

**REVOCABLE TRUST AGREEMENT**  
**CREATING THE**  
**SCOT MCKAY REVOCABLE TRUST**

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**REVOCABLE TRUST AGREEMENT  
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SCOT MCKAY REVOCABLE TRUST**

Scot E. S. McKay, who now resides in Carmel, California, and who shall be called the "Settlor" throughout this agreement, hereby creates a trust.

**ARTICLE 1 -- NAME OF TRUST**

The name of this trust shall be the Scot McKay Revocable Trust.

**ARTICLE 2 -- FAMILY STATUS OF THE SETTLOR**

The Settlor is married to Heidi G. McKay ("Heidi"). The Settlor has seven children whose names are Ashley Sidway McKay, Elyse Sidway McKay Stirton, Bridget Sidway McKay, Kyle Sidway McKay, Paige Sidway McKay, Matthew Sidway McKay, and Ian Sidway McKay. The Settlor has no children who are deceased and survived by descendants.

**ARTICLE 3 -- TRUST PROPERTY**

The Settlor is contributing various properties to this trust at the time of its creation. Additional property may be added to the trust by any appropriate legal means, and that property shall also be covered by these provisions, provided that the Trustee shall have the power to reject any property that he does not deem suitable. The Settlor may designate the trust to be beneficiary of any insurance policies and of the Settlor's rights in any pension or profit-sharing plans and other employee death benefits.

**ARTICLE 4 -- AMENDMENT AND REVOCATION**

The Settlor, acting alone or through his agent under that Uniform Statutory Form Power of Attorney executed by the Settlor on June 16, 2013, may revoke this trust and shall have the right, by a document delivered to the Trustee, to alter or amend this trust. No amendment pursuant to this paragraph shall substantially change the duties, powers, and responsibilities of the Trustee without his consent. If part or all of this agreement is revoked, the Trustee shall promptly deliver all assets in the revoked portion of the trust to the Settlor.

## **ARTICLE 5 -- ADMINISTRATION DURING SETTLOR'S LIFETIME**

**5.1 Distributions to Settlor.** During the Settlor's lifetime, the Trustee shall pay to or apply for the benefit of the Settlor as much of the net income or principal, or both, of the trust as the Trustee deems necessary for any reasonable purpose. The Trustee shall additionally pay to or apply for the benefit of the Settlor as much of the net income or principal, or both, of the trust as the Settlor requests in writing.

**5.2 Distributions at Direction of Settlor.** The Trustee shall pay to or apply for the benefit of any person or entity as much of the net income or principal, or both, of the trust as the Settlor directs in writing.

**5.3 Distributions if Settlor is Incapacitated.** At any time when the Settlor is incapacitated, the Trustee may make distributions of income or principal, or both, (i) to provide for the health, education, support, or maintenance of any person with respect to whom the Settlor has a legal obligation to support or has had a pattern of providing support without legal obligation; (ii) to carry out any plan or pattern of gifts determined by the Trustee to have been established by the Settlor, including any plan or pattern of making additions to any trust or trusts; (iii) to make gifts, either outright or in trust, to or for the benefit of one or more members of the class consisting of Heidi and the Settlor's descendants in amounts not exceeding in any year the maximum allowable exclusion against taxable gifts under section 2503(b) of the Code, as that section may be amended from time to time (the "Annual Exclusion"), regardless of whether the Settlor had established a plan or pattern of making such gifts; and (iv) to make qualified transfers as defined in section 2503(e) of the Code, as that section may be amended from time to time, to or for the benefit of one or more members of the class consisting of Heidi and the Settlor's descendants. In the case of any gift of an asset that does not have a readily determinable net fair market value, the Trustee's determination at the time of the gift of that asset's net fair market value shall be used to determine whether the amount of that gift exceeds the Annual Exclusion. Despite anything in the preceding provisions of this paragraph to the contrary, no person who is serving as a Trustee shall participate in any decision to make any distribution of income or principal to or for the benefit of himself or herself pursuant to this paragraph.

## **ARTICLE 6 -- ADMINISTRATION ON SETTLOR'S DEATH**

On the death of the Settlor, any property then held or subsequently acquired by the Trustee by reason of the Settlor's death shall be held and administered as follows:

**6.1 Distribution of Tangible Personal Property.** All Tangible Personal Property shall be distributed to Heidi, free of trust, if she survives the Settlor or, if Heidi does not survive the Settlor in equal shares to those of the Settlor's children who are then living, the property to be divided in any manner the Trustee deems appropriate in his discretion. If any of the properties described above are sold, the proceeds from the sale shall be added to the remaining trust assets.

For purposes of this agreement, Tangible Personal Property means jewelry, silver, books, pictures, paintings, sculptures, objets d'art, automobiles, household furnishings and furniture, clothes, and other personal effects held by the Trustee, together with all unexpired insurance policies on them.

**6.2 Distribution to Heidi McKay Marital Trust.** Except as provided in paragraph 6.3 (whose caption reads "Distribution to Scot McKay 2012 Irrevocable Trust"), if Heidi survives the Settlor, all trust assets not disposed of pursuant to paragraph 6.1 (whose caption reads "Distribution of Tangible Personal Property") (the "Remaining Trust Assets") shall be held and administered in the Heidi McKay Marital Trust. The Heidi McKay Marital Trust shall be held and administered on the same terms and conditions as those of the Scot McKay 2012 Irrevocable Trust established by the trust agreement executed on August 24, 2012 by Scot E. S. McKay as Settlor, William A. Santora as Trustee, Adam W. Tight as Distribution Adviser, Scot E. S. McKay as Investment Direction Adviser, and Scott M. Levin as Trust Protector (and for this purpose the Settlor incorporates by reference into this agreement the provisions of that agreement as they exist on the date this agreement is signed), provided that the Heidi McKay Marital Trust shall be administered as if Article 6 and paragraph 13.2 of the Irrevocable Trust Agreement creating the Scot McKay 2012 Irrevocable Trust read as follows:

#### **"ARTICLE 6 -- HEIDI MCKAY MARITAL TRUST**

"The Trustee shall hold and administer the Heidi McKay Marital Trust as follows:

**"6.1 Mandatory Distribution of Income.** The Trustee shall pay to or apply for the benefit of Heidi, at least annually during her lifetime, the entire net income of the Heidi McKay Marital Trust.

**"6.2 Distributions of Principal at the Direction of the Distribution Adviser.** The Trustee shall pay to or apply for the benefit of Heidi those amounts of the principal of the Heidi McKay Marital Trust that the Distribution Adviser, in the Distribution Adviser's discretion, deems appropriate under the circumstances.

**"6.3 Distribution on Heidi's Death.** Upon Heidi's death, the remaining assets of the Heidi McKay Marital Trust shall be divided into equal shares as follows: One share shall be set apart for each Settlor's child who is then living. One share shall be set apart for each Settlor's child who is then deceased and who has a Surviving Spouse who is then living. One share shall be set apart each Settlor's child who is then deceased, who does not have a Surviving Spouse who is then living, and who is then survived by at least one member of the class consisting of that deceased child's descendants and the Surviving Spouses of that deceased child's descendants. Each share set apart for a living Settlor's child shall be held and administered as provided in Article 7 in a Family Branch Trust whose Senior Beneficiary shall be that Settlor's child. Each share set apart for a deceased Settlor's child with a Surviving Spouse shall be held and administered as

provided in Article 7 in a Family Branch Trust whose Senior Beneficiary shall be that Surviving Spouse. Each share set apart for a deceased Settlor's child with no Surviving Spouse shall be further divided into separate shares for the descendants of that deceased Settlor's child, by right of representation, provided that if any descendant of the deceased Settlor's child is then deceased and is survived by a Surviving Spouse, that Surviving Spouse (rather than the descendants of that deceased Settlor's descendant) shall be allocated the share that the deceased Settlor's descendant would have been allocated had he or she then been living. Each share set apart pursuant to the preceding sentence for a living Settlor's descendant or for the Surviving Spouse of a deceased Settlor's descendant shall be held and administered as provided in Article 7 in a Family Branch Trust whose Senior Beneficiary shall be that Settlor's descendant or that Surviving Spouse.

**“6.4 No Exercise of Powers Inconsistent with Allowance of Marital Deduction.** The Settlor intends by the provisions of this article to create a qualified terminable interest trust that, if an appropriate election is made, will entitle the Settlor's estate to a marital deduction pursuant to section 2056(b)(7) of the Code. The Settlor directs that Heidi shall be entitled to all of the income from the Heidi McKay Marital Trust (that income to be paid annually or more often). No person shall have the power (exercisable during Heidi's lifetime) to appoint any part of the Heidi McKay Marital Trust to any person other than Heidi. The Settlor directs that each of the other provisions of this agreement shall be governed by and interpreted in accordance with this paragraph.”

**“13.2 Perpetuities Savings Clause.** Unless terminated sooner in accordance with other provisions of this agreement, each trust created under this agreement or governed by the terms of this agreement shall be perpetual to the fullest extent permitted by law of the applicable jurisdiction. Nevertheless, if any trust created under this agreement or governed by its terms is deemed to be subject to the law of a jurisdiction that has a rule against perpetuities or similar rule that limits the period during which property can be held in trust, then that trust (other than a trust created by the exercise of a power of appointment conferred under this agreement where that exercise commences a new rule against perpetuities period under the law of that jurisdiction) shall terminate in all events upon the expiration of the longest period that property may be held in trust under this agreement under the law of that jurisdiction (including any applicable period in gross, such as 21 years, 90 years, or 110 years); provided, however, that if that jurisdiction has a rule against perpetuities or similar rule that applies only to certain types of property, such as real property, the provisions of this section shall apply only to such property. If under the law of that jurisdiction the longest period that property may be held in trust may be determined (or alternatively determined) with reference to the death of the last survivor of a group of individuals in being upon the date of this agreement, those individuals shall consist of the Heidi and those of the Settlor's descendants who are living on the date of the Settlor's death. All principal and undistributed income of any trust terminated under this provision shall be distributed to the Settlor's descendant who



is the Senior Beneficiary of the terminated trust or, if there is no such Settlor's descendant, by right of representation to those of the Settlor's descendants who are then beneficiaries of the terminated trust or, if there is no Settlor's descendant who is then living, in the manner specified in Article 8 (whose caption reads "Ultimate Gift Over"). If any such trust is subject to the law of a jurisdiction that permits the Settlor to elect not to have the rule against perpetuities or law of similar impact apply, then the Settlor hereby makes and authorizes the Trustee to implement that election. If any such trust is deemed to be subject to the law of a jurisdiction that has a rule against perpetuities or similar rule that limits the period during which property can be held in trust, if it is possible to avoid the application of that rule by taking an action such as moving that trust to a different jurisdiction, and if there would be no significant disadvantage to that trust its beneficiaries if the Trustee were to take that action, then the Trustee is directed to take that action. If any limited power of appointment granted pursuant to this agreement is exercised in a manner that results in the creation of another limited power of appointment, any trust established pursuant to the exercise of that first limited power of appointment shall terminate at such time as is required to avoid the application of sections 2041(a)(3) and 2514(b) of the Code."

**6.3 Distribution to Scot McKay 2012 Irrevocable Trust.** If Heidi survives the Settlor, any portion of the Remaining Trust Assets as to which an election pursuant to section 2056(b)(7) of the Code ("QTIP Election") is not made shall be distributed to the Scot McKay 2012 Irrevocable Trust. If Heidi does not survive the Settlor, all Remaining Trust Assets shall be distributed to the Scot McKay 2012 Irrevocable Trust. For purposes of this agreement, all assets distributed to the Scot McKay 2012 Irrevocable Trust shall be distributed to the acting trustee of the Scot McKay 2012 Irrevocable Trust established by the trust agreement executed on August 24, 2012 by Scot E. S. McKay as Settlor, William A. Santora as Trustee, Adam W. Tigh as Distribution Adviser, Scot E. S. McKay as Investment Direction Adviser, and Scott M. Levin as Trust Protector, to be added to and administered as part of that trust according to its terms as they exist on the date of the Settlor's death. If for any reason the instructions of the preceding sentence are invalid or cannot be carried out, or if the Scot McKay 2012 Irrevocable Trust has failed or been revoked, then all assets that are to be distributed to the Scot McKay 2012 Irrevocable Trust pursuant to this agreement shall be held and administered on the same terms and conditions as those stated in the agreement creating the Scot McKay 2012 Irrevocable Trust, and for this purpose the Settlor incorporates by reference into this agreement the provisions of that agreement as they exist on the date this agreement is signed. Despite anything to the contrary in the preceding provisions of this paragraph or the Scot McKay 2012 Irrevocable Trust, all assets distributed to or administered as provided in the Scot McKay 2012 Irrevocable Trust pursuant to this paragraph shall be held and administered as if paragraph 13.2 of the agreement creating the Scot McKay 2012 Irrevocable Trust read as set forth above under paragraph 6.2 of this agreement.

**6.4 Marital Deduction Election.** The Settlor intends by the provisions of paragraph 6.2 to create a qualified terminable interest trust known as the Heidi McKay Marital

Trust that, to the extent that a QTIP Election is made, will entitle the Settlor's estate to a marital deduction pursuant to section 2056(b)(7) of the Code. The Settlor directs that the provisions of this agreement shall be construed and administered in a manner consistent with the Settlor's intention.

**A. Discretion to Make QTIP Election.** The Settlor's executor shall have full authority and discretion to determine whether to make a QTIP Election with respect to all, a portion, or none of the Remaining Trust Assets. If no executor is appointed with respect to the Settlor's estate, then the Trustee shall have full authority and discretion to determine whether to make a QTIP Election with respect to all, a portion, or none of the Remaining Trust Assets.

**B. Factors to be Considered in Making QTIP Election.** The Settlor requests (but does not direct) that in exercising such discretion, the Settlor's executor or the Trustee shall eliminate (or minimize) the federal and state death taxes payable on the Settlor's death, but shall also consider the effect of any QTIP Election upon the federal and state death taxes and income taxes that may be payable at the time of or after Heidi's death. Without limiting the generality of the preceding sentence, the Settlor anticipates (but does not direct) that the QTIP Election shall be made only to the extent necessary to reduce the Settlor's taxable estate for federal estate tax purposes to the largest amount that will result in the least amount of federal estate tax being imposed on the Settlor's estate.

**C. Reverse QTIP Election.** If the Settlor's executor or the Trustee makes a QTIP Election with respect to all or a portion of the Remaining Trust Assets, then the Settlor's executor or the Trustee shall consider making the election specified in section 2652(a)(3) of the Code ("Reverse QTIP Election") to treat all or a portion of the Exempt Marital Trust for federal generation-skipping transfer tax purposes as if it were not qualified terminable interest property.

**D. No Liability for Making or Not Making QTIP Election.** The decision of the Settlor's executor or Trustee with respect to making or not making a QTIP Election and, to the extent to which a QTIP Election is made, making or not making a Reverse QTIP Election, shall be final and conclusive upon all persons whose interests in the trust estate are directly or indirectly affected by that election. The Settlor expressly provides that the Settlor's executor or Trustee shall incur no liability whatsoever to the trust or any of its beneficiaries by reason of making, partially making, or failing to make either or both of these elections, as long as the executor or Trustee believes in good faith that his decision is in the best interests of the Settlor's estate and its beneficiaries, including the Scot McKay Revocable Trust and its beneficiaries.

## **ARTICLE 7 -- INSURANCE PROVISIONS**

The following provisions shall apply to any life insurance policy that is owned by the trust or that names the trust as a beneficiary.

**7.1 Paying Premiums.** The Trustee is not obligated to pay any premium or assessment on any such policy nor, if the trust is not the owner of the policy, to keep himself informed about any such payment.

**7.2 Insurance Company Has No Duty to Inquire.** No insurance company that pays the proceeds of any such policy to the Trustee shall be required to know or comply with any of the provisions of this agreement or to be involved in how those proceeds are applied or distributed. The Trustee's giving his receipt to any such insurance company shall effectively discharge it for any payment it makes and be binding on the beneficiaries of all trusts created by this agreement.

**7.3 Collecting Insurance Proceeds.** If the proceeds of any such insurance policy are paid to the Trustee, he shall collect those proceeds to hold in trust or distribute or both as provided above. The Trustee is authorized to take any action he deems best in collecting those proceeds and to pay the expense of that action out of the trust.

## **ARTICLE 8 -- GENERAL PROVISIONS**

To carry out the terms of any trust created by this agreement, the Trustee and all other interested parties shall be bound by and act according to the following general provisions.

**8.1 Purpose and Construction of Trusts.** The primary purpose of the trusts created by this agreement is to provide for those persons designated as income beneficiaries and the Trustee is directed to construe the terms of the trusts liberally in favor of the persons who are the income beneficiaries. No subsequent income beneficiary nor any remainderman shall have the right to question any action taken by the Trustee under the authority of this agreement for the benefit of a prior income beneficiary.

**8.2 Determination of Incapacity.** For purposes of this agreement, a person shall be deemed to be incapacitated if a conservator is appointed for that person or if two licensed physicians execute documents stating that they have personally examined that person and believe him or her to be incapacitated and incapable of managing his or her affairs ("Physicians' Statements"). Despite anything in the preceding sentence to the contrary, any person regarding whom Physicians' Statements have been executed and who is either the Settlor or an income beneficiary of any trust created under this agreement may petition a court of competent jurisdiction for a determination that he or she is not incapacitated and, upon the filing of such a petition, shall not be deemed to be incapacitated unless he or she is determined by the court to be incapacitated. Until any person or institution dealing with the trust receives written notice from the person regarding whom Physicians' Statements have been executed of that person's intent to file such a petition or receives notice of hearing with respect to such a petition, the person or institution dealing with the trust shall be free from any liability as a result of any good faith reliance on a determination of incapacity based on Physicians' Statements. Any person who is

deemed to be incapacitated pursuant to this paragraph shall be treated as unable to serve as Trustee, Special Trustee, or in any other fiduciary capacity under this agreement or to designate successor Trustees, Special Trustees, or other fiduciaries under this agreement.

**8.3 Adding Property to the Trusts.** Any person may add property to any trust created by this agreement, provided that the Trustee, in his discretion, may hold and administer such property in separate shares according to the terms and conditions of that trust or may reject any property that he deems inappropriate.

**8.4 Treatment of Accrued Income.** Any income that is accrued or unpaid on property at the time it is received by any trust created by this agreement shall, when that income is received by that trust, be treated as any other trust income. Income accrued or held undistributed by the Trustee when any trust is terminated shall be distributed to the person or persons who succeed to the beneficiary's interest in the terminated trust, in proportion to their individual interests in it.

**8.5 Allocations Between Principal and Income.** Except as specifically provided otherwise for any trust created by this agreement, all determination of what is principal and income and all apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California principal and income law that are in effect at the time such matters arise, and, if there are no such provisions of law governing any such matters, they shall be determined according to the recognized rules of good trust accounting practice.

**8.6 No Segregation of Trusts.** The various trusts created by this agreement need not be physically divided or segregated except as this may be required when any trust is terminated, but the Trustee shall keep separate accounts for the different undivided interests.

**8.7 Unified Administration of Corresponding Trusts.** If at any time there exists a trust whose terms are substantially the same as those of any trust created under this agreement and if the Trustee determines that the unified administration of those two trusts would be preferable to their separate administration, the Trustee may terminate any such trust created under this agreement and distribute the assets to the trustee of the corresponding trust. In determining whether the unified administration of any trusts would be preferable to their separate administration, the Trustee shall consider the tax consequences of the various alternatives.

**8.8 Spendthrift Clause.** No beneficiary of any trust created by this agreement shall have the right to assign or hypothecate his interest in the principal or income of that trust in any manner whatsoever, nor shall that interest, before being received by the beneficiary, be subject to any claims of a beneficiary's creditors or to attachment, execution, or any other such legal process. The preceding sentence shall not apply to the Settlor during his lifetime.

**8.9 Deferring Division or Distribution of Trust Assets.** Whenever the Trustee is directed to distribute trust assets or to divide them into separate trusts or shares on the death of any person, the Trustee may, in his discretion, defer the distribution or division until six months after that person's death or until such later time as the Trustee deems necessary or appropriate for the proper administration or settlement of that trust. When the Trustee defers distributing or dividing trust assets, the deferred division or distribution shall be made as if it had taken place at the time specified in this agreement excluding this paragraph, and all rights given to the beneficiaries of those trust assets under other provisions of this agreement shall be deemed to have accrued and vested as of that specified time.

**8.10 No Participation in Decision to Discharge Trustee's Obligation to Support.** Despite anything in this agreement to the contrary, no person who is serving as a Trustee shall participate in any decision to make any distribution of income or principal to or for the benefit of a beneficiary where that distribution would discharge a legal obligation of that person to support that beneficiary.

**8.11 Payments to Minor.** The Trustee may make payments to a beneficiary who is a minor or under other legal disability by making payments to the guardian or conservator of his person, to any custodian of the beneficiary under the California Uniform Transfers to Minors Act, or to any other suitable person taking care of or residing with the beneficiary, or the Trustee may apply payments directly for the beneficiary's benefit. The Trustee may make payments to a beneficiary who has reached the age of majority but who has not reached the age of 25 years by making payments to any custodian of the beneficiary under the California Uniform Transfers to Minors Act until age 25 if the Trustee, in the Trustee's discretion, determines that it would be in the beneficiary's best interests to do so. The Trustee may make payments directly to a beneficiary who is a minor or under other legal disability if, in the Trustee's judgment, such direct payments are in the best interests of that beneficiary.

## **ARTICLE 9 -- TAXES AND EXPENSES**

**9.1 Payment of Taxes and Expenses From Trust Assets.** Any expenses of the last illness and funeral of the Settlor and any expenses of administering the Settlor's estate, as well as all inheritance, estate, or other death taxes (excluding any additional tax imposed by section 2032A of the Code) that may be due as a result of the Settlor's death and are attributable to the Settlor's probate estate, to any trust created by this agreement, or to any property added to any trust created by this agreement as a result of the Settlor's death, shall be paid by the Trustee out of the assets passing under paragraph 6.3 or, to the extent those assets are insufficient, out of the assets passing under paragraph 6.2.

**9.2 Amounts Paid By Settlor's Executor.** Despite anything in the preceding paragraph to the contrary, the Trustee shall not be required to pay any taxes or expenses he reasonably believes have been or will be paid out of the Settlor's probate estate. For purposes of

the preceding sentence, the Trustee shall be entitled to rely on a document from the Settlor's executor (or other personal representative) that specifies the taxes and expenses that have been or will be paid out of the probate estate. For purposes of allocating property among the various trusts created by this agreement and the beneficiaries of those trusts, any taxes or expenses paid out of the Settlor's probate estate shall be charged in a manner consistent with preceding paragraph.

## **ARTICLE 10 -- TRUSTEE PROVISIONS**

**10.1 Appointment of Trustees.** The original Trustee of all trusts created under this agreement shall be Scot E. S. McKay. If he becomes unwilling or unable to serve, Adam W. Tight shall serve as successor Trustee.

**10.2 Filling of Vacancies in Trusteeship.** If a vacancy occurs in the trusteeship of any trust created under this agreement and no person is appointed as provided above to fill that vacancy, a majority of the income beneficiaries of that trust shall have the power to select a successor Trustee. If any income beneficiary is a minor, the power set forth in the preceding sentence may be exercised on behalf of that income beneficiary by the duly appointed guardian of that income beneficiary's estate or, if no guardian of the estate has been appointed for that income beneficiary, by the duly appointed guardian of that income beneficiary's person or, if no guardian of the person has been appointed for that income beneficiary, by that income beneficiary's parent who is a descendant of the Settlor's or, if there is no such living parent, by each living parent or other natural guardian of that income beneficiary. If any income beneficiary is incapacitated, the power set forth in the first sentence of this paragraph may be exercised by the duly appointed conservator of that income beneficiary's estate or, if no conservator of the estate has been appointed for that income beneficiary, by the duly appointed conservator of that income beneficiary's person.

**10.3 Trustee's Execution of Consent to Disclose Health Information.** Each individual who serves as Trustee of any trust created under this agreement shall execute and deliver to the Special Trustee of that trust or, if no Special Trustee (other than that individual) is then serving, to each income beneficiary of that trust or, if that individual also is the sole income beneficiary of that trust or if each income beneficiary of that trust is incapacitated, to each person who would receive a distribution of trust assets or would become the income beneficiary of a successor trust if the income beneficiary died at that time, upon the written request of any person described in the preceding provisions of this sentence, a document that authorizes the disclosure and release of protected health information pertaining to the ability of that person to serve as Trustee and that is reasonably designed to comply with the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub L. 104-191, 110 Stat. 1936 ("HIPAA") and the regulations thereunder (or any successor provisions) and any additional requirements that may be imposed by applicable state law. An individual Trustee who fails to comply with the requirements of the preceding sentence within 45 days of receiving the written request referred

to in the preceding sentence shall be deemed to have resigned as a Trustee. Any Trustee who executes a document described in the preceding provisions of this paragraph may revoke that document at any time, but that revocation shall be deemed to constitute the immediate resignation of that Trustee.

**10.4 Trustee's Consent to Determination of Capacity.** Each individual who serves as Trustee of any trust created under this agreement agrees to be examined by two physicians selected by that individual within 45 days of being requested to do so, in writing, by the Special Trustee of that trust or, if no Special Trustee (other than that individual) is then serving, by any income beneficiary of that trust or, if that individual also is the sole income beneficiary of that trust or if each income beneficiary of that trust is incapacitated, by any person who would receive a distribution of trust assets or would become the income beneficiary of a successor trust if each income beneficiary died at that time, to determine whether that individual who is serving as Trustee is incapacitated and incapable of managing his or her affairs, provided that no such request for an examination shall be valid if that request is made within 90 days of the most recent previous examination pursuant to this sentence. An individual who refuses to comply with a valid written request for examination as provided in the preceding provisions of this paragraph within 45 days of the date of that written request shall be deemed to have resigned as Trustee.

**10.5 Power of Successor Trustee.** All successor Trustees shall have the same powers and authority as the original Trustee.

**10.6 Restricting or Disclaiming Trustee's Powers.** The Trustee shall have the power to restrict the scope of or to disclaim or release any power that the Trustee may hold in connection with any trust created by this agreement, whether that power is expressly granted in this agreement or implied by law. The Trustee shall exercise this concomitant power by a document specifying the powers to be disclaimed, released, or restricted and the nature of any such restriction.

**10.7 Designation of Successors.** Any designation of successor Trustees or Special Trustees that is made pursuant to a power granted by a provision of this agreement shall be valid only if the designation specifically refers to the provision granting that power and is made in the designating person's last will or in a notarized document filed with the trust records. If two or more designations conflict, the designation that is executed last shall govern. Any designation of successors that is made pursuant to a power granted by a provision of this agreement and that complies with the requirements of the preceding provisions of this paragraph, shall be effective to appoint the successors to the designating person even if the designating person is not serving as a Trustee or co-Trustee at the time that the designation is made. Except as otherwise expressly provided to the contrary in this agreement, a Trustee or Special Trustee who has the power to designate his or her successors may specify that a successor designated by that Trustee or Special Trustee shall have the power to designate the successors to that designated successor.

**10.8 Professional Assistance to the Trustee.** The Trustee is authorized to employ any custodian, investment advisor, attorney, accountant, or other agent to assist the Trustee in administering the trust. Reasonable compensation for all services performed by these agents shall be paid from the trust out of income or principal as the Trustee, in his discretion, determines, and this compensation shall not decrease that to which the Trustee is entitled.

**10.9 Decisions of Trustees.** Except as this agreement provides otherwise, if there are two co-Trustees serving all decisions shall be unanimous and if more than two co-Trustees are serving the decision of the majority shall control. Despite anything in this paragraph to the contrary, any co-Trustee shall have the power to bind the trust in any transaction obligating the Trustees to spend One Thousand Dollars (\$1,000) or less and not involving a distribution of trust assets to a beneficiary. Despite anything in this agreement to the contrary, in the event that any Trustee is prohibited under the terms of this agreement from exercising any power, authority, or discretion, that power, authority, or discretion shall be exercisable by any co-Trustees who are not so prohibited or, if there are none, by the Special Trustee. No co-Trustee shall have any liability whatsoever as the result of any decision to which he did not subscribe.

**10.10 Delegation of Trustee's Powers to co-Trustee.** Any co-Trustee of a trust created under this agreement may delegate to any other co-Trustee at any time the exercise of any or all of the powers granted to the delegating co-Trustee and may revoke any such delegation at any time. Any such delegation or revocation shall be made in a document specifying the terms of the delegation or revocation and delivered to the co-Trustee to whom such power is or has been delegated and may impose any limitations on the exercise of any delegated power that the delegating co-Trustee deems advisable. Until any such delegation has been revoked, a delegated power may be exercised solely by the co-Trustee to whom such power has been delegated, subject to any limitations imposed by the delegating co-Trustee. Any action taken by a co-Trustee to whom power has been delegated shall have the same force and effect as if the Trustee delegating that power had personally joined in the exercise of that power or in the taking of such action. Despite anything in this paragraph to the contrary, a co-Trustee to whom any power is delegated shall not exercise any right or power that he is otherwise prohibited from exercising under the terms of this agreement.

**10.11 Delegation of Trustee's Powers to Agent.** In the management and investment of the assets of any trust created under this agreement, the Trustee has the power and authority to delegate to, and to authorize and empower, persons other than the Trustee to act in the name of and on behalf of the Trustee or the trust, to do all or any part of that which the Trustee may do directly under the terms of this trust agreement in the management and investment of the trust property. The Trustee shall have the duty to exercise general supervision over the person performing the delegated matter and shall have the power to terminate at any time the authority so granted. The delegation of any trust management and investment authority shall not relieve the Trustee of any of the Trustee's fiduciary obligations with respect to the trust. The delegation of authority under this provision extends only to the management and investment of the trust property and the Trustee may not delegate any power to determine the rights of any beneficiary



under this trust agreement or to make distributions to any beneficiary under this trust agreement. In furtherance of, and not by way of limitation of, the power and authority of the Trustee to delegate under this paragraph, the Trustee may authorize and delegate persons to act on the trust's behalf in authorizing withdrawals and signing checks and other drafts drawing on funds held by the trust in any financial institution. With respect to any account of the trust held in any financial institution the Trustee may specify that only one signature by a person designated as a signatory on the account (whether that person is a Trustee or another person designated by the Trustee as being authorized to sign on such account) shall be necessary to draw on any funds held in such account, notwithstanding the fact that the Trustee may have identified more than one person with authority to sign on such account. Despite anything in this paragraph to the contrary, a person to whom any power is delegated shall not exercise any right or power that he is otherwise prohibited from exercising under the terms of this agreement.

**10.12 Trustee's Duty to Account and Report.** At any time that any trust created under this agreement is revocable, the Trustee shall have a duty to report information about that trust as provided in section 16061 of the California Probate Code ("Duty to Report") and a duty to account to the beneficiaries of that trust as provided in section 16062 of the California Probate Code ("Duty to Account") only to the person or persons possessing the power to revoke that trust and only upon the written request of any such person. At any time that any trust created under this agreement is not revocable, the Trustee shall have a Duty to Report and a Duty to Account only to the person or persons to whom income or principal, or both, of that trust is required or authorized in the Trustee's discretion to be currently distributed and only upon the written request of any such person, but in no event more frequently than would be required under section 16061 or 16062, whichever is applicable. If any person upon whose written request the Trustee is required to report or account is a minor or is incapacitated, the written request described above may be made on behalf of that minor or incapacitated person by the guardian or conservator of his estate or by his attorney-in-fact under a general durable power of attorney. For purposes of this paragraph, a person who possesses an unrestricted power to withdraw the assets of a trust for his own benefit shall be deemed to possess the power to revoke that trust. Nothing in the foregoing shall be construed to prevent the Trustee from rendering an accounting that is not required under the provisions of this paragraph.

**10.13 Limitation on Objections to Accountings.** If the Trustee provides an interim or final account or other written report that complies with the requirements of California Probate Code section 16461(c) (an "Accounting") to a beneficiary and if that beneficiary fails to provide the Trustee with a written objection to that Accounting within 180 days of the beneficiary's receipt of that Accounting, the beneficiary shall be barred from asserting any claim against the trustee regarding an item that is adequately disclosed in the Accounting.

**10.14 Effect of Notice to Trustee.** Until the Trustee has received written notice of any birth, death, marriage, or other event on which the right to receive distributions from this trust might depend, the Trustee shall be free from liability to any beneficiary for any distribution made in good faith as though that event had not occurred.

**10.15 Exculpatory Provisions.** The Trustee shall not be liable for any exercise or failure to exercise any discretion granted him under this agreement as long as that exercise or failure to exercise is made in good faith. No successor Trustee shall be liable for any acts of misfeasance or malfeasance committed by any predecessor. No successor Trustee shall have any duty to investigate the acts of any predecessor Trustee.

**10.16 Resignation of Trustee.** Any Trustee may resign at any time by sending notice of his resignation, by United States mail and with postage paid, to the persons then entitled to receive trust income at their most recently furnished addresses, and the resignation shall take effect on the thirty-first day after the date the notice was mailed or upon written acceptance by the successor Trustee, whichever occurs sooner. In the case of a corporate Trustee, an affidavit of any officer of the corporate Trustee shall be conclusive evidence of the date the notice was mailed.

**10.17 Waiver of Bond.** No bond shall be required of any individual Trustee regardless of how appointed.

**10.18 Compensation of Trustee.** The Settlor shall not be entitled to any compensation for services rendered as Trustee. Any other Trustee shall be entitled to reasonable compensation for all services rendered by him, including services connected with terminating or revoking, wholly or partly, any trust created by this agreement. This compensation shall be paid wholly from principal or wholly from income or partly from both as the Trustee deems proper.

**10.19 Restrictions on Exercise of Discretion by Trustee.** No Trustee shall exercise any power, authority, or discretion otherwise granted to the Trustee in this agreement if that power, authority, or discretion would cause that Trustee to be treated as having a general power of appointment under section 2041 of the Code. The restriction in the preceding sentence shall not apply with respect to any trust (or portion of a trust) at any time when a person who is serving as a Trustee also has the power, exercisable in a non-fiduciary capacity, to withdraw the assets of that trust (or that portion of a trust). Any power, authority, or discretion that the Trustee is prohibited from exercising pursuant to the provisions of this paragraph shall be exercisable by any acting Trustees who are not so prohibited or, if there are none, by the Special Trustee.

**10.20 Powers of the Trustee.** To achieve the purposes of any trust that this agreement creates and subject to any limitations stated elsewhere in it, the Trustee is vested with the following powers in addition to those now or hereafter conferred by law. The enumeration of certain powers of the Trustee shall not limit his general powers. Subject to his fiduciary obligations, the Trustee shall be vested with and shall have all the rights, powers, and privileges that would be had by an absolute owner of the property of the trust.

**A. Holding Existing Property.** To continue to hold any property, including shares of a corporate Trustee's own stock, and to operate, at the risk of the trust, any business

that the Trustee receives or acquires under this agreement for as long as he deems advisable. The Trustee is expressly authorized to buy or otherwise acquire unproductive property.

**B. Managing and Disposing of Trust Property.** To manage, control, grant options on, sell for cash or on deferred payments, lease, convey, exchange, partition, divide, subdivide, improve, and repair any property of the trust; to grant terms effective during or extending beyond the term of the trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; to enter into community oil leases and pooling and unitization agreements; to create restrictions, easements, and other servitudes; to compromise, arbitrate, or otherwise adjust claims in favor of or against the trust; and to institute, compromise, and defend actions and proceedings.

**C. Investment Powers.** To invest and reinvest the trust principal and income, if accumulated, and to use it to buy or otherwise acquire every kind of property and to make every kind of investment, whether or not authorized by law for the investment of trust funds, specifically including but not limited to interest-bearing accounts; corporate obligations of every kind; stocks, preferred or common, including stock of any corporate Trustee; listed put and call options; mortgage participations; shares of investment trusts; investment companies; mutual funds; common trust funds including funds administered by any Trustee; general partnerships; limited partnerships (as either a general or limited partner); joint ventures; limited liability companies; unincorporated business enterprises; income interests in assets; and remainder interests in assets. The Trustee shall have the right to invest in any common or commingled trust funds operated and controlled by a corporate Trustee, such investment to conform with the provisions of and any amendments to the documents establishing any such common trust fund.

**D. Power to Form and Operate Business Entities.** To form and operate any business entity permitted by law; to incorporate any business in any state; to enter into any shareholders' agreement, general or limited partnership agreement, limited liability company operating agreement, or other entity agreement; to become and remain a shareholder, partner, or member under any such agreement; to transfer to a corporation, partnership, limited liability company, or other entity any real or personal assets of the trust estate in exchange for an interest in that business entity; to carry out all the terms and conditions of any shareholders' agreement, partnership agreement, limited liability operating agreement, or other entity agreement; to convert any general partnership interest to a limited partnership interest, or any existing interest into an interest in a different entity structure; to serve as a manager of a limited liability company, a general partner of a partnership, or in a similar management or risk position in any other entity. The Trustee shall have the preceding powers even if the Trustee is also a shareholder of the corporation, a partner of the partnership, a member of the limited liability company, or other owner of an interest in an entity, or an officer, director, managing partner, manager, or similar office in a corporation, partnership, limited liability company, or other entity, in the Trustee's individual capacity, as Trustee, or in another fiduciary capacity.

**E. Borrowing Powers.** To borrow money for any trust purpose on terms the Trustee deems proper and to obligate the trust for repayment; to obligate or use the trust estate as a guarantee for the debts of the Settlor; and in so borrowing, obligating, or guaranteeing, to encumber the trust or any trust property by mortgage, deed of trust, pledge, or other means, using whatever procedures he deems advisable to consummate any such transaction.

**F. Loans from Trustee.** To advance funds, on which he may charge interest at fair and reasonable rates, to the trust for any trust purpose; to receive, for any such loans, security in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of the trust; and to be reimbursed from principal or income for any loss or expense incurred because of his owning or holding any property in the trust.

**G. Loans of Trust Assets.** To lend trust assets on such terms and conditions as the Trustee deems appropriate. Except as otherwise provided in this paragraph, the Trustee shall not lend trust assets without adequate interest and security. Despite anything in the preceding sentence to the contrary, the Trustee shall have the power to lend the assets of a trust to any income beneficiary of that trust, without adequate interest or security, if the Trustee would otherwise be permitted to distribute those assets to that beneficiary. Despite anything in the second sentence of this paragraph to the contrary, the Trustee, in the Trustee's discretion, shall have the power to lend the assets of a trust, without adequate security, to any income beneficiary of that trust or to any descendant of an income beneficiary of that trust. The Trustee is expressly authorized to loan (with or without security) the funds of the trust to the executor or administrator of the Settlor's estate on the terms and conditions, and at the fair and reasonable rate of interest, that the executor or administrator and the Trustee agree on. For purposes of this paragraph, adequate interest shall mean interest at not less than the applicable federal rate then in effect under section 1274(d) of the Code (or successor provision).

**H. Rights in Securities.** To have all the rights, powers, and privileges of an owner with respect to securities held in the trust, including but not limited to the power to vote, give proxies, and pay assessments and other sums the Trustee deems necessary to protect the trust property; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations and, in so participating, to deposit securities with and transfer title to any protective or other committee on terms the Trustee deems advisable; to exercise or sell stock subscriptions or conversion rights; and to accept and retain as an investment any securities or other property received through exercising any of the foregoing powers, regardless of any limitations elsewhere in this agreement on investments by the Trustee.

**I. Security Margin Accounts.** To buy, sell, and trade in securities of any nature, including short sales, on margin, and for any such purposes to maintain and operate margin accounts with brokers, and to pledge any securities held or purchased by the Trustee with such brokers as securities for loans and advances made to the Trustee.

**J. Distributions in Kind.** To partition, allot, and distribute (pro rata or otherwise) the trust property in kind, including undivided interests in any property, or partly in money and partly in kind, upon any division or partial or final distribution of the trust and to sell its property as the Trustee deems necessary in making any such divisions or distributions.

**K. Equalizing Income Payments.** To budget the estimated annual income and expenses of the trust in a manner that equalizes, as far as practicable, periodic income payments to beneficiaries.

**L. Equalizing Tax Benefits.** To take any action and make any election to minimize the tax liabilities of the trust and its beneficiaries and to allocate the consequent benefits among the various beneficiaries; and to make adjustments in the rights of any beneficiaries, or between the income and principal accounts, so as to compensate for the consequences of any tax election or any investment or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one or more beneficiaries over any others.

**M. Paying Beneficiary's Death Taxes.** To pay from the trust, and to allocate between income and principal, any inheritance, estate, or other death taxes occasioned by the death of any beneficiary of the trust and any generation-skipping transfer taxes resulting from any taxable termination with respect to the trust, such payments and allocations to be made to the extent that such taxes are attributable to the trust or any part of it.

**N. Life Insurance.** To purchase life insurance policies on the life of any person and to exercise all rights of ownership and control contained in those policies, including the right to enter into split-dollar arrangements.

**O. Insuring Trust Property.** To carry, at the expense of the trust, the kinds and amounts of insurance that the Trustee deems advisable to protect the trust and himself against any hazard.

**P. Litigation and Settlements.** To commence or defend, at the expense of the trust, litigation concerning it or any of its property as the Trustee deems advisable and, in pursuing such action, to compromise or otherwise adjust any claims or litigation against or in favor of the trust.

**Q. Power to Disclaim Interests in Property.** To disclaim (to the extent that the law permits a Trustee to do so) any interest in property that the Settlor could have disclaimed had the Settlor been living at the time of the disclaimer. The Trustee shall not be liable to the Settlor's estate or to any person as a result of disclaiming or failing to disclaim any interest in property as long as that disclaimer or failure to disclaim is made in good faith.

**R. Power to Distribute Assets to Settlor's Probate Estate.** To distribute trust assets (including post-death income) to the Settlor's probate estate as a beneficiary of this trust.

**S. Power to Divide Certain Trusts.** To divide any trust created under this agreement into two or more separate trusts for any reasonable purpose determined by the Trustee, specifically including, but not limited to, ensuring that the Inclusion Ratio for any such trust shall be either zero or one.

**T. Power to Grant General Power of Appointment.** To grant to one or more income beneficiaries of any trust that has an Inclusion Ratio of greater than zero a general power of appointment within the meaning of section 2041(b) of the Code on such terms and conditions as the Trustee deems appropriate. The preceding power shall not be exercisable by any Trustee of a trust who is also an income beneficiary of that trust. Nothing in the preceding provisions of this paragraph shall be construed to prevent the Special Trustee from making an amendment pursuant to Article 12 that either grants a general power of appointment to one or more income beneficiaries of any trust that has an Inclusion Ratio of zero or that permits the Trustee to grant a general power of appointment to one or more income beneficiaries of any trust that has an Inclusion Ratio of zero.

## **ARTICLE 11 -- SPECIAL TRUSTEE PROVISIONS**

**11.1 Appointment of Special Trustee.** The original Special Trustee shall be Adam W. Tight.

**11.2 Filling of Vacancies in Special Trusteeship.** If a vacancy occurs in the special trusteeship of any trust created under this agreement and no person is appointed as provided above to fill that vacancy, the Trustee of that trust shall select a successor Special Trustee.

**11.3 Beneficiary's Power to Replace Special Trustee.** A majority of the income beneficiaries of any trust created under this agreement shall have the power and authority to remove any acting Special Trustee of that trust and to appoint as a successor Special Trustee either an individual or a corporation or other entity that is authorized to accept trusts. If any income beneficiary is a minor, the power set forth in the preceding sentence may be exercised on behalf of that income beneficiary by the duly appointed guardian of that income beneficiary's estate or, if no guardian of the estate has been appointed for that income beneficiary, by the duly appointed guardian of that income beneficiary's person or, if no guardian of the person has been appointed for that income beneficiary, by that income beneficiary's parent who is a descendant of the Settlor's or, if there is no such living parent, by each living parent or other natural guardian of that income beneficiary. If any income beneficiary is incapacitated, the power set forth in the first sentence of this paragraph may be exercised by the duly appointed conservator of that income beneficiary's estate or, if no conservator of the estate has been appointed for that

income beneficiary, by the duly appointed conservator of that income beneficiary's person. The change shall be made by delivering to the outgoing Special Trustee written notices of the outgoing Special Trustee's removal, of the appointment of the outgoing Special Trustee's successor, and of the successor Special Trustee's acceptance of that appointment.

**11.4 Restrictions on Appointment of Special Trustee.** Despite anything in this article to the contrary, the Settlor may not serve as Special Trustee of any trust created under this agreement and no income beneficiary of any trust created under this agreement may serve as Special Trustee of that trust. No person or entity who is a related or subordinate party as defined in section 672(c) of the Code with respect to any income beneficiary of a trust created under this agreement may be selected pursuant to paragraph 11.2 or 11.3 as the successor Special Trustee of that trust.

**11.5 Special Trustee's Execution of Consent to Disclose Health Information.** Each individual who serves as Special Trustee of any trust created under this agreement shall execute and deliver to each Trustee of that trust who is then serving or, if no Trustee (other than that individual) is then serving, to each income beneficiary of that trust or, if each income beneficiary of that trust is incapacitated, to any person who would receive a distribution of trust assets or would become the income beneficiary of a successor trust if the income beneficiary died at that time, upon the written request of any person described in the preceding provisions of this sentence, a document that authorizes the disclosure and release of protected health information pertaining to the ability of that person to serve as Special Trustee and that is reasonably designed to comply with the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub L. 104-191, 110 Stat. 1936 ("HIPAA") and the regulations thereunder (or any successor provisions) and any additional requirements that may be imposed by applicable state law. An individual Special Trustee who refuses to comply with the requirements of the preceding sentence within 45 days of receiving the written request referred to in the preceding sentence shall be deemed to have resigned as a Special Trustee. Any Special Trustee who executes a document described in the preceding provisions of this paragraph may revoke that document at any time, but that revocation shall be deemed to constitute the immediate resignation of that Special Trustee.

**11.6 Special Trustee's Consent to Determination of Capacity.** Each individual who serves as Special Trustee of any trust created under this agreement agrees to be examined by two physicians selected by that individual within 45 days of being requested to do so, in writing, by any Trustee of that trust who is then serving or, if no Trustee (other than that individual) is then serving, by any income beneficiary of that trust or, if each income beneficiary of that trust is incapacitated, by any person who would receive a distribution of trust assets or would become the income beneficiary of a successor trust if each income beneficiary died at that time, to determine whether that individual is incapacitated and incapable of managing his or her affairs, provided that no such request for an examination shall be valid if that request is made within 90 days of the most recent previous examination pursuant to this sentence. An individual who refuses to comply with a valid written request for examination as provided in the preceding

provisions of this paragraph within 45 days of the date of that written request shall be deemed to have resigned as Special Trustee.

**11.7 Restrictions on Exercise of Discretion by Special Trustee.** No Special Trustee shall exercise any power, authority, or discretion that would cause that Special Trustee to be treated as having a general power of appointment under section 2041 of the Code. In the event any Special Trustee is barred pursuant to the preceding sentence from exercising any power, authority, or discretion, that power, authority, or discretion shall be exercisable by the next successor Special Trustee who is not prohibited from exercising that power, authority, or discretion.

**11.8 Compensation of Special Trustee.** Any Special Trustee shall be entitled to receive reasonable compensation for any services rendered by him. This compensation shall be paid wholly from principal or wholly from income or partly from both as the Trustee deems proper.

**11.9 Exculpatory Provisions.** The Special Trustee shall not be liable for any exercise or failure to exercise any discretion granted him under this agreement as long as that exercise or failure to exercise is made in good faith.

**11.10 Resignation of Special Trustee.** Any Special Trustee may resign at any time by sending notice of his resignation by postage paid United States mail to the Trustee, and the resignation shall take effect on the thirty-first day after the date the notice was mailed or upon written acceptance by the successor Special Trustee, whichever occurs sooner.

**11.11 Waiver of Bond.** No bond shall be required of any Special Trustee regardless of how appointed.

## **ARTICLE 12 -- AMENDMENT OF TRUST BY SPECIAL TRUSTEE**

To provide for flexibility during the time that any trust is administered under this agreement, the Settlor grants to the Special Trustee the power to amend this agreement in any manner that the Special Trustee deems necessary or appropriate to accomplish the purposes of this trust, subject to the restrictions contained in this article. During the Settlor's lifetime, the Special Trustee shall have the power to amend this trust on behalf of the Settlor at any time that the Settlor is incapacitated. After the Settlor's death, the Special Trustee shall have the power to amend the provisions of this agreement governing the administration of this trust following the Settlor's death. For purposes of this article, the power to amend the provisions of this agreement governing the administration of a trust shall include the power to terminate that trust. For purposes of this article, the CPC shall mean the California Probate Code, and any reference to a provision of the CPC shall be construed to refer to that provision as it may be amended from time to time or to any successor provision.



**12.1 Execution of Amendment and Notice to Interested Parties.** Any amendment made to this agreement pursuant to this article shall be made in a notarized document executed by the Special Trustee that expressly refers to this article, with a copy of that notarized document, a copy of this article, and a copy of the provisions of this agreement that are in effect immediately before the amendment and that are being changed by the amendment (collectively referred to in this article as the "Notice") delivered to each Recipient. For purposes of this article, a Recipient shall mean a member of the class consisting of the Settlor if the Settlor is then living; each Trustee who is then serving with respect to any trust that is affected "Affected Trust"; if the Settlor is then living, each person who would receive a distribution of assets or would become an income beneficiary of any trust created under this agreement if the Settlor died at that time; and, in the case of any irrevocable trust that is affected, each person who would be entitled under CPC section 17203 to receive notice of a proceeding concerning that trust. Despite anything in the preceding sentence to the contrary, if any Recipient is a minor, the class of Recipients shall also include (i) each legal guardian of that minor or, (ii) if no legal guardian has been appointed, that minor Recipient's parent who is a descendant of the Settlor's grandparents or, (iii) if there is no such living parent, each living parent or other natural guardian of that minor, and, (iv) if a conservator of the person or estate, or both, has been appointed for any Recipient, each such conservator. Except as otherwise provided in the preceding sentence but despite anything in the second sentence of this paragraph to the contrary, the class of Recipients shall not include and the Notice shall not be required to be delivered to or for the benefit of any person or persons with respect to whom the appointment of a guardian ad litem would be necessary to satisfy the requirements of CPC section 17203.

**12.2 Challenge by Interested Party to Amendment.** In the event that any Recipient objects to any amendment made by the Special Trustee, that Recipient may petition a court of competent jurisdiction, within 45 days of receipt of the Notice, to determine whether the amendment is inappropriate in light of all existing facts and circumstances (including the Settlor's intentions as expressed in or reflected by this document) or whether the amendment violates any restriction contained in this article. If no Recipient files such a petition within 45 days of receipt of the Notice or if the court does not determine that the amendment is inappropriate in light of all existing facts and circumstances or that the amendment violates a restriction contained in this article, the amendment shall become effective as of the date it is executed by the Special Trustee or any other effective date specified in the amendment.

**12.3 Restrictions on Power to Amend.** Despite anything in the preceding provisions of this paragraph to the contrary, the Special Trustee's power to amend the trust agreement shall be subject to the following restrictions.

**A. No Power to Extend the Perpetuities Period.** The Special Trustee shall have no power to amend the trust agreement in any manner that will extend a trust's existence beyond the period specified in the subparagraph whose caption reads "Perpetuities Savings Clause" under paragraph 6.2, unless such an amendment can be made without affecting the

validity of any trust created under this agreement and without adverse gift, estate, and generation-skipping transfer tax consequences.

**B. No Power to Reduce Trustee Restrictions and Limitations.** The Special Trustee shall have no power to amend the trust agreement in any manner that will reduce in any way the restrictions and limitations on:

- (1) Trustee actions set forth in this agreement; or
- (2) eligibility of persons or entities to act as Trustees.

unless the reduction of restrictions or limitations will not have any adverse transfer tax effect on any trust created under this agreement, on any person who directly or indirectly has transferred assets to the trust, on any of the Trustees, or on any of the beneficiaries.

**C. No Power to Reduce Special Trustee Restrictions and Limitations.** The Special Trustee shall have no power to amend the trust agreement in any manner that will reduce in any way the restrictions and limitations on:

- (1) Special Trustee actions set forth in this agreement;
- (2) eligibility of persons or entities to act as Special Trustees; or
- (3) the Special Trustee's power to amend under this article.

The Special Trustee shall have the power to amend the trust agreement to impose additional restrictions or limitations on any of the items described in the preceding sentence.

**D. No Grant of Fiduciary Discretion to Non-Fiduciary.** No amendment by the Special Trustee shall give anyone acting in a nonfiduciary capacity any power granted in this agreement to fiduciaries.

**E. No Beneficial Interest in Non-Beneficiary.** No amendment by the Special Trustee shall give any beneficial interest in any trust created under this agreement nor grant any power of appointment exercisable in a non-fiduciary capacity to the Special Trustee or to any person who is not a Settlor's descendant or the spouse of a Settlor's descendant.

**F. No Loss of Marital or Charitable Deduction.** No amendment by the Special Trustee shall make any change to any trust created under this agreement that would prevent transfers to that trust from qualifying for an estate tax charitable deduction under section 2055 or an estate tax marital deduction under section 2056 that would be available if that change were not made.

**G. No Loss of Benefits.** No amendment by the Special Trustee shall make any change that would disqualify any trust created under this agreement to the extent that the trust, prior to the amendment, otherwise qualified for and was taking advantage of any exemption from any creditor's right to levy on any beneficiary's interest in the trust or any substantial deduction, credit, exclusion, or other tax benefit (for example, a section 2032A election, a generation-skipping transfer tax exemption, or a significant grandfathered status under some changed law, etc.) if, without the change, the advantage currently being enjoyed would continue.

#### **12.4 Provisions Relating to Court Review.**

**A. No Restriction on Certain Judicial Proceedings.** Nothing in the preceding provisions of this article shall be construed to limit the right of an interested party to bring a petition to modify or terminate a trust under CPC section 15400 *et seq.* nor to limit the right of the Special Trustee to seek approval under CPC section 17200 *et seq.* of any amendment pursuant to this article.

**B. Required Judicial Approval in Certain Instances.** Despite anything in the preceding provisions of this article to the contrary, an amendment may not be made pursuant to this article unless the Special Trustee obtains approval under CPC section 17200 *et seq.* if any person who is required to receive notice under CPC section 15804 is a minor and if there is a substantial possibility that the proposed amendment would materially and adversely affect the interests of that minor beneficiary.

**C. Standard of Review in Certain Judicial Proceedings.** If a petition is brought by the Special Trustee under CPC section 17200 *et seq.* for approval of an amendment made pursuant to this article, the court shall grant approval if the court determines that the amendment is appropriate in light of all existing facts and circumstances and that the amendment does not violate any restriction contained in this article.

### **ARTICLE 13 -- MISCELLANEOUS PROVISIONS**

**13.1 "Children" and "Descendants" Defined.** For the purposes of this agreement, "children" means the blood lineal descendants in the first degree of the parent designated and "descendants" means the blood lineal descendants in any degree of the ancestor designated, and the terms shall include persons born both before and after this agreement is signed. If, however, a person has been adopted while under the age of 21 years, that person and his descendants shall be considered descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. Any child in the process of being legally adopted at the time an adopting parent dies shall be considered adopted if subsequently legally adopted by the deceased's surviving spouse.

**13.2 "The Code" Defined.** As used in this agreement, "the Code" means the Internal Revenue Code of 1986, as amended.

**13.3 "Inclusion Ratio" Defined.** As used in this agreement, "Inclusion Ratio" means the inclusion ratio for federal generation-skipping transfer tax purposes, as defined in section 2642 of the Code.

**13.4 "Income beneficiary" Defined.** For purposes of this agreement, an income beneficiary shall be any beneficiary to whom the Trustee is required or authorized to distribute income or principal, or both, at the time with respect to which the determination of income beneficiaries is being made. During any period of administration following the occurrence of an event that results in the termination of a trust, the income beneficiaries shall be those persons who are entitled to receive distributions from that terminating trust or who are the income beneficiaries of any successor trust created upon the termination of that terminating trust.

**13.5 Number and Gender.** Wherever appropriate in this agreement, terms in the singular form shall include the plural (and vice versa) and any gender form shall include all others.

**13.6 Captions.** The captions in this agreement are included for convenience only and are not to be used in construing or interpreting its provisions.

**13.7 Counterparts.** This agreement may be executed in a number of counterparts (including separate signature pages), each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**13.8 Governing Law.** This agreement shall be governed by and construed according to the laws of California.

**13.9 Ownership Designation of Assets.** Unless some other designation is required, the ownership designation for assets contributed to this trust shall be "Scot E. S. McKay as Trustee, or the successor Trustee or Trustees, u/a/d June 16, 2013, as amended, creating the Scot McKay Revocable Trust."

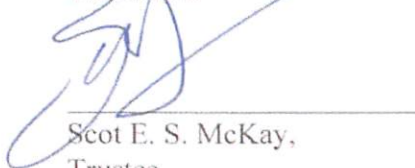
BY THEIR SIGNATURES BELOW, the undersigned have executed this agreement on June 16, 2013.

SETTLOR



Scot E. S. McKay,  
Settlor

TRUSTEE



Scot E. S. McKay,  
Trustee

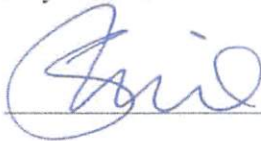
STATE OF CALIFORNIA  
COUNTY OF MONTEREY

On JUNE 16<sup>th</sup>, 2013, before me, ALIE M. TIGHT, Notary Public (here insert name and title of the officer) personally appeared Scot E. S. McKay, 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.

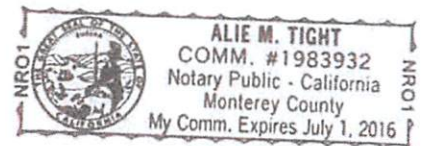
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



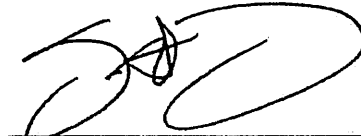
(Seal)



## GENERAL ASSIGNMENT

The undersigned hereby assigns all his jewelry, silver, books, pictures, paintings, objets d'art, automobiles, household furnishings and furniture, clothes, other personal effects; all cash, securities, and other intangible personal property of any kind whatsoever; and all real property of any kind whatsoever; that he may now or hereafter possess to Scot E. S. McKay as Trustee, or the successor Trustee or Trustees, u/a/d June 16, 2013, as amended, creating the Scot McKay Revocable Trust.

Dated: June 16, 2013



Scot E. S. McKay