

# ADVANCE HEALTH CARE DIRECTIVE

(California Probate Code Section 4701)

## Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do both of these things. It also lets you express your wishes regarding donation of organs.

Part 1 of this form is a power of attorney for health care. Part I lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. (Your agent may not be an operator or employee of a community care facility or a residential care facility where you are receiving care, or your supervising health care provider or employee of the health care institution where you are receiving care, unless your agent is related to you or is a co-worker.)

Your agent may make all health care decisions for you. Your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.
- (b) Select or discharge health care providers and institutions.
- (c) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.
- (d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.
- (e) Make anatomical gifts, authorize an autopsy, and direct disposition of remains.

Part 2 of this form lets you give specific instructions about any aspect of your health care.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

After completing this form, give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time.

## PART 1 POWER OF ATTORNEY FOR HEALTH CARE

(1.1) **DESIGNATION OF AGENT:** I designate the following individual as my agent to make health care decisions for me: ~~John K. Mirau~~.

If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

(a) First Alternate Agent: \_\_\_\_\_

(b) Second Alternate Agent: \_\_\_\_\_

If two or more agents are designated to act at the same time, then my agents shall exercise their authority by unanimous action. If a vacancy among multiple agents occurs, the remaining agents may exercise the authority conferred as if they are the only agents. For purposes of exercising authority at any particular time, a vacancy shall be deemed to have occurred (for the exercise of authority at that time only) if an agent is unavailable because of absence, illness, or other temporary incapacity.

(1.2) **AGENT'S AUTHORITY:** My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive.

(1.3) **WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE:** My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions.

(1.4) **AGENT'S OBLIGATION:** My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(1.5) **AGENT'S POSTDEATH AUTHORITY:** My agent is authorized to make anatomical gifts, authorize an autopsy, and direct disposition of my remains, except as, or more specifically as, provided for on Exhibit 1.5 or in Part 3 of this form.

(1.6) **NOMINATION OF CONSERVATOR:** If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

## PART 2 INSTRUCTIONS FOR HEALTH CARE

You may strike any wording you do not want.

(2.1) **END-OF-LIFE DECISIONS:** In the following described circumstances, I do not want my life prolonged by life-sustaining measures, but want to be allowed to die naturally: (1) If I am diagnosed as having an incurable and irreversible, terminal condition that will result in my death within a relatively short time; or (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness; or (3) If I am diagnosed as having an incurable and irreversible condition which is not terminal which causes me to experience severe and progressive physical or mental deterioration and loss of capacities I value, so that the burdens of continued life (with treatment) are greater than the benefits I experience. In the above described circumstances: (a) artificially provided fluids (except water) and nutrition, such as by a feeding tube or intravenous infusion should be withheld or withdrawn; (b) if I should suffer cardiac or respiratory arrest, cardiopulmonary resuscitation should not be provided; and (c) any other medicines or medical procedures that may be available to prolong my life should not be used.

(2.2) **RELIEF FROM PAIN:** I direct that treatment for alleviation of pain or discomfort be

provided at all times, even if it hastens my death.

(2.3) **OTHER WISHES:** Additional instructions may be added as Exhibit 2.3.

**PART 3**  
**DONATION OF ORGANS AT DEATH**  
**(OPTIONAL)**

(3.1) Upon my death (mark applicable box):

☐ I give any needed organs, tissues, or parts, OR

☐ I give the organs, tissues, or parts listed on Exhibit 3.1.

If one of the above is marked, my gift is for the following purposes (strike the following you do not want):

(a) Transplant

(b) Therapy

(c) Research

(d) Education

☒ I do not want to give any organs, tissues, or parts.

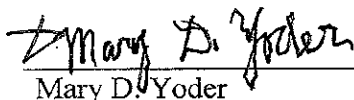
**PART 4**

(4.1) **EFFECT OF COPY:** A copy of this form has the same effect as the original.

(4.2) **HIPAA AUTHORIZATION:** My agent is authorized to execute a valid authorization under the provisions of the Health Insurance Portability and Accountability Act of 1996 and/or under the provisions of the California Confidentiality of Medical Information Act, or any similar state law. My agent may obtain any or all of my medical records, including but not limited to psychiatric information and psychotherapy notes. My agent is authorized to disclose all such information to any individual who is granted the power or authority to inquire into or issue an opinion regarding my capacity to act in any trust or power of attorney signed by me. My agent is authorized to disclose all such information to any court that is engaged in a determination of my capacity to act as a fiduciary, or my capacity to manage my own personal or financial affairs. My agent is authorized to restrict any other person's right to use or distribute my medical information. If my agent believes that the authority that I have granted in this paragraph is insufficient to accomplish the goals that my agent wishes to accomplish, my agent may seek court authority for greater access to, or greater ability to use and/or disseminate my medical information. If my agent is my spouse, and either my agent or I commence a proceeding to dissolve our marriage, my agent's power to act under this document is terminated.

(4.3) **SIGNATURE:** Sign and date the form below:

Dated: 5.9.17

  
\_\_\_\_\_  
Mary D. Yoder

(4.4) NOTARY ACKNOWLEDGMENT:

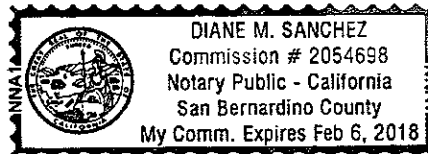
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF San Bernardino

On May 9, 2017, before me, Diane M. Sanchez, Notary Public, personally appeared Mary D. Yoder, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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 Diane M. Sanchez

Exhibit 1.5

**DISPOSITION OF REMAINS**

Funeral Home: \_\_\_\_\_

Location of funeral service: \_\_\_\_\_ Church \_\_\_\_\_ Funeral Home \_\_\_\_\_ Gravesite

\_\_\_\_\_ Temple \_\_\_\_\_ Synagogue \_\_\_\_\_ No Funeral Service

My remains shall be: \_\_\_\_\_ Embalmed \_\_\_\_\_ Refrigerated \_\_\_\_\_ Cremated

Casket: \_\_\_\_\_ Low Cost \_\_\_\_\_ Medium Cost \_\_\_\_\_ High Cost

Further Casket Description: \_\_\_\_\_

Urn: \_\_\_\_\_ Low Cost \_\_\_\_\_ Medium Cost \_\_\_\_\_ High Cost

Further Urn Description: \_\_\_\_\_

Obituary: \_\_\_\_\_ Yes \_\_\_\_\_ No

Music Selections: 1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

Clothing: \_\_\_\_\_

Flowers Description: \_\_\_\_\_

Jewelry on Body: \_\_\_\_\_

Glasses On: \_\_\_\_\_ Yes \_\_\_\_\_ No

Other Instructions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Pallbearers: Name Address Phone #

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

Cemetery: \_\_\_\_\_

Type: ☐ Mausoleum ☐ Ground Burial ☐ Lawn Crypt ☐ Urn/Niche

Do you want a "Visitation" or "Viewing": ☐ Yes ☐ No

If Yes, for whom? ☐ Family Only ☐ Everyone

Type of Marker or Memorial: \_\_\_\_\_

Have you Prepaid your Funeral or Burial? If Yes, the Source: ☐ Funeral Insurance

☐ Funeral Trust ☐ Other (indicate the source such as a bank account, totten trust, life insurance policy, living trust, etc.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## LAST WILL AND TESTAMENT

I, Mary D. Yoder, a resident of Riverside County, California, and a citizen of the United States, declare this to be my Will.

Section 1 **Revoke Prior Wills**. I hereby revoke all wills and codicils to wills that I have previously made.

Section 2 **Family Information**. I am married to Joseph E. Yoder (my "spouse") and I have no children, living or deceased.

Section 3 **Nomination of Executor**. I nominate the following to act as executor of my will, in the priority indicated:

First: Joseph E. Yoder

Second: John K. Mirau

Third: Pat Gilbreath

Section 3.1 **No Bond**. Any executor nominated herein shall serve without bond.

Section 3.2 **Executor's Powers**. The term "executor" as used in this will shall include any personal representative of my estate. I authorize my executor to sell, with or without notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law, and to hold, manage and operate any such property.

Section 3.3 **Executor Same as Trustee**. It is my intent, that if at all possible, the executor(s) of my will be the same individual(s) as the trustee(s) of my living trust.

Section 3.4 **Independent Administration**. My executor is specifically authorized to administer my estate under the California Independent Administration of Estates Act, with full authority under the Act.

Section 3.5 **Power of Spouse/Executor to Purchase Estate Property**. Notwithstanding any provisions of law to the contrary, if at any time my spouse is acting as the executor of my estate, my spouse shall have the power to purchase, or to exchange assets for, assets of my estate or any fractional interests in it. All such sales and exchanges shall be for adequate consideration.

Section 4 **Testamentary Intent**. I confirm to my spouse my spouse's interest in our community property. It is my intention hereby to dispose of all real and personal property which I have the right to dispose of by will.

Section 5 **Distribution of Estate**. I give my entire estate as follows:

Section 5.1 **Retirement and Life Insurance Funds to Spouse.** I give to my spouse, if my spouse survives me, all of my community and other interests in all retirement funds attributable to my spouse as participant, and insurance policies of every type on my spouse's life in which I have a community property interest, and I revoke any consent I have given to a nonprobate transfer of such community property interest. As to any such interests for which I hold the right to make such designation, I hereby confirm any beneficiary designation made by me prior to my death and direct that any such interest shall pass in accordance with such designation. "Retirement funds" shall include the following: (1) qualified plans under IRC § 401; individual retirement accounts under IRC § 408; and (3) any other pension or retirement plan of a similar nature.

Section 5.2 **Residue to Living Trust.** I give the residue of my estate to the then-acting-trustees of the Joseph & Mary Yoder Trust. All of my estate disposed of by this will shall be added to and commingled with the property of such trust and shall be held, managed, administered and distributed under the terms and provisions of such trust, including amendments which may be made before my death.

Section 5.2.1. **Intent.** It is not my intent to create a separate trust by this will or to subject the trust or the property added to it by this will to the jurisdiction of the probate court.

Section 5.2.2 **Invalid Disposition.** If for any reason the disposition of Section 5.2 is inoperative or invalid, or if the trust referred to in Section 5.2 has failed or has been revoked, then I hereby incorporate by reference the terms of that trust, but without giving effect to any amendments made subsequent to the date of this will, and I give the residue of my estate to the trustees of that trust, to be held, administered and distributed as provided for in that trust.

Section 5.3 **Acknowledgement of Service by Spouse.** I hereby acknowledge, by my signature below, that this will was served upon my spouse as required by California Probate Code §5031(a) as a prerequisite to the validity of my revocation of consent (see Section 5.1) in connection with non-probate transfers.

Section 6 **Disinheritance Clause.** I have purposely made no provision herein for any other person not mentioned in this Will, whether or not such person is or claims to be an heir of mine, including any person who claims to be a child of mine or claims to be the issue of any predeceased child of mine. If any claimant against this will proves to be an heir of mine, I specifically disinherit such claimant and any share or interest in my estate that would go to such heir under the laws of intestate succession or otherwise shall be disposed of in the same manner as if such person had predeceased me without issue.

Section 7 **No Contest Clause.** If any beneficiary under this will shall in any manner contest or attack this will, or any of its provisions, any share or interest in my estate given to such contesting beneficiary under this will is hereby revoked and shall be disposed of in the same manner as if such contesting beneficiary had predeceased me without issue.



Section 8 No Contracts Concerning Wills. I have not entered into either a contract to make wills or a contract not to revoke wills.

Section 9 Estate Taxes. Except as otherwise specifically provided for in the living trust reference above, the liability for and burden of state, foreign and federal death taxes shall be borne by the property or persons upon whom an inheritance tax is specifically imposed, and otherwise estate (or similar) taxes shall be apportioned in accordance with federal and California law.

Section 10 Invalidity of Any Provision. If any provision of this will, or of any codicil, should be unenforceable, the remaining provisions shall be fully effective.

Section 11 Statutes, Codes and Regulations. All references to specific statutes, codes or regulations shall include any successors. The term "Internal Revenue Code" or "IRC" shall refer to the Internal Revenue Code of 1986, as amended from time to time, and to any successor statute to it.

I subscribe my name to this will on August 24, 2005, at Menifee, California.

Mary D. Yoder  
Mary D. Yoder

The foregoing instrument, consisting of four (4) pages, including the page signed by us as witnesses, was at the date hereof by the testator signed as and declared to be the testator's will, in the presence of us who, at the testator's request and in the testator's presence, and in the presence of each other, have subscribed our names as witnesses thereto. Each of us observed the signing of this will by the testator and by each other subscribing witness and knows that each signature is the true signature of the person whose name was signed.

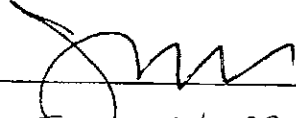
Each of us is now more than eighteen (18) years of age and a competent witness and resides at the address set forth after our names.

We are acquainted with the testator. At this time, the testator is over the age of eighteen (18) years, and to the best of our knowledge the testator is of sound mind and is not acting under duress, menace, fraud, misrepresentation or undue influence.

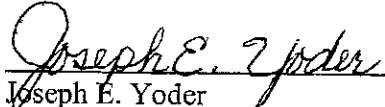
We declare under penalty of perjury that the foregoing is true and correct.

Executed on AUG 24, 2005, at MENIFEE, California.

Barbara Smith residing at 11189 Fernview Place  
Moreno Valley, CA 92557

 residing at 700 Alvarado St.  
John K. Mirau Redlands, CA 92373

I, the undersigned, the spouse of the testator herein, acknowledge receipt of a copy of this will.

  
Joseph E. Yoder

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

MIRAU, EDWARDS, CANNON & LEWIN  
A Professional Corporation (RWC)  
P.O. Box 9058  
Redlands, CA 92375-2258

### **DURABLE POWER OF ATTORNEY**

A. **Appointment of Attorney-In-Fact.**

1. **Appointment.** I, Mary D. Yoder, hereby make, constitute and appoint the following to act as my attorney in fact (hereafter "agent") in the priority indicated:

First: Joseph E. Yoder

Second: John K. Mirau

Third: Pat Gilbreath

My agent shall act for me and in my name, place and stead and for my use and benefit.

2. **Inability or Unwillingness to Act.** The inability or unwillingness to act of an above appointed agent shall be evidenced by such agent's written declination to act, or a certificate of a physician as to his or her incapacity to act, or a court order appointing a conservator for him or her, or a certified copy of his or her death certificate.

B. **Powers of Attorney.**

The agent appointed above shall have the following powers:

1. **Summary Powers.** To exercise any and all of the powers relating to:

a. **Real property transactions** as specified in California Probate Code §4451.

b. **Tangible personal property transactions** as specified in California Probate Code §4452.

c. **Stock and bond transactions** as specified in California Probate Code §4453.

d. **Commodity and option transactions** specified in California Probate Code §4454.

e. **Banking and other financial institution transactions** specified in California Probate Code §4455.

f. **Business operating transactions** as specified in California Probate Code §4456.

g. **Insurance and annuity transactions** as specified in California Probate Code §4457.

h. **Estate, trust, and other beneficiary transactions** as specified in California Probate Code §4458.

i. **Claims and litigation** as specified in California Probate Code §4459.

j. **Personal and family maintenance** as specified in California Probate Code §4460.

k. **Governmental programs** as specified in California Probate Code §4461.

l. **Retirement plan transactions** as specified in California Probate Code §4462.

m. **Tax matters** as specified in California Probate Code §4463.

n. **General matters** as specified in California Probate Code §4450.

2. **Estate Planning Powers.** To exercise any and all of the following powers as to the principal's estate planning, so long as, in the agent's discretion, the actions taken are consistent with the principal's estate plan:

a. **Marital Deduction and Annual Exclusion Gifts.** To give to the principal's spouse any amount of property including (but not limited to) any cash, securities, life insurance policies, and real property, to the extent needed for the spouse's health, education, support, or maintenance, and to give annually to each of the principal's siblings and their issue and the principal's spouse's siblings and their issue, for any purpose, amounts equal to the annual federal gift tax exclusion (presently \$11,000 per donee under Internal Revenue Code section 2503(b)), or twice this amount the spouse agrees to be treated as having made one-half of such gifts. All such gifts may be made outright, in trust, or to any legal guardian or custodian under any applicable Uniform Gifts to Minors Act, as the agent deems appropriate, even if he or she is such trustee, guardian, or custodian.

b. **Tuition and Medical Expenses.** To make direct payments to the provider for tuition and medical care for persons in the class composed of the principal's siblings and their issue and the principal's spouse's siblings and their issue under Internal Revenue Code section 2503(e) which excludes such payments from gift tax liability.

c. **Disclaimers.** To execute and deliver disclaimers under Internal Revenue Code section 2518 and California Probate Code sections 260 through 295 or any successor statute.

d. **Transfer Assets to Living Trust.** To transfer assets to any existing or future revocable living trust of which the principal is or becomes the settlor, so long as such act does not substantially alter distribution of the principal's estate during the principal's lifetime or on the principal's death, and so long as such acts do not cause adverse tax consequences for the principal's estate or the agent's estate.

e. **Remove Assets from Living Trust.** To remove assets from any revocable living trust of which the principal is a settlor for purposes of making gifts authorized above.

f. **Terminate or Transmute Joint Tenancy.** To terminate, on the principal's behalf, joint tenancies in which the principal has an interest, and to transmute, in conjunction with the principal's spouse, joint tenancy property into community property.

g. **Prohibited Powers.** Notwithstanding any other possible language to the contrary in this document, the agent is specifically NOT granted the following powers: to use the principal's assets for the agent's own legal obligations, including but not limited to support of the agent's dependents; to exercise any trustee powers under an irrevocable trust of which the agent is a settlor and the principal is a trustee; to exercise incidents of ownership over any life insurance policies which the principal owns on the agent's life; or to make any beneficiary designations as to life insurance, retirement plans, or gifts which are inconsistent with the estate plan of the settlor as indicated by preexisting wills, revocable or irrevocable trusts, or other instruments of transfer.

3. **Self Dealing Authorized.** The agent is authorized to purchase any of the principal's assets at fair market value and to engage in any transactions the agent considers in the principal's best interest, irrespective of any concurrent interest or benefit to the agent personally. Fair market value shall be determined by independent written appraisal by a licensed professional person or organization qualified to appraise such property. The agent is authorized to select such appraiser and to pay for such appraisal from the principal's assets over which the agent holds management authority.

My agent shall have full power and authority to do and perform all and every act and thing whatsoever requisite, necessary or appropriate to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, hereby ratifying all that my said agent shall lawfully do or cause to be done by virtue of these presents. The powers and authority hereby conferred upon my agent shall be applicable to all real and personal property or interests therein now owned or hereafter acquired by me and wherever situate.

My agent is empowered hereby to determine in my agent's sole discretion the time when, purpose for and manner in which any power herein conferred upon my agent shall be exercised, and the conditions, provisions and covenants of any instrument or document which may be executed by my agent pursuant hereto.

I, the undersigned, if married, hereby further authorize and empower my agent, as my duly authorized agent, to join in my behalf, in the execution of any instrument by which any community real property or any interest therein, now owned or hereafter acquired by my spouse and myself, or either of us, is sold, leased, encumbered, or conveyed.

THIS DURABLE POWER OF ATTORNEY SHALL NOT BE AFFECTED BY THE SUBSEQUENT INCAPACITY OF THE PRINCIPAL AND SHALL REMAIN EFFECTIVE FOR AN INDEFINITE PERIOD OF YEARS AFTER THE DISABILITY OR INCAPACITY OCCURS.

C. **General Provisions.**

1. **Applicable Law.** This is a Durable Power of Attorney pursuant to the Uniform Durable Power of Attorney Act and Power of Attorney Law as set forth in the California Probate Code beginning with Section 4000.

2. **Agent.** When the context so requires, the masculine gender includes the feminine or neuter and the singular number shall be presumed to include the plural. The term "agent" as used herein shall include "agents," "co-agents" and "successor agents and co-agents."

3. **Power to Revoke.** I have the right to revoke or terminate this durable power of attorney at any time.

4. **Definitions.** "Principal" means a natural person who executes a power of attorney. "Attorney in fact" means a person granted authority to act for the principal in a power of attorney. "Durable power of attorney" means a power of attorney that becomes effective or remains effective upon incapacity of the principal. "Third person" means any person other than the principal or attorney in fact.

Executed on August 24, 2005

Mary D. Yoder  
Mary D. Yoder

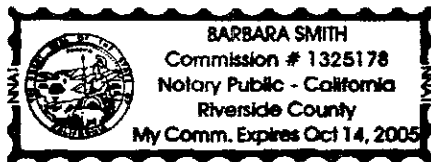
STATE OF CALIFORNIA

COUNTY OF ~~SAN DIEGO~~ <sup>RIVERSIDE</sup>

)  
: ss.  
)

On AUG 24, 2005, before me, BARBARA SMITH, personally appeared Mary D. Yoder, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Barbara Smith  
Notary Public in and for said  
County and State

**JOSEPH & MARY YODER TRUST, DATED AUGUST 24, 2005:  
FIRST AMENDMENT TO SURVIVOR'S TRUST;  
EXERCISE OF SPECIAL POWER OF APPOINTMENT OVER BYPASS TRUST;  
AND RE-DESIGNATION OF SUCCESSOR TRUSTEES**

Recitals:

A. Joseph E. Yoder ("Joseph") and Mary D. Yoder ("Mary"), as settlors and trustees, established the Joseph & Mary Yoder Trust on August 24, 2005 (the "Trust").

B. Joseph died on July 28, 2012.

C. By terms of the Trust, following Joseph's death, the Trust was split into two trusts, a Survivor's Trust which is revocable and amendable by Mary and a Bypass Trust which is irrevocable. Although the Bypass Trust is irrevocable, Mary is the donee of a special power of appointment over the Bypass Trust assets (Sections 4.2 and 8.16 through 8.16.3.2). The special power must be exercised by a written instrument signed by Mary and must be delivered to the trustee of the Bypass Trust during Mary's lifetime. The permissible appointees are the lineal descendants of Mary's parents, the lineal descendants of Joseph's parents and the spouses of such lineal descendants under certain circumstances.

D. Mary also has the right to re-designate successor trustees under Section 7.1.

E. Mary hereby amends the Survivor's Trust, exercises the special power of appointment over the Bypass Trust and re-designates the successor trustees of all trusts created under the Trust, including the Bypass and Survivor's Trusts, as follows:

Operative Provisions

1. Sections 4.3.2 and 4.3.3 are hereby deleted from the Bypass Trust and Survivor's Trust the following sections are hereby substituted in their place in the Survivor's Trust:

"Section 4.3.2 ~~**Winesap Property.**~~ On Mary's death, the real property located at 6 Winesap Road in Pittsfield, Massachusetts (the "Winesap Property"), shall be distributed, in equal shares, to the living members of the group consisting of Steven D. Mongeon, Jr., Matthew A. Mongeon and Michael C. Mongeon, per capita and not by right of representation. This property shall be distributed free of death taxes. The trustee, in the trustee's discretion, may sell the Winesap Property and distribute the net cash if directed in writing by the beneficiaries. The distribution of the Winesap Property will be delayed, as provided for in Section 4.3.2.1, if Josephine McGill survives Mary.

Section 4.3.2.1 ~~**Josephine McGill's Right to Reside in Winesap Property and Distributions for Josephine.**~~ Notwithstanding Section 4.3.2, if Josephine McGill is living in the Winesap Property, the trustees shall retain the Winesap Property and \$500,000 in cash in a trust known as the Josephine McGill Trust, until Josephine's death. The trustee shall pay all expenses related to the Winesap Property, including property taxes, insurance and utilities, and Josephine shall not be charged any rent. In addition, the trustee shall pay to or apply for Josephine's benefit net income and principal for Josephine's health, education, support and maintenance to allow Josephine to maintain the standard of living that she had at the time of



Mary's death. Upon Josephine's death, any remaining property in the trust shall be distributed as provided for in Section 4.3.2, but the beneficiaries shall be determined as of the date of distribution. The property distributed pursuant to this Section shall be distributed free of death taxes.

Section 4.3.3 ~~Sharon and Steven Mongeon~~. Sharon and Steven Mongeon, Sr. are now divorced, but it is Mary's intent to continue to benefit both following her death. Cash in the sum of \$250,000 shall be distributed to each of Sharon A. Mongeon and Steven D. Mongeon, Sr. If Sharon does not survive Mary, her share shall go to Steven and if Steven does not survive Mary, his share shall go to Sharon. If neither Sharon or Steven survive Mary, the entire \$500,000 shall be distributed to Steven D. Mongeon, Jr., Matthew A. Mongeon and Michael C. Mongeon, in equal shares, per capita and not by right of representation (this distribution is in addition to the distribution set forth in Section 4.3.2 and 4.3.2.1). This property shall be distributed free of death taxes. If this transfer will be treated as a generation-skipping transfer, the trustees shall allocate GSTT exemption to it. If this transfer has already had GSTT exemption allocated to it and it is not a generation-skipping transfer, it shall still be made and reduce the otherwise available GSTT exempt assets."

2. Section 7.1 is hereby deleted (in all trusts) and the following section is substituted in its place:

"Section 7.1 ~~Successor Trustee~~: Mary shall retain the right to re-designate successor trustees. If Mary ceases to act as trustee, then the following shall act as successor trustee in the order indicated (so long as Mary, acting as successor trustee, has not re-designated the successors):

- ~~First:~~ John K. Mirau. John, while acting as trustee, shall have the right to re-designate and name additional successor trustees.
- ~~Second:~~ Roma Scott. Roma, while acting as trustee, shall have the right to re-designate and name additional successor trustees.

All designations shall be in writing and delivered to the trustees."

The undersigned hereby acknowledges receipt and acceptance of this First Amendment to the Survivor's Trust, Exercise of Special Power of Appointment over the Bypass Trust and Re-designation of Successor Trustees.

Dated: 10-25-16

Mary D. Yoder  
Mary D. Yoder, Trustee of the Trust, Survivor's  
Trust and Bypass Trust

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: 10.25.16

Mary D. Yoder  
Mary D. Yoder, Settlor of the Survivor's Trust

Mary D. Yoder  
Mary D. Yoder, Donee of the Special Power of Appointment over the Bypass Trust

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                     )  
  : ss.  
COUNTY OF SAN DIEGO                 )

On 10.25.16, before me, Diane M. Sanchez, Notary Public, personally appeared Mary D. Yoder, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the persons, or the entity upon behalf of which the person 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.

Diane M. Sanchez  
Notary Public in and for said  
County and State

# JOSEPH & MARY YODER TRUST

## ARTICLE 1

### DECLARATIONS

Section 1.1 **Conveyance to Trustee.** Joseph E. Yoder and Mary D. Yoder, referred to herein as "husband" and "wife," "settlers," or "trustees," depending on the context, designate themselves as trustees and declare that they have set aside and hold, IN TRUST, the property described in Schedule A.

Section 1.2 **Name of Trust.** The initial trust created in this instrument may be referred to as the "Joseph & Mary Yoder Trust." Any later trusts created hereunder may be referred to by adding the name of the trust or the name of the trust's beneficiary to that name. For example, Survivor's Trust created under the Joseph & Mary Yoder Trust.

Section 1.3 **Trust Estate.** All property subject to this instrument from time to time, including the property listed in Schedule A, is referred to as the trust estate and shall be held, administered and distributed according to this instrument.

Section 1.4 **Community Property.** Settlers declare that any community property transferred to the trust shall retain its character as such notwithstanding the transfer to this trust. If the trust is revoked, this community property shall be returned to settlers as their community property and not as the separate property of either or both settlers.

Section 1.5 **Separate Property.** Separate property of a settlor added to this trust shall be segregated and separately identified and it shall retain its character as such settlor's separate property.

Section 1.6 **Intent.** The settlers' primary intent and purpose in establishing this trust is to provide for the welfare of the settlers and the survivor of them, and the provisions of this instrument shall be liberally construed to effect that purpose. The rights and interests of remaindermen are subordinate and incidental to that purpose.

Section 1.7 **Definitions.** In general, "settlers" (or trustors) are the individuals or entities who create a trust; "trustees" are the individuals or entities who hold legal title to trust assets and manage the trust assets in accordance with the trust instrument for the benefit of the beneficiaries; and "beneficiaries" are the individuals or entities with a beneficial interest in the trust assets for whose benefit the assets are managed. The settlers of this trust are also the initial trustees and beneficiaries.

## ARTICLE 2

### DISTRIBUTIONS DURING JOINT LIFETIMES OF SETTLORS

Section 2.1 **No Allocation Between Principal and Income.** During the settlers' joint lifetimes, the trustees shall not be required to allocate receipts and disbursements between income and principal. All receipts collected by the trust shall be deemed principal and expenses shall be charged to principal.

Section 2.2 **Community and Separate Principal.** During the settlors' joint lifetimes, the trustees shall pay to both settlors for the account of the community, or shall apply for the settlors' benefit, as much of the principal of the community estate as the settlors demand. The trustees shall also pay to or apply for the benefit of the settlor whose separate property was transferred to the trust, as much of the principal of that settlor's separate estate as that settlor demands.

Section 2.3 **Incapacity of Settlor.** During any period of time that, either in the trustees' discretion, or as determined in the manner provided for in this instrument, either settlor has become incapacitated, the trustees shall pay to the non-incapacitated settlor or for the benefit of either settlor, from the community estate, the amount of principal as is necessary in the trustees' discretion for both settlors proper health, education, support, maintenance, comfort and welfare, in accordance with their accustomed manner of living at the date of this instrument. The trustees may also pay for the benefit of the incapacitated settlor any amounts of principal of the incapacitated settlor's separate estate as the trustees' deem necessary for the incapacitated settlor's health, education, support, maintenance, comfort and welfare. The non-incapacitated settlor may also withdraw, from time to time, principal from the community estate. Principal from community property so paid shall be held and administered as community property by the non-incapacitated settlor. The incapacity of one settlor shall not prevent the exercise by the other settlor of his or her right to separate principal herein.

### ARTICLE 3

#### **DISTRIBUTIONS UPON DEATH OF FIRST SETTLOR**

Section 3.1 **Division Into Two Trusts.** The first settlor to die shall be called the "deceased spouse," and the living settlor shall be called the "surviving spouse." On the deceased spouse's death, after making any distributions provided for in Section 3.7, the trustees shall divide the trust estate, (including any additions made to the trust by reason of the deceased spouse's death, such as from the deceased spouse's will or life insurance policies on the deceased spouse's life), into two separate trusts, for the primary benefit of the surviving spouse, designated the "Bypass Trust" and "Survivor's Trust."

Section 3.2 **Bypass Trust.** The Bypass Trust shall consist of the assets specifically allocated to the Bypass Trust in Section 3.3.1.1 and the maximum pecuniary amount of the deceased spouse's property that can be allocated to a trust that does not qualify for the federal estate tax marital deduction to any extent, without producing any federal estate tax (or producing an increase in federal estate tax) payable by reason of the deceased spouse's death. In determining this pecuniary amount, the trustees shall consider all items that have an effect on the federal estate tax, including: (a) all federal estate tax deductions; (b) the net value of all other property included in the deceased spouse's gross estate, whether or not it is given under this instrument and whether it passes at the time of the deceased spouse's death or has passed before the deceased spouse's death to any person, trust or other entity, so that it is included in the deceased spouse's gross estate and does not qualify for the federal estate tax marital deduction (except that any disclaimers by the surviving spouse shall be disregarded); (c) all federal credits other than those for death taxes paid in the estate of one whose death occurs after that of the deceased spouse, or for any state death tax unless and to the extent that a death tax would be payable to the state or states regardless of the federal credit; and (d) the enumeration of the above

items shall not be considered exclusive, but indicative of items to be considered in maximizing the pecuniary amount; for example, adjusted taxable gifts, although not enumerated above, could affect the amount of assets going to the Bypass Trust. The Bypass Trust shall also consist of any disclaimed property passing to the Bypass Trust as provided in Section 3.4 below. All State death taxes and unclaimed administration expenses attributable in whole or in part to the deceased spouse's property allocated to the Survivor's Trust shall be paid from the Bypass Trust (regardless of any other provision either in this instrument or by applicable law allocating administration expenses or taxes). The term "unclaimed administration expenses" means administration expenses, described in IRC §§2053(a)(2) and (b) that are eligible for deduction on the federal estate tax return, but that are not deducted on that return because they are claimed as income tax deductions.

Section 3.2.1 **Selection of Assets.** Assets of the trust estate may be allocated to the Bypass Trust in cash or in kind, including in undivided interests, or partly in each. Any assets of the deceased spouse contributed or added to the trust that are not eligible for the federal estate tax marital deduction shall be allocated to the Bypass Trust and assets qualifying for the marital deduction shall be allocated to the Survivor's Trust only to the extent that the transfer reduces the federal estate tax otherwise payable by the deceased spouse's death. The deceased spouse's property constituting IRD (defined in Section 3.3) shall be allocated to the Survivor's Trust, to the extent possible, and then to the Bypass Trust. Assets eligible for a foreign death tax credit shall be used only if other property of the trust estate is insufficient to fund the Survivor's Trust. Assets allocated in kind to the Bypass Trust shall be valued for purposes of satisfying the pecuniary amount at their net fair market values at the date or dates of allocation.

Section 3.2.2 **Division of Community Property.** The trustees shall have the discretion to select the community assets to be allocated between the Survivor's Trust and any other trust or distribution provided for herein on the death of the deceased spouse. In other words, each settlor's interest in community property is not limited to an undivided one-half interest in and to each and every community asset, but rather, so long as the fair market value of the community property in the trust estate (or added to it in any manner) is equally divided as between each settlor on the date of division, some assets may go in their entirety or in unequal portions to or for the benefit of the surviving spouse and other assets may go in their entirety or in unequal portions as directed by the deceased spouse.

Section 3.2.3 **Income.** From the time of the deceased spouse's death, net income of the Bypass Trust may be paid or applied for the benefit of the surviving spouse in such sums as the trustees, in the trustees' discretion, consider necessary for the surviving spouse's proper health, education, support and maintenance.

Section 3.2.4 **Principal.** If the trustees consider the income insufficient, the trustees shall also pay to or apply for the benefit of the surviving spouse all sums from principal as the trustees, in the trustees' discretion, consider necessary for the surviving spouse's proper health, education, support and maintenance.

Section 3.2.5 **Disclaimer of Income and Principal Interest.** If the surviving spouse disclaims the right to both net income and principal with respect to all or any portion of the Bypass Trust, or specific assets of the Bypass Trust, the property subject to the disclaimer shall be distributed to the persons entitled to distribution of the Bypass Trust according to the

terms of this instrument, applied as if the surviving spouse died on the day before the date of death of the deceased spouse.

Section 3.2.6 **Outright Distribution if Mary is the Deceased Spouse.** If Mary is the deceased spouse, the real property located at 6 Winesap Road in Pittsfield, Massachusetts (the "Winesap Property"), shall be distributed, in equal shares, to the living members of the group consisting of Steven D. Mongeon, Jr., Matthew A. Mongeon and Michael C. Mongeon, per capita and not by right of representation. The Winesap Property may be distributed directly to these beneficiaries although its value shall be taken into account in determining the assets to be allocated to the Bypass Trust. This property shall be distributed free of death taxes.

Section 3.2.6.1 **Josephine McGill's Right to Reside in Winesap Property.** Notwithstanding Section 3.2.6, if Josephine McGill is living in the Winesap Property, the trustees shall retain the Winesap Property, in trust, until such time as Josephine's death (or an earlier time if Josephine is no longer able to live at the Winesap Property for health or other reasons). Any expenses related to the Winesap Property, while held for Josephine's benefit, shall be paid out of the Bypass Trust and Josephine shall not be charged any rent. If expedient for administrative or tax purposes, the trust holding the Winesap Property may be segregated into a separate trust, along with a reasonable amount of funds (to be determined by the trustees in their sole discretion) to pay estimated future expenses, and held as a trust separate from the Bypass Trust. Upon Josephine's failure to live in the Winesap Property, any such extra segregated funds shall not be distributed to the beneficiaries in Section 3.2.6.

Section 3.2.6.2 **Directed Sale of Winesap Property.** The trustees may sell the Winesap Property and distribute the net sale proceeds to the beneficiaries in Section 3.2.6 if the beneficiaries deliver a written request to the trustees to do so.

Section 3.3 **Survivor's Trust.** The Survivor's Trust shall consist of the assets specified in Sections 3.3.1 through 3.3.5. For purposes of allocation of assets under Articles 3 and 4, the term "IRD" shall mean all items of property wherein five percent (5%) or more of the value of the property constitutes income in respect of a decedent within the meaning of IRC Section 691(a). The five percent limitation is intended to exclude items of property with minimal amounts of income in respect of a decedent, such as bank accounts with accrued interest or stocks with accrued dividends.

Section 3.3.1 **IRD.** The deceased spouse's property constituting IRD, excepting:

Section 3.3.1.1 **Non-Qualifying IRD.** IRD which, at the date of distribution, would not qualify for the estate tax marital deduction, which shall be specifically allocated to the Bypass Trust.

Section 3.3.1.2 **Amount to Fund Bypass Trust.** IRD which, after allocation of all other specific allocations to the Bypass Trust (Section 3.3.1.1) and after all other non-IRD assets of the deceased spouse have been allocated to the Bypass Trust, is necessary, if any, to maximize the pecuniary amount passing to the Bypass Trust under Section 3.2.

Section 3.3.2 **Tangible Personal Items.** The deceased spouse's tangible personal items (such as jewelry, clothing, household furniture and furnishings, personal

automobiles, books and other tangible articles of a household or personal nature) not disposed of as provided for in Section 3.7.

Section 3.3.3 **Survivor's SP.** The surviving spouse's separate property that is a part of the trust estate.

Section 3.3.4 **Survivor's CP.** The surviving spouse's interest in the settlors' community estate included in or added to the trust estate in any manner.

Section 3.3.5 **Remainder.** The remainder of the deceased spouse's property, after all other allocations have been made to the Bypass Trust and Survivor's Trust, including any disclaimed property passing to the Bypass Trust as provided in Section 3.4 below.

Section 3.3.6 **Income and Principal.** From the time of the deceased spouse's death, the trustees shall pay to or apply for the benefit of the surviving spouse the net income of the trust estate in quarter-annual or more frequent installments. If the trustees consider such income insufficient, the trustees shall also pay to or apply for the benefit of the surviving spouse any sums from the principal of the trust estate that the trustees, in the trustees' discretion, consider necessary for the surviving spouse's proper health, support, comfort, enjoyment, and welfare. In addition, the trustees shall pay the surviving spouse as much of the principal of the trust estate as he or she shall demand.

Section 3.3.7 **Intent.** The settlors intend that the deceased spouse's assets allocated to the Survivor's Trust qualify for the federal estate tax marital deduction, and all powers of the trustees and all provisions of this declaration, as applied to such trust, shall be interpreted and restricted to achieve that purpose.

Section 3.4 **Disclaimer (Estate-Splitting).** If the surviving spouse disclaims any property given to him or her outright, or all or a portion of his or her interest in the Survivor's Trust, the property disclaimed by the surviving spouse shall be allocated to the Bypass Trust, to be managed and distributed as provided in Section 3.2 (and its subsections). The purpose of a disclaimer by the surviving spouse would be to reduce the aggregate estate tax paid upon the deaths of both the deceased spouse and the surviving spouse by creating a taxable estate on the death of the deceased spouse. The aggregate estate tax paid is reduced due to use of the lower levels of the graduated estate tax rates twice, instead of once, as well as by removing appreciating property from the surviving spouse's estate.

Section 3.5 **Deceased Spouse's Expenses.** On the deceased spouse's death, the trustees shall pay from and charge against the Bypass Trust all federal, state and foreign estate, inheritance or other death taxes payable on or with respect to any property which passes or has passed under this declaration, under the deceased spouse's will or otherwise and which qualifies for the federal estate tax marital deduction; in all other respects the liability for and burden of federal, state and foreign death taxes imposed by reason of the deceased spouse's death shall be paid by the person or from the property on which an inheritance tax is specifically imposed, or in the case of estate (and other) taxes, shall be apportioned in accordance with federal and California law; and the trustees of the Bypass Trust may, in the trustees' discretion, pay debts, last illness and funeral expenses of the deceased spouse and the administrative expenses and other obligations of his or her estate. Administration costs allocable to the surviving spouse's

share of the community property administered in the deceased spouse's estate shall be charged to the Survivor's Trust. Notwithstanding the above, if the surviving spouse disclaims any property given to him or her outright or in trust, the amount of any increase in federal or state death taxes that results from such disclaimer shall be paid out of the disclaimed property. Payment of any of the deceased spouse's debts shall be made proportionately from the property of the trust estate as such property shall be liable for the debts.

Section 3.6 **Specific Bequests of IRD.** The settlors intend that the allocations in Sections 3.3.1 through 3.3.4 be construed as specific bequests from the original trust to the Survivor's Trust and Bypass Trust.

Section 3.7 **Tangible Personal Items.** The deceased spouse's tangible personal items (such as jewelry, clothing, household furniture and furnishings, personal automobiles, books and other tangible articles of a household or personal nature) specifically listed in a signed and dated writing by the deceased spouse and delivered to the trustees, shall be distributed to the persons specifically listed in the writing. The expense (including insurance) of packing, shipping and delivering such personal items to the persons listed in the writing shall be paid as an expense of the trust.

Section 3.8 **Insurance Trust.** If the Bypass Trust becomes the owner of any insurance policy on the life of the surviving spouse (whether pursuant to distribution under the deceased spouse's will or because the Joseph & Mary Yoder Trust or the Bypass Trust was designated contingent owner of the policy), and if the surviving spouse is then acting as trustee of the Bypass Trust, such policy shall be held in a separate trust known as the "Insurance Trust." The Insurance Trust shall hold such policy until the earlier of (i) the surviving spouse ceasing to act as trustee or (ii) maturity of the policy. Thereafter, the Insurance Trust shall distribute such policy or its proceeds to the then acting trustee of the Bypass Trust, to be held, managed and distributed as provided in the Bypass Trust. The successor trustee named herein shall act as trustee of the Insurance Trust and in no event shall the surviving spouse act as trustee of the Insurance Trust.

## ARTICLE 4

### **DISTRIBUTIONS UPON DEATH OF SURVIVING SETTLOR**

Section 4.1 **Survivor's Trust - General Power of Appointment.** On the surviving spouse's death, the trustees shall distribute any remaining balance of the Survivor's Trust, including principal and accrued or undistributed income, to one or more persons and entities, including the surviving spouse's own estate, and on any terms and conditions, either outright or in trust, and in any proportion that the surviving spouse shall appoint by will or codicil, specifically referring to and exercising this power of appointment. This power shall not apply to the Bypass Trust. In addition (and with priority over the aforementioned power of appointment as to the assets specified herein), the trustees shall distribute tangible personal items (such as jewelry, clothing, household furniture and furnishings, personal automobiles, books and other tangible articles of a household or personal nature) specifically listed in a signed and dated writing by a settlor and delivered to the trustees, to the persons specifically listed in the writing. Such specifically listed tangible articles shall be distributed free of any federal estate tax, or state inheritance, succession or estate taxes. The expense (including insurance) of packing, shipping



and delivering such personal items to the persons listed in the writing shall be paid as an expense of the trust.

Section 4.1.1 **Default of Appointment.** On the surviving spouse's death, if and to the extent that the surviving spouse shall not have effectively disposed of all property of the Survivor's Trust through a valid and effective exercise of a power of appointment, all of the remaining assets of the Survivor's Trust shall be held, administered and distributed in accordance with the provisions relating to Default Distribution Following Death of Surviving Spouse in Section 4.3 below.

Section 4.1.2 **Three-Month Limit.** If, on the expiration of three months after the death of the surviving spouse, no instrument purporting to exercise the power of appointment has been brought to the attention of the trustees after reasonable investigation, the Survivor's Trust may be distributed as if the power had not been exercised. If a document purporting to exercise the power shall be located later, the trustees shall not be liable to the appointees under the exercise, and the rights of the appointees and the persons receiving property from the trustees shall be governed by applicable law.

Section 4.1.3 **After Acquired Assets.** The power of appointment given herein may be exercised by the surviving spouse even if the assets constituting the Survivor's Trust over which the power is exercised have not been received by the trustees on the date of the death of the surviving spouse.

Section 4.2 **Bypass Trust - Special Testamentary Power of Appointment.** The surviving spouse shall have a special testamentary power of appointment over the assets of the Bypass Trust. On the surviving spouse's death, the trustees shall distribute any remaining balance of the Bypass Trust, including principal and undistributed income, in favor of any of the following permissible appointees: The lineal descendants of Mary's parents and the lineal descendants of Joseph's parents. A spouse of a lineal descendant shall also be a permissible appointee to the extent and for so long as such spouse is married to and living with a descendant, or is a widow or widower of a descendant.

Section 4.2.1 **Default of Appointment.** On the surviving spouse's death, if and to the extent that the surviving spouse shall not have effectively disposed of all property of the Bypass Trust through a valid and effective exercise of a power of appointment, all of the remaining assets of the Bypass Trust shall be held, administered and distributed in accordance with the provisions relating to Default Distribution Following Death of Surviving Spouse in Section 4.3 below.

Section 4.3 **Default Distribution Following Death of Surviving Spouse.** On the surviving spouse's death, the trustees shall distribute any of the trust estate that is to be distributed in accordance with the provisions of this Section, together with any additions to the trust as a result of the death of the surviving spouse (under the will of the surviving spouse or otherwise), as follows:

Section 4.3.1 **Allocation of Exempt and Non-Exempt Assets.** Following the surviving spouse's death the trust estate will consist of several trusts, including the Survivor's Trust and Bypass Trust (or exempt and non-exempt forms of such trusts). Certain of those trusts

will have an inclusion ratio of zero while others will have an inclusion ratio of one. Except as otherwise specifically provided, the trustees shall allocate all of the assets from trusts with inclusion ratios of zero to a share referred to as the "exempt share," as provided for in Section 4.3.5 below and shall allocate all other assets from the other trusts to a share referred to as the "non-exempt share," as provided for in Section 4.3.6 below.

Section 4.3.2 **Winesap Property.** The Winesap Property, if not otherwise distributed as provided for in Section 3.2.6 (and subsections), shall be distributed as provided for in Section 3.2.6 and subsections, but applied as of the surviving spouse's death. If this transfer will be treated as a generation-skipping transfer, the trustees shall allocate GSTT exemption to it. If this transfer has already had GSTT exemption allocated to it and it is not a generation-skipping transfer, it shall still be made and reduce the otherwise available GSTT exempt assets.

Section 4.3.3 **Sharon and Steven Mongeon.** The greater of (a) the separate property of Mary (or what was her separate property at the time of the deceased spouse's death, including any assets traceable to such property), excepting the Winesap Property, or (b) cash or other property with a value of \$500,000 (which would include what was the separate property of Mary), shall be distributed to Sharon A. Mongeon and Steven D. Mongeon, Sr., or to the survivor of them, or to their living issue, by right of representation, if neither survive the surviving spouse. This property shall be distributed free of death taxes. If this transfer will be treated as a generation-skipping transfer, the trustees shall allocate GSTT exemption to it. If this transfer has already had GSTT exemption allocated to it and it is not a generation-skipping transfer, it shall still be made and reduce the otherwise available GSTT exempt assets.

Section 4.3.4 **Charitable Distributions.** Cash in the sum of \$50,000 shall be distributed to Concordant Publishing Concern, 15570 Knochaven Road, Santa Clarita, CA 91387 (phone: 661-252-2112); cash in the sum of \$10,000 shall be distributed to Sun City Bible Church, 26815 Murrieta Road, Sun City, CA 92585 (phone: 951-679-8753); and cash in the sum of \$10,000 shall be distributed to Evergreen Memorial Historical Cemetery, c/o Best, Best & Krieger, attn: Judy Ishmael, P.O. Box 1028, Riverside, CA 92502 (phone: 951-686-1450). These distributions shall be made out of non-exempt assets, to the extent available.

Section 4.3.5 **Exempt Share.** The exempt share of assets, not otherwise dealt with herein, shall be distributed to the grandchildren and more distant issue (great-grandchildren and great-great-grandchildren) of Joseph Yoder's siblings, per capita and not by representation.

Section 4.3.5.1 **Reallocation of Exempt Share.** However, if at the time the assets are allocated between the exempt share and non-exempt share, the exempt share (determined after any specific distribution of exempt assets, such as those provided for in Sections 4.3.2 and 4.3.3) is greater than the non-exempt share, an amount of the exempt share sufficient to make both shares equal to each other shall be segregated and held, administered and distributed as though a part of the non-exempt share. In making this adjustment, Joseph and Mary realize that assets may not all be allocated at the same time, some assets may be difficult to value and other issues are likely to exist to make this reallocation difficult. Therefore, the trustees shall have the discretion to make the reallocation in a way that seems equitable, in the trustees' sole discretion. The trustees shall be indemnified from any liability in making these decisions, unless the decisions are shown to be grossly negligent or intentionally unreasonable.

Section 4.3.5.2 **Grandchildren of Siblings.** Joseph's siblings are Madena Anderson (deceased), Charles E. Yoder, M. David Yoder (who has no children), and Evelyn Tatton. The settlors believe that the following are the current (or at least most of the current) living grandchildren of Joseph's siblings:

Section 4.3.5.2.1 **Through Madena Anderson.** Madena Anderson's grandchildren are: Eric Anderson, Hanna Anderson and Chris Anderson, children of her son, Richmond G. Anderson; and Emma K. Anderson, child of her son, Douglas C. Anderson.

Section 4.3.5.2.2 **Through Charles E. Yoder.** Charles E. Yoder's grandchildren are: Sharon Anne Yoder, Chandra Mendosa and Leah Hamm, children of his son, Paul C. Yoder; Fred Marall Jr. and Samuel Marall, children of his daughter, Sharon Marall; and Aaron Lucia and Paul Lucia, Jr., children of his daughter, Mary Y. Lucia.

Section 4.3.5.2.3 **Through Evelyn Tatton.** Evelyn Tatton's grandchildren are: Nicole Tatton and Myah Tatton, children of her son, William J. Tatton; Catherine Sentlinger, Caroline Sentlinger and Christine Sentlinger, children of her daughter, Anita Sentlinger; Christopher Tatton and Ryan W. Tatton, children of her son, Charles E. Tatton; and Michelle Moore and Matthew Moore, children of her daughter, Margaret Moore.

Section 4.3.6 **Non-Exempt Share.** The non-exempt share of assets, not otherwise dealt with herein, shall be distributed to the children of Joseph Yoder's siblings, per capita and not by representation.

Section 4.3.6.1 **Children of Siblings.** The following are the current living children of Joseph's siblings:

Section 4.3.6.1.1 **Through Madena Anderson.** Madena Anderson, has three living children, namely, Richmond G. Anderson, Douglas C. Anderson and David T. Anderson.

Section 4.3.6.1.2 **Through Charles E. Yoder.** Charles E. Yoder, has three children, namely, Paul C. Yoder, Sharon Marall and Mary Y. Lucia.

Section 4.3.6.1.3 **Through Evelyn Tatton.** Evelyn Tatton has four children, namely, William J. Tatton, Anita Sentlinger, Charles E. Tatton and Margaret Moore.

Section 4.3.7 **Joseph and Mary Yoder Pot Trust.** "Yoder Family Property" is defined as interests in Yoder Investments, a California general partnership (or treated as held in Yoder Investments, even though held individually) and real property in Murrieta, California (or property traceable to those properties), owned by Joseph (or Joseph and Mary) and the siblings of Joseph (or their descendants). Because the decision making process in dealing with Yoder Family Property is so cumbersome and sensitive (dealing with multiple parties), Joseph and Mary desire that all Yoder Family Property remain in trust until it is liquidated to cash, or otherwise ready to distribute to the beneficiaries hereunder, unencumbered by the issues of extended family ownership. Therefore, any Yoder Family Property subject to Sections 4.3.5 and

4.3.6 shall be held, administered and distributed (in a trust that may be referred to as the "Joseph and Mary Yoder Pot Trust" or "JMYPT") as provided for hereunder. "Assets Traceable to Yoder Family Property" are assets that are traceable to Yoder Family Property, but are no longer tied up in extended Yoder Family ownership. For example, if the Murrieta, California, property is sold for cash and Joseph's share is deposited in a bank account for his sole benefit, that is, his siblings are not also parties on the account, the bank account would be an Asset Traceable to Yoder Family Property, as would any securities purchased by Joseph with funds from the bank account. The trustees shall have sole discretion to determine assets that are traceable to Yoder Family Property.

Section 4.3.7.1 **Income and Principal.** The JMYPT shall have two shares: one share consisting of exempt assets and one share consisting of non-exempt assets. Income and principal of the exempt assets may be distributed to or for the benefit of the beneficiaries of the exempt share as set forth in Section 4.3.5 and income and principal of the non-exempt assets may be distributed to or for the benefit of the beneficiaries of the non-exempt share as set forth in Section 4.3.6. Further, the trustees shall have the discretion to make distributions of income and principal to the siblings of Joseph, from either or both of the exempt and non-exempt shares. The trustees shall pay to or apply for the benefit of the beneficiaries as much of the net income and principal of the trust estate, as the trustees, in the trustees' discretion, consider necessary for a beneficiary's: (a) maintenance in reasonable comfort; (b) education, including college and professional education; and (c) health, including medical, dental, hospital and nursing expenses and expenses of invalidism. Any net income not distributed shall be added to principal. Notwithstanding the foregoing, it is the settlors' intent, but not mandate, that no Yoder Family Property be distributed pursuant to this Section, but only Assets Traceable to Yoder Family Property, such as interest, rents, dividends and principal cash.

Section 4.3.7.1.1 **Other Resources.** The trustees may, but need not, take into consideration, to the extent the trustees consider advisable, any of the beneficiaries' other income and means of support, and any other circumstances and factors that the trustees deem pertinent.

Section 4.3.7.1.2 **Unequal Distributions.** In exercising the discretion conferred herein, the trustees may pay more to or apply more for the benefit of some beneficiaries than others, and may make payments to or applications of benefits for one or more beneficiaries to the exclusion of others, if the trustees consider this necessary or appropriate in light of the circumstances, the size of the trust estate, and the probable future needs of the beneficiaries. All payments or applications of benefits shall be charged against the trust estate as a whole, rather than against the ultimate distributive share of a beneficiary to whom or for whose benefit the payment is made.

Section 4.3.7.1.3 **Obligation of Support.** Any other provisions of this trust notwithstanding, income or principal of the trust estate shall not be used to discharge in whole or in part any person's legal obligation, from time to time existing, under the laws of the state of their domicile, to support and educate any beneficiary of this trust unless a court of competent jurisdiction shall determine that the distribution is necessary for a minor beneficiary's support and education. When determining the legal obligation of any person to support and educate any beneficiary of this trust, the existence of this trust and funds made available by it shall not be taken into consideration.

Section 4.3.7.2 **Division of Exempt Pot Trust.** After the transition of all property from Yoder Family Property to Assets Traceable to Yoder Family Property, such as the liquidation to cash of all of the Yoder Family Property (the timing of which shall be in the sole discretion of the trustees), the trustees shall distribute the remainder of the trust estate as provided for in Sections 4.3.5 and 4.3.6, except that the beneficiaries shall be determined as of the date of distribution and not as of the death of the surviving spouse.

Section 4.4 **Distribution to Young Beneficiary.** If any beneficiary entitled to outright distribution of a trust or of a portion of a trust is under age twenty-five (25), the trustees, pursuant to California Probate Code sections 3905 and 3920.5(c), are hereby authorized and directed to irrevocably transfer the beneficiary's portion of the trust estate to a custodian for the benefit of the beneficiary until age twenty-five (25) under the California Uniform Transfers to Minors Act. The trustees shall designate the custodian from those eligible to serve as custodian for property of the kind distributed.

Section 4.5 **Surviving Settlor's Expenses.** On the surviving spouse's death, and subject to any power of appointment exercised by the survivor, the trustees may in the trustees' discretion pay out of the principal of the Survivor's Trust, or if it has been exhausted, of the Bypass Trust, the surviving settlor's debts outstanding at the time of his or her death and not barred by the statute of limitations, statute of frauds or any other provision of law; last-illness and funeral expenses, attorneys' fees, other costs incurred in administering the surviving settlor's probate estate, if any; and estate and inheritance taxes, including interest and penalties arising on the surviving spouse's death.

## ARTICLE 5

### **REVOCATION AND AMENDMENT**

Section 5.1 **Revocation During Joint Lifetimes.** During the settlor's joint lifetimes, this trust may be revoked in whole or in part: With respect to community property, by a written instrument signed by either settlor and delivered to the trustees and the other settlor; and with respect to separate property, by a written instrument signed by the settlor who contributed that property to the trust and delivered to the trustees.

Section 5.1.1 **Community Property.** On revocation, the trustees shall promptly deliver to the settlors all or the designated portion of the community property trust assets. All community property delivered to the settlors on revocation shall continue to be the community property of the settlors and shall be held and administered as community property.

Section 5.1.2 **Separate Property.** On revocation, the trustees shall promptly deliver to the contributing settlor all or the designated portion of any separate property.

Section 5.2 **Amendment During Joint Lifetimes.** The settlors may at any time during their joint lifetimes amend any terms of this trust by written instrument signed by both settlors and delivered to the trustees.

Section 5.3 **Revocation and Amendment By Surviving Settlor.** On the deceased spouse's death, the surviving spouse may amend, revoke or terminate the Survivor's Trust; but

the Bypass Trust may not be amended, revoked or terminated. On revocation or termination of the Survivor's Trust, all of its assets shall be delivered to the surviving spouse. Revocation and amendment shall be made by written instrument signed by the surviving spouse and delivered to the trustees.

Section 5.4 **Agent Under DPA.** If a settlor has named an agent under a durable power of attorney and authorized that agent to make gifts, the trustees may distribute assets to the agent for purposes of making such gifts, but only if the settlor has a power to revoke or amend the trust from which such assets are distributed.

## ARTICLE 6

### **TRUSTEES' POWERS**

To carry out the provisions of the trust(s) created by this instrument, the trustees shall have the following powers in addition to those now or later conferred by law:

Section 6.1 **Investments.** To invest and reinvest all or any part of the trust estate in any kind of property, real, personal, or mixed, and any kind of investment, as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.

Section 6.1.1 **Prudent Investor Rule.** The trustees' investment and management decisions respecting individual assets and courses of action shall be evaluated in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust. The trustees shall consider (a) general economic conditions; (2) the possible effect of inflation or deflation; (3) the expected tax consequences; (4) the role each investment plays within the overall trust portfolio; (5) the expected total return from income and appreciation of capital; (6) other resources of the beneficiaries known to the trustees; (7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and (8) an asset's special relationship or special value to the purposes of the trust or to one or more of the beneficiaries.

Section 6.1.2 **Duties of Loyalty, Impartiality and Diversification.** Except as otherwise provided herein, the trustees have the duties to: (a) administer the trust solely in the interest of the beneficiaries; (b) to act impartially in investing and managing the trust property for two or more beneficiaries, taking into account any differing interests of the beneficiaries; and (c) to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so.

Section 6.1.2.1 **Retention of Business Interests and Real Property.** The trustees are authorized to retain any business or real property interests transferred to the trust, despite the fact that such interests may not be producing much if any income and may not be diversified. Specifically, the trustees are authorized to retain Yoder Family Property, despite the fact that such interests may not be producing much if any income, may not be diversified, and may result in favoring some beneficiaries over others.

Section 6.1.2.2 **Related Entities and Individuals.** This trust was established to benefit the members of Mary's and Joseph's families. The trust may have investment or business assets that are also held by other family members or that may complement the businesses or assets of other family members. The trustees are encouraged to communicate with other family members, with trustees of trusts that benefit other family members and with business entities in which other family members have an interest and may enter into transactions with the same despite any conflicts of interest, so long as the transactions are fair and reasonable for the beneficiaries of the trust. The trustees may also allocate trust assets, upon distribution, in ways that the trustee believe will benefit the family as a whole, so long as the distribution is fair and reasonable to the beneficiaries.

Section 6.1.2.3 **Coordination Among Different Trusts.** If a beneficiary of a trust hereunder (the "primary trust") is also a beneficiary of one or more other trusts (the "other trust"), whether administered under this instrument or otherwise, the trustees may consult with the trustees of the other trust in determining whether to distribute income and/or principal of the primary trust to such beneficiary, and the amount of any such distribution. In making such determination, the trustees may take into consideration the assets and income of the other trust and the amount of income and/or principal of the other trust which has been or will be distributed to the beneficiary. In determining the propriety of investments for the primary trust, the trustees may take into consideration the investments of the other trust. If practicable, the trustees of the primary trust and the trustees of the other trust may attempt to coordinate overall investment strategy of both trusts. In exercising the discretion to distribute income and/or principal to a beneficiary, the trustees may take into consideration (a) foreign and domestic income, estate, generation-skipping, excise and other tax consequences to the primary trust, to the other trust and to the beneficiary from making or not making such distribution and (b) the beneficiary's other income and resources to the extent that they are reasonably available to be used by the beneficiary for the purposes for which such discretionary distribution for the primary trust is authorized.

Section 6.1.3 **Delegation of Investment and Management.** The trustees may delegate investment and management functions. So long as the trustees are prudent in selecting an agent and periodically reviewing the agent's overall performance and compliance with the terms of the delegation, the trustees shall not be liable to the beneficiaries or to the trust for the decisions or actions of the agent.

Section 6.2 **Retain Property.** To continue to hold any property, including any shares of the trustees' own stock, and to operate at the risk of the trust estate any business that the trustees receive or acquire under the trust as long as the trustees consider advisable.

Section 6.3 **Unproductive Property.** To retain, purchase, or otherwise acquire unproductive property (except that the surviving spouse beneficiary of the Survivor's Trust shall have the right to compel the trustees to dispose of any assets in the Survivor's Trust that fail to provide a reasonable income to the surviving spouse as income beneficiary).

Section 6.4 **Securities.** To have all the rights, powers, and privileges of an owner of the securities held in trust, including, but not limited to, the powers to vote, give proxies, and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations and, incident to such participation, to deposit securities

with and transfer title to any protective or other committee on any terms the trustees consider advisable; and to exercise or sell stock subscription or conversion rights.

Section 6.5 **Securities in Nominee's Name.** To hold securities or other property in the trustees' own name or in a nominee's name, or to hold securities unregistered in such condition that ownership will pass by delivery.

Section 6.6 **Sell, Exchange, Repair.** To manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve, and repair trust property.

Section 6.7 **Lease.** To lease trust property for terms within or beyond the terms of the trust 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.

Section 6.8 **Loans.** To lend money to any person, including the probate estate of either settlor, provided any such loan shall be adequately secured and shall bear a reasonable rate of interest.

Section 6.9 **Purchase Property From Probate Estate.** To purchase property at its fair market value, as determined by the trustees in the trustees' discretion, from the probate estate of either settlor.

Section 6.10 **Self-Dealing by Trustee.** To loan or advance a trustee's own funds to the trust for any trust purpose, with interest at current rates; to receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of the trust; to purchase assets of the trust at their fair market value as determined by an independent appraisal of those assets; and to sell property to the trust at a price not in excess of its fair market value as determined by an independent appraisal.

Section 6.11 **Release of Powers.** Each trustee shall have the power to release or to restrict the scope of any power that the trustees 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 trustees 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 be extinguished.

Section 6.12 **Borrow.** To borrow money and to encumber trust property by mortgage, deed of trust, pledge, or security agreements and any other form of encumbrancing, for the debts of the trust or the joint debts of the trust and any co-owners of the property and/or any entities in which the trust has an interest, or for a settlor's debts; to guarantee a settlor's debts.

Section 6.13 **Litigation.** To initiate or defend, at the expense of the trust, any litigation relating to the trust or any property of the trust estate the trustees consider advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of the trust.

Section 6.14 **Insure.** To carry insurance of the kinds and in the amounts the trustees consider advisable, at the expense of the trust, to protect the trust estate and the trustees personally against any hazard.



Section 6.15 **Distribution**. To partition, allot, and distribute the trust estate on any division or partial or final distribution of the trust estate, in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the trustees, and to sell any property the trustees consider necessary for division or distribution. In making any division or partial or final distribution of the trust estate, the trustees are not obligated to make a prorata division or to distribute the same assets to beneficiaries similarly situated. The trustees may, in the trustees' discretion, make a nonprorata division between trusts or shares and nonprorata distributions to the beneficiaries if the respective assets allocated to separate trusts or shares, or distributed to the beneficiaries, have equivalent or proportionate fair market value and income tax bases.

Section 6.16 **Principal and Income Act**. Except as otherwise specifically provided in this instrument, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Revised Uniform Principal and Income Act from time to time existing. The trustees in the trustees' discretion shall determine any matter not provided for either in this instrument or in the California Revised Uniform Principal and Income Act.

Section 6.17 **Agents**. To hire persons, including accountants, attorneys, auditors, investment advisers, or other agents, to advise or assist the trustees in the performance of administrative duties.

Section 6.18 **Termination for Low Principal**. If the trust estate of any trust created herein does not exceed twenty thousand dollars (\$20,000.00) in value, the trustees, in the trustees' discretion, shall have the power to terminate such trust. At the termination of the trust, the trustees may convey, transfer and pay over to an income beneficiary the entire principal of the share held for his or her benefit.

Section 6.19 **Claims and Expenses of Administration**. To the extent a deceased settlor's probate estate is inadequate to satisfy claims of creditors and expenses of administration, the trustees shall turn over to the personal representative of such probate estate, trust assets, which were part of a trust subject to such settlor's power of revocation at the time of such settlor's death, sufficient to satisfy the claims and expenses.

Section 6.20 **Probate Administration**. At the death of a settlor, if the trustees reasonably believe the settlor's estate may possibly be subject to malpractice or other claims and desire to have the benefit of the creditor's claim period of a probate estate, the trustees may cooperate with the settlor's personal representative and probate any assets held outside of the trust(s) even if such assets could be transferred by affidavit or some other form of summary administration.

Section 6.21 **Use and Occupancy of Residence**. During any period of time the trust estate of any trust created herein contains any interest in improved real property used by a settlor as a principal residence and/or vacation home (referred to herein collectively or singularly as a "Residence"), such settlor shall have the right to reside rent free on such property so long as the settlor desires.

Section 6.21.1 **Includes Personal Property.** Residence as used herein shall include tangible personal property (household and garden furniture, furnishings, bedding, rugs, equipment and supplies) used in connection with the Residence and held by the trustees.

Section 6.21.2 **Taxes, Repairs, Insurance.** The trustees shall pay such portion of mortgage or trust deed payments, property taxes, assessments, insurance, maintenance, and ordinary repairs on the Residence as is proportional to the interest in such Residence held in the trust.

Section 6.21.3 **Sale and Purchase.** The trustees may comply with the reasonable request of a settlor concerning sale of a Residence and purchase of another Residence of comparable or lower value selected by the settlor. In the event an undivided interest in a Residence is distributed to a trust not revocable by the resident settlor, the trustees may sell the undivided interest to the settlor or to the trustee of another trust of which the settlor is a beneficiary, or may exchange such interest to another trust for other assets so long as such sales or exchanges are done at fair market value, after obtaining appraisals.

Section 6.22 **Minimize Taxes.** In administering the trusts created under this instrument, the trustees shall exercise all tax related elections, options, discretions and choices in such a manner as the trustees believe will minimize the total combined present and reasonably anticipated (but appropriately discounted) future administrative expense and tax burden of all kinds, upon not only such trusts, but also their beneficiaries, and the settlors' probate estates. Such direction supersedes the trustees' duty of impartiality and includes, but is not limited to, the following matters:

Section 6.22.1 **Itemized Matters.** Matters of valuation, including valuation agreements and alternate valuation elections; elections regarding Subchapter S of the IRC, installment payment of taxes, alternate methods of taxing annuities and employee benefits, to have certain life interests qualify for the marital deduction (with or without treating the creator of such interests as transferor for generation-skipping tax purposes), to file or not file any permitted joint returns with a spouse (including making agreements as to how taxes, refunds and credits arising from such returns shall be borne or shared), to consent or not consent to having any gifts made by one spouse as having been made one-half by the other spouse for gift tax purposes; allocation of administrative expenses between federal estate and income taxes; selection of income tax fiscal years, timing of distributions and payment of deductible expenses, selection of assets for allocation and distribution, disclaimer of benefits of any kind receivable by any trust created under this instrument in any manner permitted by law or by a "transfer" meeting the requirements of IRC section 2518(c)(3) and allocation of all generation-skipping tax exemptions.

Section 6.22.2 **Nonliability.** The trustees shall not be accountable to any person interested in the trusts or the settlors' estates for the manner in which the trustees, in good faith, carry out this direction to minimize overall taxes and expenses (including any decision not to incur the expense of detailed analysis of alternative choices) and, even though their decisions may result in increased tax or decreased distributions to a trust or to one or more beneficiaries. There shall not be any compensation readjustments or reimbursements between any of the trusts or beneficiaries by reason of the manner in which the trustees carry out this direction. Notwithstanding the above, a trustee shall not be authorized to make or participate in any decision if power to do so would result in his or her having a general power of appointment (for

federal estate or gift tax purposes) over property with respect to which he or she would not otherwise have such a general power. Should this prohibition leave the trustees unable to make the elections and allocations, the office of trustee for this limited purpose shall be filled in the manner that other vacancies in the office of trustee would be filled under this instrument.

Section 6.23 **Payment of Death Taxes.** Except as otherwise specifically provided in this instrument (or in either settlor's will directing that the property passing under the will be applied to the satisfaction of a tax), the liability for and burden of all death taxes imposed on or by reason of the inclusion of any portion of the trust estate in the gross taxable estate of a settlor may be paid by the trustee (or to the executor of such settlor's estate to be paid by the executor) and charged to, prorated among, or recovered from the trust estate or the persons entitled to the benefits under these trusts as and to the extent provided, by any applicable tax law or proration statute. The trust estate includes property subject to probate administration that is directed to be added to the trust estate by reason of a settlor's death.

Section 6.23.1 **Death Taxes Defined.** Death taxes means all estate, inheritance, succession, or transfer taxes and any income or similar taxes on appreciation (including interest, penalties, and any excise or supplemental taxes) imposed by the laws of any domestic or foreign taxing authority at the time of or by reason of the death of a settlor, except generation-skipping transfer taxes.

Section 6.23.2 **Disclaimers/Specific Exemptions.** Notwithstanding Section 6.23 above: (a) if the surviving spouse disclaims any property given to him or her outright or in trust, the amount of any increase in federal or state death taxes that results from such disclaimer shall be paid out of the disclaimed property; and (b) if any distribution hereunder is specifically exempted from federal estate and/or state death taxes, such taxes shall be paid from the source specifically identified, and if not specifically identified, equitably prorated among the other distributions in the trust estate subject to proration.

Section 6.23.3 **Death Tax Attributable to Non-Trust Recipients.** In the discretion of the trustees, death taxes attributable to property not included in the trust estate ("attributable tax") may be paid out of the trust estate prior to recovering the attributable tax from the recipient of that property.

Section 6.23.3.1 **Interest on Deferred Taxes.** Attributable tax that has not been paid by the recipient before the trustees pay death taxes, or that is not yet due because a valid deferral election was made under IRC Sections 6161, 6163 or 6166, shall bear interest equal to that imposed by the IRC on the trustees.

Section 6.23.3.2 **Set-Off Against a Beneficiary's Share.** In the sole and absolute discretion of the trustees, the trustees may pay all or a portion of the attributable tax, including interest, using funds from a recipient's share of trust assets, funds provided by the recipient, or both. The settlors specifically request that the trustees pay the attributable taxes out of the recipient's share of trust assets when doing so enhances the recipient's ability to benefit from income tax deferred compounding associated with property outside of the trust estate, including by way of example, and not limitation, a qualified retirement plan.

Section 6.23.3.3 **Indemnification of Trustees.** The trustees shall not be personally liable for withholding an insufficient amount as a set off against the liability of a recipient or for failing to recover attributable taxes or interest following reasonable efforts, and shall not be required to litigate to enforce apportionment unless indemnified against the costs thereof.

Section 6.24 **Guaranty Debts and Hypothecate Assets.** The trustees of any trust hereunder revocable by a settlor are authorized to do the following (so long as the trustees receive written direction to do so by the settlor or settlors with the revocation powers): (a) guaranty the indebtedness of any person, corporation or other entity, whether or not said guaranty is for a trust purpose or in any way benefits the trust; (b) hypothecate all or any part of the assets of the trust estate as security for loans obtained by any person, corporation or other entity or to effectuate a guaranty; and (c) to execute such agreements and documents as may be requested by a creditor and which appear reasonable to the trustees, such as security agreements, trust deeds and financing statements.

Section 6.25 **Margin Account.** The trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin, and for such purposes may maintain and operate a margin account with brokers, and may pledge any securities held or purchased by them with such brokers as security for loans and advances made to the trustee.

Section 6.26 **Enter into Business Enterprises.** The trustee is authorized to cause the trust to enter into various business enterprises, as defined elsewhere herein. The provisions of Section 6.27 and its subsections shall also apply to the business enterprises that the trustees enter into.

Section 6.27 **Continuation of Business Enterprises.** To continue to operate a business enterprise and to retain an interest in a business enterprise, in which the settlors, or either of them, have or had an interest. "Business enterprise" shall include, but not be limited to, a partnership (general and limited), sole proprietorship, limited liability company and corporation (S and C, public and closely held).

Section 6.27.1 **Reinvest, Lack of Diversification.** To invest additional sums in the business enterprise even to the extent that the trust may be invested largely or entirely in the business without liability for loss resulting from lack of diversification.

Section 6.27.2 **Directors, Officers, Employees.** To act as or to select other persons (including any beneficiary) to act as directors, officers or other employees of such business enterprises and to be compensated without regard to such person being a trustee or beneficiary.

Section 6.27.3 **Recapitalize, Liquidate.** To participate in corporate reorganizations, including recapitalizations and to liquidate the business enterprise upon such terms, as the trustees determine.

Section 6.27.4 **Estate Tax Lien.** If the executor makes an election under IRC section 6324A, or corresponding state statute, to create a special lien for the payment of any

deferred estate or death tax (including tax attributable to property not passing under this instrument), the trustees may subject trust property to such lien.

Section 6.27.5 **Experts.** To retain and pay the compensation of investment bankers, appraisers, accountants, legal counsel and others when the trustees determine that services are desirable in connection with the affairs of a business enterprise.

Section 6.27.6 **Sale of Shares.** If the trustees determine to dispose of shares in a business enterprise, the trustees shall be under no obligation to solicit offers from third parties and, based solely upon appraisal of a qualified appraiser, may sell the trust's interest in the business enterprise to any suitable buyer, including another shareholder, partner, employee of the business enterprise, a trust beneficiary, or to the corporation upon such terms as the trustees determine to be reasonable.

Section 6.27.7 **Conflicting Interests.** The trustees may have conflicting fiduciary and individual interests and the settlors direct that such interests shall not be a basis for any trustee not participating in the exercise of such trustee's powers as to business enterprises.

Section 6.27.8 **No Liability for Agents.** The trustees shall not be liable to any beneficiary of any trust created under this instrument or to any other person for losses resulting from retaining a business enterprise or for misconduct, mismanagement, or negligence on the part of any partner, employee, director or officer who is not a fiduciary of this trust or an officer or employee of a corporate fiduciary of this trust.

Section 6.27.9 **Taxed as a Trust.** The trustees shall not continue to operate any such business enterprise in a manner which causes the trust to be considered an "association" under section 301.7701-2 of the Treasury Regulations. This limitation is designed to ensure that this trust is treated as a trust for purposes of federal taxation, rather than as a corporation or other type of organization.

## ARTICLE 7

### **APPOINTMENT, RESIGNATION AND COMPENSATION OF TRUSTEES**

Section 7.1 **Successor Trustee.** If either of the initial trustees shall for any reason fail to qualify or cease to act as trustee, then the other initial trustee shall act as successor trustee. An initial trustee acting as successor trustee shall retain the right to redesignate successor trustees. If both of the initial trustees shall for any reason fail to qualify or cease to act as trustee, then the following shall act as successor trustee in the order indicated (so long as the initial trustee acting as successor trustee has not redesignated the successors):

~~First.~~ John K. Mirau. John, while acting as trustee, shall have the right to redesignate and name additional successor trustees.

~~Second.~~ Pat Gilbreath. Pat, while acting as trustee, shall have the right to redesignate and name additional successor trustees.

All designations shall be in writing and delivered to the trustees.

Section 7.1.1 **Beneficiaries Select Trustees.** If no successor is available in the manner prescribed above, then successor trustees may be appointed by a majority of the income beneficiaries of the trusts created under this instrument, age twenty-one (21) or older, signified by a signed writing.

Section 7.1.2 **Court Selects Trustees.** If a majority of the beneficiaries age twenty-one (21) and older are unable to agree on a successor trustee, any beneficiary of the trust may secure the appointment of a successor trustee by a court of competent jurisdiction at the expense of the trust. The term trustee as used herein shall include "trustees," "co-trustees" and "successor trustees."

Section 7.2 **Appoint Co-Trustee.** Any trustee acting hereunder shall have the power while acting as trustee to appoint a co-trustee or co-trustees to serve with him or her at his or her pleasure, and to remove the co-trustees. The co-trustees shall not serve beyond the death, incapacity or resignation of the person appointing the co-trustee (unless the trustee specifically has the power to designate successor trustees). Any appointment of co-trustee (and revocation of appointment) shall be made in a written instrument. The appointment of a co-trustee becomes effective on the new co-trustee's written acceptance of the trust and the delivery of the acceptance to the person appointing the trustee.

Section 7.3 **No Bond.** No bond shall be required of any person named in this instrument as trustee.

Section 7.4 **Compensation.** Any successor trustee actually acting as trustee shall be entitled to pay himself or herself reasonable compensation from time to time and to reimburse himself or herself for expenses of the trust that he or she has paid, both without prior court order. If the reasonableness of fees shall be disputed by any beneficiary, the fees shall be determined by a court of competent jurisdiction.

Section 7.5 **Incapacity of Trustee.** If a trustee cannot administer the trust because of incapacity, or otherwise cannot act, the successor trustee named herein shall act as trustee, having all rights and powers granted to the trustee by this instrument.

Section 7.6 **Determination of Incapacity.** For purposes of this instrument, incapacity of a settlor or trustee herein may be established if any of the foregoing take place:

Section 7.6.1 **Physician.** A licensed physician (preferably the primary physician) issues a written certificate to the effect that (i) the settlor has lost the capacity to manage his or her own financial affairs, (ii) that a trustee has lost the capacity to administer the trust, or (iii) that a settlor or trustee has lost the capacity to resist fraud or undue influence. The settlor recognizes that he or she may become incapacitated in the future and that there could be a dispute about the incapacity. During the dispute, the settlor, perhaps because of the incapacity, may take a position that appears inconsistent with the settlor's true condition or best interests. If the settlor's physician, in his or her own best professional judgment determines that it is necessary, reasonable or desirable to disclose the settlor's private and protected health information to either a person named as successor trustee in this trust, to a person named as agent under the settlor's Advance Health Care Directive, or to a person named as agent under the settlor's Durable Power of Attorney, then the settlor authorizes the disclosure as a part of his or

her treatment and as a part of the physician's treatment, payment, or health care operations. If the physician makes a disclosure under a circumstance indicated above, the physician shall be held harmless from all reasonable costs and fees incurred by the physician in any proceeding regarding the settlor's incapacity and the trust estate shall indemnify the physician against all such costs and fees.

Section 7.6.2 **Successor Trustee.** The successor trustee, by a written declaration under penalty of perjury, determines that a trustee is no longer able to substantially manage the affairs of the trust. In the event incapacity is determined in this manner, nothing precludes the removed trustee from seeking a court determination of capacity, but the successor trustee is entitled to exercise all powers of the trustee unless or until the successor's powers are limited by court order. The successor trustee shall incur no liability to any beneficiary of the trust or to the substituted trustee as a result of this declaration, provided the declaration is made in good faith and in the reasonable belief that the substituted trustee is incapacitated or is otherwise unable to act.

Section 7.6.3 **Court.** A person interested in the trust may petition the court having jurisdiction over this trust to have a settlor declared incapacitated or to remove a trustee and replace him or her with the successor trustee. The petitioner to the court shall incur no liability to any beneficiary of the trust or to the substituted trustee as a result of this petition, provided the petition is filed in good faith and in the reasonable belief that the substituted trustee is incapacitated or is otherwise unable to act.

Section 7.7 **Signatures.** At any time two or more persons are acting as trustees in the manner specified in this instrument, any one trustee shall be authorized to act for all trustees in connection with any transaction (particularly involving bank, savings and loan and brokerage accounts and real property) and any third party may rely conclusively on the signature of one trustee on any contract, deed, or similar instrument, to bind the trust.

## ARTICLE 8

### **ADMINISTRATIVE PROVISIONS**

Section 8.1 **Issue and Children.** In this instrument, the term "issue" refers to lineal descendants of all degrees, and the terms "child," "children" and "issue" include children adopted into a bloodline who were minors at the date of adoption and exclude persons of any age adopted out of a bloodline.

Section 8.2 **Spendthrift Clause.** No interest in the principal or income of any trust created under this instrument shall be anticipated, assigned, encumbered or subjected to creditor's claim or legal process before actual receipt by the beneficiary.

Section 8.3 **No-Contest Clause.** Except as otherwise provided in this instrument, the settlors have intentionally and with full knowledge omitted to provide for their heirs. If any beneficiary under this trust, singly or in conjunction with any other person or persons, contests in any court the validity of this trust or of a deceased settlor's last will or seeks to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that such will or any of its provisions is void, or seeks otherwise to void, nullify or set aside this trust or

any of its provisions, then that person's right to take any interest given to him or her by this trust shall be determined as it would have been determined if the person had predeceased the execution of this declaration of trust without surviving issue. The provisions of this paragraph shall not apply to any disclaimer by any person of any benefit under this trust or under any will.

Section 8.4 **Additions to Trust.** Other property acceptable to the trustees may be added to these trusts by any person, by the wills or codicils of either settlor, by the proceeds of any life insurance, or otherwise.

Section 8.5 **Statutes, Codes and Regulations.** All references to specific statutes, codes or regulations shall include any successors. The term "Internal Revenue Code" or "IRC" shall refer to the Internal Revenue Code of 1986, as amended from time to time, and to any successor statute to it.

Section 8.6 **Gender and Number.** In this instrument, in all matters of interpretation, whenever necessary to give effect to any provision of this instrument, the masculine shall include the feminine and neuter and vice versa, the singular shall include the plural, and the plural shall include the singular.

Section 8.7 **Division Not Required.** The trustees need not physically segregate or divide the various trusts, except when segregation or division is required because one of the trusts terminates, but the trustees shall keep separate accounts for the different trusts.

Section 8.8 **Gifts.** The trustees shall comply with any direction by a settlor to make a lifetime gift of all or a portion of such settlor's interest in the trust estate that is revocable by the settlor.

Section 8.9 **Survivorship Provision.** If the surviving spouse fails to survive the deceased spouse for thirty (30) days, the surviving spouse shall be considered to have predeceased the deceased spouse. If any person fails to survive the surviving spouse for thirty (30) days, that person shall be considered to have predeceased the surviving spouse. If any other distribution or allocation hereunder is caused by the death of any other beneficiary or any other event hereunder, the resultant beneficiaries must survive the deceased beneficiary or event for thirty (30) days, or they shall be considered to have predeceased the deceased beneficiary or event.

Section 8.10 **Education.** Whenever provision is made to pay for the education of a beneficiary, the term "education" shall include vocational school, college and postgraduate study if in the trustees' 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 education, the trustees shall consider the beneficiary's reasonable related living and traveling expenses.

Section 8.11 **Payments to Minors.** Payments to any beneficiary who is a minor or is under any other disability may be made for the beneficiary's account to the beneficiary's conservator, guardian of the person, custodian under the Uniform Gifts to Minors Act or California Uniform Transfers to Minors Act, parent, or any other suitable adult with whom the beneficiary shall reside, or may be applied for the beneficiary's benefit. Sums may be paid directly to minor beneficiaries who, in the fiduciaries' judgment, have attained sufficient age and



discretion to render it probable that such sums will be properly expended. No bond or other security shall be required of any such payee. No distribution under this instrument to or for the benefit of a minor beneficiary shall discharge the legal obligation of the beneficiary's parents to support him or her in accordance with the laws of the state of the parents' domicile from time to time, unless a court of competent jurisdiction determines that this distribution is necessary for the minor's support, health, or education.

Section 8.12 **Perpetuities Savings Clause.** Unless terminated earlier, any trust created under this instrument or by the exercise of a power of appointment granted under this instrument (unless an appointed trust is allowed a new perpetuities period) shall terminate twenty-one (21) years after the death of the last survivor of: (a) the settlors; (b) the settlors' issue living on the date of the deceased spouse's death; and (c) any other beneficiaries provided for hereunder living on the date of the deceased spouse's death. The principal and undistributed income of any trust terminated under this Section shall be distributed to the trust's income beneficiaries in the same proportions in which they are entitled to receive income immediately before termination. If those proportions are not fixed by the terms of the trust, distribution shall be by right of representation to issue of the settlors who are then entitled or, in the trustees' discretion, authorized to receive income distributions from the trust; and if there are no such issue, then to any one or more of the persons who are then entitled or authorized to receive trust income, such persons to take in shares determined in the trustees' discretion.

Section 8.13 **California Law Applies.** The validity of this trust and the construction of its beneficial provisions shall be governed by the laws of the State of California in force from time to time. This section shall apply regardless of any change of residence of a trustee or any beneficiary, or the appointment or substitution of a trustee residing or doing business in another state. Notwithstanding the foregoing, the validity and construction of this trust in relation to any real property located in a jurisdiction outside the State of California shall be determined under the laws of such jurisdiction.

Section 8.14 **Invalidity of Any Provision.** If any provision of this trust instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

Section 8.15 **Generation-Skipping Transfers.** The term (or any reference to) "generation-skipping" in this instrument refers to the federal generation-skipping transfer tax under IRC Chapter 13.

Section 8.15.1 **GSTT Exemption.** "GSTT exemption" refers to the exemption allowable under IRC §2631. As of the date of this instrument, the GSTT exemption is \$1,500,000.00.

Section 8.15.2 **Unused GSTT Exemption.** "Unused GSTT exemption" refers to the amount of a settlor's GSTT exemption, reduced by: (1) any allocation of GSTT exemption to property transferred by such settlor prior to his or her death; (2) any allocation of GSTT exemption directed in such settlor's will; and (3) any allocation of GSTT exemption to direct skip transfers occurring outside of this instrument at such settlor's death and with respect to which he or she is the transferor.

Section 8.15.3 **Executor.** In the federal income, estate and GSTT context where an executor is required to make an election or otherwise act, a reference to a settlor's "executor" shall mean the trustees under this instrument unless the settlor's personal representative (executor or administrator) is appointed, qualified and acting within the United States (that is, if a portion of the settlor's estate is probated). If tax elections will be made by a personal representative, the trustees shall consult with such personal representative and shall assign property to trusts consistent with the tax elections that will be made.

Section 8.15.4 **Trust.** References to trusts refer also to arrangements treated as trusts for GSTT purposes. For example, separate shares of a trust, when appropriate to the context, are treated as trusts if the shares are "substantially separate and independent shares of different beneficiaries."

Section 8.15.5 **Allocation of Unused GSTT Exemption.** In exercising the power to allocate a settlor's GSTT exemption, the executor may include in or exclude from that allocation any property of which the settlor is transferor for GSTT purposes, including property transferred prior to his or her death. These decisions may be based on transfers, gift tax returns, and other information known to the executor, with a requirement of good faith but no requirement that allocations benefit various transferees or beneficiaries of such property equally, proportionally, or in any other particular manner. No person acting as executor, however, shall make or participate in any GSTT election or allocation decision if the power to do so would result in his or her having a general power of appointment (for federal estate and gift tax purposes) over property with respect to which he or she would (or might) not otherwise have such a general power; should this prohibition leave no executor able to make such an election or allocation, the office of executor for this limited purpose shall be filled in the manner that other vacancies in the office of trustee under this instrument would be filled. The allocations suggested hereafter are suggestions, rather than mandatory allocations.

Section 8.15.6 **Exempt and Non-exempt.** The term "exempt" refers to property or a trust that has a GSTT inclusion ratio of zero. When reference is made to an "exempt trust," this is a reference to a trust that has or is to be established having an inclusion ratio of zero (and which will be exempt from GSTT). The term "non-exempt" indicates property or a trust that has a GSTT inclusion ratio of one (and which will be subject to GSTT). Reference herein to the term "inclusion ratio" shall refer to the inclusion ratio for GSTT purposes.

Section 8.15.7 **Payment of Generation-Skipping Transfer Taxes.** All GSTT attributable to transfers under this instrument shall be paid out of and charged against the property constituting the transfer. Responsibility for payment of the tax shall be as follows: (1) direct skips occasioned by either settlor's death and with respect to which such settlor is the transferor shall be paid by the trustees; (2) taxable distributions shall be paid by the transferee; and (3) taxable terminations shall be paid by the trustees.

Section 8.15.8 **Divide Trusts.** With respect to any trust or trusts created under this instrument, the trustees shall have discretionary power, without need of court approval, to divide the trust or trusts into separate individual trusts for GSTT purposes or for any other tax, administrative, or other purposes. The trustees shall also have discretionary authority to divide separate shares or separable portions of a trust and administer them as separate trusts. In

exercising this authority, the power shall be exercised in a manner that complies with applicable Treasury regulations or other requirements for accomplishing the intended purpose(s).

Section 8.15.8.1 **Terms of Divided Trusts.** When a trust is divided into exempt and non-exempt trusts or otherwise into separate trusts: (1) each trust shall have the same provisions as the original trust (the "divided trust") from which it is established; (2) references in this instrument to the divided trust shall collectively refer to the separate trusts derived from it; and (3) the trustees may exercise administrative and distributive discretion differently with respect to each of the separate trusts (even otherwise identical trusts) derived from the divided trust.

Section 8.15.8.2 **Preserve Exempt and Non-exempt Character.** Upon termination, partial termination, division, subdivision or distribution of any of the various trusts created under this instrument, and even when it is provided (or appears to be provided) that various trusts are to be combined, the non-exempt, exempt or even partially exempt GSTT character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or other trusts or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions.

Section 8.15.8.3 **Division Upon Allocation of Unused GSTT Exemption.** If some or all of a settlor's Unused GSTT exemption is to be allocated to any trust that is otherwise to be established under this instrument, unless the trust in question will thereby have a GSTT inclusion ratio of zero, that trust may be divided and two separate trusts may instead be established so that each will have a GSTT inclusion ratio of either zero (an exempt trust) or one (a non-exempt trust). Any such division shall be accomplished by allocating to the exempt trust the maximum pecuniary amount that will not result in the exempt trust having an inclusion ratio greater than zero. Any allocation of a pecuniary amount may be satisfied in cash or in kind, in undivided interests, or partly in each. Any assets used to satisfy the pecuniary amount shall be valued for this purpose at their date or dates of allocation; and each such pecuniary amount shall bear interest from the date prescribed under California law to the date of allocation, such interest to be at the statutory rate applicable to pecuniary bequests under California law. The foregoing interest requirement shall be interpreted and adapted to meet the "appropriate interest" requirement imposed by applicable GSTT regulations.

Section 8.15.8.4 **Combine Trusts.** The trustees shall also have discretionary authority to combine any trust with any other trust or trusts having the same inclusion ratio, including trusts established (during life or at death) by a settlor or issue of a settlor; and the trustees shall establish shares within a trust if and as necessary to preserve the rights and protect the interests of the various beneficiaries (such as when trusts being combined do not have identical terms) or if the trustees otherwise believe that separate shares are desirable (such as because different portions of the trust have different perpetuities periods). In addition (and as an exception to the general rule), trusts with different GSTT inclusion ratios may be combined if the trustees make a discretionary judgment that economic efficiency or other considerations justify sacrificing their separate GSTT characteristics. These powers to combine and divide trusts may be exercised (without need of court authorization) from time to time and may be used to modify or reverse their prior exercise. The trustees may take into account

efficiencies of administration, GSTT and other transfer tax considerations, income tax factors affecting the various trusts and their beneficiaries, financial and other objectives of the trusts and beneficiaries, the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the trustees may deem appropriate.

Section 8.15.8.5 **Intent.** It is the settlors' intent to encourage the trustees to administer separate trusts under this instrument in ways that, in the long run, are likely to reduce unnecessary income, gift and other transfer taxation among trusts and their beneficiaries and that are likely to make efficient utilization of available tax privileges, such as GSTT exemptions. Without limiting the foregoing, the settlors particularly authorize (but do not require) the trustees, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment strategies and objectives for different trusts based on their GSTT ratios, and to prefer making distributions from non-exempt trusts to beneficiaries who are non-skip persons for GSTT purposes and from exempt trusts to those who are skip persons. In deciding whether and how to exercise this authority the trustees may take account of efficiencies of administration, GSTT and other transfer tax considerations, income tax factors affecting the various trusts and their beneficiaries, present and future financial and other objectives of the trusts and beneficiaries, the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the trustees may deem appropriate to these decisions. Consistent with these objectives, the trustees of any trust may consult with other trustees and may in reasonable ways coordinate decisions and actions of the trust with those of other trusts under other dispositions made by the settlor and under wills and trusts of others when those other trusts have, in whole or in part, similar beneficiaries or objectives.

Section 8.15.9 **Tax Elections, Allocations of Unused GSTT Exemption and Division of Trusts.** The settlor's suggest, but do not require that the executor (or trustees) follow the following instructions.

Section 8.15.9.1 **Unused GSTT Exemption to Bypass Trust.** That the deceased spouse's Unused GSTT exemption be allocated to the Bypass Trust to the extent necessary to make the inclusion ratio zero. If the value of the property allocated to the Bypass Trust is greater than the Unused GSTT exemption, that the Bypass Trust be divided into two separate trusts so that the remaining Unused GSTT exemption may be allocated to one such trust (the "Exempt Bypass Trust") which will have an inclusion ratio of zero and the other trust (the "Non-exempt Bypass Trust") will have an inclusion ratio of one.

Section 8.15.9.2 **Unused GSTT Exemption to Survivor's Trust.** The surviving spouse's Unused GSTT exemption may be allocated to the Survivor's Trust to the extent necessary to make the inclusion ratio zero. If the value of the property allocated to the Survivor's Trust is greater than the Unused GSTT exemption, the Survivor's Trust may be divided into two separate trusts. The balance of the Unused GSTT exemption would then be allocated as to all of the property in one of such trusts (the "Exempt Survivor's Trust") which will have an inclusion ratio of zero, and the remaining trust (the "Non-exempt Survivor's Trust") would have an inclusion ratio of one.

Section 8.15.10 **Death Taxes.** The term "death taxes" shall refer to all estate, inheritance or other taxes, including any interest and penalties thereon, arising by reason of a settlor's death. The term, however, does not include generation-skipping transfer taxes.

Section 8.16 **Powers of Appointment.** Except as otherwise specifically provided, the following provisions shall apply to any power of appointment provided for under this instrument.

Section 8.16.1 **Manner of Exercise.** A power of appointment shall be exercised by an instrument in writing (other than a will or a codicil to a will) that (a) specifically references the power of appointment, (b) is signed by the donee (the person to whom the power of appointment is given), and (c) is delivered to the trustees during the lifetime of the donee.

Section 8.16.2 **Scope of Power.** A power of appointment may be exercised: in favor of any one or more of the permissible appointees. The power of appointment may be exercised either outright or in trust, and on any terms, conditions and further powers. The power of appointment shall include the power to direct the division of the trust property into separate shares; to establish terms for payment of income or principal; to grant lifetime and testamentary general or special powers of appointment; and to grant others the power to grant or take away general or limited powers of appointment. Notwithstanding the foregoing, the power of appointment may not be exercised in a manner that will cause the maximum duration of any trust created herein to be extended beyond the period which would have limited the trust duration if no such power had been granted. The power of appointment is discretionary, the donee need not exercise the power at all, or he or she may exercise the power in favor of all, or some, or even one of the permissible appointees.

Section 8.16.3 **Definitions.** The following definitions relate to the powers of appointment.

Section 8.16.3.1 **Permissible Appointee.** A permissible appointee is a person or entity in whose favor a power of appointment can be exercised.

Section 8.16.3.2 **Donee.** A donee is the person to whom a power of appointment is given.

## ARTICLE 9

### ~~DUTIES OF TRUSTEES~~

The trustees shall have the following duties in carrying out the provisions of the trust(s) created by this instrument:

Section 9.1 **Accounting Required.** To render, besides any accounting required under the California Probate Code Section 17200, an accounting, from time to time, but not less frequently than one year after any prior accounting, regarding the transactions of any trust created in this instrument. Accountings shall also be rendered by any trustees or the trustees' representative within sixty (60) days after his or her resignation, death, disability or removal by a court of competent jurisdiction.

Section 9.1.1 **Delivery.** Accountings shall be made by delivering a written accounting to each beneficiary to whom income or principal is required or authorized to be currently distributed. If any person entitled to receive an accounting is a minor or is disabled, the accounting shall be delivered to his or her parents or the guardian of his or her person, if a minor, or to the guardian or conservator of his or her person, if disabled.

Section 9.1.2 **Accounting Conclusive.** Unless any beneficiary, including parents, guardians, or conservators of beneficiaries, shall deliver a written objection to the trustees within 180 days after receipt of the trustees' account, the account shall be final and conclusive for transactions disclosed in the account and shall be binding on all beneficiaries of the trust, including unborn, unascertained, and contingent beneficiaries. After settlement of the account by agreement of the parties objecting to it or by expiration of the 180 day period, the trustees shall no longer be liable to any beneficiary of the trust, including unborn, unascertained, and contingent beneficiaries for transactions disclosed in the account, except for the trustees' intentional wrongdoing or fraud.

Section 9.1.3 **Settlors as Trustees.** While either settlor is acting as trustee of a trust revocable by such settlor, any withdrawals of principal or income shall be presumed to be proper and no successor trustee shall be required to account for such withdrawals or for any accumulations which may result if the power of withdrawal is not exercised.

Section 9.2 **Legal Counsel on Deceased Spouse's Death.** When the deceased spouse dies, the trustees shall shortly thereafter seek the counsel of an attorney concerning (a) the valuation of the trust estate for federal income and estate tax purposes; (b) the necessity of filing a federal estate tax return; (c) the advisability of the surviving spouse disclaiming any of the deceased spouse's property into the Bypass Trust; and (d) the funding of assets into the Bypass and Survivor's Trusts.

Section 9.3 **Notification by Trustee.** The trustees shall serve a Notification by Trustee ("NBT") as required by California law. To the extent California law changes from time to time, the requirements as reflected herein will be construed to conform with the minimum requirements under then-current law.

Section 9.3.1 **Service Requirement.** Within 60 days of the death of a settlor or the change of trustee of any trust hereunder that is irrevocable, the trustees shall serve an NBT on: (a) each required beneficiary, (b) each heir of a deceased settlor (if the death of the settlor is the event requiring the NBT), and (c) the Attorney General if the trust is a charitable trust.

Section 9.4 **Copy of Terms of the Trust.** When a revocable trust hereunder, or any portion, becomes irrevocable because of the death of a settlor, the trustee shall provide a true and complete copy of the terms of the irrevocable trust to any beneficiary and to any heir of the deceased settlor who requests it.

Executed at Menifee, California, on 08-24-05.

Joseph E. Yoder  
Joseph E. Yoder, Trustee

Mary D. Yoder  
Mary D. Yoder, 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: 8/24/05

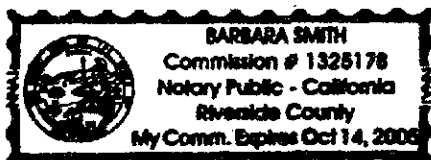
Joseph E. Yoder  
Joseph E. Yoder, Settlor

Mary D. Yoder  
Mary D. Yoder, Settlor

STATE OF CALIFORNIA                     )  
  : ss.  
COUNTY OF SAN DIEGO                 )

On 8/24/05, before me, BARBARA SMITH, personally appeared Joseph E. Yoder and Mary D. Yoder, personally known to me (or proved to me 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.



Commission #1325178  
Expires Oct 14, 2005

Barbara Smith  
Notary Public in and for said  
County and State