shall be construed in a manner consistent with that objective, and to the extent possible, so as to create and maintain trusts or shares of the trust estate that have inclusion ratios of either zero or one and are entirely exempt or nonexempt from GST tax.

9.2 Allocation of GST Exemption

In allocating my GST exemption, the Trustee may include or exclude from that allocation any property as to which I am the transferor for GST tax purposes, including property transferred prior to my death. The Trustee's decisions may be based on my estate tax return, gift tax returns, and other information known to the Trustee. The Trustee shall allocate the exemption in good faith, but shall not be required to allocate the exemption to benefit the various transferees or beneficiaries of the property equally, proportionally, or in any other particular manner.

9.3 Division of Trusts

The Trustee (other than issue of mine) may divide any trust into two or more separate trusts to create one or more trusts with assets completely exempt from any application of any GST tax or to create trusts so that the federal generation-skipping tax inclusion ratio for each such trust shall be either zero or one. Divisions shall be made based on the fair market value of the assets at the time of the division. If permitted by the regulations under the GST tax, the allocation of property between or among separate trusts created from a single trust or trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. All trusts so established shall be administered under the same terms as would have applied to the undivided trust or trust share. The Trustee is directed to divide any trust that may be subject to the GST tax into two separate sub-trusts of equal or unequal value, but with the same terms and with the same beneficiaries, so that the transferor's exemption under I.R.C. §2631 may be allocated to one sub-trust to the exclusion of the other or disproportionately between them.

9.4 Allocation of Assets

The Trustee may allocate any property payable or distributable to the trust or any of its sub-trusts so that all trusts or property with an inclusion ratio of zero shall be allocated to a trust with an inclusion ratio of zero and all trusts or property with an inclusion ratio of other than zero shall be allocated to a trust with an inclusion ratio of other than zero. The Trustee may allocate any property that may become payable or distributable to the trust to one of its sub-trusts to the exclusion of the other trusts or disproportionately between the sub-trusts.

9.5 General Power of Appointment Granted to Beneficiary

If upon the death of an issue of mine who is a beneficiary of an irrevocable trust created under this Trust Agreement, the trust estate of his or her trust would pass to or in trust for the beneficiary's issue (whether directly or by the beneficiary's failure to exercise a power of appointment), then the beneficiary shall have the power to appoint to the beneficiary's estate by his or her Will (whether or not admitted to probate) expressly referring to and exercising this power, the smallest fractional share of the trust that would be necessary to reduce to the minimum the aggregate Estate taxes and GST taxes payable upon the beneficiary's death.

9.6 General Power of Appointment Conferred by Trustees

The Trustee may grant a beneficiary a general power of appointment, as that term is defined in I.R.C. §2041, over that beneficiary's share of the trust estate, pursuant to which that beneficiary may appoint the principal and or undistributed income of that share to one or more persons and entities, including his or her own estate, and on those terms and conditions, either outright or in trust, as he or she may appoint by a Will (whether or not admitted to probate) or other written instrument expressly referring to and exercising this general power of appointment. A grant of power may limit the amount subject to any general power of appointment, require that it be exercised jointly with another person or persons, or otherwise impose limits or conditions on its exercise. The Trustee may also eliminate or modify, at any time and for any reason, a general power of appointment granted by the Trustee. The Trustee shall

promptly notify the beneficiary in writing that they have granted a general power of appointment to the beneficiary over trust assets.

The foregoing provisions shall not apply to a beneficiary who is serving as a Trustee or Co-Trustee, except that a Co-Trustee or successor Trustee may exercise the foregoing power to grant a general power of appointment in favor of the beneficiary who is a Trustee. No beneficiary shall have the power under this Section 9.6 to amend his or her share of the trust estate in a manner that would increase his or her benefits, or to grant himself or herself a general power of appointment.

9.7 No Trustee Liability

The Trustee shall not be liable for any exercise or nonexercise of any of the powers granted under this article.

ARTICLE 10 DISCLAIMERS

10.1 Disclaimers Allowed

In addition to any rights granted by law, any person granted any right, title, interest, benefit, privilege, or power under this Trust Agreement may at any time renounce, release, or disclaim all or any part of that right, title, interest, benefit, privilege, or power, including his or her right, title, and interest in and to trust income or principal. The natural or legal guardians of a minor shall have the authority and power to disclaim the interests of the minor; the conservator of the estate of the person shall have the authority and power to disclaim the interests of the conservatee; the fiduciary of a trust or estate shall have the authority and power to disclaim the interests of the trust or estate; and the youngest adult ancestor of any unborn, unknown, or unascertained issue shall have the power to disclaim the interests of those issue.

10.2 Disclaimers of Property Interests

In general, a disclaimer or renunciation of a property interest shall accelerate the succeeding interest. Except as otherwise expressly provided in this Trust Agreement, any interest in property so disclaimed shall be allocated or distributed as if the beneficiary had predeceased the person from whom the interest in the property would have been received. Further, except as otherwise expressly provided in this Trust Agreement, if a beneficiary disclaims his or her entire interest in one or more specific assets held in any trust, the assets shall be distributed from the trust as if the beneficiary predeceased the person from whom the interest in the assets would have been received. If all living current and contingent beneficiaries disclaim their interests in the trust, any contingent remainder interest shall be destroyed and the remaining trust property shall pass as provided in Section 4.2.

10.3 Disclaimers by Trustee

Any person granted any fiduciary power, authority, right, privilege, or discretion ("Fiduciary Power") under this Trust Agreement or under the law applicable to this trust may at any time renounce, release, or disclaim all or any part of such Fiduciary Power. Unless otherwise expressly provided in the disclaimer, if any Fiduciary Power shall be disclaimed, the power shall cease to exist and shall not pass to any successor fiduciary. The disclaimer may expressly provide that the Fiduciary Power shall be exercisable by the remaining Trustees, if any, or any successor Trustees.

10.4 Effective Disclaimers

To be effective, disclaimers must be in writing, signed by the disclaiming person, and irrevocable. Disclaimers shall be effective only upon delivery to the Trustee or to a court having jurisdiction over the administration of the trust.

ARTICLE 11 PAYMENT OF DEBTS AND EXPENSES

The following provisions shall apply upon my death to the payment of my debts and expenses.

11.1 Payment of Debts and Expenses

Upon my death, the Trustee may pay on my behalf, in the manner and at the time the Trustee

determines, any and all of my outstanding unsecured debts (including unpaid tax liabilities arising prior to my death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of my estate.

11.2 Payment from Trust

The Trustee is authorized to pay from the assets of the trust my debts and expenses that my Executor may request. If there are insufficient assets in my probate estate to make any gifts provided under my Will or to pay my debts and expenses, or if there are sufficient assets in my probate estate but, in the sole judgment of the Trustee, it would be to the advantage of the estate that those gifts or payments be made from the assets in the trust, the Trustee may pay from the assets of the trust all of those gifts, debts, and expenses. If the assets of my probate estate (exclusive of residential real property and tangible personal property) are insufficient to pay all unsecured debts, funeral expenses, and expenses of administration, the Trustee may pay to my estate from the principal of the trust estate that amount that my Executor may request for those purposes. The Trustee shall not be under any duty to take part in determining the amount of those debts or expenses, and may rely upon the written certification of my Executor for the amount to be paid as authorized by these provisions. The Trustee shall be under no duty to see to the application of any such payment. The Trustee shall not require any reimbursement for payments made to my Executor.

ARTICLE 12

PAYMENT OF ESTATE TAXES AND GENERATION-SKIPPING TRANSFER TAXES

12.1 Payment of Estate Taxes

All Estate taxes and charges imposed upon any property by reason of my death, whether passing under the Will or not, shall be paid (1) first, by my Executor out of the residue of my probate estate, to the extent funds are sufficient, and (2) second, by the Trustee out of the residue of the trust estate. All Estate taxes shall be paid without proration or reimbursement from any other property or person.

12.2 Payment of Generation-Skipping Transfer Taxes

All GST taxes attributable to a direct skip occurring upon my death, and with respect to which I was the transferor, shall be paid by the Trustee from and charged against property constituting the transfer, as provided in I.R.C. §2603(a)(3) and §2603(b). All GST taxes attributable to a taxable distribution occurring with respect to any trust established under this Trust Agreement shall be paid by the transferee, as provided in I.R.C. §2603(a)(1) and §2603(b). All GST taxes attributable to a taxable termination occurring with respect to any trust established under this Trust Agreement shall be paid by the Trustee and charged against the property transferee, as provided in I.R.C. §2603(a)(2) and §2603(b).

12.3 No Proration

No portion of the Estate taxes or GST taxes payable under these provisions shall be charged against, prorated among, or recovered from any person entitled to benefits under this instrument.

12.4 Reserves

The Trustee may establish reserves from trust income and principal that he or she considers necessary for the payment of Estate taxes.

12.5 Tax Elections

The Trustee shall have the power, in his or her discretion, to take any action and to make any election to minimize the tax liabilities of my probate estate, any trust, and the beneficiaries. The Trustee may make those elections and allocations under the tax laws as he or she deems advisable. The Trustee may, but shall not be required to, allocate the benefits of an election among the various beneficiaries or make adjustments in the rights of any beneficiaries or between the income and principal accounts to compensate for the consequences of any tax election or any investment or administrative decision made by the Trustee that may have had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over another.

**ARTICLE 13
THE APPOINTMENT OF TRUSTEES**

The following provisions shall apply to the appointment, designation, and removal of the Trustee.

13.1 My Powers of Appointment, Designation, and Removal

. During my lifetime, I shall have the power to appoint, designate, and remove, with or without cause, Trustees and Co-Trustees. I may appoint or designate individuals or entities to serve as Trustee. I may appoint or designate Trustees to serve alone, to serve with me, or to serve with other persons and to serve currently or in the future. I may also prescribe the conditions and terms governing the actions, authority, and duties of the Trustees I appoint or designate. Further, I may designate a series of persons to serve as Trustees following my death or following the death, resignation, or inability, failure, or refusal to serve of any Trustee. There shall be no limit on the number of times I may exercise the foregoing powers. The appointments and designations shall be in writing and shall be filed with the current Trustee of the trust. All my appointments and designations shall be revocable and amendable by me unless I provide otherwise. All my appointments and designations shall continue to be effective after my death and shall take precedence over the appointments made under any other provisions of this article.

13.2 Initial Trustee

. Pursuant to my powers to appoint Trustees, I appoint myself as the initial Trustee under this Trust Agreement.

13.3 Successor Trustees

. Upon my death or incapacity, I appoint ROBERT BERTRAM BURKE to serve as Trustee. If ROBERT BERTRAM BURKE should fail or become unable or unwilling to serve as Trustee, I appoint JAMES RAVENSCROFT to serve as Trustee.

13.4 Filling Vacancies

. If a vacancy in a Trustee position is not filled as otherwise provided in this Trust Agreement, the California court having jurisdiction over the trust shall appoint one or more Trustees upon the application of any former Trustee or any trust beneficiary, current or contingent.

13.5 Temporary Incapacity of a Trustee

. If, due to illness or other cause, an individual Trustee is temporarily, but not permanently, unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trusts for which he or she serves as Trustee, the other Trustees may, during such temporary incapacity, make any and all decisions regarding the trust estate as though the incapacitated Trustee were not then serving. In determining the temporary incapacity of an individual Trustee, the other Trustees may rely on a certificate or other written statement from a licensed physician who has examined the incapacitated individual Trustee. The other Trustees shall incur no liability whatsoever to any beneficiary as a result of any action taken under this section.

13.6 Removal of Trustees

. Following my death EDWARD WILLIAM BAYUK may remove any Trustee of the trust and appoint a Trustee or Trustees other than himself to succeed the removed Trustee, provided at least one adult income beneficiary and one adult presumptive remainder beneficiary join in the exercise of this power.

13.7 Effective Dates

. Any and all appointments, designations, removals, or revocations affecting a Trustee position shall be made by a written instrument executed by the person entitled to make the appointment, designation, removal, or revocation. The written instrument shall be effective upon its delivery to the current Trustee; provided, however, that the appointment of a successor Trustee or Co-Trustee shall become effective only upon the new Trustee's written acceptance of the appointment and the delivery of this written acceptance to the person who appointed him or her, the other Trustees, or the current beneficiaries.

13.8 No Bond

. No bond or other security shall be required of any Trustee named in this Trust Agreement or of any

Trustee appointed or designated in the manner provided under this Trust Agreement unless the terms of the appointment or designation require a bond. The foregoing provisions shall apply whether the Trustee serves alone or together with one or more other Trustees.

13.9 Administrator. The Administrator shall provide such services to the Trustee by way of accounting, tax and planning purposes, and advise the Trustee and the Beneficiaries as to the intent and implementation of each and every provision of this Trust. The Administrator shall be reimbursed based on his normal hourly rate, as well as receive an annual base stipend of one dollar (\$1.00).

ARTICLE 14 THE PROTECTION PROVIDED THE TRUSTEES

The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

14.1 Resignation

Each Trustee shall have the right to resign his or her position at any time without the consent of any beneficiary or the approval of any court. A Trustee may resign for any reason by delivering a written resignation signed by him or her to the successor Trustees. The resignation shall be effective according to its terms. But, if the resigning Trustee is the sole Trustee, the resigning Trustee shall continue to be responsible for the trust property until it is delivered to the successor Trustee and shall continue to hold title and custody to the trust assets and administer the trust assets and perform the actions that are reasonably necessary to preserve the trust property and to complete the Trustee's administration of the trust, until a successor Trustee has been appointed and has accepted the position of Trustee.

14.2 Compensation

The Trustee shall be entitled to pay himself an annual fee of one hundred and twenty thousand dollars (\$120,000) for the performance of his or her duties and services rendered as Trustee. A Trustee that is a corporation or partnership shall be entitled to compensation for its services in the amount and at the time specified in its Schedule of Fees and Charges established from time to time by it for the administration of trust accounts of a character similar to this one and in effect when services are rendered. This compensation may be paid without prior court approval. The Trustee shall be reimbursed for reasonable expenses actually and properly incurred by him or her in the administration of the trust.

The Trustee also is authorized to pay to the attorneys and accountants retained by the Trustee to advise him or her in the administration of the trust those amounts for fees and costs as the Trustee shall determine in his or her discretion. The Trustee is authorized to pay these fees and costs without first obtaining approval of the trust beneficiaries or the court having jurisdiction over the trust. These fees and costs shall not be offset against the compensation payable to the Trustee.

A Trustee may waive his or her right to compensation for his or her services to be rendered to the trust estate. The waiver must be in writing and signed by the person in advance of rendering the services for which compensation is being waived. A waiver may be limited in duration or limited to specific services.

14.3 Dual Compensation

A Trustee serving as a director, officer, partner, or employee of any corporation, partnership, or other business in which the trust owns an interest shall also be entitled to receive reasonable compensation for his or her services rendered as Trustee in addition to the compensation being paid to him or her by such business. The compensation paid to the Trustee in either capacity shall not be offset against the other. A Trustee who is an investment advisor, attorney, accountant, or other professional shall not be disqualified from rendering professional services to the trust and being compensated on a reasonable basis therefore in addition to any compensation that he or she otherwise is entitled to receive as Trustee. Neither shall a firm with which a Trustee is associated as a partner, officer, or employee be disqualified from dealing with, rendering services to, or discharging duties for the trust and being compensated therefore on a reasonable basis. A Trustee is authorized to retain himself or herself or any firm with which he or she is associated to render investment, legal, accounting, or other professional services.

14.4 Right of Indemnification and Reimbursement

. A Trustee shall be entitled to indemnification and reimbursement for any expense, loss, damage, liability, costs, or claim (including, without limitation, attorney's fees and costs of litigation) incurred by the Trustee by reason of any act performed or omitted to be performed by the Trustee, acting in good faith, in the administration of the trust. The Trustee shall be deemed to have acted in good faith on behalf of the trust if the Trustee acted in a manner reasonably believed by the Trustee to be within the scope of his or her authority and in the best interest of the trust and its beneficiaries. Notwithstanding the foregoing, a Trustee shall not be indemnified or reimbursed with respect to any expense, loss, damage, or claim incurred by reason of any breaches of trust, by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries.

14.5 Notice to the Trustee

. Until the Trustee receives written notice of any birth, marriage, death, or other event affecting the rights of beneficiaries to payments or distributions from the trust, the Trustee shall incur no liability to any persons whose interests may have been affected by that event for payments or distributions made by the Trustee in good faith as though the event had not occurred.

14.6 Confidentiality of Trust Agreement

. Except as otherwise provided in this Trust Agreement, the Trustee shall not disclose the contents of this Trust Agreement, or the fact of its existence unless required to do so by law or applicable regulation, regulatory authorities, or legal process, without my prior written consent. The Trustee may, however, disclose the terms of this Trust Agreement where necessary to carry out his or her powers, to enforce the rights and remedies belonging to the trust, or as required by a court in its supervision of the trust. The Trustee may also disclose the contents of this Trust Agreement to persons employed by him or her to advise or assist him or her in the administration of the trusts, including attorneys and accountants, provided these professionals agree to keep the disclosed information confidential on the same terms as provided in this section.

14.7 Disclosure to the Beneficiaries

. During my lifetime, the Trustee shall have no duty to provide any information regarding the trust to anyone other than me.

14.8 Reports and Accounts

. I hereby waive all statutory requirements, that the Trustee render a report or account to the beneficiaries of the trust. The Trustee shall not be required to make any current reports or render any annual or other periodic accounts to any trust beneficiary or to any court, whether or not required by statute, except pursuant to court order. The Trustee may take action for the approval of his or her accounts at the times and before the courts, or without court proceedings, as he or she determines in the exercise of his or her discretion. The Trustee shall pay the costs and expenses of such action, including the compensation and expenses of accountants, attorneys, and guardians, from the principal or income, or both, of the trust as he or she determines.

14.9 My Right to Release Trustee

. I reserve the right to execute a release, with or without an account, approving the administration of the trust by the Trustee. A release shall discharge the Trustee from any accountability and liability to me or my estate or to any other persons interested or claiming to be interested in the trust as to all matters covered by the release or in the account, if any, with the same effect as if an account of the Trustee for the period concerned had been judicially settled and allowed in a proceeding to which these other persons (including all interested persons) were parties. No beneficiary other than me or my Executor shall have the right to question or assert any liability by the Trustee for the Trustee's acts or omissions during my lifetime.

14.10 Right of Trustee to Secure Releases

. The Trustee is authorized to secure from any beneficiary a full and complete release from any and all liabilities arising from the Trustee's administration of the trust and the beneficiary's written approval of any account or report of the Trustee. The release or approval shall be binding and conclusive upon the beneficiary and upon all of the beneficiary's issue (including then unborn, unknown, and unascertained

issue) and other successors in interest who may then have or later acquire any interest in the separate trust. All written instruments to be delivered to or executed by a beneficiary may be delivered to or executed by the legally appointed conservator of any incompetent beneficiary or a parent or legal guardian of a minor beneficiary. When so delivered or executed, the written instrument shall be binding upon the beneficiary and shall be of the same force and effect as if delivered to or executed by a beneficiary acting under no legal disability. The foregoing provisions shall apply to all reports, statements, accounts, releases, and notices, as well as documents appointing, removing, or designating Trustees. However, the Trustee may not condition the performance of his or her duties on the delivery of such a release.

14.11 Consultation with Legal Counsel

The Trustee may retain and consult with California based legal counsel on any matters related to the administration of the trust or the construction or interpretation of this Trust Agreement, and I encourage the Trustee to do so. The Trustee may select the legal counsel to advise or represent him or her, and the Trustee is expressly authorized to pay the fees and costs of the legal counsel from the trust estate. The time, place, subject matter, and content of any such consultation with legal counsel, all communication (written or oral) between the Trustee and legal counsel, and all work product of legal counsel shall be privileged and confidential and shall be absolutely protected and free from any duty or right of disclosure to any successor Trustee or any beneficiary and any duty to account. The Trustee shall, however, include the amount of any disbursement for the legal counsel fees and costs in any report or account prepared by the Trustee for the period during which the expenses were paid.

14.12 Reliance on Experts and Others

The Trustee shall be entitled to rely on the information, opinions, reports, or statements (including financial statements and other financial data) prepared by his or her managers, attorneys, accountants, brokers, investments counselors, and other experts, even if they are associated with a Trustee, prepared by such persons as to matters which the Trustee reasonably believes to be within that person's profession or expert competence, and shall not be liable for losses resulting therefrom. The Trustee may act without independent investigation upon the recommendations of any attorneys, auditors, accountants, investment advisers, appraisers, or other qualified experts retained by the Trustee, even if they are associated or affiliated with the Trustee. The written opinion of any such expert submitted to the Trustee shall be a full and complete authorization and protection with respect to any action taken or not taken by the Trustee in good faith.

14.13 Extent of Liability

I do not want the Trustee to be personally liable for his or her good faith efforts in administering the trust estate.

(a) In general

A Trustee shall not be personally liable to the trust or its beneficiaries, and shall be held harmless, for any loss, expense, damage, or claim incurred by the Trustee by reason of any act performed or omitted to be performed by the Trustee, acting in good faith, in the administration of the trust. The Trustee shall be deemed to have acted in good faith on behalf of the trust if the Trustee acted in a manner reasonably believed by the Trustee to be within the scope of his or her authority and in the best interest of the trust and its beneficiaries. Further, a Trustee shall not be personally liable for obligations arising from the Trustee's ownership or control of trust property or for torts committed in the course of the Trustee's administration of the trust unless the Trustee is personally at fault. Notwithstanding the foregoing, a Trustee shall be personally liable for his or her breach of trust by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries, and as to any profit that the Trustee derives from any breach of trust.

(b) While trust is revocable

During my lifetime, the Trustee shall follow all written directions given from time to time to him or her by me or by the person or persons to whom I delegate the right to direct the Trustee. In consenting to and carrying out those directions, the Trustee shall not be liable to any person having a vested or contingent interest in the trust for any act performed or omitted pursuant to those directions. Moreover,

the Trustee may follow those directions regardless of any fiduciary obligations to which the directing party may also be subject.

(c) **As to other Trustees**

The liability of the Trustee is further limited as follows.

(i) **As to prior Trustees**

No successor Trustee shall be responsible or liable for any acts, omissions, or default of any prior Trustee. Unless requested in writing by a beneficiary within 60 days of the appointment of the successor Trustee, no successor Trustee shall be required or have any duty to review or investigate the actions or omissions of a prior Trustee. A successor Trustee shall not be required or have any duty or obligation to review, audit, or examine the transactions, accounts, or records of any prior Trustee, or any allocation of the trust estate made by any prior Trustee. No successor Trustee shall have any obligation to take any action to obtain redress for any breach of trust by any prior Trustee unless instructed by a court to do so. Each Trustee is responsible only for those assets that are actually delivered to the Trustee's custody or control.

(ii) **As to Co-Trustees**

A Trustee shall be liable to the beneficiaries for the acts or omissions of a Co-Trustee only as provided required by law.

(d) **As to agents and investment managers**

I want the Trustee to be able to rely on the advice of professionals hired to advise him or her. Accordingly, the Trustee's liability is further limited as follows.

(i) **As to agents**

A Trustee shall be liable to the beneficiaries for the acts or omissions of an agent only as provided by applicable law.

(ii) **As to investment managers**

A Trustee shall not be liable for the acts or omissions of any investment manager, or be under an obligation to invest or otherwise manage any asset that is subject to the management of an investment manager.

(e) **As to taxes**

I want the Trustee to be aggressive in minimizing the taxes, including estate and income taxes, imposed on the trust estate. Accordingly, the Trustee shall not be liable for any accuracy-related penalty, such as is currently imposed under I.R.C. §6662, arising from the preparation and filing of any income tax or estate tax return.

(f) **Liability insurance**

Individual Trustees may carry errors and omissions or fiduciary liability insurance and may charge the premiums to trust income or principal, or both, as a cost of administration.

ARTICLE 15 THE AUTHORITY OF THE TRUSTEES

The following provisions shall apply to each of the Trustees serving under this Trust Agreement. A successor Trustee shall be vested with all the rights, powers, and authority of an original Trustee.

15.1 Trustee Authority

Except as otherwise expressly provided, a successor Trustee upon commencing to serve as Trustee shall immediately become vested with all the rights, titles, powers (including discretionary powers), and obligations, with like effect as if named as an initial Trustee. Where this Trust Agreement states that the Trustee "shall" perform an act, the Trustee is required to perform that act. Where this Trust Agreement states that the Trustee "may" do an act or Trustee is "authorized" to act, the Trustee is expressly permitted or authorized to do the act described, and his or her decision to do or not to do the act shall be made in the Trustee's sole and absolute discretion in the exercise of his or her fiduciary powers and duties. The decision of the Trustee as to all discretionary actions and decisions shall be conclusive and binding on all persons.

15.2 Trustee Discretion

The discretionary powers granted to the Trustee under this Trust Agreement shall be absolute. This means that the Trustee can act arbitrarily, so long as he or she does not act in bad faith, and that no requirement of reasonableness shall apply to the exercise of his or her absolute discretion. This does not mean that the Trustee may do as he or she pleases, but rather that I want the Trustee to use his or her own personal, subjective best judgment. For this purpose, I waive the requirement that the Trustee's conduct at all times must satisfy the standard of judgment and care exercised by a reasonable, prudent person. In particular, the decision of the Trustee as to the distributions to be made to beneficiaries under the distribution standards provided in this Trust Agreement shall be conclusive on all persons.

15.3 Release of Power or Authority by a Trustee

The Trustee may at any time release, surrender, disclaim, relinquish, either in whole or in part, or may reduce or restrict in scope, any of the powers, rights, authority, or discretion granted to the Trustee under this Trust Agreement, either expressly or implied. Such action shall be taken by means of a written notice filed in the records of the trust, signed and dated by the releasing Trustee, and mailed to all of the adult current beneficiaries. Unless otherwise specified by the releasing Trustee, any such action as it affects that Trustee shall be irrevocable. Such action shall be effective only as to the Trustee giving such written notice and shall in no way affect the rights, powers, authority, and discretion of successor Trustees. The powers, rights, authority, or discretion released or restricted shall continue to exist as to all Trustees and successor Trustees other than the releasing Trustee.

15.4 Trustee's Consideration of Beneficiary's Other Assets

Except as otherwise provided in this Trust Agreement, in exercising his or her discretion to distribute trust funds to any beneficiary, the Trustee may, but shall not be required or have any duty to, consider all income and assets, including other sources of income or financial support, reasonably available to the beneficiary, as are actually known to the Trustee. The Trustee shall have no duty of inquiry as to the property owned by or held for the benefit of the beneficiary. In making discretionary distributions from any trust created under this Trust Agreement, the Trustee may rely absolutely upon a declaration executed under penalty of perjury by the beneficiary describing his or her expenses and financial needs and any other financial resources available to him or her, without further investigation. The Trustee may continue to rely upon a declaration until otherwise advised in another declaration from the beneficiary.

15.5 Limitation on Discretion of a Beneficiary Serving as Trustee

Notwithstanding any other provisions of this Trust Agreement, a Trustee (other than me) who is also a beneficiary of the trust shall not have, and shall not participate in the exercise of, the power to use, apply, or distribute trust principal for his or her own benefit, except as necessary to provide for his or her health, education, maintenance, and support in his or her accustomed manner of living. Further, a Trustee who is also a beneficiary of the trust shall not participate in the exercise of any power to advance or loan funds to himself or herself or to guarantee or secure any debt of such beneficiary/Trustee.

15.6 Voting

While more than two Trustees are serving, the decision of the majority of the Trustees shall prevail and be binding with respect to all matters affecting the trust estate. If one or more Trustees are excluded or precluded from participating in making a decision with respect to a particular matter, the remaining Trustees acting by majority vote shall make the decision. Any act by or instrument executed by the majority of the Trustees shall constitute the action of the Trustees as if done by all Trustees. Any dissenting or nonconcurring Trustee shall not be liable to any person for the action or failure to act of the other Trustees acting by majority vote.

15.7 Delegation by One Trustee

Each Trustee may at any time, by a signed revocable instrument, delegate to another Trustee the exercise of all or less than all of the powers conferred on a Trustee. Nonetheless, the delegating Trustee shall be liable for the proper exercise of the delegated powers by the other Trustee.

15.8 Delegation by All Trustees

The Trustees may delegate their powers to one or more of the Trustees in a writing signed by all of them. The writing must state the powers delegated to the particular Trustees and provide a date when

the delegation will terminate automatically if not previously terminated. Any delegation shall be revocable by any one Trustee in a writing delivered to the delegate. A Trustee acting pursuant to a delegation shall have the authority to bind the trust and third persons may rely on his or her authority to act for the trust. Any act by or instrument executed by a Trustee acting pursuant to this delegation shall constitute the action of the Trustees as if done by all Trustees.

15.9 Delegation of Power to Expend

The Trustees may delegate to one or more of the Trustees, for any period, the power to bind the trust in any transaction obligating the trust to expend up to or less than a certain sum of money as specified by the delegating Trustees. The Trustee to whom the power is delegated may be the sole signatory of all checks necessary to accomplish the expenditure. The Trustees may also delegate to a property management company authority to be the sole signatory of all checks written on behalf of the trust relating to real estate owned by the trust or on checks written on behalf of the trust in an amount less than the amount specified by the Trustees.

15.10 Delegation of Investment Authority

The Trustees, acting by majority vote, may delegate to one or more Trustees or to agents (including independent investment advisors, investment counsel or managers, banks, or trust companies) the power and authority to act for the Trustees in the investment and reinvestment of trust assets. The Trustees, acting by majority vote, may also authorize the payment of compensation for investment advisory or management services. The Trustees may delegate to the retained investment counsel the power to instruct the custodian of trust property with respect to all matters affecting the property, and the custodian shall comply with those instructions.

15.11 Agents

The Trustee may act under this Trust Agreement through an agent or attorney-in-fact acting under a power of attorney duly executed by the Trustee.

15.12 Dealing with the Trustees

If a third person dealing with the Trustee or assisting him or her in the conduct of a transaction acts in good faith and for a valuable consideration and without actual knowledge that the Trustee is exceeding the Trustee's powers or improperly exercising them, the third person is not bound to inquire whether the Trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise. That third person shall be fully protected in dealing with or assisting the Trustee just as if the Trustee has and is properly exercising the powers the Trustee purports to exercise. In addition, that person has no duty to see to the application of any money paid or property transferred to or upon the order of one or more Trustees.

15.13 Reliance on Representations by the Trustees

A third person dealing with the Trustee also shall be fully protected in relying on written statements of fact, certified or declared under penalty of perjury by any one or more of the persons who appear from the original or certified copy of this Trust Agreement (or documents of appointment) to be a Trustee or successor Trustee, regarding the Trustee's authority to act under this Trust Agreement, the calling of any meeting of the Trustees, the giving of any notice of a meeting, the action taken at a meeting, and other facts concerning the trusts established under this Trust Agreement. Anyone may rely on a copy of this Trust Agreement certified by a Trustee, by the Trustee's legal counsel, or by a Notary Public, to be a counterpart or true copy of this Trust Agreement.

15.14 Reliance on the Authority of Trustees

No persons or organizations employed by the Trustee or retained by the Trustee as provided in this article shall be required to oversee or supervise the activities of the Trustee or to inquire into the Trustee's powers, authority, or discretion. Each person or organization so employed or retained may rely implicitly upon the written instructions of the Trustee with respect to the property and business of the trust, including instructions of the Trustee to deal directly with investment counsel employed by the Trustee. In no event shall any person or organization so employed or retained be liable for any act or omission of any Trustee in which that person or organization may also have participated.

ARTICLE 16
THE POWERS OF THE TRUSTEE

Subject in all instances to his or her fiduciary duties and the limitations set forth elsewhere in this Trust Agreement, with regard to the entire trust estate and all trusts established under this Trust Agreement, the Trustee shall have all the powers described below, all powers granted by law, and all powers reasonably necessary to carry out his or her duties as Trustee to administer, manage, protect, and invest the trust estate. The Trustee in his or her discretion, without court approval, authorization, or supervision, may exercise these powers except as expressly required in this Trust Agreement.

16.1 To Accept Property

The Trustee may accept or receive additions and contributions to the trust estate from me or any other person and hold the property in trust under the provisions of this Trust Agreement. If the Trustee receives property from another fiduciary and if the Trustee believes the action to be in the best interests of the trust estate, the Trustee is authorized to waive an accounting from the fiduciary, to approve his or her actions, to consent to his or her proposed actions, and to consent to his or her discharge.

16.2 To Disclaim or Reject Property

The Trustee may renounce or otherwise disclaim all or any part of any interest in property passing to the trust, by gift or bequest, and any right, power, privilege, or discretion granted the Trustee under this Trust Agreement. The Trustee may reject any property or interest in property passing to the trust, including property that by reason of hazardous materials or substance the Trustee determines (after investigation at the expense of the trust) would be detrimental to the trust purpose.

16.3 To Retain Property

The Trustee may retain trust property received at the inception of the trust or at any other time, from me or any other person until, in the judgment of the Trustee, disposition or distribution of the property should be made. The property may be retained even though the property is unproductive, is property in which a Trustee is personally interested or in which the Trustee owns an undivided interest personally or as trustee of another trust, or there is known or later discovered to be hazardous materials or substances requiring remedial action pursuant to environmental laws. The Trustee shall have no duty to dispose of any part of the trust property included in the trust at the time of its creation, or later added to the trust by me or another person, that would not be a proper investment for the Trustee to make. The Trustee may, without liability, continue to hold that property. The Trustee may hold trust property in bearer form so that title may pass by delivery, or in the name of any one Trustee or a nominee without indication of any fiduciary capacity by the nominee. The Trustee may keep all or part of the trust property at any place within the United States or abroad.

16.4 To Operate a Business

The Trustee may continue or participate in the operation of any business or other enterprise (including a partnership as a general or limited partner) that is part of the trust property for as long as the Trustee deems advisable, at the risk of the trust estate and not at the risk of the Trustee. The Trustee may incorporate, dissolve, or change the form of the organization of the business or enterprise, or operate it as a partnership or in any other form. The profits and losses from any business or other enterprise shall be chargeable to and borne by the trust, and not the Trustee. A Trustee, as an individual, may continue to be a shareholder, director, officer, employee, or partner of any business or enterprise in which the trust holds any interest.

16.5 To Invest and Reinvest Trust Property

The Trustee may invest and reinvest trust property (including income and principal) in any kind of property, whether real, personal, or mixed, including (1) real property (including leaseholds; royalty interests; interests in mines, oil and gas wells, timberlands, and other wasting assets), (2) intangible personal property (including common and preferred stock and all other kinds of securities (on margin or otherwise); investment company shares, mutual funds, index funds, common trust funds (including any common trust fund under the management of a corporate trustee) and other collective investment

vehicles; interests in partnerships (whether as a general or limited partner); commodities; governmental obligations of every kind; obligations of corporations or unincorporated associations; and patents, copyrights, trademarks, and other intangible rights), and (3) tangible personal property (including precious metals, works of art, and other collectibles). The Trustee is authorized to establish and maintain brokerage accounts, including margin accounts, for the purpose of purchasing, acquiring, possessing, pledging, hypothecating, selling and otherwise disposing of, and generally dealing in and with any of the foregoing types of investments.

16.6 To Administer Securities

. The Trustee may purchase, exchange, or sell stocks, bonds, futures contracts, and other securities, and puts, calls, straddles, and other options. The Trustee may maintain brokerage accounts, including margin and commodity accounts, and in connection with such accounts, may borrow, pledge securities, make short sales, and sell on margin or otherwise. With respect to all securities held by in the trust estate, the Trustee may exercise the rights, powers, and privileges, and responsibilities of an owner, including the right to vote; to give general or limited proxies; to pay calls, assessments, and other sums; to participate in voting trusts, pooling arrangements, foreclosures, reorganizations, consolidations, mergers, and liquidations; to deposit securities with and transfer title to any protective or other committee; and to exchange, exercise, or sell stock subscription or conversion rights. The Trustee may also accept and retain as an investment any securities received through the exercise of any of the foregoing powers.

16.7 To Conduct Banking Activities

. The Trustee may establish financial accounts of any kind, including checking, money market, and savings accounts, with any bank, savings and loan association, credit union, brokerage firm, or other financial institution (including such accounts in the banking department of a Trustee that is a corporation or partnership). The Trustee may deposit trust funds into such accounts, withdraw funds from such accounts, and transfer funds among such accounts. The Trustee may designate in writing the persons, whether or not Trustees, who may conduct such banking activities, and the financial institutions may rely, without liability, on such designations.

16.8 To Purchase and Sell Trust Property

. The Trustee may buy, purchase, acquire, sell, convey, dispose of, exchange, or otherwise transfer any trust property, or any interest in property, for cash or on credit, at public or private sale, with or without notice, and for the prices and upon the terms as the Trustee determines. The Trustee may grant or acquire options and rights of first refusal involving the acquisition or disposition of any trust property. The Trustee may also subdivide or develop land; create restrictions, easements, and other servitudes, with or without consideration; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate real property to public use with or without consideration.

16.9 To Manage Trust Property

. The Trustee may manage, control, divide, develop, improve, repair, exchange, partition, change the character of, or abandon trust property or any interest in trust property. The Trustee may enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust. The Trustee may amend or extend existing leases. The Trustee may also demolish or remove buildings or other improvements on trust property.

16.10 To Borrow Money and Encumber Trust Property

. The Trustee may borrow money for any trust purpose from any person upon such terms and conditions as may be determined by the Trustee, and obligate the trust to make repayment from trust property. I or the Trustee may loan or advance funds to the trust, and the loans or advances together with the interest charged shall be treated as a first lien on the trust estate until repaid. The Trustee may also encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the Trustee, or to create restrictions, easements, or other servitudes on trust property.

16.11 Providing Guarantees

. The Trustee may guarantee any indebtedness incurred by me, or by any entity owned directly or indirectly by me or by the trust, as I may direct.

16.12 To Make Loans

. The Trustee may loan or advance trust property of any kind (including money) for any trust purpose to any person on terms and conditions as determined by the Trustee, subject to limitations stated in this Trust Agreement. The Trustee may make loans out of trust property to the current beneficiary on terms and conditions that the Trustee determines are fair and reasonable under the circumstances, and guarantee loans to the current beneficiary by encumbrances on trust property.

16.13 To Purchase Liability Insurance

. The Trustee may purchase and pay the premiums on policies to insure the property of the trust estate against damage or loss and to insure the Trustee against liability with respect to third persons. The Trustee shall not be liable for any omission to purchase any type or amount of insurance. The premiums shall be a proper expense to be charged against the trust.

16.14 To Purchase and Administer Life Insurance

. The Trustee may purchase, own, and pay the premiums on life insurance on my life, and collect the proceeds of life insurance policies payable to the trust. The Trustee shall have the power to compromise, arbitrate, or otherwise adjust any claim, dispute, or controversy arising under any policy payable to the trust and shall have authority to initiate, defend, settle, and compromise any legal proceeding necessary in the Trustee's discretion to collect the proceeds of any policy. The Trustee's receipt to any insurer shall be a sufficient release of the insurer. The insurer shall not be under any duty to inquire concerning the Trustee's application of the policy proceeds.

16.15 To Pay, Contest, and Settle Claims

. The Trustee may pay or contest any claim; settle a claim by or against the trust by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the trust.

16.16 To Litigate

. In accordance with his or her duties to enforce claims and defend actions, the Trustee may prosecute or defend actions, claims, or proceedings for the protection of the trust estate and the Trustee in the performance of his or her duties.

16.17 To Deal with Environmental Hazards

. The Trustee may deal with matters involving the actual or threatened contamination of trust assets (whether real or personal) by hazardous substances, or involving compliance with environmental laws and regulations, including conducting environmental assessments, audits, and site monitoring, and taking remedial action (whether or not required by governmental authorities) to contain, clean up, or remove any environmental hazard.

16.18 To Pay and Allocate Trust Expenses

. The Trustee may pay taxes and other assessments imposed on the trust estate or trust income; reasonable compensation of the Trustee and of the employees and agents of the trust; and other expenses incurred in the collection, care, management, administration, and protection of the trust estate. In allocating the payment of expenses, the Trustee shall have the power to determine which expenses are chargeable to income or principal or partly to each. The Trustee is authorized, but not directed, to allocate and charge post-death expenses incurred in the administration of the trusts or sub-trusts to post-death income. In particular, all expenses of administration claimed as income tax deductions may be entirely allocated to and charged against post-death income. In making these determinations, the Trustee shall be guided by the principles set forth in the Uniform Principal and Income Act, but his or her final determination shall be binding.

16.19 To Hire and Employ Persons

. The Trustee may hire and employ persons (including individuals, corporations, partnerships, associations, and other companies), including accountants, attorneys, auditors, investment advisers, appraisers, or other agents or experts, even if they are associated or affiliated with a Trustee, to advise or assist the Trustee in the performance of his or her duties and obligations. The Trustee may grant

discretionary authority to such persons, but may not delegate either the administration of the trust or acts that are not delegable except as expressly provided in this Trust Agreement.

16.20 To Maintain Custody

The Trustee may keep any or all of the trust property at any place in California or elsewhere, within the United States or abroad, or with a depository or custodian at those places. If no bank or trust company is acting as sole or a Co-Trustee hereunder, the Trustee is authorized to appoint a bank or trust company as custodian for securities and any other trust assets. Any appointment shall terminate when a bank or trust company begins to serve as sole or as a Co-Trustee under this Trust Agreement. The custodian shall keep the deposited property; collect and receive the income and principal; and hold, invest, disburse, or otherwise dispose of the property or its proceeds (specifically including selling and purchasing securities and delivering securities sold and receiving securities purchased) upon the order of the Trustee. The custodian shall not be liable to any person interested in the trust for any action taken pursuant to the order or instructions of the Trustee or his or her authorized agents.

16.21 To Use a Nominee

The Trustee may hold securities or other property of the trust estate in the name of the Trustee, in the name of a nominee, or in street name accounts with brokers, or in the name of a custodian (or its nominees) selected by the Trustee, with or without disclosure of this Trust Agreement. The Trustee shall be responsible for the acts of such custodian, broker, or nominee affecting such property. The Trustee may also acquire and retain securities in unregistered form so that ownership passes by delivery.

16.22 To Execute and Deliver Instruments

The Trustee may execute and deliver all documents and instruments (including checks withdrawing or disbursing trust funds, stock powers, deeds and other conveyances, receipts, releases, contracts, and other agreements and transfer documents) which are needed to accomplish or facilitate the exercise of the powers vested in the Trustee, and to disclose the provisions of this Trust Agreement whenever in the Trustee's discretion disclosure is appropriate.

16.23 Other Powers

- (a) The Trustee may invest in obligations of the United States Government.
- (b) The Trustee may deposit trust funds at reasonable interest in accounts, whether or not the account is insured by a government agency or collateralized. The accounts may be maintained in the name of any one of the Trustees or in the name of a nominee.
- (c) The Trustee may make repairs, alterations, and improvements, and perform the other acts affecting trust property.
- (d) The Trustee may develop land.
- (e) The Trustee may enter into leases and other arrangements regarding minerals.
- (f) The Trustee may grant or take options.
- (g) The Trustee may exercise the powers of voting rights, payment of calls and assessments, stock subscriptions and conversions, and consent to change in form of business and participation in voting trusts.
- (h) The Trustee may hold securities and deposit securities in a securities depository.

ARTICLE 17

SPECIAL DISCRETIONARY POWERS OF THE TRUSTEE

The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

17.1 To Deal with My Estate

The Trustee may loan money to and borrow money from, sell property to and buy property from, exchange property with, and otherwise deal with, on reasonable, arm's-length terms (including adequate security, fair market prices, and market rates of interest), my estate or the Trustees of other trusts created by me, for the purpose of providing liquidity to the estate or trusts or for any other purpose. The Trustee shall not be obligated to make any such loans or purchases.

17.2 To Make Payments and Distributions

The Trustee shall have the discretion to make any payments or transfers of income or principal or other sums distributable to a beneficiary in any one or more of the following ways. The Trustee shall not be required to supervise or inquire into the application of any funds so paid or applied, and the receipt of the payee shall be full acquittance and discharge of the Trustee. The Trustee may withhold from distribution all or any part of any trust property, so long as the Trustee, exercising its discretion, determines that such property may be subject to conflicting claims, tax deficiencies, or liabilities (contingent or otherwise) properly incurred in the administration of the trust.

- (a) By payment directly to the beneficiary or by deposit in any bank or similar account designated by the beneficiary even if the beneficiary is a minor or under a legal disability, without the intervention of a custodian, guardian, or conservator. Payments may be made directly to minor beneficiaries who, in the Trustee's judgment, have attained sufficient age and discretion to manage their own funds.
- (b) By payment to the legally appointed guardian or conservator of the beneficiary's person or estate or by payment for the benefit of the beneficiary to any person with whom the beneficiary resides or to any person who has custody of the beneficiary, without the intervention of a guardian or conservator.
- (c) If the beneficiary entitled to distribution is a minor, by transferring the trust property to a custodian for the beneficiary under the California Uniform Transfers to Minors Act or a similar law of any other state in which the beneficiary or custodian resides. The custodian shall be named by the Trustee, and may, but need not be, the beneficiary's parent or legal guardian or person already serving as custodian for other property. The Trustee shall provide that the trust property shall be held under the custodianship until the minor reaches a certain age selected by the Trustee, but not past age 25 or the maximum age then allowed under the applicable Uniform Transfers to Minors Act. Alternatively, the Trustee may deposit the payment for the beneficiary in a savings or similar account in the minor's name payable to the minor when he or she reaches age 18, or the Trustee may distribute the share to the Trustee of any other trust maintained for the minor, provided no other person will become entitled to any interest in the funds, and all the accumulated income and principal of the funds will be distributed to the minor when he or she reaches age 18 or, upon the minor's death, to his or her estate.
- (d) By payment to any person or organization furnishing health care, education, maintenance, or support of the beneficiary.
- (e) By making expenditures directly for the benefit of the beneficiary or for the reasonable health, education, maintenance, and support of persons whom the

beneficiary has a legal obligation to support.

- (f) By purchasing an annuity contract or other property for the benefit of a beneficiary entitled to receive a distribution.

17.3 To Sell Trust Assets

The Trustee may sell trust assets to obtain cash with which to pay my debts, income taxes, Estate taxes, expenses of administration, and other liabilities of the trust, or to satisfy pecuniary gifts provided for under this Trust Agreement. The Trustee's selection of assets to be sold for these purposes, and the tax effects of that selection, shall not be subject to question by any beneficiary. Property, assets, or funds otherwise excludable from my gross estate for federal estate tax purposes shall not be used to make any of these payments.

17.4 To Postpone Distributions

Notwithstanding other provisions of this Trust Agreement, the Trustee shall have the power to postpone the distribution of any fractional portion or part of the principal of any trust estate or of an entire trust estate of any trust created under this Trust Agreement for any person other than me if the Trustee determines that there is a compelling reason to postpone the distribution. Compelling reasons shall include, but are not limited to, a serious disability, drug addiction or dependency, a pending divorce, a potential financial difficulty, pending or threatened litigation, a serious tax disadvantage, or similar substantial cause affecting the beneficiary who otherwise would be entitled to the distribution. In that event, the distribution from or termination of any trust may be postponed, and any postponement may be continued from time to time, up to and including the entire lifetime of the beneficiary. During the postponement, the retained portion or part of the trust estate shall be administered under the same terms as applied immediately prior to the postponement.

17.5 To Determine Values and Allocate Property

The Trustee, in his or her discretion, shall determine the valuations of trust property for purposes of divisions, allocations, and distributions, and those valuations, reasonably determined, shall be final and binding on all beneficiaries and other persons having an interest in the trust. The Trustee may adjust any valuations retroactively if a different valuation is finally determined for federal estate tax purposes. The Trustee is authorized to effect the division, allocation, or distribution of trust property in divided or undivided interests, in cash or in kind or partly in both, pro rata or non-pro rata, as the Trustee shall determine, and to sell any property in connection with the division, allocation, or distribution if the Trustee deems that action necessary or appropriate. A distribution in kind may be made pro rata or non-pro rata, and a beneficiary may receive all or a portion of any asset as part of a distribution or allocation in kind. The Trustee may allocate or distribute property (or the right to receive property) which is subject to estate tax and federal income tax as income in respect of a decedent ("IRD") to any one or more of the trusts created under this Trust Agreement or the beneficiaries of any trust. The Trustee shall not be under any obligation to equalize any disproportionate allocation or distribution of items of IRD to any one or more trusts or beneficiaries. In making such divisions, allocations, and distributions, the Trustee is not required to consider the income taxes bases of such assets or the potential income tax consequences to the beneficiaries receiving the assets.

17.6 To Make Allocations between Principal and Income

The Trustee shall determine what is principal or income of the trust estate, and what items shall be charged or credited to principal or income, or both. For example, Trustee fees, attorney's fees, accounting fees, and custodian fees shall be charged against income or principal, or both, in such proportions (or all against either income or principal) as the Trustee determines. In exercising such discretion, the Trustee may use the Uniform Principal and Income Act as a guide.

The Trustee shall not be required to establish any reserves. The Trustee may, however, establish reserves for depreciation, depletion, amortization, obsolescence, or repair and improvement of capital assets; for operating capital; or to amortize loans from income. If the Trustee determines to establish a reserve, he or she may fund the reserve by appropriate charges against the income of the trust estate, in

such amounts as the Trustee determines. If any security is purchased for a premium or at a discount, such premium or discount may be amortized in a reasonable manner. In addition, the Trustee may establish such reserves as he or she considers necessary for the payment of all taxes.

17.7 To Retain or Purchase Unproductive or Under-productive Property

The Trustee may retain, purchase, or otherwise acquire property that is unproductive or under-productive of current income. Because of the substantial potential for appreciation presented by unproductive assets such as unimproved real estate and growth stocks, I want the Trustee to have broad discretion to acquire those assets. The Trustee shall have a duty to make the trust property productive, but property may be made productive by appreciation in value as well as by the production of income. The Trustee may acquire and retain assets for appreciation as part of a portfolio that produces a reasonable level of current income.

17.8 To Invest Trust Assets Together

Each of the trusts and trust shares created under this Trust Agreement shall be a separate trust for trust, accounting, tax, and all other purposes. The Trustee shall keep an account for each trust and may, but shall not be required to, segregate trust assets. Rather, the Trustee may invest together the property of the separate trusts, allotting to each separate trust its proportionate undivided interest in the collective fund. The undivided interest always shall be equal to that trust's proportionate contribution to the mingled assets.

17.9 To Consolidate Trusts

If a trust is to be established or exists under this Trust Agreement for a beneficiary for whom another trust has been established under this Trust Agreement, the Trustee may allocate the property for the one trust to the other trust. Similarly, if I have established a trust for a beneficiary for whom a trust is to be established or exists under this Trust Agreement, and the dispositive provisions of that trust are substantially the same as the dispositive provisions of the trust to be established or existing under this Trust Agreement, the Trustee may transfer the property for the trust to be established or existing under this Trust Agreement to the Trustee of the other trust, to be held on the terms of that other trust. Further, where the dispositive provisions of each trust or trust share are substantially similar, the Trustee shall have the discretion to combine any trusts or trust shares into one trust because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for such a combination. A combination must not materially impair the interests of any beneficiaries. Trusts may be combined or consolidated whether created inter vivos or by will, by the same or different trust instruments, whether the Trustee is the same, and regardless of where the trusts were created or administered. When combining trusts, however, the Trustee shall only combine Exempt Trusts with other Exempt Trusts.

17.10 To Divide Trusts

With respect to all trusts established under this Trust Agreement, the Trustee shall have the discretionary power, exercisable without need of court approval, to divide the trust into two or more separate trusts for any purpose, including, without limitation, any of the following purposes.

- (a) To create one or more separate trusts that qualify as a qualified S corporation shareholder or as any other type of special trust provided for under the I.R.C.
- (b) To create one or more separate trusts with assets completely exempt from any application of any generation-skipping transfer tax. If the Trustee exercises the election provided by I.R.C. §2652(a)(3) as to any trust, the Trustee is authorized in his or her discretion to hold the property of the trust in two separate fractional share trusts, one in an amount equal to my GST exemption allocated to the trust and one in an amount equal to the balance of the property of the trust.
- (c) To create one or more separate trusts to accomplish other proper tax planning purposes.

- (d) To create a separate trust as to any share or portion of a trust disclaimed by a beneficiary, and to sever the disclaimed portion to be administered as a separate trust.
- (e) To create a separate trust for each current income beneficiary of a trust or trust share, and to divide any trust along family lines to be administered as separate trusts.
- (f) To create one or more separate trusts because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for a division.

The allocation of property between or among separate trusts created from a single trust or trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. The fair market values of the trust property at the date or dates of allocation shall be used in making the allocations. All trusts so established shall be designated and named by the Trustee and the property allocated to the divided trusts shall be held and administered under the same terms and provisions as would have applied to the undivided trust or trust share. With regard to planning for the S corporation election, the GST tax inclusion ratio, or other tax purposes, this power to divide trusts shall be exercised in a manner that complies with the I.R.C. and applicable Treasury regulations.

17.11 To Terminate Trusts

I recognize that circumstances may change so that continuation of a trust provided for in this Trust Agreement may not be in the best interests of its current beneficiary, taking into account all relevant factors, including the costs of administration and tax consequences. Accordingly, after my death, the Trustee may for any reason terminate any trust created under this Trust Agreement and distribute any remaining trust estate, including principal and undistributed income, to any one or more of the current beneficiaries or the presumptive remainder beneficiaries of the trust in those proportions as the Trustee determines, in a manner that conforms as nearly as possible to my intention. In exercising his or her discretion to terminate a trust, the Trustee may, but shall have no obligation to, consider the interests of any person other than the current income beneficiary, including any remainder beneficiaries.

17.12 To Permit Use of Personal Residence

The Trustee is authorized to permit me and, following my death, the current beneficiary of a trust to occupy rent-free any residence held in the trust and to use the furnishings in the residence. The Trustee shall pay from the trust all taxes, insurance premiums, assessments, costs of repairs, and maintenance for these residences. The Trustee may sell the residence and, in his or her discretion, acquire other residences from trust property. The Trustee may also permit the guardian of a minor current beneficiary of the trust, along with the guardian's family, to reside rent free with the minor beneficiary in the residence so long as the minor beneficiary is entitled to reside there.

17.13 To Hold Personal Articles in Trust

If the Trustee of any trust receives furniture or furnishings, household items, clothing and other personal effects, or vehicles or accessories to vehicles, the Trustee may distribute that property to the current beneficiary or beneficiaries of the trust, at the times and in the manner the Trustee, in his or her discretion, determines to be proper. In addition, the Trustee may allow the current beneficiaries to use this property. Neither the Trustee nor any beneficiary who uses this property shall be liable to other beneficiaries for permitting the use of this property or for the loss or damage of this property.

17.14 To Make Distributions from Qualified S Trusts

The Trustee is authorized to distribute to the beneficiary of any trust that has made a qualified S Corporation election under I.R.C. §1361 et seq. from income or principal, or both, funds sufficient to pay the federal and state income taxes imposed on the beneficiaries for the income or gain passing to the beneficiary from the S Corporation. No such distribution is required.

ARTICLE 18 DISINHERITANCE AND NO CONTEST

18.1 Disinheritance Clause

I have intentionally omitted from this Trust Agreement any provision for any of my heirs, issue, relatives, or other persons who are not named, mentioned, designated, or described in this Trust Agreement. I have intentionally omitted any person who would be a pre-termitted heir under applicable law. Except as specifically provided in this Trust Agreement, I have intentionally omitted any provision for any of my children now alive or hereafter born or adopted, or for the issue of any of my children who may predecease me. After-born children shall have no rights in my trust estate other than those expressly given my children in my Will or this Trust Agreement. I also intentionally do not provide for any stepchildren or foster children that I now have or may later acquire. I generally and expressly disinherit each and every person whomsoever claiming to be and who may be determined to be my heirs at law, except as they are otherwise expressly provided for in this Trust Agreement.

18.2 No Contest Clause

I want the greatest deterrence against interference with my estate plan that the law allows. If any heir, issue, relative, legatee, devisee, beneficiary, or other interested person; or any person who is provided for under this Trust Agreement, my Will, any beneficiary designation, or any Will substitute; or any person who would be entitled to any of my property under the laws of succession or otherwise, alone or in conjunction with any other person or persons, directly or indirectly (1) institutes any legal proceeding that attacks or contests this Trust Agreement or my Will (or any amendment or codicil to this Trust Agreement or my Will), or seeks to impair, nullify, void, or invalidate such documents or any of their provisions; (2) asserts or pursues in any manner any claim, including any creditor's claim, against my estate or property other than as permitted in this Trust Agreement and my Will; (3) attacks or contests or seeks to change any beneficiary designation under an insurance policy, employee benefit plan, deferred compensation plan, retirement plan, annuity, or other Will substitute of mine; or (4) conspires with or voluntarily assists any person or persons attempting to do any of these things, I direct that that person (the "Contestant") and all persons conspiring with or assisting him or her shall take none of my property and nothing from my estate. All these persons are expressly disinherited. Any and all gifts or property that otherwise would have gone to these persons shall be forfeited and shall pass as if these persons had predeceased me without leaving living issue. The foregoing provisions shall apply to any persons who claim that I entered into an oral agreement providing for the disposition or transfer of property to those persons or others in any way inconsistent with the provisions of this Trust Agreement or my Will. The foregoing provisions shall also apply to any action or proceeding brought by any person, other than me (or my authorized agents) during my lifetime, to change the ownership title of my property already characterized in a document signed by me (excluding any action by my Executor or Trustee to confirm ownership of my property in the trust or my estate) and any challenge to the validity of an instrument, contract, agreement, beneficiary designation, or other document providing for or directing the disposition of my property.

The foregoing provisions shall not be violated by (1) the disclaimer of any right or interest in trust property; (2) the assertion or submission of any creditors' claims, supported by consideration, by any person to my Executor or the Trustee that are believed by such person, in good faith, to be owed by me to that person or the prosecution of an action based upon any such creditor's claims; (3) the participation in a mediation or settlement discussions or the filing of a petition for settlement or compromise affecting the terms of this Trust Agreement, my Will, or other documents governing the disposition of my estate or property, (4) the filing of any petition or the taking of other action by the Trustee or my Executor seeking judicial construction or interpretation of this Trust Agreement or my Will, or of any amendment or codicil to this Trust Agreement or my Will, or (5) the commencement of any proceeding for declaratory relief to determine whether any action by any person would constitute a contest under these provisions.

18.3 Expenses of Contest

My Executor and the Trustee serving under this Trust Agreement are expressly authorized to defend against any and all of the actions described in Section 18.2, including any contest or attack of any nature upon this Trust Agreement, my Will, or any of their provisions. All expenses incurred in the defense of any of the actions or matters described in Section 18.2 shall be paid, as the Trustee determines, from either my probate estate or the trust estate as expenses of administration. If, however, a Contestant is or becomes entitled to receive any property or property interests included in my probate estate or the trust estate, whether under this Trust Agreement, my Will, or any other instrument, then all expenses incurred by the Trustee or my Executor in the defense of the actions undertaken by the Contestant shall be charged against and paid from the property or property interests that the Contestant otherwise would be entitled to receive, whether or not the Trustee or my Executor was successful in the defense of the Contestant's actions.

ARTICLE 19 GENERAL TRUST PROVISIONS

The following provisions shall apply in all matters of construction and interpretation of this Trust Agreement.

19.1 Rules of Construction

Unless the specific provision or term being construed or the context of the provision or term otherwise requires, and except as otherwise expressly provided in this Trust Agreement, the general provisions and rules of construction and interpretation set forth in applicable law and in this article and the definitions set forth in Article 20 (Definitions) shall govern the construction and interpretation of this Trust Agreement. Where the provisions and rules of construction or definitions set forth in applicable law and in this article and Article 20 conflict, the provisions and rules and definitions set forth in this article and Article 20 shall govern.

19.2 Governing Law

This Trust Agreement has been executed in California, and its validity and construction, including the determination of all rights of the beneficiaries, shall be governed by the laws of California regardless of where the trusts are administered. Further, except as otherwise provided in this section, the trusts established under this Trust Agreement shall be administered in California regardless of where the Trustee or beneficiaries reside, and all matters and questions related to their administration shall be governed by the laws of California. Notwithstanding the foregoing, with the consent of a majority in percentage interest of all the beneficiaries of the trust then entitled to trust income (whether discretionary or not), the Trustee may transfer the situs of a trust established under this Trust Agreement to another state of the United States as he or she determines to be in the best interests of the trust beneficiaries. After any change of situs for a trust, the laws of the state of the new situs shall govern the administration of the transferred trust, but the validity of this Trust Agreement and its construction shall continue to be governed by the laws of California.

19.3 Successors in Interest

This Trust Agreement shall be binding upon my heirs, executors, successors, and assigns, the Trustee and the successor Trustee, and all the beneficiaries and interested persons under this Trust Agreement.

19.4 Court Supervision

Under California law the California courts have jurisdiction to consider petitions concerning each trust created by this Trust Agreement.

19.5 References to Statutes

Whenever a reference is made to any portion of the Internal Revenue Code or to any other law, the statutory reference shall be construed to refer to the statutory section mentioned, related successor or substitute sections, and corresponding provisions of any subsequent law, including all amendments and additions.

19.6 Gender, Tense, and Numbers

Unless the context clearly requires another construction, the masculine, feminine, and neuter genders

shall each include the others as appropriate; the present tense shall include the past and future tenses, and the future tense shall include the present tense; and the singular number shall include the plural, and the plural shall include the singular.

19.7 Effect of Headings

. Article, section, and paragraph numbers and headings, as well as titles, used in this Trust Agreement are used for convenience of reference only and shall not be considered in the construction or interpretation of this Trust Agreement. They are not intended to have any legal effect or to affect the scope, meaning, or intent of the provisions of this Trust Agreement.

19.8 Severability

. If any part, clause, or provision of this Trust Agreement, or the application of any part, clause, or provision of this Trust Agreement to any person or circumstances, is held to be void, invalid, unenforceable, or inoperative, this invalidity shall not affect any other parts, clauses, or provisions or applications of this Trust Agreement that can be given effect without the invalid provision or application. The remaining provisions of this Trust Agreement shall be effective and fully operative as though the part, clause, or provision had not been contained in this Trust Agreement. To this end, the provisions of this Trust Agreement are severable.

ARTICLE 20 DEFINITIONS

The following definitions shall apply in all matters of construction and interpretation of this Trust Agreement.

20.1 Administer

. The term "administer" means to hold, manage, administer, allocate, and distribute.

20.2 Agent

. The term "agent" means (1) an individual's attorney-in-fact acting under a power of attorney, to the extent the power of attorney specifically authorizes the attorney-in-fact to take the proposed actions, or (2) an individual's court-appointed conservator or guardian, to the extent the conservator or guardian has obtained, from the court that appointed the agent as conservator or guardian, approval of its proposed actions at a hearing for which the Trustee received timely notice.

20.3 Beneficiary

. The terms "beneficiary" or "beneficiaries" mean a person to whom a donative transfer of property or a distribution from a trust is or could be made or that person's successor in interest, and shall include an heir, devisee, legatee, a person with any interest in a trust, and any person entitled to enforce a charitable trust.

20.4 Charitable Organization

. The term "charitable organization" means an organization or trust described in I.R.C. §170(c), §2055(a), and §2522(a) to which contributions or bequests are deductible for both federal income and estate tax purposes.

20.5 Child, Parent, and Issue

. The term "child" means any individual entitled to take as a child by intestate succession from the parent whose relationship is involved. References to "child" or "children" mean descendants in the first degree of the parent designated. A child of mine shall include a child born or adopted after the execution of my Will and this Trust Agreement. The term "parent" means any individual entitled to take as a parent by intestate succession from the child whose relation is involved. The terms "issue" or "descendants" of a person means all the person's lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of parent and child. The term "grandchild" includes only a child of a child of the person referred to.

(a) Limitations as to Adopted Children

. The terms "child," "children," "issue," and "descendant" shall include "adopted children." The term "adopted children" means all persons adopted by someone other than me only if the person was adopted

before reaching the age of eighteen (18), or lived in the home of the adopting parent before reaching the age of eighteen (18) if not actually adopted before that time. Anyone that I adopt shall be included as a child of mine regardless of the adopted person's age at the time of the adoption. An adopted child and the adopted child's issue shall be considered issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents.

(b) Limitations as to Stepchildren and Foster Children

The terms "child," "children," "issue," and "descendants" shall not include a foster child or a stepchild, even if a parent-child relationship existed between the foster parent and the foster child or between the stepparent and the stepchild.

20.6 Distribute

The term "distribute" means to pay directly to, or apply for the benefit of, the designated beneficiary, donee, or transferee or that person's agent.

20.7 Education

The term "education" shall include, but not be limited to, elementary, primary, secondary, college, graduate, postgraduate, and professional study or schooling, and vocational training, as well as instruction in drama, music, art, science, computers, and other subjects taught before or after a regular school day. Payments for education shall include tuition, books, supplies, tutors, and the beneficiary's reasonable related living and travel expenses, including clothing, room and board, and a reasonable living allowance.

20.8 Estate Taxes

The term "Estate taxes" means all estate, inheritance, transfer, succession, legacy, death, and other similar taxes, including any interest or penalties on these taxes, that may be imposed by reason of my death. "Estate taxes" excludes any income tax, generation-skipping transfer tax, excise tax, and other similar taxes.

20.9 Executor

The term "Executor" means an executor, administrator, administrator with the will annexed, special administrator, personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status, including all successors or persons holding the office temporarily. If, however, there is no Executor serving within the United States, the term means the Trustee of this trust for purposes of the property held in the trust estate, as provided in I.R.C. §2203. The terms "Executor" and "Executors" each include both the singular and the plural.

20.10 Expenses of Estate Administration

The term "expenses of estate administration" means those expenses incurred following my death by my estate or by the Trustee of the trust that are deductible (whether or not so deducted) for estate tax purposes pursuant to I.R.C. §2053. Such expenses shall include attorney's, appraiser's, and accountant's fees and all expenses incurred in determining the amount of any Estate tax.

20.11 Federal Estate Tax Value

The term "federal estate tax value" means the value of property included in my gross estate, valued either as of my date of death or the alternate valuation date, as finally determined for federal estate tax purposes. The federal estate tax value of any property acquired after my death shall be deemed to be its adjusted basis at the time of its acquisition as finally determined for federal income tax purposes. References to "adjusted gross estate" shall mean my gross estate as finally determined for federal estate tax purposes, but excluding property includible in my gross estate pursuant to I.R.C. §2044 and subtracting allowable deductions under I.R.C. §2053 and §2054.

20.12 Generation-Skipping Transfer Tax

The terms "generation-skipping transfer tax" or "GST tax" refer to the federal generation-skipping transfer tax imposed by Chapter 13 of the I.R.C. The term "GST exemption" refers to the exemption provided in I.R.C. §2631(a). "Unused GST exemption" means the amount of a person's GST exemption that is then remaining available for allocation to property or a trust as to which the person is the transferor. A "GST exempt trust" is a trust that has an inclusion ratio of zero for purposes of the GST tax.

A "GST nonexempt trust" is a trust that has an inclusion ratio of greater than zero for purposes of the GST tax. The terms "GST reverse QTIP election" or "reverse QTIP election" refer to the election provided for qualified terminable interest property under I.R.C. §2652(a)(3) to treat all of a QTIP trust as if, for purposes of the GST tax, the QTIP election had not been made.

20.13 Gifts

The term "gifts" mean devises, legacies, bequests, and all other types of donative transfers, inter vivos and testamentary.

20.14 Guardian

The term "guardian" means the court-appointed guardian of the person or estate of a minor person. The term "natural guardian" means the child's parents.

20.15 Health

The term "health" refers to all matters related to the health of the designated person, including medical, dental, hospital, and nursing expenses and expenses of home care and therapy incurred for the person's benefit.

20.16 Heirs at Law

The terms "heirs at law" or "heirs" mean the persons determined according to the California laws of intestate succession then in effect relating to separate property not acquired from a previously deceased spouse.

20.17 Incapacity

The term "incapacity" when used with respect to any person appointed to serve or serving as Trustee shall have the following meaning. A person shall be considered to be incapacitated, and unable to serve or continue to serve as a Trustee, if the person is under a legal disability or by reason of illness or mental or physical disability is or would be unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trust or trusts for which he or she serves as Trustee. The determination of a person's inability at any time shall be made by either (1) the person's primary physician, or (2) an order of a court appointing a conservator for that person.

20.18 Interested Person

The term "interested person" includes (1) an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against the trust estate; (2) any person having priority for appointment as a fiduciary under this Trust Agreement; and (3) a fiduciary representing an interested person.

20.19 Internal Revenue Code

The term "Internal Revenue Code" or "I.R.C." means the United States Internal Revenue Code of 1986, as amended from time to time, and corresponding provisions of any subsequent federal internal revenue law.

20.20 Investment Counsel

The term "investment counsel" means reputable, professional, independent, and disinterested investment counsel that is (1) currently managing at least five other accounts of equal or larger size, (2) compensated for services on a fee basis, but not on any percentage of the price of assets purchased or sold, and (3) not personally or financially interested in the sale or purchase of assets to or by the trust. The term "discretionary investment counsel" means investment counsel that has been given the authority to manage the investment of all or any portion of the trust estate with full discretion to act without seeking the approval of the Trustee as to individual transactions.

20.21 May and Shall

Wherever used in this Trust Agreement, the term "may" is discretionary and means the Executor or Trustee is authorized, at his or her option, to take or not take an action as he or she determines, in his or her sole and absolute discretion. The term "shall" is mandatory and means that the Executor or Trustee must take the designated action.

20.22 Property

The term "property" means anything that may be the subject of ownership and includes real and

personal property, tangible and intangible property, and any interest in such property.

- (a) The term "real property" (including any residence) includes the land (including all easements appurtenant to the land), all buildings and improvements on the land, all policies of insurance on the land and buildings and improvements on the land, and all oil, gas, mineral, and similar interests. A gift of real property, including any gift of a residence, shall be made subject to any and all liens, mortgages, deeds of trust, or other encumbrances on the property or secured by the property, whether or not recorded in the official county records, unless otherwise provided in this Trust Agreement.
- (b) The term "tangible personal property" includes clothing, jewelry, and other personal effects; household furniture, furnishings, equipment, and appliances (including rugs, linen, and other household decorations); china, silverware, glassware, crystal, and other household items of use and decoration; books, pictures, works of art (including paintings, sculptures, and works on paper), antiques, stamp and coin collections, wine, and other collectibles; automobiles, boats, other vehicles, and accessories to vehicles; and other items of domestic, household, or personal use. "Tangible personal property" shall not include ordinary currency, cash, or bullion or property primarily held for investment purposes, such as investment funds, or any property held for use in a trade or business.
- (c) The term "intangible property" includes rights in literary or musical properties, rights in works of art, contract rights, copyrights, publishing rights, and rights to a deceased personality's name, voice, signature, photograph, or likeness.

20.23 Residence

The term "residence" means that dwelling or dwellings, as the case may be, in which I normally lived prior to my death. The term "residence" includes the fixtures, exterior planting, built-in appliances, and other items that in the ordinary course of the sale and purchase of the dwellings would remain in or be regarded as part of the dwellings.

20.24 Residue

The term "residue" means the property remaining after the payment of all expenses of administration and debts and the distribution of all specific gifts and tangible personal property, and before the payment of Estate taxes. Estate taxes shall be handled separately, and shall be paid and charged as specifically provided in this Trust Agreement.

20.25 Share

The term "share" means a beneficiary's proportional interest as determined by the provisions of this Trust Agreement in the principal and accumulated income of the trusts established under this Trust Agreement.

20.26 Survivorship

The term "survive" or "survivorship" means to live for at least thirty (30) days past the designated event. No beneficiary shall be considered to have survived my death, the death of a prior beneficiary, or the event terminating any trust (and be entitled to any trust funds) unless the beneficiary survives for at least thirty (30) days after the event. Any beneficiary required to survive any other person, who fails to survive the other person by thirty (30) days, shall be deemed to have predeceased that person. If it cannot be established whether a beneficiary has survived by thirty (30) days, the beneficiary shall be deemed to have failed to survive for the required time. Except as otherwise expressly provided, any gift or bequest to any person made contingent upon the survivorship of that person shall lapse and shall not be made if the conditions of survivorship stated in this section or elsewhere in this Trust Agreement are not met. The lapsed gifts or bequests shall pass instead as part of the residue of the trust.

20.27 Trust Estate

The term "trust estate" means property transferred to the Trustee, in trust, to be administered under the terms of this Trust Agreement, including the property transferred to the Trustee following my death, and all the income from and appreciation in the property transferred to the Trustee. As a matter of convenience, all property at any time subject to this Trust Agreement is collectively referred to as the "trust estate."

20.28 Trustee


The terms "Trustee" or "Trustees" mean the persons who are serving from time to time as the Trustees or Co-Trustees under this Trust Agreement, including each initial, additional, or successor Trustee, whether or not appointed or confirmed by any court. Unless otherwise expressly provided, all references in this Trust Agreement to the "Trustees" shall include all Trustees. The terms "Trustee" and "Trustees" each include both the singular and the plural. The term "corporate Trustee" means a corporation, a bank, a trust company, or other entity that is authorized by law to serve as a professional Trustee. The term "Independent Trustee" means a Trustee who is not any of the following: (1) a beneficiary of the trust for which he or she is serving as Trustee; (2) a person who has transferred property to such trust or joined in any such transfer; or (3) a person who is a related or subordinate party as to any such beneficiary or grantor. In addition, if a General Power of Appointment held by a beneficiary of a trust may only be exercised with the consent of an Independent Trustee, the term "Independent Trustee" also means a person who does not have a substantial interest in the property subject to the power which interest is adverse to the exercise of the power in favor of the beneficiary, his or her estate, his or her creditors, or the creditors of his or her estate.

ARTICLE 21

RELIANCE ON CERTIFIED COPIES

To the same effect as if it were the original, anyone may rely upon a copy of this Trust Agreement, or any part of this Trust Agreement, certified by a Grantor or Trustee or their legal counsel to be a true and correct copy of all or any part of this Trust Agreement, or of any document required to be filed with or maintained at the office of the Trustee. Anyone may rely upon any statements of fact concerning this trust certified by anyone who appears from an original document, or a certified copy, to be serving as a Trustee under this Trust Agreement.

I have executed this Trust Agreement on September 30th, 2010 in West Hollywood, California.


PAUL A. MORABITO
 Grantor and Trustee

WITNESS:

I attest that Paul Morabito signed this document in my presence, and that he appears to be of sound mind, total competence, and that he has affirmed to me that the contents of this document fully and absolutely represent his intentions and desires, and further that he attests that he is under no outside or third party influence in having written this document, determined its contents, or now signing it before me and _____, the Notary.

name: _____

NOTARY:

State of California

County of Los Angeles }

On September 30th, 2010, before me, _____, personally appeared Paul Morabito, who

proved to me on the basis of satisfactory evidence to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

See Attached

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELESOn September 30, 2010 before me, M. NASON Notary Public

Here Insert Name and Title of the Officer

personally appeared PAUL MORABITO

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: FIFTH AMENDMENT AND RESTATEMENT OF THE TRUSTDocument Date: N/A Number of Pages: 3Signer(s) Other Than Named Above: N/A**Capacity(ies) Claimed by Signer(s)**Signer's Name: PAUL MORABITO☒ Individual☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____Signer Is Representing: SELFRIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Exhibit 5

1 **DISC**

2 Kent R. Robison, Esq. (SBN 1167)
3 Barry L. Breslow, Esq. (SBN 3023)
4 Frank C. Gilmore, Esq. (SBN 10052)
5 ROBISON, BELAUSTEGUI, SHARP & LOW
6 71 Washington Street
7 Reno, Nevada 89503
8 Tel: (775) 329-3151 / Fax: (775) 329-7941

9 Dennis C. Vacco, Esq.
10 Lippes Mathias Wexler Freidman LLP
11 665 Main Street, Suite 300
12 Buffalo, New York 14203
13 Tel: (716) 853-5100 / Fax: (716) 853-5199

14 Attorneys for Plaintiffs/Counter-Defendants
15 Paul A. Morabito and Consolidated Nevada Corporation

16
17 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

18
19 IN AND FOR THE COUNTY OF WASHOE

20 CONSOLIDATED NEVADA CORPORATION,
21 a Nevada corporation, and PAUL A.
22 MORABITO, an individual,

CASE NO. CV07-02764

DEPT. NO. B6

23 Plaintiffs,

24 vs.

**PAUL A. MORABITO'S SUPPLEMENT
TO NRCP 16.1 DISCLOSURES**

25 JH, INC., a Nevada corporation, and JERRY
26 HERBST, an individual,

27 Defendants.

28 _____
JH, INC., et al.,

Counter-Claimants,

vs.

29 CONSOLIDATED NEVADA CORPORATION, a
30 Nevada corporation, et al.,

Counter-Defendants.

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AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 1st day of March, 2011.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, NV 89503

and

LIPPES MATHIAS WEXLER FREIDMAN LLP
665 Main Street
Suite 300
Buffalo, NY 14203

By: 

KENT R. ROBISON, ESQ.
BARRY L. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
DENNIS C. VACCO, ESQ.
Attorneys for Plaintiffs/
Counter-Defendants Consolidated
Nevada Corporation and Paul A. Morabito

J:\WPData\BLR\14283\001 Morabito and Consolidated NV Corp v JH, Inc. and HerbetP-Supplement to NRCP 18.1 Disclosures 03.01.11 wpd

ROBISON,
BELAUSTEGUI,
SHARP & LOW
A PROFESSIONAL
CORPORATION
ATTORNEYS AT LAW
71 WASHINGTON ST.
RENO, NEVADA 89503
TELEPHONE

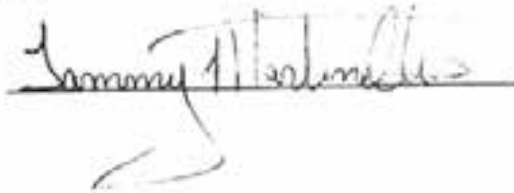
1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date, I caused to be *hand-*
4 *delivered* a true and correct copy of the attached PAUL A. MORABITO'S

5
6 SUPPLEMENT TO NRCP 16.1 DISCLOSURES addressed to:

7 John P. Desmond, Esq.
8 Brian R. Irvine, Esq.
9 Justin J. Bustos, Esq.
10 Jones Vargas
11 100 West Liberty Street, 12th Floor
12 Reno, Nevada 89504-0281

13 DATED this 1st day of March, 2011.

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