

**DECLARATION OF REVOCABLE TRUST**  
  
**OF**  
  
**C. DUANE NIESEN AND**  
  
**KATHRYNE J. NIESEN**

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### SCHEDULE A

**DECLARATION OF REVOCABLE TRUST**  
**OF**  
**C. DUANE NIESEN AND KATHRYNE J. NIESEN**

**C. DUANE NIESEN AND KATHRYNE J. NIESEN** (referred to herein as "Grantors," "Trustees," and sometimes as "Husband" and "Wife" depending on the context) declare that they have transferred or will transfer to themselves as Trustees the property listed in Schedule A attached hereto and that they hold and will hold that property and any other property of the trust estate in trust for the primary benefit of themselves and their family on the terms set forth in this Declaration. The Grantors declare that Husband has three (3) children from a prior marriage, **PERRY DUANE NIESEN, LAUREL DIANE MOGL-NIESEN and HEATHER LYNN COMERATE**, and that Husband and Wife have two (2) children of their marriage, **JESSE DUANE NIESEN and JASON CARL NIESEN**. It is the Grantors' intention that their five (5) children share equally as beneficiaries of this Trust. The Grantors declare that they have no deceased children with issue now living.

**ARTICLE 1.**

**TRUST ESTATE AND TRUSTEES**

**A. Trust Estate.** Property subject to the terms of this Declaration of Trust is referred to as the "trust estate" and shall be known during the joint lives of the Grantors as the **C. DUANE NIESEN AND KATHRYNE J. NIESEN REVOCABLE TRUST**.

**B. Retention of Property Character.** Any community property transferred to the trust shall remain community property after its transfer. It is the Grantors' intention that as Trustees they shall have no more extensive power over the community property transferred to the trust estate than they would have had under California Civil Code Sections 5125 and 5127 had this Trust not been created, and this instrument shall be so interpreted to achieve this intention. This limitation shall terminate on the death of either Grantor.

All separate property of either of the Grantors transferred to this Trust and the proceeds thereof shall be identified and shall retain its character as separate property during the joint lifetimes of Grantors.

**C. Trustees.** Husband and Wife are the Co-Trustees (hereinafter jointly referred to as "the Trustee") of all trusts created by, or to be created in accordance with this Declaration of Trust, to serve

without bond. Should either Husband or Wife become unable because of death, incompetency or other cause, to serve as Trustee, or should he or she resign as Trustee, then the other shall serve as sole Trustee of all trusts provided for in this Trust Agreement.

Husband and Wife, while acting as Trustees, or either of them while acting as sole Trustee, are authorized in their absolute discretion, and upon giving written notice or amendment, to appoint or nominate at any time a substitute or successor Trustee or Co-Trustee, as the case may be, to act in place of any Trustee either then nominated or acting. The superseded Trustee, if then acting, shall, at the cost and expense of the Trust Estate, execute and deliver to such successor Trustee all conveyances and assignments, and do all things to confirm to such successor Trustee the authority to act as such.

Whenever in this Declaration of Trust, reference is made to Trustee or Trustees, such reference shall include not only the original Trustees named, but also any and all substitute Trustees and/or successor Trustees.

## ARTICLE 2.

### **DISTRIBUTIONS DURING JOINT LIVES OF HUSBAND AND WIFE**

**A. Distributions from Community Estate.** During the joint lifetimes of the Grantors, and except as provided in Paragraph D below, the Trustee shall pay to or apply for the benefit of the Grantors as much of the *income and principal* of the community trust estate as either Grantor requests plus such additional sums as the trustee in its discretion determines are appropriate for each Grantor's **health, education, and support** in accordance with their accustomed manner of living. Any income not distributed shall be accumulated and added to the principal of the trust estate.

**B. Distributions from Separate Property.** During the joint lifetimes of the Grantors, the portion of the trust estate that is the separate property of one Grantor (the "owning Grantor") shall be distributed, retained, or provided for use in kind as the owning Grantor directs. Undistributed income shall be added to principal. If the owning Grantor is not competent to direct distributions or other use of property, the other spouse may direct distributions on behalf of the owning spouse and may exercise this power for the generous health and support of both Grantors. If both Grantors are incompetent, the trustee shall pay to or apply for the benefit of the Grantors as much of the owning Grantor's separate property trust estate as the trustee deems appropriate for the Grantors' **health and support**. In exercising its discretion, the trustee may take into account other income and resources available for these purposes.

C. **Policy of Liberal Invasion.** The Trustee shall exercise in a liberal manner the power to invade principal contained in this Article 2, and the rights of the remainder beneficiaries in the trust shall be considered of secondary importance.

D. **Distributions in the Event of Incapacity.** If either or both Grantors become physically or mentally incapacitated, which shall be established by the written opinion of his or her physician, whether or not disability or the need for a conservator has been declared by court (but subject to the right of a Grantor to petition a court for a determination that no disability exists), the Trustee shall pay to or apply for the benefit of the Grantors, first from the community estate until it is exhausted and then from the separate estates of either or both Grantors (in equal shares to the extent possible), as much of the net income and principal of the trust estate as the Trustee considers necessary to provide for the Grantors' health, education, maintenance, support, comfort, happiness and welfare. Any income not distributed shall be accumulated and added to the principal of the trust estate. This power of the Trustee shall remain in effect until the incapacity is removed and the Grantor is again able to manage his or her own affairs, as certified in writing by his or her physician. Each Grantor waives any privilege which may apply to releasing information included in the physician's statement. No licensed physician shall be subject to any liability in providing the written opinion as described in this Paragraph.

E. **Payments to Others.** The Grantors acting jointly may at any time direct the Trustee in writing to pay single sums or periodic payments out of the community estate to any person or organization, including the Grantors, or either of them. Any Grantor who has contributed separate property may direct the Trustee in writing to pay single sums or periodic payments out of the separate property to any person or organization including that Grantor. The Grantors' power to so direct the Trustee shall be personal to the Grantors, except that this power may be exercised by the Grantor's Conservator to the extent that such payments are made to or for the benefit of one or more of the Grantor-Conservatee's issue and qualify for the annual gift tax exclusion.

### ARTICLE 3.

#### ADMINISTRATION OF TRUST ESTATE AND DISTRIBUTIONS ON FIRST DEATH

A. **Survivor's Trust.** The first Grantor to die shall be called the "deceased spouse" and the living Grantor shall be called the "surviving spouse." On the death of the deceased spouse, the Trustee shall continue to hold the property of the surviving spouse in trust, to be known as the Survivor's Trust. The

Trustee shall also allocate and distribute to the Survivor's Trust all of the property of the deceased spouse, except as the deceased spouse shall have appointed in accordance with the provisions of this trust for exercising a power of appointment. If the Survivor's Trust is the only trust established on the death of the deceased spouse, then the transfer of property to such trust need not be evidenced by a change of title.

**B. Distributions from Survivor's Trust.** During the lifetime of the Surviving Grantor, the Trustee shall pay to or apply to the benefit of the Surviving Grantor as much of the *income and principal* of the Survivor's Trust as the Surviving Grantor requests, plus such additional sums as the Trustee, in the Trustee's discretion, determines are appropriate for the Surviving Grantor's health, maintenance, support, or education. If the Grantors' deaths occur simultaneously or in unknown order, the trust estate shall be divided, administered and distributed pursuant to Article 4 for the event of the survivor's death.

**C. Payment of Expenses and Taxes.**

1. After the death of the deceased spouse, the Trustee shall pay out of the trust estate the deceased spouse's last-illness and funeral expenses, debts, and the expenses of administration of the deceased Grantor's probate estate. The burden of such payments shall be allocated and charged to the separate and community property of each Grantor in accordance with California Probate Code sections 19320-19326, with no last-illness and funeral expenses being paid from the community property of the surviving Grantor.

2. Except as otherwise specifically provided in this instrument (or in either Grantor's Will directing that the property passing under the will be applied to the satisfaction of a tax), all estate and other inheritance taxes, including interest and penalties, imposed on or by reason of the inclusion of any portion of the trust estate in the gross taxable estate of either Grantor may be paid by the trustee and charged to, prorated among, or recovered from the trust estate or the persons entitled to the benefits under these trusts as provided in Division 10 of the California Probate Code and applicable provisions of the Internal Revenue Code. The trust estate includes property subject to probate administration that is directed to be added to the trust estate by reason of a Grantor's death.

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#### ARTICLE 4.

##### **PAYMENT OF EXPENSES AND TAXES AND DISTRIBUTION ON DEATH OF SURVIVOR**

###### **A. Payment of Expenses and Taxes.**

1. After the death of the surviving spouse, the Trustee shall pay out of the trust estate the surviving spouse's last-illness and funeral expenses, debts, and the expenses of administration of the surviving Grantor's probate estate.

2. Except as otherwise specifically provided in this instrument (or in the surviving Grantor's Will directing that the property passing under the will be applied to the satisfaction of a tax), all estate and other inheritance taxes, including interest and penalties, imposed on or by reason of the inclusion of any portion of the trust estate in the gross taxable estate of either Grantor may be paid by the trustee and charged to, prorated among, or recovered from the trust estate or the persons entitled to the benefits under these trusts as provided in Division 10 of the California Probate Code and applicable provisions of the Internal Revenue Code. The trust estate includes property subject to probate administration that is directed to be added to the trust estate by reason of a Grantor's death.

**B. Division of Trust Estate into Shares.** After the death of the surviving spouse, the Trustee shall divide the trust estate into as many equal shares as there are children of Husband and Wife then living and children of Husband and Wife then deceased leaving issue then living. Thus, if all of the children of Husband and Wife are then living, each child shall receive an equal one-fifth (1/5) share of the Trust. The Trustee shall allocate one such equal share to each living child and one such equal share to each group composed of the living issue of a deceased child. Each such share shall be distributed, or retained in trust, as hereafter provided.

###### **C. Distribution of Shares.**

1. Each share allocated to a living child of Husband and Wife shall be paid to such child free of trust.

2. Each share allocated to a group composed of the living issue of a deceased child of Husband and Wife shall be distributed to the deceased child's issue then living, by right of representation, subject to the provisions of Article 4, Paragraph C (3) below.

3. Notwithstanding anything to the contrary herein, if under the provisions of this Article a child of a deceased child of Husband and Wife or a more remote descendant of Husband and Wife

who is under age twenty-one (21) becomes entitled to any share of the principal of the trust and no effective provision is made for the retention thereof, the Trustee shall continue to hold, administer, invest and reinvest such beneficiary's share as a separate trust for the benefit of the beneficiary as follows: the Trustee shall pay to or apply for the benefit of the beneficiary from his or her trust share as much of the *net income and principal* as the Trustee deems advisable for the proper **support, health, maintenance, and education** of the beneficiary. Any income not so paid or applied shall be accumulated and added to principal. When the beneficiary attains age twenty-one (21), the Trustee shall distribute to the beneficiary his or her entire share of the trust then being held.

4. If a child or the issue of a deceased child of Husband and Wife dies before becoming entitled to receive distribution of his or her entire trust, the undistributed balance of such beneficiary's trust shall be distributed to his or her issue then living, by right of representation or, if there are none and the beneficiary is the issue of a deceased child of Husband and Wife, then to the surviving issue of such child, by right of representation, subject to the provisions of Article 4, Paragraph C (3) above. If a child of the Grantors dies without issue then living prior to receiving the entire distribution of his or her share of the trust estate, such share shall be distributed to the then living issue of Husband and Wife, by right of representation. If any share of the trust estate would otherwise be distributed to a person for whose benefit a trust is then being administered under this instrument, that part shall instead be added to that trust and shall thereafter be administered according to its terms.

**D. Payments to Minors and Disabled Beneficiaries.** If the trustee is directed to distribute trust property to a minor, a person under any other legal disability, or a person not adjudicated to have limited legal capacity but who, by reason of illness or mental or physical disability, is in the trustee's judgment unable to manage the distributed property properly, and no other effective provision is made for the retention thereof, the trustee may, in the trustee's discretion, make the distribution to: (1) the beneficiary directly; (2) a legally appointed guardian or conservator of the beneficiary's person or estate; (3) a custodian for the minor beneficiary under any applicable Uniform Transfers or Gifts to Minors Act to hold for the beneficiary until age twenty-four (24); (4) a third party for the benefit of the beneficiary; or (5) an adult relative or friend in reimbursement for amounts properly advanced for the beneficiary's benefit. If no custodian exists for receipt of property under any applicable Uniform Transfers or Gifts to Minors Act, the trustee may designate an appropriate custodian to receive the property.

## ARTICLE 5.

### AMENDMENT AND REVOCABILITY

A. **Revocation of Trust.** During the joint lifetimes of the Grantors, this Trust may be revoked in whole or in part with respect to community property by an instrument in writing signed by either Grantor and delivered to the Trustee and the other Grantor, and with respect to separate property by an instrument in writing signed by the Grantor who contributed that property to the Trust and delivered to the Trustee. On revocation, the Trustee shall promptly deliver to Husband and Wife all or the designated portion of the community property trust assets, which shall continue to be the community property of the Grantors. On revocation with respect to quasi-community property or separate property, the Trustee shall promptly deliver to the contributing Grantor all or the designated portion of that property.

If this instrument is revoked with respect to all or a major portion of the assets subject to the instrument, the Trustee shall be entitled to retain sufficient assets reasonably necessary to secure payment of liabilities lawfully incurred by the Trustee in the administration of the Trust, including Trustee's fees that have been earned, unless the Grantors shall indemnify the Trustee against loss and expense.

B. **Trust Remains Revocable.** On the death of the deceased spouse, the surviving spouse shall have the power to amend, revoke or terminate the Trust. On revocation or termination of the Trust, all its assets shall be delivered to the surviving spouse.

Revocation and amendment shall be made in the manner provided in Paragraphs A and C of this Article 5.

C. **Amendment of Trust.** The Grantors may at any time during their joint lifetimes amend any or all of the terms of this instrument as to any community property by an instrument in writing signed by both Grantors and delivered to the Trustee. With respect to any separate property included in the trust estate, the Grantor who contributed that property to the Trust may amend any or all of the terms of this instrument as to such separate property by an instrument in writing signed by and delivered to the Trustee.

No amendment shall substantially increase the duties or liabilities of the Trustee or change the Trustee's compensation without the Trustee's consent, nor shall the Trustee be obligated to act under such an amendment unless the Trustee accepts it. If a Trustee is removed for refusing to accept an amendment, the Grantors shall pay to that Trustee any sums due and shall indemnify that Trustee against liability lawfully incurred by that Trustee in the administration of the trusts.

**D. Power to Amend or Revoke Personal to Grantors.** The powers of the Grantors to revoke or amend this instrument are personal to them; except that a Grantor's agent under a duly executed Durable Power of Attorney, if authorized to do so under the power of attorney instrument, may exercise the power to revoke or amend this Trust but shall not alter the ultimate distribution of the trust estate as expressed by the Grantor(s) herein. If no such agent is appointed under a duly executed Durable Power of Attorney, then a Court-appointed Conservator for a Grantor may be authorized to exercise the power to revoke or amend this Trust pursuant to a Petition to the Court under Probate Code section 2580, or any successor statute.

**E. Exercise of Power of Appointment.** A power of appointment conferred by this document, other than a power held in a fiduciary capacity by a trustee, may be exercised only by an instrument that specifically refers to both this trust and the specific power being exercised. Such a power must be exercised by Will, Codicil, or a "qualified lifetime instrument." For purposes of this paragraph, a qualified lifetime instrument is an instrument meeting the requirements described above for revoking a trust as to the revoking Grantor's separate property, including an instrument executed by a conservator or an attorney-in-fact. A court may give effect to an attempted exercise that fails to satisfy the requirements of this paragraph in accordance with the criteria that would apply to a defective amendment of this document. It being a purpose of this trust to avoid probate, the trustee may distribute trust property in accordance with a Will or Codicil that has not been probated.

## **ARTICLE 6.**

### **POWERS OF TRUSTEE**

**A. Powers of Trustee.** To carry out the purposes of any trust created under this instrument, subject to any limitations stated elsewhere in this document, the Trustee shall have the powers listed below, in addition to those powers now or hereafter conferred by law. The enumeration of certain powers shall not limit the Trustee's powers. The Trustee shall have all of the rights, powers and privileges that an absolute owner of the same property would have, subject to the Trustee's fiduciary obligations. The powers of the Trustee are as follows:

1. To manage, control, grant options on, sell (for cash or on deferred payments with or without security), convey, exchange, partition, divide, improve, and repair trust property.

2. To lease trust property for terms within or beyond the terms of the trust and for any purpose, including exploration for and removal of gas, oil, and other minerals, and to enter into community oil leases, pooling, and unitization agreements.

3. To invest and reinvest the trust estate in every kind of property and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, preferred or common stocks, mutual funds, shares in investment trusts and investment companies, bonds, debentures, mortgages, deeds of trust, mortgage participations, life insurance policies, notes, real estate or other property which the Trustee in the Trustee's discretion selects; as a prudent investor would, considering the purposes, terms, distribution requirements, and other circumstances of the Trust and exercising reasonable care, skill and caution.

4. To hold securities or other property in the trustee's name as trustee under this trust, in the trustee's own name, in the name of a nominee, or in unregistered form so that ownership will pass by delivery.

5. To carry, at the expense of the trust, insurance of such kinds and in such amounts as the trustee deems advisable to protect the trust estate against any damage or loss and to protect the trustee against liability with respect to third parties.

6. To loan money to any person, including a trust beneficiary or the Grantor, or the estate of a trust beneficiary or the Grantor's estate, or a trust created by a trust beneficiary or the Grantor, irrespective of whether the executor or trustee of such estate or trust shall be the same as the Trustee of this trust; provided, however, that any such loan shall be adequately secured and bear a reasonable rate of interest.

7. To purchase property at its fair market value, as determined by the Trustee in the Trustee's discretion, from the probate estate or a trust created by the Grantor, irrespective of whether the executor or trustee of such estate or trust shall be the same as the Trustee of this trust.

8. To borrow money and to encumber trust property by mortgage, deed of trust, pledge, or otherwise, for the debts of the trust or the joint debts of the trust and a co-owner of the property in which the trust has an interest, or for a Grantor's debts; and to guarantee the debt of the Grantor.

**B. Securities.** The trustee shall have all the rights, powers, and privileges of an owner of the securities held in trust, including, but not by way of limitation, the power to vote, give proxies, and pay assessments; to participate in voting trusts and pooling agreements (whether or not extending beyond the term of the trust); to enter into shareholders' agreements; to consent to foreclosure, reorganizations,

consolidations, merger liquidations, sales, and leases, and, incident to any such action, to deposit securities with and transfer title to any protective or other committee on such terms as the trustee may deem advisable; and to exercise or sell stock subscription or conversion rights.

**C. Retain or Abandon Property.** The trustee shall have the power to continue to hold any property and to operate at the risk of the trust estate any business that the Trustee receives, or to abandon any property that the trustee receives or acquires when, in the discretion of the Trustee, the abandonment is in the best interests of the trust and its beneficiaries. The Trustee may, in the Trustee's discretion, retain, purchase or otherwise acquire unproductive or underproductive property; provided, however, that this power is subject to the surviving spouse's right to compel the Trustee either to sell unproductive or underproductive property or to make compensatory distributions of principal.

**D. Litigation.** The Trustee shall have the power to initiate or defend, at the expense of the trust, any litigation relating to the trust or any property of the trust estate the trustee considers advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of the trust. The Trustee's powers under this Paragraph shall apply during the term of the trust and after distribution of trust assets. The Trustee shall have no obligations or duties, however, for any litigation or claims occurring after distribution of trust assets, unless the trustee is adequately indemnified by the distributees for any loss connected with these matters.

**E. Compensation.** The Trustee shall be entitled to reasonable compensation from time to time and to reimbursement for expenses of the trust which the trustee has paid, both without prior court order.

**F. Allocations Between Principal and Income.** The trustee shall determine all matters with respect to what is principal and income of the trust estate as follows:

1. Subject to subparagraph (2) of this clause and to any contrary provision in this instrument, from and after the deceased spouse's death, the provisions of the California Revised Uniform Principal and Income Act (RUPIA) shall govern beneficiaries' rights among themselves in matters concerning principal and income. If this Act contains no provision concerning a particular item, the Trustee shall determine what is principal or income and apportion and allocate, in the trustee's reasonable discretion, receipts and expense between these accounts. Income accrued or unpaid on trust property when received into any trust shall be treated as any other income.

2. All the powers in this paragraph are subject to the Trustee's duties to treat equitably both the income beneficiaries and remainder beneficiaries of any trust. In this connection, the Trustee shall observe the following:

a. A reasonable reserve for depreciation of all income-producing depreciable real property, capital improvements, and extraordinary repairs to the property (e.g., new roof, new plumbing system, etc.) shall be charged to income.

b. A reasonable reserve for depletion of all depletable natural resources, including, but not limited to, oil, gas and mineral and timber property, shall be charged to income.

c. Distributions by mutual funds and similar entities of gains from the sale or other disposition of property shall be credited to principal.

d. A reasonable reserve for amortization of all intangible property with a limited economic life including, but not limited to, patents and copy-rights shall be charged to income.

e. All premiums paid and all discounts received in connection with the purchase of any bond or other obligation shall be amortized by making an appropriate charge or credit to income as the case may be.

f. All items of income in respect of a decedent shall constitute principal, except that if any such items allocated to the marital gift do not yield a reasonable amount of income as required by Treasury Regulation section 20.2056(b)-5(f), the Trustee shall allocate a reasonable portion of such items to income, the amount of such allocation to be determined in the Trustee's discretion, taking into account the Grantor's desire to comply with such regulation as to all items allocated to the marital gift.

**G. Undistributed Income.** Income accrued or held undistributed by the trustee at the termination of any trust or any interest in a trust created under this instrument shall go to the next beneficiaries of that interest or trust in proportion to their interest in it.

**H. Expense Allocation.** Among successive beneficiaries of this trust, all taxes and other current expenses shall be prorated on a daily basis over the period to which these expenses relate.

**I. Tax Consequences - Adjustment.** The trustee shall have the power in the trustee's reasonable discretion to take any action and to make any election to minimize the tax liabilities of any trust and its beneficiaries, to allocate the benefits among the various beneficiaries, and to 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 that the trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

J. **Release of Powers.** Each Trustee shall have the power to release or to restrict the scope of any power that the Trustee may hold in connection with the Trust created under this instrument, whether this power is expressly granted in this instrument or implied by law. The Trustee shall exercise this power in a written instrument specifying the powers to be released or restricted and the nature of any restriction. Any released power shall pass to and be exercised by the nominated successor Trustee.

K. **Prohibited Powers.** The Trustee is expressly prohibited from exercising any power vested in the Trustee primarily for the benefit of the Trustee rather than for the benefit of the beneficiaries. The Trustee shall not have the power to purchase, exchange or otherwise deal with or dispose of the principal or income of the trust estate, for less than adequate and full consideration in money or money's worth; or the power to borrow the principal or income of the trust estate, directly or indirectly, without adequate interest or without adequate security.

L. **Public Benefits.** The trustee shall have the power to apply for, maximize and maintain any and all public benefits to which a Grantor may be entitled, including Veteran's benefits, Social Security, Medicare and Medi-Cal, particularly in the event that major expenses relating to a Grantor's incapacity are foreseeable. This authorization includes: (a) modifying or revoking this Trust in whole or in part in order to effect a transfer of Grantor's residence to transferees then permissible under applicable state and federal law; (b) amending this Trust in any other manner which may maximize a Grantor's eligibility for public benefits; (c) making gifts of a Grantor's property to Grantor's beneficiaries, including gifts of community property to the Grantor's spouse as his or her separate property, so long as such gifts do not result in Grantor's ineligibility for public benefits; (d) creating an irrevocable trust to contain a Grantor's assets; and/or (e) taking any other action necessary to maximize a Grantor's eligibility for public benefits; provided, however, that any such actions by the trustee should not result in any significant change in the Grantor's plan for the distribution of the Grantor's estate without the consent of all beneficiaries whose interests may be affected. The trustee is further directed to take all legal steps necessary to defend a Grantor's actions, or the trustee's actions, under this section, including retaining attorneys and other professionals and paying for the services of such attorneys and other professionals out of Grantor's property.

M. **Simultaneous Death/Survivorship.** Except as otherwise provided in this instrument, if Husband and Wife die and there is no sufficient evidence that they died otherwise than simultaneously, it shall be conclusively presumed that Husband survived Wife. If any person named in this instrument fails to survive the surviving Grantor for thirty (30) days, for all purposes of this instrument that person shall be considered to have predeceased the surviving Grantor.



N. **Power to Comply with Environmental Laws.** The trustee may, in the trustee's discretion:

1. Take any action to prevent, abate, clean up, or otherwise remedy any actual or threatened violation of any environmental law arising from the existence, condition, maintenance, or use of any property held in any trust created under this trust instrument. Action may be taken before or after the initiation of enforcement action by any government agency. The trustee may, in the trustee's discretion, charge the cost of any inspection, monitoring, reporting, preventive activity, abatement, cleanup, or other remedial action against trust income or principal.

2. Settle or compromise any claim against the trust asserted by any government body or private party involving the violation of any environmental law alleged to result from the existence, conditional, maintenance, or use of any trust property.

3. Decline to accept any property in trust if the trustee determines, in the trustee's discretion, that the property's existence, condition, maintenance, or use (before or after its acceptance into the trust) does or could violate any environmental law, resulting in liability to the trustee or detriment to the value of other trust assets. Acceptance of any property into the trust shall not create any inference regarding the existence of any liability under any environmental law affecting the property.

4. Decline to serve as trustee or resign as trustee if the trustee determines, in the trustee's sole discretion, that there may be or is a conflict of interest between the trustee in a fiduciary capacity and as an individual because of environmental claims or liabilities that could be asserted against the trustee arising from the existence, condition, maintenance or use of any trust property.

As used in this trust, "environmental law" means any federal, state, or local law, regulation, rule or ordinance relating to protection of the environment or human health. The trustee will not be liable to any beneficiary for any detriment to trust property values due to the trustee's compliance with any environmental law.

O. **Power to Hire Advisors.** The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisors, appraisers, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

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## ARTICLE 7.

### ADMINISTRATIVE PROVISIONS

A. **Spendthrift.** No interest in the principal or income of any trust created under this instrument shall be anticipated, assigned or encumbered, or subject to any creditor's claim or to legal process, prior to its actual receipt by the beneficiary.

If the creditor of any beneficiary who is entitled to any distributions from a trust established under this instrument attempts by any means to subject to the satisfaction of his or her claim that beneficiary's interest in any distribution, then, notwithstanding any other provision in this instrument, until the release of the writ of attachment or other process, the distribution set aside for such beneficiary shall be disposed of as follows:

1. The trustee shall pay to or apply for the benefit of the beneficiary all sums the trustee determines to be necessary for the reasonable health, education and support of the beneficiary according to his or her accustomed mode of life; and
2. The portion of the distribution that the trustee determines to exceed the amount necessary for health, education and support shall be added to and become principal in whole or in part.

B. **Accounting.** The Trustee shall be required to provide an accounting of his or her actions as Trustee as follows:

1. During either Grantor's lifetime, the Trustee (if other than the Grantor) shall render an accounting to the Grantor(s) at least annually.
2. The Trustee, if other than one of the Grantors, shall render an accounting at least annually to all of the current income and current principal beneficiaries who are then adults or to the parent or legal guardian of any such beneficiary who is a minor.

The form, content and manner of delivery of an accounting shall be in accordance with the provisions of Probate Code sections 16060-16064, or any successor statute.

C. **Trust Not to Extend Beyond Legal Limits.** Unless sooner terminated in accordance with other provisions of this instrument or the provisions of any trust created by the exercise of any power of appointment conferred in this instrument, all trusts created under this instrument and each trust created by the exercise of any such power of appointment shall terminate twentyone (21) years after the death of the

beneficiaries of the trust who are living at the time of death of the Grantor. The principal and undistributed income of a terminated trust shall be distributed to the then income beneficiaries of that trust in the same proportions that the beneficiaries are entitled to receive income when the trust terminates. If at the time of such termination the rights to income are not fixed by the terms of the trust, distribution under this clause shall be made, by right of representation, to the persons who are entitled or authorized, in the Trustee's discretion, to receive trust payments.

**D. Multiple Trusts - No Physical Division.** If more than one trust is held under this instrument, the trustee shall not be required to physically segregate or divide assets between the various trusts, except on the termination of any of the trusts. However, the trustee shall keep separate accounts for the separate undivided interests and may hold undivided interests in the same assets.

**E. Distributions - Consideration of Basis.** In making non-prorata distributions to beneficiaries, the trustee shall consider and attempt to equalize, as far as practicable, the aggregate income tax basis of assets distributed to the various beneficiaries. Any such determination by the trustee shall bind all parties in interest.

**F. Distribution - Broad Powers.** When the trustee must divide any trust property into parts or shares for the purpose of distribution, or otherwise, the trustee may, in the trustee's reasonable discretion, make the division and distribution in identical interests, in kind, or partly in kind and partly in money, prorata or non-prorata. Also, the trustee may make such sales of the trust property as the trustee deems necessary to accommodate such distributions.

**G. Power to Withhold Distribution.** The Trustee shall have the power to withhold from distribution at the time specified for distribution of any property in this trust, without payment of interest, all or any part of the property if the Trustee determines in the Trustee's discretion that the property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise.

**H. Small Trust Termination - Trustee Discretion.** The trustee may determine whether, in its reasonable discretion, the principal of the trust is uneconomical to administer. The trustee may then, in its reasonable discretion, either (1) distribute the trust assets to the beneficiaries in proportion to their interests in income; (2) purchase and deliver to the income beneficiaries a restrictive savings account, certificate of deposit, annuity, or endowment; (3) distribute the trust assets to a custodian for each minor beneficiary under the Uniform Transfers to Minors Act; or (4) distribute the trust assets as provided by law. On such distribution and delivery, the trust shall terminate. The trustee shall not be liable or responsible to any

person for its action nor for its failure or refusal at any time to terminate the trust as authorized in this paragraph.

**I. Severability Clause.** If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

**J. California Law Shall Apply.** The validity of the trusts and the construction of their beneficial provisions shall be governed by the laws of the State of California in force from time to time.

**K. Definition of "Education."** Whenever provision is made to pay for the education of a beneficiary, the term "education" shall include public and private vocational, college and postgraduate study as long as in the Trustee's discretion it is pursued to advantage by the beneficiary at an institution of the beneficiary's choice. In determining payments to be made to the beneficiary for such education, the Trustee shall consider the beneficiary's reasonably related living and traveling expenses.

**L. Definition of "Issue."** In this instrument, the term "issue" shall refer to lineal descendants of all degrees and the terms "child," "children," and "issue" shall include adopted children.

## **ARTICLE 8.**

### **SUCCESSOR TRUSTEE**

**A. Appointment.** If both Husband and Wife shall resign as Trustees or shall cease to act as Trustees due to death or incapacity, **PERRY DUANE NIESEN** shall act as Trustee. If **PERRY DUANE NIESEN** is unable or unwilling to act as Trustee, **JESSE DUANE NIESEN** shall act as Trustee.

Each Trustee (including successors) shall have the right to appoint a successor Trustee by an instrument in writing, such appointment to take effect upon the death, resignation or incapacity of the appointing Trustee. An appointment may be changed or revoked until it takes effect. If the office of the Trustee is vacant, then a majority of the current adult beneficiaries who are living and competent at the time of such vacancy may appoint a Successor Trustee.

**B. Bond.** No bond shall be required of any person named in this instrument as a Trustee for the faithful performance of his or her duties as Trustee.

**C. Limited Liability of Successor Trustee.** No successor Trustee shall be liable for any act, omission or default of a predecessor Trustee or Trustees. Unless requested in writing within sixty (60) days of appointment by an adult beneficiary of a trust, no successor Trustee shall have any duty to investigate or review any action of a predecessor Trustee or Trustees, and the successor Trustee may accept the accounting


records of the predecessor Trustee or Trustees showing assets on hand without further investigation and without incurring any liability to any person claiming or having an interest in the trust.

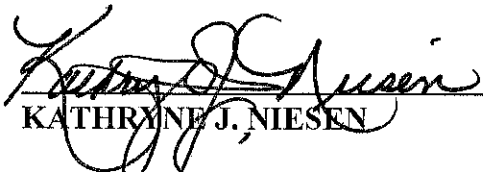
**D. Exculpation of Trustee.** A trustee appointed in this instrument, otherwise designated by a Grantor, or designated as authorized in this document, shall not be liable to any beneficiary for the trustee's acts or omissions, except in cases of willful misconduct, bad faith, or gross negligence. This provision does not however relieve a trustee of any obligation to restore to the trust any benefits received by the trustee as a result of a breach of the trust. This paragraph does not apply to a person who regularly engages in the business of acting as a trustee.

We certify that we have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed, and disposed of by the Trustees. We approve the Declaration of Trust in all particulars and request that the Trustees execute it.

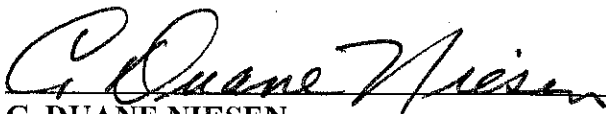
DATED: 3/6/07

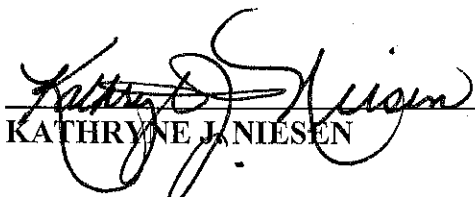
GRANTORS:

  
C. DUANE NIESEN

  
KATHRYNE J. NIESEN

TRUSTEES:

  
C. DUANE NIESEN

  
KATHRYNE J. NIESEN

ATTEST:

On the date written below, C. DUANE NIESEN and KATHRYNE J. NIESEN declared to us, the undersigned, that the foregoing instrument, consisting of twenty (20) pages, including this page, was the

**DECLARATION OF REVOCABLE TRUST OF C. DUANE NIESEN AND KATHRYNE J.**

**NIESEN**, and they requested us to act as witnesses to it. They thereupon signed this Declaration in our presence, all of us being present at the same time. We now, at their request and in their presence, and in the presence of each other, have subscribed our names as witnesses.

EXECUTED on March 6, 2007, at Grass Valley, California. We declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

J. J. Willens  
(Signature)  
Address:

Jennifer L. Willerson  
(Print)

140 Litton Dr. Ste 204  
Grass Valley CA 95945

Sherel A. Daly  
(Signature)  
Address:

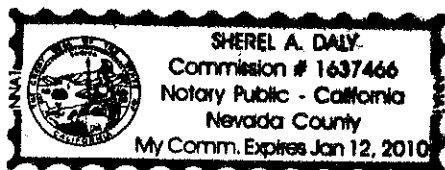
SHEREZ A. DALY  
(Print)

13839 Lee Lane  
Nevada City, CA 95959

State of California )  
County of Nevada )

On 6 March 2007, before me, SHEREZ A. DALY, Notary Public, personally appeared **C. DUANE NIESEN and KATHRYNE J. NIESEN**, personally known to me (or proved on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



Sherel A. Daly  
Notary Public

**SCHEDULE A**

**TO THE**

**DECLARATION OF REVOCABLE TRUST OF**

**C. DUANE NIESEN AND KATHRYNE J. NIESEN**

The Grantors hereby transfer, assign and convey the following described assets, receipt of which is hereby acknowledged by the Trustees, to be held for the beneficiaries under the terms and conditions of this Trust:

**COMMUNITY PROPERTY OF C. DUANE NIESEN & KATHRYNE J. NIESEN**

**Real Property**

1. Residence and real property located at  
16735 Rough & Ready Highway  
Rough & Ready, CA 95975  
APN: 53-150-21 & 22; 53-160-06 & 07

**Promissory Notes**

2. \$300,000 Promissory Note from Thomas P. Hess, et al.  
dated 9-28-05  
interest rate 6.5%  
payable in monthly installments of \$4,015.87  
all due and payable 11-15-2013  
secured by deed of trust recorded 10-24-05  
as doc. no. 2005-42335 in Nevada County

**Cash & Investment Accounts: Certificates of Deposit**

3. Bank of the West  
Account No. \_\_\_\_\_
4. Tri-Counties Bank  
Account No. \_\_\_\_\_
5. Edward Jones  
Investment Account No. \_\_\_\_\_

**Individual Retirement Accounts - Trust is Contingent Beneficiary**

6. Edward Jones – Wife's IRA

### **Tangible Personal Property**

7. Firearms
8. Artwork
9. Vehicles
10. Equipment, Machinery & Tools
11. Books & Library Materials
12. Photographs

[sad:3/6/07:J:\Wpwin7\Clients Open\Niese01\NoTaxTrust]