

2006

Kay W. Eager v. Ray Burrows, Ronald Burrows, Linda Davis, Arthur Kiisel, Julia Rodgers, Florence Webster : Brief of Appellant

Utah Court of Appeals

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Wesley D. Hutchins; Scalley, Reading, Bates, Hansen and Rasmussen; Appellees/Defendants.
Michael A. Jensen; Attorney for Appellant/Plaintiff.

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IN THE UTAH SUPREME COURT

KAY W EAGAR,

Plaintiff/Appellant,

v.

**RAY BURROWS,
RONALD BURROWS,
LINDA DAVIS,
ARTHUR KIISEL,
JULIA RODGERS, and
FLORENCE WEBSTER,**

Defendants/Appellees.

BRIEF OF APPELLANT

Appellate Court No. 20061011-SC

Third District Court No. 060905534

BRIEF OF APPELLANT

Appeal from the Third District Court, Judge Denise P. Lindberg

Wesley D. Hutchins (#6576)
Scalley Reading Bates Hansen &
Rasmussen
15 W South Temple Ste 600
PO Box 11429
Salt Lake City, UT 84147-0429
(801) 531-7870; Fax: 531-7968
Appellees/Defendants

Michael A. Jensen (#7231)
Attorney at Law
PO Box 571708
Salt Lake City, Utah 84157-1708
(801) 519-9040; Fax: 519-9264
Attorney for Appellant/Plaintiff

ORAL ARGUMENT REQUESTED

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Attorney at Law
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Salt Lake City, Utah 84157-1708
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Attorney for Appellant/Plaintiff

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JURISDICTION OF THE COURT

Jurisdiction is conferred upon this Court by virtue of § 78-2a-2(3)(j), *U.C.A.*

ISSUES PRESENTED FOR REVIEW and STANDARD OF REVIEW

1. **Issue:** Did the trial court apply in its grant of summary judgment in favor of Defendants the correct legal standard in determining that (a) the agent holding a power of attorney for asset management had the authority to gift away all of the principal's personal property while the principal was confined in a long term care facility; and (b) such gifting did not violate his duty of loyalty to the principal. A subsidiary question is whether the agent, assuming he had authority to gift away all of the principal's personal property, had a duty to act in a manner consistent with the principal's last will and testament, which narrowly limits the recipients of the principal's personal property.

This issue was preserved by raising it during the proceedings for the motion and cross-motion for summary judgment and then timely filing a notice of appeal.

Standard of Review: Questions of whether the correct legal standards were applied are questions of law and are reviewed for correctness. *See generally State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

STATEMENT OF THE CASE

a. **General Substance of the Case.** This is a probate case that involves the scope of power of an agent holding a power of attorney for asset management. Specifically, does an agent holding a power of attorney (a) have authority to gift away all personal property of a principal who is in a care facility; (b) have a duty of loyalty to the principal; and (c) have a duty to act in a manner that is consistent with the principal's last will and testament?

b. **Material Facts Relevant to the Subject Issue.**¹ Ralph and Ida Burrows were married to each other for more than 40 years but they had no children together. *Kay Eagar Aff.* at 2 ¶ 4-8 (R. 14). Each of them was previously married: Ralph twice and Ida once. *Kay Eagar Aff.* at 2 ¶ 5-7 (R. 14). From those prior marriages, each had two children, or "issue" as that term is defined in the Probate Code. *Id.*; *See also* §§ 75-1-201(5), (9), and (25), Utah Code Ann. In addition, Ralph brought four stepchildren (not his own) into his marriage with Ida. *Kay Eagar Aff.* at 2 ¶ 6 (R.14). This created for Ralph and Ida a family of eight "children": two of issue from Ralph: Ray and Ron Burrows; two of issue from Ida: Kay Whiteley Eagar and William Whiteley; and four stepchildren brought to the marriage from a prior wife of Ralph: Linda Davis, Arthur

¹ The trial court denied Plaintiff's Motion for Summary Judgment and granted Defendants' Motion for Summary Judgment. Therefore, the facts are presented from the view of Plaintiff, since the trial court is obligated to accept the facts in the light most favorable to Plaintiff.

Kiisel, Julia Rodgers, and Florence Webster (collectively referred to herein as the “Children”). *Kay Eagar Aff.* at 2 ¶ 5-7 (R. 14). None of the four stepchildren was adopted by Ralph or Ida. *Kay Eagar Aff.* at 2 ¶ 6 (R. 14). Likewise, Ralph’s two children were not adopted by Ida and Ida’s two children were not adopted by Ralph. *Kay Eagar Aff.* at 2 ¶ 5-7 (R. 14).

In 2002, Ralph died. *Kay Eagar Aff.* at 2 ¶ 8 (R. 14). Three years later in 2005, Ida died. *Kay Eagar Aff.* at 3 ¶ 11 (R. 15). Prior to Ralph’s death, they each executed personal estate documents, including a (i); personal will (Addendum 2); (ii) power of attorney for asset management (Addendum 5); and (iii) medical power of attorney. *Kay Eagar Aff.* at 2 ¶ 12 (R. 15). They also entered into a joint trust agreement (the “Burrows Trust”). *Kay Eagar Aff.* at 2 ¶ 14 (R. 15); *Addendum 4*.

Upon the death of both Ralph and Ida, the Burrows Trust left their residual estates in equal shares to the eight Children, or as expressly designated in the trust agreement, to the eight “beneficiaries” (hereinafter “Beneficiaries”). *Burrows Trust* at 5 (R. 50); *Addendum 4*. However, their individual wills left all of their personal property to their respective “issue” and not to the group of eight Children who are designated as “beneficiaries.” *Ida’s Will* at 1 (R. 32); *Addendum 2*; *Ralph’s Will* at 1 (R. 18); *Addendum 3*. It is important to note that their personal property was not intended to be poured over into the Burrows Trust. In effect, Ralph and Ida had clearly designed

different plans for distributing their personal property than they designed for the distribution of their other assets, or their “Residuary Estate.”

Just prior to Ralph’s death, Ida was in a hospital and was shortly thereafter moved to a care facility. *Kay Eagar Aff.* at 2 ¶ 9 (R. 14); *Kay Eagar 2nd Aff.* at 2 ¶ 6 (R. 160).

Ralph’s son, Ray Burrows, one of the Defendants herein, immediately took charge of Ralph’s and Ida’s estates. *Kay Eagar 2nd Aff.* at 2 ¶ 4-5, 21 (R. 160, 162). Kay learned years later that Ray was at that time acting under a power of attorney for asset management that Ida had granted to him years earlier. *Kay Eagar 2nd Aff.* at 3 ¶ 13-16 (R. 161).

Within a few weeks after Ralph’s death, Ray gifted away all of Ida’s personal property in approximately equal shares to the eight Children. *Kay Eagar Aff.* at 2-3 ¶ 10 (R. 14-15). During the gifting process by Ray, Ida’s daughter, Kay Eagar, the Plaintiff herein and now also the court-appointed Personal Representative for Ida’s estate, demanded that Ray cease disposing of Ida’s personal property. *Kay Eagar 2nd Aff.* at 5 ¶ 26-27 (R. 163). Nonetheless, Ray continued gifting away all of Ida’s personal property. *Id.* Unable to stop Ray, Kay contributed \$600 for the personal property that she received, and she requested that all of the Children pay for the personal property that they received. *Kay Eagar 2nd Aff.* at 5 ¶ 28 (R. 163). None of them did so. *Id.*

Ida lived for another three years. *Kay Eagar Aff.* at 3 ¶ 11 (R. 15). Upon her death in 2005, Kay was appointed as the Personal Representative for Ida’s estate.

Kay Eagar Aff. at 3 ¶ 12 (R. 15). Kay then promptly requested that all personal property that Ray had gifted away to the Children be returned to Ida's estate. *Kay Eagar Aff.* at 2 ¶ 2 (R. 14). However, Ray and the other Defendants refused to return any of the personal property. *Kay Eagar Aff.* at 2 ¶ 3 (R. 14). Although the trial court made no findings on the value of the personal property gifted away, the value was meaningful if only in monetary way. Ray alleged in his affidavit that one item of personal property received by Kay has a value of \$6,000. *Ray Burrows Aff.* at 3 ¶ 8 (R.119).

Acting as Personal Representative for Ida's estate, Kay commenced an action for the return of Ida's property. The trial court, however, approved Ray's gifting on the basis that it seemed equitable and because the word "gift" was included in Ida's Power of Attorney for Asset Management. *See Order* at 3 (R. 274); *Addendum 1*; Power of Attorney at 1 (R. 124); *Addendum 5*. In doing so, the trial court ignored Ida's wishes that she clearly and unambiguously expressed in her Last Will and Testament.

SUMMARY OF ARGUMENT

The mere presence of the term “gift” in Ida’s Power of Attorney for Asset Management didn’t authorize her agent to gift away all personal property to himself, the other children, and the stepchildren. Such gifting would have no benefit to Ida.

Moreover, gifting Ida’s property to the eight Children contravened Ida’s estate plan. Her Will expressly leaves all personal property to her two children, or “issue” as that term is used in her Will. Her Will and her Trust provide that her Residuary Estate goes equally to the eight children. But only her two children are to receive her personal property.

By gifting away Ida’s personal property to the eight children, Ray breached his duty to Ida, since the gifting did not benefit her and the pattern of gifting was inconsistent with the pattern of gifting expressed in her Will.

Public policy also dictates that any gifting by Ida’s agent should take into account Ida’s Will and her overall estate plan. Ray’s gifting of Ida’s personal property was inconsistent with such public policy.

The trial court erred in approving Ray’s gifting by failing to appreciate the distinction between Ida’s estate plan for her personal property and her estate plan for her Residuary Estate. Understanding that distinction would be reasonably led to the conclusion that Ray’s gifting was inconsistent with Ida’s estate plan, and, therefore, Ray’s gifting breached his duty to Ida. Accordingly, this Court should reverse the trial court and remand for the entry of an order granting Plaintiff’s motion for summary judgment.

ARGUMENT

ISSUE:

Did the trial court apply in its grant of summary judgment in favor of Defendants the correct legal standard in determining that (a) the agent holding a power of attorney for asset management had the authority to gift away all of the principal's personal property while the principal was confined in a long term care facility; and (b) such gifting did not violate his duty of loyalty to the principal. A subsidiary question is whether the agent, assuming he had authority to gift away all of the principal's personal property, had a duty to act in a manner consistent with the principal's last will and testament, which narrowly limits the recipients of the principal's personal property.

I. The trial court erred when it ruled that Ray Burrows, as the agent holding a power of attorney for asset management granted to him by Ida Burrows, had authority to gift away all of Ida's personal property.

Prior to Ralph's death, Ida granted a power of attorney to Ray Burrows, Ralph's son.

See Durable Power of Attorney for Asset Management (R. 124-25); Addendum 5.

"A power of attorney is an instrument in writing by which one person, as principal, authorizes another to act as agent." *Kline v. Utah Dep't of Health*, 776 P.2d 57, 61 (Utah App. 1989) (citing *In re Estate of Lienemann*, 222 Neb. 169, 382 N.W.2d 595, 602 (1986); *In re Estate of Rolater*, 542 P.2d 219, 223 (Okla. App. 1975)). "The scope of the authority so conferred may, by the terms of the instrument itself, be general or limited, but the instrument creating this agency relationship is to be strictly construed." *Id.* (citing

Rolater, 542 P.2d at 223; *see Huntsman v. Huntsman*, 56 Utah 609, 192 P. 368, 370 (1920) (whether attorney-in-fact has power to convey principal's property for nominal consideration must be "deducible from the language or manifest intent of the [power of attorney] instrument")).

Ida was the principal, and Ray was acting as Ida's agent. An agent is a fiduciary with respect to matters within the scope of his agency. *SEE* RESTATEMENT, AGENCY 2d, Section 13; *Hopkins v. Wardley Corp.*, 611 P.2d 1204, 1206 (Utah 1980).

While the power of attorney contains a single reference to the term "gift," such reference in common usage would not imply authority for Ray to gift away all of Ida's personal property. Taken in context with the entire document, the term "gift" is only incidental and minor in importance. This is particularly true during Ida's lifetime when she may need her personal property and where her last will and testament provides for the distribution of her personal property in a specific manner upon her death. Importantly, there are no contrary facts that show any different intent.

The power of attorney granted by Ida appears from its title to be limited to managing her assets, *i.e.*, "asset management." Nonetheless, Ray relied solely on the word "gift" for his authority to gift away all of Ida's personal property while she was in a care facility.²

² There is no evidence that Ida was terminally ill nor that she was fully incapacitated at the time Ray gifted away her personal property. *Kay Eagar 2nd Aff.* at 4 ¶ 24 (R. 162). In fact, she lived for nearly three years after the gifting took place.

Plaintiff is unaware of any cases, in Utah or in other jurisdictions, that address or interpret the term “gift” as used in a power of attorney where that term is undefined and is used in a minor way *viz-a-viz* all other terms in the power of attorney.

Ida’s property was for her benefit, not anyone else. As long as she was alive, she had a right to expect that her property would be used for her benefit and care. As acknowledged by Ray, Ida’s vehicles and lawn mower were sold and the proceeds were deposited into the Burrows Trust for her benefit. *Ray Burrows Aff.* at 2 ¶ 4 (R.118). Those proceeds were to be used for Ida’s care, whether such care was in her home, another home, or in a long term care facility.

Likewise, the personal property gifted away by Ray should have either been held or sold for Ida’s long-term benefit. Ray acknowledges that the personal property was

“... given to each child³ with the understanding that wherever Ida eventually resided, that if she wanted items returned to her, they would be returned for her use until her passing. Upon her death, the personal property items would remain with the children who had chosen them.”

Ray Burrows Aff. at 3 ¶ 10 (R. 119).

This is a curious and ambiguous statement. It appears self-serving and convenient in response to Plaintiff’s lawsuit. Moreover, there is no evidence that Ida was a participant in any “understanding.” If such understanding existed, it was solely in the mind of Ray

³ The terms “child” and “children” refer to all eight children, although four of those children are stepchildren and have no legal standing as “issue.”

and/or the other recipients of the personal property. Ray's statement is also fraught with questions about the legal status of the personal property that he gifted away.

For example, if Ida had requested that a particular item be returned to her and if such item had in fact been returned to her, would she be able to gift to someone else or dispose of it another manner? Or, would she be just borrowing her own property? And, if she somehow destroyed or damaged a returned item, would she be liable to the person who returned it to her? Further, would a child holding an item of personal property have any liability for selling, gifting or destroying the item so that it was no longer available to return to Ida if and when she requested its return?

Also, what about the fact that Plaintiff voluntarily reimbursed Ida's estate \$600 for the items that she received? *Kay Eagar 2nd Aff.* at 5 ¶ 28 (R. 163). Were those items to be returned whenever Ida wanted them? And if the vehicles and lawnmower could be sold and the proceeds deposited into the Trust, why weren't all of the other items of personal property sold and the proceeds deposited into the Trust?

Gifting away all of Ida's personal property simply had no benefit to Ida. Ida's personal property benefitted Ray, his brother, and the four stepchildren. Yet, the personal property that was gifted away clearly had value to Ida's estate. Ray alleges that a single item received by Kay has a value of \$6,000. *Ray Burrows Aff.* at 3 ¶ 8 (R.119). Surely all of the other items of personal property had some additional monetary value, although there is no evidence of such value.

Plaintiff contends that Ray far exceeded the scope of his authority when he gifted away all of Ida's personal property. The gifting was not for Ida's benefit and the power of attorney fails to authorize or contemplate such broad and encompassing gifting.

II. The trial court erred when it ruled that Ray, as the agent holding a power of attorney for asset management, did not violate his duty of loyalty to Ida.

The trial court ruled that under the power of attorney, Ray "... had the authority to dispose of Ida Burrow's personal property essentially in any manner he deemed appropriate within the limitations imposed by any fiduciary duties that might be applicable." *Order* at 2-3 ¶ 4, *Addendum* 1; (R. 274-75). However, the trial court failed to articulate what duty if any Ray had to Ida at the time the gifting took place. Plaintiff contends that Ray had a duty to act for the benefit of Ida and also a duty to respect the wishes that she expressed in her Last Will and Testament.

There is very little Utah law on the issues presented in this case. However, other jurisdictions such as Alabama, Massachusetts and Ohio have analyzed the duty of an agent holding a power of attorney. *See e.g., Lamb v. Scott*, 643 So. 2d 972, 974 (Ala. 1994) ("One who accepts a power of attorney covenants to use the power for the sole benefit of the one conferring the power and to use it in a manner consistent with the purposes of the agency relationship created by the power of attorney."); *Sevigny v. New South Fed. Sav. & Loan Ass'n*, 586 So. 2d 884, 887 (Ala. 1991) ("The principal-agency

relationship is fiduciary in nature and imposes upon the agent a duty of loyalty, good faith, and fair dealing.").

In Massachusetts, the courts have come down hard on any an agent under a power of attorney who engages in self dealing. "Such self-dealing by an agent, in the absence (as here) of distinct authority from the principal expressly granted in the empowering instrument, has been continuously and uniformly denounced as one of the most profound breaches of fiduciary duty, irrespective of the agent's good faith and however indirect or circuitous the accomplishment of the benefit to the agent." *Gagnon v. Coombs*, 39 Mass. App. Ct. 144 at 157-58 (1995) (citing *Jennison v. Hapgood*, 7 Pick. 1, 7--8 (1828); *Sikes v. Inhabitants of Hatfield*, 13 Gray 347, 353 (1859); *American Circular Loom Co. v. Wilson*, 198 Mass. 182, 206--207 (1908); *Dolbeare v. Bowser*, 254 Mass. at 61; *Pitman v. Pitman*, 314 Mass. 465, 471, 476 (1943); *Berenson v. Nirenstein*, 326 Mass. 285, 288, 289 (1950); *Mackey v. Rootes Motors Inc.*, 348 Mass. 464, 467--468 (1965); *O'Brien v. Dwight*, 363 Mass. 256, 283--284 (1973); . . . RESTATEMENT (SECOND) OF AGENCY §§ 34, 39, 387, 388, 389, 391, 394.

In a recent Ohio case, the court strongly emphasized the importance of an agent acting consistent with a person's will. See *In re Estate of Leach*, 2006-Ohio-3755 (citing *In re Estate of Case* (Apr. 3, 1998), Montgomery App. No. 16747; and *Testa v. Roberts* (1988), 44 Ohio App.3d 161, 542 N.E.2d 654). In *Leach*, the Ohio court analyzed its holdings from *Case* and *Testa*. From *Case*, it stated that "where the state legislature has

clarified the requirements of a power of attorney regarding gift giving authority, courts must determine whether to interpret the power of attorney narrowly, according to the power conferred on its face, or to consider extrinsic evidence of the donor's intent." *See Leach* at ¶ 23. And from *Testa*, the Leach court stated that "the court invalidated gifts made to the attorney-in-fact and other family members under the general power of attorney when the gifts contravened the decedent's wishes as expressed in her will, the gifts were inconsistent with the lifetime estate planning strategy, and the decedent was incompetent when the power of attorney was executed." *Id.*

In the instant case, there is no evidence that Ida was incompetent when she executed the power of attorney. But her will clearly established a pattern of gifting for her personal property and a different pattern of gifting for all other property. Ida's wishes were to have her personal property go to her two children, or her "issue." When Ray gifted away Ida's personal property to all eight Children, his gifts contravened the wishes that Ida expressed in her will.

III. The trial court erred by ignoring the unambiguous language in Ida's Last Will and Testament that leaves all of her personal property to her "issue."

The trial court mentions Ida's estate plan and concludes that the gifting was not inconsistent with her overall estate plan. However, an analysis of the clear, unambiguous language contained in Ida's will provides a contrary result.

“I give and bequeath all of my tangible personal property of very kind including, without limitation, furniture, furnishings, pictures, books, objects of art, jewelry, and the like, together with all insurance policies relating thereto, as set forth in a written memorandum left by me. The remainder of my tangible personal property, or all of such property in the event that I leave no memorandum, I give and bequeath to my personal representative, to be divided among my issue by my personal representatives, in their sole and absolute discretion.”

Ida's Last Will at Article Third (*Addendum 2*) (R. 32).

No memorandum of personal property was ever prepared by Ida. *Order* at 3 ¶ 6 (*Addendum 1*) (R. 275). According to the foregoing language, all of Ida's personal property was to be divided among her “issue,” since no memorandum was left by her.

Defendants submitted an argument in their pleadings that the term “issue” was not restricted to the statutory definition found in Utah's Probate Code. (R. 198-99). However, the trial court never discussed nor ruled on whether the use of the term “issue” in Ida's will was intended to be broader than the statutory definition found in §§ 75-1-201(5), (9), and (25), Utah Code Ann. Utah's Probate Code defines “issue” as lineage through a blood line that expressly excludes a stepchild. While the term would include an adopted child, there were no adoptions for any of the eight Children involved in this case.

Ida's remaining estate, or her "Residuary Estate," was to be transferred to the Burrows Trust. *Ida's Last Will* at Article Fourth (*Addendum 2*) (R. 32). Therefore, Ida's will clearly shows her intent that her personal property was to go to her two children (her issue) and that none of her personal property was to go to the Burrows Trust. That is where the trial court erred. The trial court concluded that gifting Ida's personal property to the eight Beneficiaries was consistent with her overall estate plan. If one were considering only the Residuary Estate, that would be a correct conclusion. But Ida had different estate plans for her personal property and her Residuary Estate. Unfortunately, the trial court failed to appreciate that distinction.

Had there been some confusion or ambiguity as to Ida's intent, the trial court had an obligation to analyze Ida's will. *See In re Bovier's Estate*, 172 P. 683 at 684 (Utah 1918) ("... it is the duty of the court to determine, if possible, from the will itself the intent of the testator.")

More recently, the Utah Court of Appeals articulated how wills are to be construed:

In construing a will, we are bound by the fundamental principle that "a court must look to the testator's intent as expressed in the will." Moreover, if the will is ambiguous, any rule of construction normally used in other writings must yield to the intention of the testator as revealed in the instrument. . .

In re Hamilton, 869 P2d 971, 975 (Utah App. 1994) (*citations omitted*).

However, the trial court failed to analyze Ida's will. Perhaps it relied on the language in the Burrows Trust where Ida's Residuary Estate is intended to go to all eight Children, or the "Beneficiaries." But it seems clear that the trial failed to appreciate the distinction Ida made between her personal property and her Residuary Estate. That distinction is crucial here, since only two of the Beneficiaries qualify as Ida's "issue." Therefore, when the trial court concluded that the gifting away of Ida's personal property was consistent with her overall estate plan, the trial court erred because Ida's will clearly provides a contrary result.

In the instant case, Ray distributed Ida's estate without any regard to Ida's estate plan, *i.e.*, her Will. Moreover, Ray distributed Ida's estate in a manner that provided no benefit to her.

Even if Ray's actions were sincere, the personal property he distributed in October 2002 should be deemed to be held in constructive trust for the benefit of Ida. The recipients had nothing more than a temporary or possessory interest in Ida's property. And, Ray clearly recognized that Ida's car, truck, lawn mower and house belonged to Ida when he sold them and deposited the proceeds into her Trust. Why didn't he gift the car or the truck or the lawn mower to himself or other children and stepchildren? The reason is clear: he realized that such property belonged to Ida.

Defendants are attempting to distinguish between the personal property distributed to themselves and other personal property that was sold. But what is the difference? There

is no bright line distinguishing those items. Is it merely the value of such property? And if so, how did Ray arrive at a value below which an item should be “gifted away” and above which an item should be sold with the proceeds held in Trust for Ida’s benefit? Such an approach is without any logical, legally or reasonably sound basis.

IV. Public policy favors (a) restrictions on fiduciaries and agents holding a power of attorney; and (b) construing narrowly the powers given to them.

Utah’s statutes governing powers of attorney have been in a state of flux over the past several years, and have trended toward greater restrictions on the scope of an agent’s powers. *See generally* §§ 75-5-501-504, Utah Code Ann. Also, Utah’s conservatorship statutes evidence general policy considerations for fiduciaries, especially where a principal is incapacitated or unable to reasonably manager her own financial affairs.

In May 2003, about 6-7 months after Ray gifted away all of Ida’s personal property, two statues were enacted that limit the authority of agents holding a power of attorney:

A power of attorney may not be construed to grant authority to an attorney-in-fact or agent to perform any of the following, unless expressly authorized in the power of attorney:

- (1) create, modify, or revoke an inter vivos revocable trust created by the principal;
- (2) fund, with the principal's property, a trust not created by the principal or by a person authorized to create a trust on behalf of the principal;
- (3) make or revoke a gift of the principal's property, in trust or otherwise; or

(4) designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the principal's death.

§ 75-5-503, *Utah Code Ann.* (2003).

and,

Any loan, sale, or encumbrance on behalf of a principal with his attorney-in-fact, or with the attorney-in-fact's spouse, agent, or attorney, or any entity or trust in which the attorney-in-fact has a substantial beneficial interest, or any transaction involving the attorney-in-fact which is affected by a substantial conflict of interest, is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

§ 75-5-504, *Utah Code Ann.* (2003)

Had Ray gifted away Ida's personal property after May 2003 instead of in October-November 2002, the personal property gifted to himself without the approval of a court would be voidable. Although the power of attorney statutes in effect at the time didn't expressly prohibit Ray's gifting, the underlying public policy was nonetheless existing at the time of the gifting as the Ohio court found in *Leach*.

Utah's conservatorship laws also provide guidance with respect to the public policy that governs fiduciaries. Specifically, § 75-5-427, *Utah Code Ann.*, requires a conservator and the court to take into account any Will or Trust of the protected person:

In investing the estate, and in selecting assets of the estate for distribution under Subsections 75-5-425(1) and (2), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, **the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he**

is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

§ 75-5-427, *Utah Code Ann.*

Applying the policies for fiduciaries found under Utah law, three patterns emerge:

(1) A fiduciary must act for the benefit of the principal; (2) he should not act in a self-serving manner nor make gifts to himself; and (3) he should act consistent with the principal's will or general estate plan. In the instant case, Ray failed to comply with all three of these policies when he failed to act for Ida's benefit by gifting away all of her personal property, when he made gifts to himself, and when his gifting was inconsistent with Ida's Last Will and Testament.

CONCLUSION AND RELIEF SOUGHT

From the plain, unambiguous language contained in Ida's Last Will and Testament, she intended that all of her personal property be gifted equally to her two children, and only her Residuary Estate was intended to be gifted equally to the eight Beneficiaries. When Ray gifted away Ida's personal property to the eight Beneficiaries, he breached his duty of loyalty to Ida and he contravened the wishes that she expressed in her will.

Based on Ida's will, the trial court erred when it found that Ray acted consistent with Ida's estate plan. Therefore, Plaintiff is requesting that this Court reverse the trial court and remand to the trial court for the entry of an order granting summary judgment to Plaintiff, including her costs.

DATED this 9th day of March 2007.

A handwritten signature in black ink, appearing to read "Michael A. Jensen", written over a horizontal line.

Michael A. Jensen (7231)
Counsel for Appellant

CERTIFICATE OF SERVICE

Appellate Court No. 20061011-SC

KAY W EAGAR,

Plaintiff/Appellant,

v.

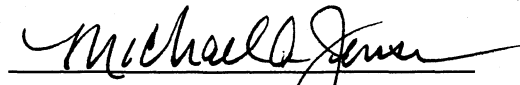
**RAY BURROWS,
RONALD BURROWS,
LINDA DAVIS,
ARTHUR KIISEL,
JULIA RODGERS, and
FLORENCE WEBSTER,**

Defendants/Appellees.

I, Michael A. Jensen, hereby certify that on this day that I served the foregoing **APPELLANT'S BRIEF** by MAILING two copies thereof to:

Wesley D. Hutchins
Scalley Reading Bates Hansen & Rasmussen
15 W South Temple Ste 600
PO Box 11429
Salt Lake City, UT 84147-0429
(801) 531-7870; Fax: 531-7968

DATED this 9th day of March 2007.


Michael A. Jensen

ADDENDUM INDEX

Addendum 1	<i>Order Denying Plaintiff's Motion for Partial Summary Judgment and Granting Defendants' Motion for Summary Judgment (R. 273-76)</i>
Addendum 2	<i>Ida B. Burrows' Last Will and Testament (R. 32-44)</i>
Addendum 3	<i>Ralph W. Burrows' Last Will and Testament (R. 18-30)</i>
Addendum 4	<i>The Ralph W. & Ida B. Burrows Revocable Living Trust (R. 46-64)</i>
Addendum 5	<i>Ida's Durable Power of Attorney for Asset Management (R. 124-25)</i>

Tab 1

FILED DISTRICT COURT
Third Judicial District

OCT 04 2006

SALT LAKE COUNTY

By WJ Deputy Clerk

Wesley D. Hutchins, #6576
SCALLEY READING BATES
HANSEN & RASMUSSEN, P.C.
15 West South Temple, Suite 600
P.O. Box 11429
Salt Lake City, Utah 84147-0429
Telephone: (801) 531-7870

*Attorneys for Defendants and
Counterclaim Plaintiffs*

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT
IN SALT LAKE COUNTY, STATE OF UTAH

KAY W. EAGAR,

Plaintiff,

v.

RAY BURROWS, RONALD BURROWS,
LINDA DAVIS, ARTHUR KIISEL, JULIA
RODGERS, and FLORENCE WEBSTER,

Defendants.

RAY BURROWS, RONALD BURROWS,
LINDA DAVIS, ARTHUR KIISEL, JULIA
RODGERS, and FLORENCE WEBSTER,

Counterclaim Plaintiffs,

v.

KAY W. EAGAR,

Counterclaim Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
DEFENDANTS' CROSS MOTION FOR
SUMMARY JUDGMENT**

Civil No.: 060905534

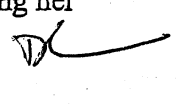
Judge: Denise P. Lindberg

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This matter came before the Court on Plaintiff's Motion for Partial Summary Judgment, and on Defendants' Cross Motion for Summary Judgment. Oral Arguments were heard on August 10, 2006. Michael A. Jensen, Esq. appeared on behalf of Plaintiff. Wesley D. Hutchins, Esq., appeared on behalf of Defendants. The Court having carefully considered the Motions and Memoranda of both parties, and having heard oral arguments on the matter, now enters the following Order and Judgment.

ORDER AND JUDGMENT

Plaintiff's Motion is hereby denied, and Defendants' Motion is hereby granted in part, for the reasons set forth in Defendants' Memoranda and discussed during oral argument, and for the reason that there is no material dispute of fact and Defendants/Counterclaim Plaintiffs are entitled to judgment as a matter of law. Moreover, the Court further orders, and provides as additional explanation for its decision, the following:

1. It has carefully reviewed and considered in detail all memoranda and documents submitted by the parties;
2. It is clear that when the estate plan was developed that Ida Burrows deposited an extreme amount of trust in Defendant Ray Burrows ("Burrows"), as evidenced by, among other things, her granting him a Durable Power of Attorney for Asset Management;
3. Burrows ~~could have mismanaged the assets of Ida Burrows, including her personal property, but he did not;~~ *mismanage the assets of Ida Burrows* 
4. Under the Durable Power of Attorney for Asset Management, written in

broad terms, Burrows had the authority to dispose of Ida Burrow's personal property essentially in any manner he deemed appropriate *within the limitations imposed by any fiduciary duties that might be applicable.*

5. The manner in which Burrows disposed of the personal property was not inherently inequitable, or self-serving, but rather sought to deal with all the children equally, as Ralph and Ida Burrows clearly intended pursuant to and consistent with their overall estate plan;

6. The Court notes that Ralph and Ida Burrows' wills referenced the preparation of a memorandum to direct the distribution of their personal property, which the undisputed facts demonstrate no such memorandum was ever prepared by either;

7. In the absence of such a memorandum, the Court is satisfied that Burrows had the authority under the Durable Power of Attorney for Asset Management to distribute the personal property in the manner he did;

8. As further support of the Court's decision, the Court notes that the broad grant of authority under the Durable Power of Attorney for Asset Management was not inconsistent with the entire estate plan executed on the same date as an integrated package of estate planning;

9. While Burrows was not technically an issue of Ida Burrows, it is clear that she placed substantial trust in him, as evidenced by the Durable Power of Attorney for Asset Management and the overall estate plan;

10. The Court further notes that the personal property distributed by Burrows constituted gifts that vested at the time of the distribution, and the informal undocumented

agreement that items gifted to others might still be made available for Ida Burrow's use during her lifetime was an accommodation to a mother they all cared for;

11. Plaintiff Kay W. Egar's Complaint is hereby dismissed with prejudice and on the merits;

12. Plaintiff Kay W. Egar is hereby ordered to provide a full and complete accounting of the Burton Trust monies, and is further ordered that to the extent it is determined that there are any monies remaining, that they be immediately deposited into the Burrows Trust (said accounting may be provided in conjunction with Plaintiff filing a petition in the probate matter to approve a final accounting and close the probate matter);

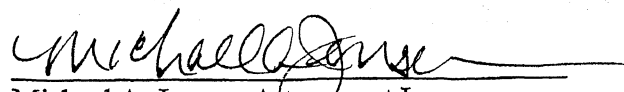
13. This Order is hereby entered and certified as a final order and judgment for purposes of any appeal.

DATED this 4th day of October, 2006.

BY THE COURT:


Honorable Denise P. Lindberg
THIRD DISTRICT COURT JUDGE

APPROVED AS TO FORM:


Michael A. Jensen, Attorney at Law
Attorney for Plaintiff and Counterclaim
Defendant

C:\MISC\BURROWS\ORDER.SUMJUD

Tab 2

Last Will and Testament

(With Pour-Over Provision)

I, IDA B. BURROWS, residing in SALT LAKE COUNTY, STATE of UTAH, do make, publish, and declare this to be my Will, hereby revoking all Wills and Codicils previously made by me.

FIRST: I direct that the expenses of my last illness and all of my just debts and funeral expenses be paid as soon after my death as may be practicable.

SECOND: All estate, inheritance, transfer, legacy, succession, and other death taxes of any nature (including any interest or penalties thereon) imposed with respect to all property taxable by reason of my death, whether or not such property passes under this Will, shall be paid out of my estate as an expense of administration, and no part of said taxes shall be apportioned or prorated among or be chargeable to any distributee, devisee, or legatee under this Will or any person owning or receiving any property not passing under this Will.

THIRD: I give and bequeath all of my tangible personal property of every kind including, without limitation, furniture, furnishings, pictures, books, objects of art, jewelry, and the like, together with all insurance policies relating thereto, as set forth in a written memorandum left by me. The remainder of my tangible personal property, or all of such property in the event that I leave no memorandum, I give and bequeath to my personal representatives, to be divided among my issue by my personal representatives, in their sole and absolute discretion.

FOURTH: All the rest, residue, and remainder of my property and estate, real, personal, and mixed of whatever kind and nature and wherever the same may be situated, of which I may die seized or possessed, or to which I may in any way be entitled at the time of my death (collectively, "Residuary Estate") I give, devise, and bequeath to a certain trust known as THE

RALPH W. & IDA B. BURROWS REVOCABLE LIVING TRUST, except that, in the event **THE RALPH W. & IDA B. BURROWS REVOCABLE LIVING TRUST** shall not be in existence at the time of my death, I give, devise, and bequeath my Residuary Estate to my spouse, **RALPH W. BURROWS**, or if she predeceases me, then I give, devise, and bequeath my Residuary Estate in equal shares to those of the following beneficiaries who shall survive me or, if one or more of such persons shall not survive me leaving issue surviving me, the share which would otherwise have been distributed to such predeceased person shall be distributed to such predeceased person's issue in equal shares, per stirpes. My currently living beneficiaries are as follows: **RAYMOND R. BURROWS, RONALD P. BURROWS, WILLIAM B. WHITELEY, KAY EAGAR, FLORENCE WEBSTER, ARTHUR F. KIISEL, JULIA ROBERTS, and LINDA DAVIS**. For purposes of this, my Will, all of my afterborn natural or adopted children shall be treated as my Beneficiaries, having equal rights with all of my other children.

FIFTH: If, pursuant to this Will, all or any part of my estate shall vest in absolute ownership in a person or persons under the age of twenty-one (21) years, I authorize and empower my personal representatives, in their discretion, to hold the property so vested in such person or persons, or any part thereof, in a separate fund for the benefit of such beneficiary, and to invest and reinvest the same, collect the income therefrom and, while such beneficiary shall be under twenty-one (21) years, to apply so much or all of the principal thereof and so much or all of the net income therefrom and any accumulated income to the support, education, and maintenance of such beneficiary as my personal representatives shall see fit, and to accumulate, invest, and reinvest the balance of said income until such beneficiary shall attain the age of twenty-one (21) years, and thereupon to pay over the then principal together with any accumulated income to such beneficiary, and if such beneficiary shall die before attaining the age of twenty-one (21) years, then upon the

death of such beneficiary, the then principal together with any accumulated income, shall be paid over to the estate of such beneficiary. The authority conferred upon my personal representatives herein shall not operate to suspend the absolute ownership of such property by such beneficiary or to prevent the absolute vesting thereof in such beneficiary. With respect to any such property which shall vest in absolute ownership in a beneficiary or beneficiaries, but which shall be held by my personal representatives as authorized herein, my personal representatives shall have all the powers conferred by the other provisions of this Will including, without limitation, the power to retain, invest, and reinvest without being limited to investments authorized by law for trust funds.

SIXTH: Whenever in this Will my personal representatives are authorized or permitted to pay or apply any income or principal for the benefit of a person or persons under the age of twenty-one (21) years, my personal representatives are authorized, among other methods, to pay all or part of such income or principal at any time and from time to time directly to such beneficiary, or to a parent of such beneficiary, or to a guardian of such beneficiary, or to a custodian of such beneficiary under any Uniform Gift to Minors Act, or to the person with whom such beneficiary may reside, or other person having the care and control of such beneficiary, without bond or security, and my personal representatives shall not be bound to see to the application or use of any payments so made.

SEVENTH: In addition to all powers granted by any other provision of this Will or by present or future law applicable to personal representatives or trustees, I grant to my personal representatives and trustees with respect to any and all property, real or personal and wherever situated, which shall at any time be part of my estate or any trust hereunder, full power and authority in their sole and absolute discretion, subject only to any express and specific restrictions and directions herein set forth, to do all such acts, take all such proceedings, and exercise all such rights

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and privileges as if they were the absolute owners thereof including, but not by way of limitation, the powers:

A. To retain as an investment, so long as they deem proper, and to invest and reinvest in, as and when they deem proper, any property, whether real or personal, wheresoever situate, foreign or domestic, including, but not by way of limitation, bonds, notes, or debentures (secured or unsecured), mortgages, certificates of deposit, common and preferred stock, including shares of stock in corporations, owned or controlled by me, interest in mutual funds, shares, or interests in partnerships or other business entities or ventures, and joint or undivided interests in any such property, as they may, in their sole and absolute discretion, select, and may invest or reinvest in any such property or retain any such property without any duty to diversify investments, without being limited to investments authorized by present or future law for estate or trust funds and without regard to whether such property is unproductive.

B. To own, manage, operate, or lease real property and to make ordinary and extraordinary repairs, alterations, renovations, or improvements to any such property; to raze buildings and to erect and construct new buildings and to make any other improvements, to insure against loss by fire or other casualties; to subdivide and plat real property; to lay out and dedicate streets, ways, and public places; to square lines; to partition or agree to partition any real or personal property and to give or receive money or other property for equality of partition.

C. To foreclose mortgages and bid on real property under foreclosure and to hold, lease, and manage or sell all or any part of such property so acquired, upon such terms and conditions, including terms of credit, as they shall deem advisable in their sole and absolute discretion.

D. To render any such real property liquid, in whole or in part, and to retain cash, at interest or not, or securities of little or no yield, for such time as they may in their sole and absolute discretion determine.

E. To sell, at public or private sale, exchange, or otherwise dispose of or grant options with respect to any such property, real or personal, in such manner, at such prices, for such purposes and upon such terms, including sales on credit, with or without security, as they may deem advisable in their sole and absolute discretion; to lease, or grant options to lease, any such property upon such terms and conditions and for such period or periods, including options to renew, as they deem proper in their sole and absolute discretion, whether or not any such period may extend beyond the termination of any trust or fund, or beyond any period of time established by statute or other rule of law limiting the period for which a fiduciary may lease property, without application to any court; and in connection with any such lease, to agree and covenant as they deem proper in their sole and absolute discretion; to mortgage any such property; to pay off and satisfy any mortgage to which any such

property shall at any time be subject, and to use for that purpose any property, real or personal, at the time constituting an asset of my estate or of any trust hereunder.

F. To carry on and continue any business, partnership, joint venture, or corporation owned by me or in which I may have an interest, whether alone or in partnership or in joint venture with others, for such period of time as they may deem advisable in their sole and absolute discretion, or to sell or liquidate the same on such terms as they may deem advisable in their sole and absolute discretion; to form corporations and to own stock in corporations, to act as director or officer of any corporation, to operate or continue the management of any corporation as long as they, in their sole and absolute discretion, shall deem such continuance advisable, or to dissolve any such corporation and transfer the assets thereof to themselves in complete liquidation of the stock therein held by them and thereafter to retain and continue to own such assets and to continue the management or operation of the business formerly conducted by such corporation, and generally to take all action with respect to any such stock as they might or could take as absolute owner thereof; and in their sole and absolute discretion, and without any personal liability, they may employ the general assets of my estate or of any trust or trusts created herein either directly by means of loans or indirectly by extending the credit of my estate or trusts in the conduct of any business, partnership, joint venture, or corporation in which I, my estate, or any trust herein may have an interest. My personal representatives and trustees shall be entitled to reasonable compensation in addition to the commissions allowed to them by statute for the services rendered by them in respect to the operation of any such business.

G. To oppose or consent to and participate in any reorganization, consolidation, merger, recapitalization, dissolution, liquidation, or similar plan with respect to any corporation, partnership, or other business organization; to approve or consent to any contract, lease, mortgage, purchase, sale, or other action by any corporation, partnership or other business organization; to deposit property with and delegate discretionary powers to any protective, reorganization, or similar committee and to pay expenses, compensation, and any assessments levied by such committee; and to accept and retain securities or other property under any such plan whether or not such securities or other property are legal for the investment of estate or trust funds.

H. To exercise, sell, exchange, or abandon all conversion, option, subscription, voting, and other rights of whatsoever nature pertaining to any such property as they shall deem advisable in their sole and absolute discretion.

I. To vote or consent in person or by general or limited proxy, for any purpose, in respect of any stocks or other securities held hereunder, and to grant proxies, discretionary and otherwise, for any period of time, with respect to such property.

J. To employ and administer all or any part of any trust fund consolidated with the funds of any other trust established hereunder or of which I am the grantor, in which each separate trust shall have an undivided interest, provided that neither the separateness nor the vesting in possession of the trusts shall thereby be impaired or affected.

K. To employ agents, attorneys, accountants, investment counsel, and other persons, including any firm or corporation in which any fiduciary hereunder may be a partner or officer or otherwise interested, to act in connection with any such property or the administration of my Will or any trust thereunder, to delegate discretionary powers to them to the extent permitted by law, and to remunerate them and to pay their expenses; and to make and enter into custodian agreements, whether management or otherwise, with any bank or other financial institution, and to pay therefor as an expense of administration.

L. To cause any such property to be registered or held in bearer form, or in the name of a nominee, or in their own names individually, without disclosure of a fiduciary relationship, without increasing their responsibility.

M. To deposit funds with any bank or trust company, including the fiduciary if a corporate fiduciary, individually, with or without interest, and to designate and authorize agents to act or sign checks or make withdrawals pertaining thereto; to hold the same in any depository, wherever situated, or in the name of a nominee, or in their own names individually, without disclosure of a fiduciary relationship, without increasing their responsibility.

N. To make any division, distribution, or payment of any general legacy or share of my estate or any trust hereunder, either in kind or in cash, or partly in kind and partly in cash, and it shall not be necessary that the proportionate amount of cash or real or personal property shall be the same in every share or legacy. To allocate particular assets or portions thereof or undivided interests therein to any one or more of the beneficiaries hereunder taking into account the income tax bases of such assets as they shall deem in their sole and absolute discretion to be for the best interests of the beneficiaries of my estate and of any trust hereby created. For the purpose of any such distribution, to select such securities or other property as they may deem suitable, and to place such valuation upon such securities or other property as they may determine. Any share or legacy may include personal property like in kind to or different in kind from that included in any other share or legacy, and even if another share includes no personal property, and may include any parcel or real property or any part thereof or undivided interest therein even though one or more of the other shares or legacies include different interests in real estate or do not include any interest in the real estate.

O. To borrow money from any person (including themselves) for any purpose and upon any terms, including the borrowing of money with respect to the construction, maintenance, improvement, or operation of real property; to execute and renew promissory notes or other obligations for amounts so borrowed; to secure the payment of any amounts so borrowed by mortgage or pledge of any real or personal property of which I may die seized or possessed, or which may at any time form part of my estate or any trust created hereunder, in such amounts and upon such terms and conditions as they may deem advisable in their sole and absolute discretion; and to continue, renew, extend, or otherwise defer payment of any mortgages, pledges, loans, or other obligations of mine or to which any property of mine may be subject at the time of my death, or which may be payable to or by my estate or the trusts created hereunder, in such amounts and upon such terms and

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conditions, secured or unsecured, as they may deem advisable in their sole and absolute discretion.

P. To lend, with or without security, in such amounts, upon such terms, at such rates of interest, and to such individuals, firms, or corporations as they may deem advisable in their sole and absolute discretion.

Q. To adjust, settle, compromise, renew, assign, alter, extend, commute, prepay, arbitrate, release, with or without consideration, obligations, rights, claims, or demands, including taxes, held by or asserted against them or which affect estate or trust assets, upon such terms as they may deem advisable in their sole and absolute discretion.

R. To abandon, in any way, property, real or personal, which they determine in their sole and absolute discretion not to be worth maintaining or protecting, and to waive, in whole or in part, at any time and from time to time, accrued interest, or accumulated dividends, or other interest or dividends on any investments which may be held by them.

S. To determine whether or to what extent receipts should be deemed income or principal, whether or to what extent expenditures should be charges against principal or income, and what other adjustments should be made between principal and income. In this regard the following may be considered:

(1) In their sole and absolute discretion to maintain a reserve for depreciation of real property or for the amortization of leaseholds, and may set aside and add to principal a portion of the income for any such reserve. In determining the amount of the reserve, they may, but need not, be guided by a rate and method of computing amortization or depreciation that is allowable for Federal income tax purposes.

(2) If the income from any parcel of real property owned or held directly (not through a corporation) shall at any time be insufficient to pay the taxes and carrying charges thereon, such taxes and carrying charges may be paid out of principal to the extent that the income from such parcel of real property is thus insufficient and need not be charged against income from any other assets.

T. To elect, in their sole and absolute discretion, to take as a deduction on the estate or income tax returns of my estate, any expense or loss, as they may deem desirable.

U. To join with my spouse in income tax returns for any period prior to my death and for the taxable year in which my death occurs; to execute any consents authorized by the Internal Revenue Code in connection with federal gift taxes; and to pay such amounts of income and/or gift taxes and interest and penalties thereon as they deem in their sole and absolute discretion advisable, even though not attributable to my own income or gifts.

V. To choose, whenever given a choice of dates for valuing property in my gross estate, that date which they in their sole and absolute discretion deem advisable.

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W. To make or not make any election or other decision that may be necessary in connection with the filing of any federal, state, or local income tax or gift tax return, as they deem desirable in their sole and absolute discretion; to elect or not elect to pay estate, inheritance, transfer, legacy, succession and other taxes of any nature (including any interest or penalties thereon) imposed with respect to all property, taxable by reason of my death, whether or not such property passes under this Will, in such number of installments and over such period of time as my personal representatives, in their sole and absolute discretion deem to be in the best interest of my estate.

X. To form, either alone or in conjunction with others, corporations or other entities under the laws of any state or country, either before or after the termination of any trust, and prescribe and vary their powers, capital, and duration; to transfer to any such corporation or entity all or portions of my estate or any trust hereunder; and to retain or distribute in kind the stock and obligations of such corporations or entities.

Y. On the payment of any legacy or devise, or on termination of any trust hereunder, to determine in their sole and absolute discretion who are the persons entitled to receive distributive shares and the proportions of their shares, and in so doing to act upon such information as on reasonable inquiry they may deem reliable with respect to identity, relationship, or other facts relative to the distributees.

Z. If the effect of any power or provision of this Will would be to prevent the allowance of the marital deduction, then I direct that such power or provision shall not apply to the marital deduction provision set forth in this Will, and that so far as the marital deduction provision and its administration are concerned, this Will shall be read and take effect as if such provision did not exist.

EIGHTH: If my spouse, **RALPH W. BURROWS**, and I shall die under such circumstances that it is difficult or impossible to determine who predeceased the other, then I direct that the terms and provisions of this my Will, with respect to the benefits provided for my spouse, **RALPH W. BURROWS** shall be construed as though I had survived him and that my estate shall be administered and distributed in all respects accordingly. If any other person named or referred to in this, my Will, and I shall die under such circumstances that it is difficult or impossible to determine who predeceased the other, then I direct that the terms and provisions of this, my Will, shall be construed as though I had survived such other person and that my estate shall be administered and distributed in all respects accordingly.



NINTH:

A. I appoint my spouse, **RALPH W. BURROWS**, as personal representative under this, my Will. If he shall fail to qualify or cease to act for any reason as such personal representative, I appoint **KAY EAGAR** to act as substitute or successor personal representative. If such person shall fail to qualify or cease to act for any reason as such personal representative, I appoint **WILLIAM B. WHITELEY** to act as substitute or successor personal representative. If such person shall fail to qualify or cease to act for any reason as such personal representative, I appoint **RAYMOND R. BURROWS** to act as substitute or successor personal representative.

B. The last or remaining personal representative or guardian, if any, shall have the power, while serving as personal representative or guardian, to appoint, by written instrument, one or more successor personal representatives or guardians, who shall have the same authority as if appointed in this instrument.

C. I direct that no bond or other security shall be required in any jurisdiction of any personal representative, or substitute or successor personal representative, named herein or appointed pursuant to the provisions of this Will.

D. Any power or authority, including any discretion conferred upon my personal representatives by this Will, may be exercised by such of them as shall qualify and be acting hereunder as personal representative from time to time and by the survivors or survivor or the successors or successor of them.

E. Insofar as may be permitted by law, none of my personal representatives shall be liable for any act or omission in connection with the administration of my estate or the exercise of any powers hereunder, nor for any loss or injury to any property held in or

under my estate, except for his, her, or their gross negligence or willful misconduct, and none of my personal representatives shall be responsible for any act or omission of any other personal representative.

F. No beneficiary under this, my Will, or under any trust created by my Will shall have power to pledge, assign, mortgage, sell, or in any manner transfer or hypothecate any interest which such beneficiary may have or may expect to have in any income or principal, except by the exercise of powers of appointment contained herein, if any; nor shall any beneficiary have any power in any manner to anticipate, charge, or encumber his or her interest, whether in income or in principal, except by the exercise of such powers; nor shall such interest of any beneficiary be liable for or subject to, in any manner while in the possession of my personal representatives or trustees, the debts, contracts, liabilities, engagements, obligations, or torts of such beneficiary, in favor of any person including, but not limited to, creditors, betrothed, spouses, and ex-spouses, except by the exercise of such powers of appointment.

G. My personal representatives shall not enforce or otherwise carry out the provisions of this, my Will, in ways that would cause the distributions or other actions made or performed in connection with such provisions to be in violation of the Rule Against Perpetuities as applied under the laws of the state having jurisdiction over the matters or property in question. Upon the expiration of the Rule Against Perpetuities period, my personal representatives shall terminate all appropriate trusts, separate funds, or other vehicles (collectively, "Separate Funds"), and shall distribute the assets of such Separate Funds to the beneficiaries of such Separate Funds who are then permissible distributees of such Separate Funds in accordance with their relative interests in such Separate Funds. If the permissible distributees' relative interests are uncertain, the property of such Separate Funds shall be distributed to the permissible distributees in such manner as my personal

representatives deem to be consistent with my intent as set forth in this, my Will. In the event my personal representatives are uncertain as to my intent, they may seek instructions from a court having jurisdiction over the administration of the Separate Funds.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 2nd day of Oct, 1997.

Ida Burton Burrows
IDA B. BURROWS

The foregoing instrument, consisting of twelve (12) typewritten pages (including this page), was on the date thereof signed, sealed, published, and declared by **IDA B. BURROWS**, the Testatrix, as and for her Last Will and Testament, in the presence of us who, at her request, in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Marion D. Mann residing at: 1091 East 7575 St.
Witness

Ida B. Burrows 9/11/97

Frank J. Mann residing at: 1091 E 7575 St.
Witness

Marion D. Mann 9/11/97

STATE OF UTAH)
) ss.:
COUNTY OF SALT LAKE)

Each of the undersigned, individually and severally, being duly sworn, deposes and says:

The within Will was subscribed in our presence and sight at the end thereof by **IDA B. BURROWS**, the within named Testatrix, on this 2nd, Oct, 1997, at Midvale, Utah.

Said Testatrix at the time of making such subscription declared the instrument so subscribed to be her last Will.

Each of the undersigned thereupon signed his/her name as a witness at the end of said Will, at the request of said Testatrix, in the Testatrix's presence and sight, and in the presence and sight of each other.

Said Testatrix was, at the time of so executing said Will, over the age of eighteen (18) years and, in the respective opinions of the undersigned, of sound mind, memory, and understanding and not under any constraint or in any respect incompetent to make a Will.

Said Testatrix, in the respective opinions of the undersigned, could read, write, and converse in the English language and was suffering from no defect of sight, hearing, or speech, or from any other physical or mental impairment which would affect Testatrix's capacity to make a valid Will. The Will was executed as a single, original instrument and was not executed in counterparts.

Each of the undersigned was acquainted with said Testatrix at such time, and makes this affidavit at Testatrix's request.

The within Will was shown to the undersigned at the time this affidavit was made, and was examined by each of them as to the signatures of said Testatrix and of the undersigned.

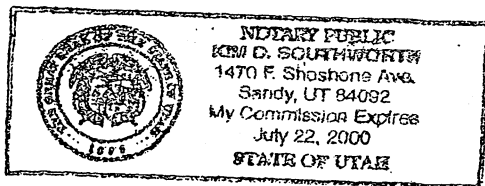
The foregoing instrument was executed by said Testatrix and witnessed by each of the undersigned affiants.

Marilyn A. Miller

Janna A. Miller

SUBSCRIBED AND SWORN to before me this date Oct. 2nd 1997

(seal)



Kim D. Southworth
NOTARY PUBLIC

Tab 3

Last Will and Testament

(With Pour-Over Provision)

I, RALPH W. BURROWS, residing in SALT LAKE COUNTY, STATE of UTAH, do make, publish, and declare this to be my Will, hereby revoking all Wills and Codicils previously made by me.

FIRST: I direct that the expenses of my last illness and all of my just debts and funeral expenses be paid as soon after my death as may be practicable.

SECOND: All estate, inheritance, transfer, legacy, succession, and other death taxes of any nature (including any interest or penalties thereon) imposed with respect to all property taxable by reason of my death, whether or not such property passes under this Will, shall be paid out of my estate as an expense of administration, and no part of said taxes shall be apportioned or prorated among or be chargeable to any distributee, devisee, or legatee under this Will or any person owning or receiving any property not passing under this Will.

THIRD: I give and bequeath all of my tangible personal property of every kind including, without limitation, furniture, furnishings, pictures, books, objects of art, jewelry, and the like, together with all insurance policies relating thereto, as set forth in a written memorandum left by me. The remainder of my tangible personal property, or all of such property in the event that I leave no memorandum, I give and bequeath to my personal representatives, to be divided among my issue by my personal representatives, in their sole and absolute discretion.

FOURTH: All the rest, residue, and remainder of my property and estate, real, personal, and mixed of whatever kind and nature and wherever the same may be situated, of which I may die seized or possessed, or to which I may in any way be entitled at the time of my death (collectively, "Residuary Estate") I give, devise, and bequeath to a certain trust known as THE

RALPH W. & IDA B. BURROWS REVOCABLE LIVING TRUST, except that, in the event **THE RALPH W. & IDA B. BURROWS REVOCABLE LIVING TRUST** shall not be in existence at the time of my death, I give, devise, and bequeath my Residuary Estate to my spouse, **IDA B. BURROWS**, or if she predeceases me, then I give, devise, and bequeath my Residuary Estate in equal shares to those of the following beneficiaries who shall survive me or, if one or more of such persons shall not survive me leaving issue surviving me, the share which would otherwise have been distributed to such predeceased person shall be distributed to such predeceased person's issue in equal shares, per stirpes. My currently living beneficiaries are as follows: **RAYMOND R. BURROWS, RONALD P. BURROWS, WILLIAM B. WHITELEY, KAY EAGAR, FLORENCE WEBSTER, ARTHUR F. KIISEL, JULIA ROBERTS, and LINDA DAVIS**. For purposes of this, my Will, all of my afterborn natural or adopted children shall be treated as my Beneficiaries, having equal rights with all of my other children.

FIFTH: If, pursuant to this Will, all or any part of my estate shall vest in absolute ownership in a person or persons under the age of twenty-one (21) years, I authorize and empower my personal representatives, in their discretion, to hold the property so vested in such person or persons, or any part thereof, in a separate fund for the benefit of such beneficiary, and to invest and reinvest the same, collect the income therefrom and, while such beneficiary shall be under twenty-one (21) years, to apply so much or all of the principal thereof and so much or all of the net income therefrom and any accumulated income to the support, education, and maintenance of such beneficiary as my personal representatives shall see fit, and to accumulate, invest, and reinvest the balance of said income until such beneficiary shall attain the age of twenty-one (21) years, and thereupon to pay over the then principal together with any accumulated income to such beneficiary,

and if such beneficiary shall die before attaining the age of twenty-one (21) years, then upon the death of such beneficiary, the then principal together with any accumulated income, shall be paid over to the estate of such beneficiary. The authority conferred upon my personal representatives herein shall not operate to suspend the absolute ownership of such property by such beneficiary or to prevent the absolute vesting thereof in such beneficiary. With respect to any such property which shall vest in absolute ownership in a beneficiary or beneficiaries, but which shall be held by my personal representatives as authorized herein, my personal representatives shall have all the powers conferred by the other provisions of this Will including, without limitation, the power to retain, invest, and reinvest without being limited to investments authorized by law for trust funds.

SIXTH: Whenever in this Will my personal representatives are authorized or permitted to pay or apply any income or principal for the benefit of a person or persons under the age of twenty-one (21) years, my personal representatives are authorized, among other methods, to pay all or part of such income or principal at any time and from time to time directly to such beneficiary, or to a parent of such beneficiary, or to a guardian of such beneficiary, or to a custodian of such beneficiary under any Uniform Gift to Minors Act, or to the person with whom such beneficiary may reside, or other person having the care and control of such beneficiary, without bond or security, and my personal representatives shall not be bound to see to the application or use of any payments so made.

SEVENTH: In addition to all powers granted by any other provision of this Will or by present or future law applicable to personal representatives or trustees, I grant to my personal representatives and trustees with respect to any and all property, real or personal and wherever situated, which shall at any time be part of my estate or any trust hereunder, full power and authority in their sole and absolute discretion, subject only to any express and specific restrictions and

directions herein set forth, to do all such acts, take all such proceedings, and exercise all such rights and privileges as if they were the absolute owners thereof including, but not by way of limitation, the powers:

A. To retain as an investment, so long as they deem proper, and to invest and reinvest in, as and when they deem proper, any property, whether real or personal, wheresoever situate, foreign or domestic, including, but not by way of limitation, bonds, notes, or debentures (secured or unsecured), mortgages, certificates of deposit, common and preferred stock, including shares of stock in corporations, owned or controlled by me; interest in mutual funds, shares, or interests in partnerships or other business entities or ventures, and joint or undivided interests in any such property, as they may, in their sole and absolute discretion, select, and may invest or reinvest in any such property or retain any such property without any duty to diversify investments, without being limited to investments authorized by present or future law for estate or trust funds and without regard to whether such property is unproductive.

B. To own, manage, operate, or lease real property and to make ordinary and extraordinary repairs, alterations, renovations, or improvements to any such property; to raze buildings and to erect and construct new buildings and to make any other improvements, to insure against loss by fire or other casualties; to subdivide and plat real property; to lay out and dedicate streets, ways, and public places; to square lines; to partition or agree to partition any real or personal property and to give or receive money or other property for equality of partition.

C. To foreclose mortgages and bid on real property under foreclosure and to hold, lease, and manage or sell all or any part of such property so acquired, upon such terms and conditions, including terms of credit, as they shall deem advisable in their sole and absolute discretion.

D. To render any such real property liquid, in whole or in part, and to retain cash, at interest or not, or securities of little or no yield, for such time as they may in their sole and absolute discretion determine.

E. To sell, at public or private sale, exchange, or otherwise dispose of or grant options with respect to any such property, real or personal, in such manner, at such prices, for such purposes and upon such terms, including sales on credit, with or without security, as they may deem advisable in their sole and absolute discretion; to lease, or grant options to lease, any such property upon such terms and conditions and for such period or periods, including options to renew, as they deem proper in their sole and absolute discretion, whether or not any such period may extend beyond the termination of any trust or fund, or beyond any period of time established by statute or other rule of law limiting the period for which a fiduciary may lease property, without application to any court; and in connection with any such lease, to agree and covenant as they deem proper in their sole and absolute discretion;

to mortgage any such property; to pay off and satisfy any mortgage to which any such property shall at any time be subject, and to use for that purpose any property, real or personal, at the time constituting an asset of my estate or of any trust hereunder.

F. To carry on and continue any business, partnership, joint venture, or corporation owned by me or in which I may have an interest, whether alone or in partnership or in joint venture with others, for such period of time as they may deem advisable in their sole and absolute discretion, or to sell or liquidate the same on such terms as they may deem advisable in their sole and absolute discretion; to form corporations and to own stock in corporations, to act as director or officer of any corporation, to operate or continue the management of any corporation as long as they, in their sole and absolute discretion, shall deem such continuance advisable, or to dissolve any such corporation and transfer the assets thereof to themselves in complete liquidation of the stock therein held by them and thereafter to retain and continue to own such assets and to continue the management or operation of the business formerly conducted by such corporation, and generally to take all action with respect to any such stock as they might or could take as absolute owner thereof; and in their sole and absolute discretion, and without any personal liability, they may employ the general assets of my estate or of any trust or trusts created herein either directly by means of loans or indirectly by extending the credit of my estate or trusts in the conduct of any business, partnership, joint venture, or corporation in which I, my estate, or any trust herein may have an interest. My personal representatives and trustees shall be entitled to reasonable compensation in addition to the commissions allowed to them by statute for the services rendered by them in respect to the operation of any such business.

G. To oppose or consent to and participate in any reorganization, consolidation, merger, recapitalization, dissolution, liquidation, or similar plan with respect to any corporation, partnership, or other business organization; to approve or consent to any contract, lease, mortgage, purchase, sale, or other action by any corporation, partnership or other business organization; to deposit property with and delegate discretionary powers to any protective, reorganization, or similar committee and to pay expenses, compensation, and any assessments levied by such committee; and to accept and retain securities or other property under any such plan whether or not such securities or other property are legal for the investment of estate or trust funds.

H. To exercise, sell, exchange, or abandon all conversion, option, subscription, voting, and other rights of whatsoever nature pertaining to any such property as they shall deem advisable in their sole and absolute discretion.

I. To vote or consent in person or by general or limited proxy, for any purpose, in respect of any stocks or other securities held hereunder, and to grant proxies, discretionary and otherwise, for any period of time, with respect to such property.

J. To employ and administer all or any part of any trust fund consolidated with the funds of any other trust established hereunder or of which I am the grantor, in which each

separate trust shall have an undivided interest, provided that neither the separateness nor the vesting in possession of the trusts shall thereby be impaired or affected.

K. To employ agents, attorneys, accountants, investment counsel, and other persons, including any firm or corporation in which any fiduciary hereunder may be a partner or officer or otherwise interested, to act in connection with any such property or the administration of my Will or any trust thereunder, to delegate discretionary powers to them to the extent permitted by law, and to remunerate them and to pay their expenses; and to make and enter into custodian agreements, whether management or otherwise, with any bank or other financial institution, and to pay therefor as an expense of administration.

L. To cause any such property to be registered or held in bearer form, or in the name of a nominee, or in their own names individually, without disclosure of a fiduciary relationship, without increasing their responsibility.

M. To deposit funds with any bank or trust company, including the fiduciary if a corporate fiduciary, individually, with or without interest, and to designate and authorize agents to act or sign checks or make withdrawals pertaining thereto; to hold the same in any depository, wherever situated, or in the name of a nominee, or in their own names individually, without disclosure of a fiduciary relationship, without increasing their responsibility.

N. To make any division, distribution, or payment of any general legacy or share of my estate or any trust hereunder, either in kind or in cash, or partly in kind and partly in cash, and it shall not be necessary that the proportionate amount of cash or real or personal property shall be the same in every share or legacy. To allocate particular assets or portions thereof or undivided interests therein to any one or more of the beneficiaries hereunder taking into account the income tax bases of such assets as they shall deem in their sole and absolute discretion to be for the best interests of the beneficiaries of my estate and of any trust hereby created. For the purpose of any such distribution, to select such securities or other property as they may deem suitable, and to place such valuation upon such securities or other property as they may determine. Any share or legacy may include personal property like in kind to or different in kind from that included in any other share or legacy, and even if another share includes no personal property, and may include any parcel or real property or any part thereof or undivided interest therein even though one or more of the other shares or legacies include different interests in real estate or do not include any interest in the real estate.

O. To borrow money from any person (including themselves) for any purpose and upon any terms, including the borrowing of money with respect to the construction, maintenance, improvement, or operation of real property; to execute and renew promissory notes or other obligations for amounts so borrowed; to secure the payment of any amounts so borrowed by mortgage or pledge of any real or personal property of which I may die seized or possessed, or which may at any time form part of my estate or any trust created hereunder, in such amounts and upon such terms and conditions as they may deem advisable

in their sole and absolute discretion; and to continue, renew, extend, or otherwise defer payment of any mortgages, pledges, loans, or other obligations of mine or to which any property of mine may be subject at the time of my death, or which may be payable to or by my estate or the trusts created hereunder, in such amounts and upon such terms and conditions, secured or unsecured, as they may deem advisable in their sole and absolute discretion.

P. To lend, with or without security, in such amounts, upon such terms, at such rates of interest, and to such individuals, firms, or corporations as they may deem advisable in their sole and absolute discretion.

Q. To adjust, settle, compromise, renew, assign, alter, extend, commute, prepay, arbitrate, release, with or without consideration, obligations, rights, claims, or demands, including taxes, held by or asserted against them or which affect estate or trust assets, upon such terms as they may deem advisable in their sole and absolute discretion.

R. To abandon, in any way, property, real or personal, which they determine in their sole and absolute discretion not to be worth maintaining or protecting, and to waive, in whole or in part, at any time and from time to time, accrued interest, or accumulated dividends, or other interest or dividends on any investments which may be held by them.

S. To determine whether or to what extent receipts should be deemed income or principal, whether or to what extent expenditures should be charges against principal or income, and what other adjustments should be made between principal and income. In this regard the following may be considered:

(1) In their sole and absolute discretion to maintain a reserve for depreciation of real property or for the amortization of leaseholds, and may set aside and add to principal a portion of the income for any such reserve. In determining the amount of the reserve, they may, but need not, be guided by a rate and method of computing amortization or depreciation that is allowable for Federal income tax purposes.

(2) If the income from any parcel of real property owned or held directly (not through a corporation) shall at any time be insufficient to pay the taxes and carrying charges thereon, such taxes and carrying charges may be paid out of principal to the extent that the income from such parcel of real property is thus insufficient and need not be charged against income from any other assets.

T. To elect, in their sole and absolute discretion, to take as a deduction on the estate or income tax returns of my estate, any expense or loss, as they may deem desirable.

U. To join with my spouse in income tax returns for any period prior to my death and for the taxable year in which my death occurs; to execute any consents authorized by the Internal Revenue Code in connection with federal gift taxes; and to pay such amounts of

income and/or gift taxes and interest and penalties thereon as they deem in their sole and absolute discretion advisable, even though not attributable to my own income or gifts.

V. To choose, whenever given a choice of dates for valuing property in my gross estate, that date which they in their sole and absolute discretion deem advisable.

W. To make or not make any election or other decision that may be necessary in connection with the filing of any federal, state, or local income tax or gift tax return, as they deem desirable in their sole and absolute discretion; to elect or not elect to pay estate, inheritance, transfer, legacy, succession and other taxes of any nature (including any interest or penalties thereon) imposed with respect to all property, taxable by reason of my death, whether or not such property passes under this Will, in such number of installments and over such period of time as my personal representatives, in their sole and absolute discretion deem to be in the best interest of my estate.

X. To form, either alone or in conjunction with others, corporations or other entities under the laws of any state or country, either before or after the termination of any trust, and prescribe and vary their powers, capital, and duration; to transfer to any such corporation or entity all or portions of my estate or any trust hereunder; and to retain or distribute in kind the stock and obligations of such corporations or entities.

Y. On the payment of any legacy or devise, or on termination of any trust hereunder, to determine in their sole and absolute discretion who are the persons entitled to receive distributive shares and the proportions of their shares, and in so doing to act upon such information as on reasonable inquiry they may deem reliable with respect to identity, relationship, or other facts relative to the distributees.

Z. If the effect of any power or provision of this Will would be to prevent the allowance of the marital deduction, then I direct that such power or provision shall not apply to the marital deduction provision set forth in this Will, and that so far as the marital deduction provision and its administration are concerned, this Will shall be read and take effect as if such provision did not exist.

EIGHTH: If my spouse, **IDA B. BURROWS**, and I shall die under such circumstances that it is difficult or impossible to determine who predeceased the other, then I direct that the terms and provisions of this my Will, with respect to the benefits provided for my spouse, **IDA B. BURROWS**, shall be construed as though I had predeceased her and that my estate shall be administered and distributed in all respects accordingly. If any other person named or referred to in this, my Will, and I shall die under such circumstances that it is difficult or impossible to

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determine who predeceased the other, then I direct that the terms and provisions of this, my Will, shall be construed as though I had survived such other person and that my estate shall be administered and distributed in all respects accordingly.

NINTH:

A. I appoint my spouse, **IDA B. BURROWS**, as personal representative under this, my Will. If she shall fail to qualify or cease to act for any reason as such personal representative, I appoint **RAYMOND R. BURROWS** to act as substitute or successor personal representative. If such person shall fail to qualify or cease to act for any reason as such personal representative, I appoint **KAY EAGAR** to act as substitute or successor personal representative. If such person shall fail to qualify or cease to act for any reason as such personal representative, I appoint **RONALD P. BURROWS** to act as substitute or successor personal representative.

B. The last or remaining personal representative or guardian, if any, shall have the power, while serving as personal representative or guardian, to appoint, by written instrument, one or more successor personal representatives or guardians, who shall have the same authority as if appointed in this instrument.

C. I direct that no bond or other security shall be required in any jurisdiction of any personal representative, or substitute or successor personal representative, named herein or appointed pursuant to the provisions of this Will.

D. Any power or authority, including any discretion conferred upon my personal representatives by this Will, may be exercised by such of them as shall qualify and be acting hereunder as personal representative from time to time and by the survivors or survivor or the successors or successor of them.

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E. Insofar as may be permitted by law, none of my personal representatives shall be liable for any act or omission in connection with the administration of my estate or the exercise of any powers hereunder, nor for any loss or injury to any property held in or under my estate, except for his, her, or their gross negligence or willful misconduct, and none of my personal representatives shall be responsible for any act or omission of any other personal representative.

F. No beneficiary under this, my Will, or under any trust created by my Will shall have power to pledge, assign, mortgage, sell, or in any manner transfer or hypothecate any interest which such beneficiary may have or may expect to have in any income or principal, except by the exercise of powers of appointment contained herein, if any; nor shall any beneficiary have any power in any manner to anticipate, charge, or encumber his or her interest, whether in income or in principal, except by the exercise of such powers; nor shall such interest of any beneficiary be liable for or subject to, in any manner while in the possession of my personal representatives or trustees, the debts, contracts, liabilities, engagements, obligations, or torts of such beneficiary, in favor of any person including, but not limited to, creditors, betrothed, spouses, and ex-spouses, except by the exercise of such powers of appointment.

G. My personal representatives shall not enforce or otherwise carry out the provisions of this, my Will, in ways that would cause the distributions or other actions made or performed in connection with such provisions to be in violation of the Rule Against Perpetuities as applied under the laws of the state having jurisdiction over the matters or property in question. Upon the expiration of the Rule Against Perpetuities period, my personal representatives shall terminate all appropriate trusts, separate funds, or other vehicles (collectively, "Separate Funds"), and shall distribute the assets of such Separate Funds to the beneficiaries of such Separate Funds who are then

permissible distributees of such Separate Funds in accordance with their relative interests in such Separate Funds. If the permissible distributees' relative interests are uncertain, the property of such Separate Funds shall be distributed to the permissible distributees in such manner as my personal representatives deem to be consistent with my intent as set forth in this, my Will. In the event my personal representatives are uncertain as to my intent, they may seek instructions from a court having jurisdiction over the administration of the Separate Funds.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 2nd day
of Oct, 1997.

Ralph W Burrows
RALPH W. BURROWS

The foregoing instrument, consisting of twelve (12) typewritten pages (including this page), was on the date thereof signed, sealed, published, and declared by **RALPH W. BURROWS**, the Testator, as and for his Last Will and Testament, in the presence of us who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Michael W. Miller residing at: 1291 East 7575 St
Witness

Michael W. Miller

Anna L. Miller residing at: 1291 East 7575 St
Witness

Michael W. Miller

STATE OF UTAH)
) ss.:
COUNTY OF SALT LAKE)

Each of the undersigned, individually and severally, being duly sworn, deposes and says:

The within Will was subscribed in our presence and sight at the end thereof by **RALPH W. BURROWS**, the within named Testator, on this date Oct. 2nd, 1997, at Midvale, Utah.

Said Testator at the time of making such subscription declared the instrument so subscribed to be his last Will.

Each of the undersigned thereupon signed his/her name as a witness at the end of said Will, at the request of said Testator, in the Testator's presence and sight, and in the presence and sight of each other.

Said Testator was, at the time of so executing said Will, over the age of eighteen (18) years and, in the respective opinions of the undersigned, of sound mind, memory, and understanding and not under any constraint or in any respect incompetent to make a Will.

Said Testator, in the respective opinions of the undersigned, could read, write, and converse in the English language and was suffering from no defect of sight, hearing, or speech, or from any other physical or mental impairment which would affect Testator's capacity to make a valid Will. The Will was executed as a single, original instrument and was not executed in counterparts.

Each of the undersigned was acquainted with said Testator at such time, and makes this affidavit at Testator's request.

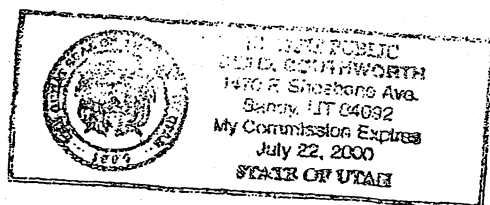
The within Will was shown to the undersigned at the time this affidavit was made, and was examined by each of them as to the signatures of said Testator and of the undersigned.

The foregoing instrument was executed by said Testator and witnessed by each of the undersigned affiants.

William D. Moore

James E. Moore

SUBSCRIBED AND SWORN to before me this date 2nd Oct. 1997
(seal)



Kim D. Southworth
NOTARY PUBLIC

Tab 4

The Ralph W. & Ida B. Burrows Revocable Living Trust

Trust Agreement, dated 10/2/97, by and between RALPH W. BURROWS and IDA B. BURROWS, (collectively, "Settlors" or, individually, a "Settlor") and RALPH W. BURROWS and IDA B. BURROWS (collectively, the "Trustees" or, individually, a "Trustee"). As used herein, the terms "Trustees" and "Trustee" also refer to any successor trustee(s) or co-trustee(s) at any time serving in such capacities with respect to any of the trusts (collectively, the "Trusts" or, individually, a "Trust") at any time created or existing pursuant to the terms of this Trust Agreement. The Settlers hereby transfer and deliver to the Trustees the property listed on the attached Schedule "A." The Trustees shall hold, manage, invest, and reinvest such property, together with any other property which subsequently may be received by the Trustees, in trust and shall administer the property upon the terms and conditions hereinafter set forth. All property at any time received by the Trustees in trust in connection with the provisions of this Trust Agreement is sometimes collectively referred to herein as the "Trust Estate." In the event that, at any time during the effectiveness of this Trust Agreement or any amendment or modification hereto, only one Trust shall be in existence, all of the Trust Estate shall apply to such Trust; in the event that more than one Trust is in existence, each such Trust shall have its own Trust Estate.

ARTICLE I

NAME OF TRUST; DISPOSITION OF TRUST ESTATE DURING SETTLORS' LIVES; ADDITIONS TO TRUST ESTATE; TRUSTEES; SUCCESSOR TRUSTEES

1.1 Name of Trust. The Name of this Trust shall be "THE RALPH W. & IDA B. BURROWS REVOCABLE LIVING TRUST."

1.2 Income and Principal. At all times while both of the Settlers are alive, the Trustees shall hold, manage, invest, and reinvest the Trust Estate, shall collect the income therefrom, and shall pay over the net income to the Settlers, or shall apply the same for Settlers' benefit, in convenient installments but at least annually. In addition, the Trustees are hereby authorized, at any time and from time to time, in the Trustees' sole and absolute discretion: (i) to pay to Settlers for their care, support, maintenance, education, or general welfare, or to apply for any such purpose, any part or all of the principal of the Trust Estate, and (ii) to pay to, or on behalf of, the Settlers the amount of any and all taxes caused by the sale of any of the assets comprising the Trust Estate.

The Trustees shall charge any distribution made pursuant to this Section 1.2 against the Trust Estate as a whole, and not against the ultimate distributive share of the beneficiary to whom such distribution is made.

1.3 Additions to Trust Estate. The Trustees are authorized, but not required, to accept any property transferred to the Trustees or any of the Trusts at any time existing pursuant to the terms of this Trust Agreement, whether during the lifetime of the applicable transferor, or by such

transferor's Last Will and Testament. Any property so transferred shall become a part of the applicable Trust or Trusts in accordance with the directions of the transferor, and may be commingled with the other property relating to the Trust or Trusts to which such property has been added, and shall be held, administered, and disposed of as a part of such Trust or Trusts.

1.4 Initial Trustees; Special and Successor Trustees. The Settlers, jointly, shall act as the initial Trustees with respect to all Trusts at any time created or existing pursuant to the terms of this Trust Agreement. Notwithstanding anything set forth in this Trust Agreement to the contrary, the Settlers, jointly, shall be entitled to act as Trustees with respect to all decisions, whether discretionary or otherwise, that are made while they are serving in the capacity of Trustees hereunder including, but not limited to, decisions for the benefit of, or otherwise affecting, one or both of the Settlers.

A. Trustees of "Trust A" and other Trusts. Upon the death or incapacity of one of the Settlers, and except with respect to "Trust B" (as such Trust is hereinafter described), the surviving or non-incapacitated Settlor (the "Surviving Settlor"), together with a Co-Trustee (the "Special Co-Trustee") appointed in the manner set forth herein, shall act as Co-Trustees with respect to "Trust A" (as such Trust is hereinafter described) and any and all other Trusts at any time created or existing pursuant to the terms of this Trust Agreement. Notwithstanding anything set forth in this Trust Agreement to the contrary, the Surviving Settlor and the Special Co-Trustee shall be entitled to act in connection with all non-discretionary decisions made by, or non-discretionary acts undertaken by, such person while serving in the capacity of a Co-Trustee including, but not limited to, decisions for the benefit of, or otherwise affecting, such persons. Neither the Surviving Settlor nor the Special Co-Trustee, however, shall be entitled to act with respect to any discretionary decisions or undertakings that would benefit, or otherwise affect, such persons. Such discretionary decisions and undertakings shall be made and undertaken by the other Co-Trustee then serving or, in the event that only one such Co-Trustee is then serving, or in the event that such other Co-Trustee would also be benefitted by, or affected by, such discretionary decisions or undertakings, such decisions or undertakings shall be made by, or undertaken by, an independent third-party Co-Trustee (an "Independent Co-Trustee") appointed solely for such purpose. An Independent Co-Trustee shall also be appointed to act as the sole Trustee upon the death, incapacity, or resignation of the last surviving Special Co-Trustee.

Any Independent Co-Trustee shall be chosen by a majority of the then income beneficiaries of the affected Trust, with a parent or legal guardian voting for incapacitated or minor beneficiaries; provided, however, that the issue of any deceased beneficiary shall have collectively only one vote.

B. Surviving Settlor as Sole Trustee of Trust B. Upon the death or incapacity of one of the Settlers, the Surviving Settlor shall act as the sole Trustee of Trust B, with such Surviving Settlor being entitled to act individually as the sole Trustee with respect to all decisions, whether discretionary or otherwise, that are made while such Surviving Settlor is serving in the capacity of Trustee of Trust B including, but not limited to, decisions for the benefit of, or otherwise affecting, the Surviving Settlor.

C. Successor Trustees. Upon the death, incapacity, or resignation of the Surviving Settlor, all Trusts at any time created or existing pursuant to the terms of this Trust Agreement shall be administered by Four (4) successor Co-Trustees (individually, a "Successor

Trustee" or collectively "Successor Trustees") appointed in the manner and in the order set forth herein. Each Successor Co-Trustee shall be entitled to act in connection with all non-discretionary decisions made by, or non-discretionary acts undertaken by, such person while serving in the capacity of Successor Co-Trustee including, but not limited to, decisions for the benefit of, or otherwise affecting, such person. No Successor Co-Trustee, however, shall be entitled to act with respect to any discretionary decisions or undertakings that would benefit, or otherwise affect, such person. Such discretionary decisions and undertakings shall be made and undertaken by any other then serving Successor Co-Trustee or, in the event that no other Successor Co-Trustee is then serving, or in the event that such other Successor Co-Trustee would also be benefitted by, or affected by, such discretionary decisions or undertakings, such decisions or undertakings shall be made by, or undertaken by, an Independent Trustee appointed solely for such purpose. An Independent Trustee shall also be appointed to act as the sole Trustee upon the death, incapacity, or resignation of the last surviving Successor Co-Trustee.

Any Independent Trustee shall be chosen by a majority of the then income beneficiaries of the affected Trust, with a parent or legal guardian voting for incapacitated or minor beneficiaries; provided, however, that the issue of any deceased beneficiary shall have collectively only one vote.

D. Appointment of Special and Successor Co-Trustees. All Special Co-Trustees and Successor Co-Trustees shall be appointed from the following persons and shall serve in the order named:

Special Co-Trustees and Successor Co-Trustees:

RAYMOND R. BURROWS

KAY EAGAR

RONALD P. BURROWS

WILLIAM B. WHITELEY

ARTICLE II

DISPOSITION OF TRUST ESTATE AFTER THE DEATH OF THE FIRST TO DIE OF THE SETTLORS

2.1 Disposition Upon the First to Die of the Settlers. Upon the death of the first to die of the Settlers, the Trustees shall divide the Trust Estate into two (2) separate trusts. The first of such trusts ("Trust A") shall be constituted as provided in Article III hereof, and shall be held, administered, and disposed of in accordance with the terms thereof. The second of such trusts ("Trust B") shall consist of the balance of the Trust Estate and shall be held, administered, and disposed of in accordance with the terms of Article IV hereof.

ARTICLE III

TRUST A

3.1 Trust Estate of Trust A. The Trust Estate of Trust A (the "Trust A Trust Estate") shall consist of a pecuniary sum equal to the maximum amount by which the deceased Settlor's federal taxable estate (determined without regard to this Article) may be increased without causing an increase in the federal estate tax payable by reason of the deceased Settlor's death after taking into account all credits available against such tax, provided, however, that the credit for state death taxes shall be taken into account only to the extent that it does not result in an increase in the state death taxes which would otherwise be payable. In computing the amount of this bequest, the values and amounts as finally determined for federal estate tax purposes shall control, disclaimers shall not be taken into account, and it shall be assumed that an election is made to qualify all qualified terminable interest property (other than Trust A) for the marital deduction, regardless of what election is in fact made.

3.2 Uses and Purposes of Trust A. The Trustees shall hold the Trust A Trust Estate for the following uses and purposes: (i) to manage, invest, and reinvest the same, to collect the income thereof, and to pay over the net income to the Surviving Settlor, or to apply the same for the Surviving Settlor's benefit, in convenient installments, but at least annually, during the Surviving Settlor's life, and (ii) in the event that the principal of Trust B shall be exhausted, to pay over to the Surviving Settlor, for such Surviving Settlor's care, support, maintenance, education, or general welfare, or to apply for any such purpose, including the expenses of such Surviving Settlor's last illness and funeral, out of the principal of Trust A, such sum or sums, including the whole thereof, as the Trustees shall determine in the Trustees' sole and absolute discretion.

3.3 Upon the Death of the Surviving Settlor. Upon the death of the Surviving Settlor, the principal of the Trust A Trust Estate, as it shall then be constituted, plus all then undistributed income, shall be disposed of as provided in this Trust Agreement.

3.4 Discretion of Surviving Settlor and Special Co-Trustee. In their sole and absolute discretion, and particularly in the event that the aggregate value of the Trust Estate is less than the amount described in Section 3.1, the Surviving Settlor and the Special Co-Trustee, acting jointly, may determine to only partially fund the Trust A Trust Estate, or not to fund such Trust A Trust Estate at all.

ARTICLE IV

TRUST B

4.1 Trust Estate of Trust B. As noted above, the Trust Estate of Trust B (the "Trust B Trust Estate") shall consist of the balance of the Trust Estate subsequent to the establishment of Trust A.

4.2 Uses and Purposes of Trust B. The Trustees shall hold the Trust B Trust Estate for the following uses and purposes: (i) to manage, invest, and reinvest the same, to collect the income

thereof, and to pay over the net income to the Surviving Settlor, or to apply the same for the Surviving Settlor's benefit, in convenient installments, but at least annually, during the Surviving Settlor's life, and (ii) to pay over to the Surviving Settlor, for such Surviving Settlor's care, support, maintenance, education, or general welfare, or to apply for any such purpose, out of the principal of Trust B, such sum or sums, including the whole thereof, as the Trustees shall determine in the Trustees' sole and absolute discretion.

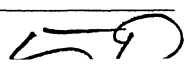
4.3 Upon the Death of the Surviving Settlor. Upon the death of the Surviving Settlor, the principal of the Trust B Trust Estate, as it shall then be constituted, plus all then undistributed income, shall be disposed of as provided in this Trust Agreement.

ARTICLE V

DISTRIBUTION UPON THE DEATH OF THE LAST TO DIE OF THE THE SETTLORS; DISTRIBUTION IN THE EVENT OF THE SIMULTANEOUS DEATHS OF THE SETTLORS; DIRECTIONS REGARDING TAXES AND OTHER MATTERS

5.1 Trust Distributions. Upon the death of the Surviving Settlor, and subject to the terms and conditions set forth herein, the Successor Trustee, shall distribute the principal and accrued income of the Trust A Trust Estate, together with the principal and accrued income of the Trust B Trust Estate, in equal shares, to the joint beneficiaries (collectively, the "Joint Beneficiaries" or, individually, a "Joint Beneficiary") of Settlers who shall survive the Surviving Settlor, and if any such Joint Beneficiary shall not survive the Surviving Settlor leaving issue surviving the Surviving Settlor, the share which would otherwise have been distributed to such deceased Joint Beneficiary shall be distributed to such deceased Joint Beneficiary's issue in equal shares, per stirpes. In the event that any Joint Beneficiary of Settlers shall not survive the Surviving Settlor and shall not leave issue surviving the Surviving Settlor, the share which would otherwise have been distributed to such deceased Joint Beneficiary shall lapse. As of the date of this Trust Agreement, Settlers' Joint Beneficiaries are the following persons, all of whom are living at the date hereof:

<u>Settlers' Joint Children</u>	<u>Share:</u>
RAYMOND R. BURROWS	Equal
RONALD P. BURROWS	Equal
WILLIAM B. WHITELEY	Equal
KAY EAGAR	Equal
FLORENCE WEBSTER	Equal
ARTHUR F. KIISEL	Equal
JULIA RODGERS	Equal



Notwithstanding the foregoing: (i) all distributions to Settlor's Joint Beneficiaries or other beneficiaries who are minors or who are disabled shall be governed by the terms and conditions set forth herein, and (ii) in the event that Settlor shall, subsequent to the date of this Trust Agreement, jointly have one or more additional natural children, or jointly adopt one or more additional children (collectively, "Afterborn Beneficiaries"), then such Afterborn Children shall, for purposes hereof, be treated as Joint Children of Settlor, with all rights of the other Joint Beneficiaries hereunder including, but not limited to, the right to receive distributions of equal shares of the principal and accrued income of the Trust A Trust Estate and the Trust B Trust Estate as described herein.


5.2 Simultaneous Deaths of Settlor. If both of the Settlor shall die simultaneously, or shall die in such circumstances as to render it impossible to determine who predeceased the other, **RALPH W. BURROWS** shall be deemed to have predeceased **IDA B. BURROWS**, and the provisions of this Trust Agreement shall be construed upon that assumption, notwithstanding the provisions of any law establishing a different presumption of order of death or providing for survivorship for a fixed period as a condition of inheritance of property.

5.3 Direction to Pay Taxes, Debts, and Expenses if Settlor's Residual Estate is Insufficient. The Trustees shall pay over to the Personal Representative of a deceased Settlor's estate, out of the applicable Trust Estate, the amount that such Personal Representative shall certify to the Trustees as the amount by which the residuary estate passing pursuant to the deceased Settlor's Last Will and Testament shall be insufficient for the payment of all taxes referred to in the deceased Settlor's Last Will and Testament and all expenses of the deceased Settlor's estate and all debts and funeral expenses payable by the deceased Settlor's estate, provided, however, that no asset of the applicable Trust Estate shall be paid over to such Personal Representative if such asset is not includible in the deceased Settlor's gross estate for federal estate tax purposes. The Trustees shall have no duty or obligation to inquire as to the correctness of any amount so certified by such Personal Representative, and the payment of such amount to such Personal Representative shall be a full and complete discharge to the Trustees with respect to such payment. The Trustees may, but shall have no duty to, take part in the preparation of any death tax return or in any negotiation or proceeding to determine the amount of any death taxes. The Trustees shall, however cooperate in connection with any such matters.

ARTICLE VI

TRUSTEES' POWER TO TERMINATE

6.1 Trustees' Power to Terminate One or More of the Trusts. Notwithstanding anything contained in this Trust Agreement to the contrary, if the Trustees determine, in such Trustees' sole and absolute discretion, that any Trust at any time created or existing pursuant to the terms of this Trust Agreement has a Trust Estate that is so small in value that the continuation of such Trust is no longer convenient, or that the continuation of such Trust is no longer in the best interests of the beneficiaries thereof, then the Trustees may terminate such Trust and distribute the Trust Estate relating thereto to the then income beneficiaries of such Trust.



ARTICLE VII

ADMINISTRATIVE PROVISIONS

7.1 In General. The Trustees of any of the Trusts at any time created or existing pursuant to the provisions of this Trust Agreement shall have as complete power with respect to the administration and management of the Trust Estates of such Trusts as would an owner of property, together with all powers conferred upon Trustees by law including, but not limited to, all powers from time to time enumerated for trustees in the *Utah Uniform Probate Code*. By way of illustration, and not of limitation, the Trustees shall have the specific powers set forth in this Article, all statutory powers not inconsistent with the other provisions of the Trusts, and any inherent or implied powers. The Trustees must exercise all powers consistent with such Trustees' fiduciary responsibilities.

7.2 Investments. The Trustees may purchase, acquire, or retain any kind of investment asset which trustees may hold under Utah law. The Trustees' actions in managing the assets of the Trust Estates shall be measured by the overall performance of the Trust Estates' assets, and not by the performance or lack of performance of individual assets.

7.3 Types of Transactions. The Trustees may sell, exchange, develop, lease, pledge, mortgage, transfer, convert, or otherwise dispose of or grant options with respect to any properties of the Trust Estates. The Trustees may enter into leases and contracts even though the term of the lease or contract may extend beyond the period fixed by statute for leases or contracts made by fiduciaries or beyond the duration of any of the Trusts.

7.4 Borrowing. The Trustees may borrow money from any source for the benefit of any one or more of the Trust Estates, and as security for any such loan, may mortgage or pledge any property in one or more of the Trust Estates. The Trustees may loan money to the Trusts, provided that the terms of the loan are no more beneficial to the Trustees than those terms that would be charged by a commercial lender in the community in which the Trusts are being administered.

7.5 Management. The Trustees may vote any shares of stock, or other securities held by such Trustees, in person or by general or limited proxy. The Trustees may become a party to, or deposit securities or other property under, or accept securities issued under, any voting trust agreement, whether or not such voting trust agreement extends beyond the duration of any Trust hereunder. The Trustees may rescind, terminate, or amend any voting trust agreement, make consents, directly or through a committee or agent, to any recapitalization, reorganization, consolidation, merger, dissolution, or liquidation of any corporation, limited liability company, partnership, or association in which any of the Trusts may have an interest, and may make any payments, assignments, or subscriptions and take any other steps which the Trustees may deem necessary or proper to enable the Trusts to obtain the benefits of any such transaction.

7.6 Insurance. The Trustees may purchase and retain life, fire, rent, title, liability, and casualty insurance, or any other insurance as the Trustees deem advisable under the circumstances. The Trustees may purchase and retain insurance on any dwelling and the contents thereof in which

any beneficiaries reside and any automobile which any beneficiary uses, whether or not such dwelling, contents, or automobile are part of one or more of the Trust Estates.

7.7 Principal and Income. The Trustees shall have discretion to determine what is principal or income of any of the Trusts and to apportion and to allocate the Trustees' receipts, taxes, and other expenses and charges between the two. The Trustees do not need to maintain a separate income account. The Trustees may accumulate income notwithstanding the provisions of Sections 665 through 667 of the Internal Revenue Code of 1986, as amended. The Trustees shall treat accumulated income as principal.

7.8 Tax Choices. The Trustees shall have the power to make such tax elections as the Trustees deem advisable for the collective benefit of the beneficiaries of the appropriate Trusts. The Trustees may, but shall not be required to, make equitable adjustments to equalize the disproportionate impact of the Trustees' tax elections among the various Trusts' beneficiaries.

7.9 Equitable Adjustments. The Settlor hereby authorize the Trustees to make equitable adjustments because the Settlor recognize that there are a number of discretionary fiduciary decisions that can have a disproportionate impact upon the beneficiaries of the Trusts no matter how the Trustees act. In addition, the number of decisions, and the complexity of those decisions, has increased to the point where the Trustees cannot reasonably be expected to foresee all of the decisions that may arise. Accordingly, the Trustees are exonerated from the responsibility of analyzing a particular decision to determine if the impact will be disproportionate. The Trustees are further exonerated from making any equitable adjustment in the event a decision is made that has a disproportionate impact. Finally, the Trustees are exonerated if the Trustees, in the Trustees' sole and absolute discretion, choose to make an equitable adjustment.

Notwithstanding the foregoing, in the event that a beneficiary of any of the Trusts at any time created or existing hereunder objects in writing to a proposed course of action, and one basis of the objection is that an equitable adjustment should be made, or if a beneficiary requests in writing that an equitable adjustment be made after an action has been taken, or that a different equitable adjustment be made from that which was made, the Trustees shall proceed only with the written consent of all affected beneficiaries or with a court order.

7.10 Settlement of Claims. The Trustees shall have the power to commence or defend, at the expense of the applicable Trust, such litigation with respect to such Trust or any property of the Trust Estate with respect to such Trust as the Trustees consider advisable. The Trustees shall have power to renew, assign, alter, extend, compromise, release, with or without consideration, or submit to arbitration, obligations or claims held by or asserted against the applicable Trust Estate.

7.11 The Trustees' Transactions with Other Family Trusts or Estates. The Trustees may enter into any transactions authorized by this Article with any other decedent's estate or any inter vivos or testamentary trust in which the Settlor or the Settlor's issue or any of them has a beneficial interest, even though any fiduciary of such other estate or trust is also a fiduciary under any of the Trusts created hereunder or under either of the Settlor's Wills. The Trustees must insure that all such transactions are commercially reasonable from the viewpoint of the applicable Trust Estates the Trustees are administering.

7.12 Agents. The Trustees may hold investments in the name of a nominee or a substitute trustee and may employ brokers, agents, attorneys, and custodians for any property of any of the Trust Estates.

7.13 Reimbursement of Advances. The Trustees may reimburse the Trustees out of the appropriate Trust Estates for all advances made for the benefit or protection of such Trust Estates or their properties and all expenses, losses, and liabilities not resulting from the negligence or other default of the Trustees incurred in connection with the administration of the appropriate Trust Estates.

7.14 Distribution In Kind. The Trustees may make any distributions or payments in kind, or cause any shares to be comprised of cash, property, or undivided fractional interests in property different in kind from any other share. The Trustees shall determine the value of any distribution in kind. The Trustees may acquire assets for distribution in kind to the beneficiaries hereunder.

7.15 Trustees' Expenses. The Trustees may pay, from either income or principal of the appropriate Trusts, the expenses of administering the same; however, the Trustees shall allocate expenses of the applicable Trusts between income and principal in accordance with the provisions set forth herein.

7.16 Payments to Minors or Disabled Beneficiaries. Subject to the terms and conditions set forth herein, if any individual under the age of twenty-one (21) years becomes entitled to any property from any Trust created hereunder or upon the termination thereof, the Trustees shall hold the same in further trust (a "Minority Trust") for the following uses and purposes: to manage, invest, and reinvest the same, to collect the income thereof, and to apply the net income and principal to such individual's general use, to such extent (including the whole thereof) and at such time or times as the Trustees, in their sole and absolute discretion, shall determine, until such individual reaches the age of twenty-one (21) years, and thereupon to transfer, convey, and pay over the principal of such Minority Trust, as it shall then be constituted, to such individual. Any net income not so applied shall be accumulated and added to the principal of such Minority Trust at least annually and thereafter shall be held, administered, and disposed of as a part thereof. Subject to the terms and conditions set forth herein, upon the death of such individual before reaching the age of twenty-one (21) years, and provided that such individual is survived by issue, the Trustees shall transfer, convey, and pay over the principal of such Minority Trust, as it shall then be constituted, together with all accumulated income, to such individual's personal representatives, executors, or administrators. In the event that more than one individual under the age of twenty-one (21) years shall become entitled to property hereunder, a separate Minority Trust shall be established for each such person.

If the Trustees, in the Trustees' sole and absolute discretion, shall determine at any time not to transfer in trust or not to continue to hold in trust any part or all of the property relating to the Minority Trust, as the case may be, the Trustees shall have full power and authority to transfer and pay over such property, or any part thereof, without bond, to any of the following persons: (i) to such individual, if an adult under the law of the state of his or her domicile at the time of such payment, (ii) to a parent of such individual, (iii) to the guardian of such individual's person or property, (iv) to a custodian for such individual under any Uniform Gifts to Minors Act pursuant to which a custodian is acting or may be appointed, or (v) to the person with whom such individual resides.

The receipt of such individual, if an adult, or the parent, the guardian or custodian, or any other person to whom any principal or income is transferred and paid over pursuant to any of the above provisions shall be a full discharge to the Trustees from all liability with respect thereto.

In the event the Trustees are directed to make distribution to a person who is under a legal disability other than minority (a "Disabled Beneficiary"), the Trustees shall retain the distributable amount as a further trust (the "Disability Trust") hereunder. The Trustees shall administer such Disability Trust by making distribution of none, part, or all of such Disability Trust's income and principal to or for the benefit of such Disabled Beneficiary as the Trustees, in the Trustees' sole and absolute discretion, deem advisable for such Disabled Beneficiary's health, education, and support in accordance with such Disabled Beneficiary's accustomed manner of living. The Trustees may make distribution by one or more of the following methods: (i) by making distribution on behalf of such Disabled Beneficiary to anyone with whom such Disabled Beneficiary resides; (ii) by making distribution to third parties in discharge of such Disabled Beneficiary's bills or debts, including bills for premiums on insurance policies; or (iii) by making distribution to such Disabled Beneficiary directly as an allowance. The foregoing payments shall be made without regard to other resources of such Disabled Beneficiary, and without the intervention of any guardian or like fiduciary. The Trustees shall endeavor to apply the funds for the benefit of such Disabled Beneficiary so that the funds will not be used for a purpose other than the benefit of such Disabled Beneficiary.

Any applicable minor or Disabled Beneficiary, as a beneficiary hereunder, shall have a general power of appointment over the assets retained by the Trustees as a Minority Trust or a Disability Trust hereunder. The applicable beneficiary may only exercise such beneficiary's general power of appointment in such beneficiary's Last Will and Testament. If the Trustees still have property of a Minority Trust or a Disability Trust remaining after the appropriate beneficiary dies and after the provisions of such beneficiary's Last Will and Testament have been carried out, the Trustees shall distribute that property to such beneficiary's heirs at law, as determined by the laws of the state where such beneficiary resided at the time of such beneficiary's death.

7.17 Trustees May Rely on Will. Where the Trustees must look to a Last Will and Testament to determine the Trustees' duties hereunder, the Trustees shall be protected in relying upon an instrument admitted to probate in any jurisdiction as the Last Will and Testament of the person in question. Unless the Trustees have actual notice of the admission to probate of a Last Will and Testament within six (6) months after the death of the person in question, it will be conclusively presumed that no Last Will and Testament has been admitted to probate, and the Trustees shall administer the appropriate Trusts accordingly, whether or not a Last Will and Testament is thereafter found to exist or is admitted to probate.

7.18 Consolidation. The Trustees may consolidate the property of any of the Trust Estates hereunder with the property of any of the other Trust Estates provided that: (i) proper records are kept of the assets allocable to each of such Trust Estates, and (ii) there will be no material unfavorable tax consequences as a result of such consolidation. In this regard, the Trustees are instructed to carefully review the possibility of unfavorable generation skipping tax consequences as a result of a consolidation of separate Trusts. If the Trustees consolidate separate Trusts, the Trustees shall not be required to physically divide any of the investments or any other property unless necessary or deemed advisable for the purpose of distribution. Instead, the Trustees may keep

any part of the consolidated trusts in one or more funds in which the separate and distinct Trusts shall have undivided interests.

7.19 Trustee Liability. No successor Trustee shall be held liable for any mistakes, negligence, or willful misconduct of any preceding Trustee. Without limiting the generality of the foregoing, no Trustee shall be held liable for failing to make an examination of the actions or accounts of any preceding Trustee. If a successor Trustee learns of a breach of duty by a preceding Trustee, the successor Trustee shall notify the beneficiaries of the breach. A successor Trustee's failure to notify the beneficiaries of a predecessor's breach, however, shall not be grounds for a surcharge action against the successor Trustee. If the Surviving Settlor serves as a Trustee, the Surviving Settlor shall be liable only for willful fraud. Any other Trustee shall be liable for such Trustee's acts and omissions in accordance with the laws of the state where the appropriate Trusts are being administered.

7.20 Miscellaneous Trustee Provisions. The Trustees shall also have the following powers:

A. Lending Money. To lend money to any person, provided that any such loan shall be adequately secured and shall bear a reasonable rate of interest. Notwithstanding the foregoing, the Trustees need not require security for loans made to the probate estates of either Settlor.

B. Purchase Property. To purchase property at its fair market value as determined by the Trustees in the Trustees' discretion, from the probate estates of either of the Settlers.

C. Withholding Distributions. To withhold property from distribution without payment of interest, if at the time for distribution of the property the Trustees determine that the property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, which properly must be resolved before distribution can be made.

D. Purchase Bonds at Premium. To purchase bonds and to pay premiums in connection with such purchases as the Trustees, in the Trustees' discretion, consider advisable; provided, however, that the Trustees shall treat part of the interest payments with respect to such bonds, or sales proceeds, if necessary, as the repayment of principal as is reasonable under the circumstances.

E. Purchase of Bonds at Discount. To purchase such bonds at a discount from face value as the Trustees, in the Trustees' sole and absolute discretion, consider advisable; provided, however, that the Trustees shall treat such part of the return of principal as income as is reasonable under the circumstances.

F. Purchase Flower Bonds. To purchase, at less than par, United States Treasury Bonds redeemable at par in payment of federal estate tax liability, in such amounts as the Trustees deem advisable.

7.21 Proration. Upon the termination of any of the Trusts, the Trustees shall distribute all principal and all undistributed, accrued income to the then income beneficiaries of such Trusts in proportion to their interests therein. Among successive beneficiaries of such Trusts, the Trustees shall prorate all taxes and other current expenses over the period to which they relate on a daily basis.

7.22 Division of Trusts for Generation Skipping Tax Purposes. Whenever: (i) this Trust Agreement provides for the creation of a Trust, (ii) part or all of either of the Settlor's generation skipping tax exemption will be allocated to that Trust, and (iii) that Trust will not have a generation-skipping inclusion ratio of zero, the Trustees shall instead establish two separate Trusts so that each separate Trust has a generation-skipping inclusion ratio of either zero (the "Exempt Trust") or one (the "Nonexempt Trust"). The Trustees shall allocate to the Nonexempt Trust the minimum amount of property necessary to establish the Trust with an inclusion ratio of one, while leaving the Exempt Trust with an inclusion ratio of zero.

ARTICLE VIII

TRUSTEE PROVISIONS

8.1 Accounting. With respect to any of the Trusts at any time created or existing pursuant to the terms of this Trust Agreement, a corporate Trustee shall render an annual accounting. An individual Trustee shall render an annual accounting only if requested by at least one beneficiary of the applicable Trust, and as needed for tax returns.

When an accounting is required, the Trustees shall render the annual accounting to all beneficiaries who are then permissible distributees. In the case of a minor or a Disabled Beneficiary, the Trustee shall render the Trustees' accounting to such minor's or Disabled Beneficiary's natural or legal guardian. The Trustees shall give a copy of the Trustees' most recent annual accounting to any future beneficiary who makes a written request for an accounting.

If a Trustee resigns, is removed, or dies, the departing Trustee, or such Trustee's legal representative, shall render an accounting to all living beneficiaries of the applicable Trusts. In the case of a minor or a Disabled Beneficiary, such Trustee shall render such Trustee's accounting to such minor's or Disabled Beneficiary's natural or legal guardian. Unless a beneficiary, or a minor's or Disabled Beneficiary's natural or legal guardian, objects in writing to the Trustee's accounting within sixty (60) days, the Trustee's accounting shall be deemed approved by the beneficiaries.

8.2 Acting in Other Jurisdictions. If for any reason the Trustees are required or deem it advisable to take any actions in any jurisdiction in which one or more of the Trustees are not permitted under the laws of such jurisdiction to qualify as trustees, the Trustees may appoint, to act in such other jurisdiction only, such person(s) or entity(ies) as the Trustees deem advisable to take the place of the Trustee or Trustees who do not qualify as trustees within the relevant jurisdiction.

8.3 Bond. In general, no bond shall be required of any Trustee acting hereunder. If it is proved to a court of competent jurisdiction by a preponderance of the evidence that a Trustee has

engaged in conduct that endangered the safety of any of the Trust Estates, however, the court, in its discretion, may order such Trustee to post a bond.

8.4 Compensation. Settlers desire any individual Trustee to serve as Trustee without compensation; however, if an individual Trustee requests reasonable compensation in writing, such individual Trustee shall be entitled to reasonable compensation from the date a copy of such Trustee's request is delivered to the beneficiaries of the appropriate Trusts (or to the natural or legal guardians of any minors or Disabled Beneficiaries) who are then permissible distributees.

A corporate Trustee shall be entitled to a reasonable fee for its services commensurate with the published schedule of fees charged by such Trustee for similar services. A corporate Trustee may charge a reasonable fee for transfers to a successor Trustee and for any final distribution of any share of the appropriate Trust Estates based upon the work involved in the transfer or final distribution.

8.5 Resignation. Any Trustee may resign by giving thirty (30) days written notice to all of the then beneficiaries of the applicable Trust who are permissible distributees. Such Trustee shall give notice to the natural or legal guardian for any minor or Disabled Beneficiary. No resignation shall be effective until a successor Trustee accepts the office of Trustee and begins serving as the Trustee of the applicable Trust.

8.6 Dissent Among Trustees. When more than one (1) Trustee is serving, a majority of the Trustees, whether individual or corporate, shall have the power to make any decisions, undertake any actions, or execute any documents affecting the appropriate Trusts. In the event of a difference of opinion among the Trustees, the decision of the majority of them shall prevail, but the dissenting Trustees shall not be responsible for any action taken by the majority pursuant to their decision. If only two (2) Trustees are in office, they must act unanimously.

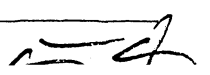
8.7 Delegation of Authority. A Trustee may from time to time delegate, to one (1) or more of the remaining Trustees, specific powers, duties, or discretions, provided that the delegation is limited both in time and in the scope of the power, duty, or discretion conferred. To be effective, any delegation must be in writing and must be delivered to the delegatee or delegatees. The delegation shall remain effective for the time specified or until earlier revocation in writing delivered to the delegatee or delegatees. Anyone dealing with the delegatee shall be protected in relying upon the certificate of the Trustee setting forth the terms of the delegation.

8.8 Independence of Court Supervision. In the absence of a breach of trust, no Trustee shall be required to qualify before, be appointed by, or account to, any court. Nor shall any Trustee be required to obtain a court order to exercise any power or discretion.

ARTICLE IX

WITHDRAWAL RIGHTS

9.1 Right of Withdrawal. If at any time either of the Settlers or anyone else transfers property to any of the Trust Estates, and if the transfer is accompanied by written notice (the



"Written Notice") to the Trustees that the transferred property, or a part of such property, shall be subject to withdrawal under the provisions of this Article, the Trustees shall follow the directions set forth in this Article.

9.2 Notice to Beneficiary. The Trustees shall notify each affected beneficiary of the withdrawal right specified in the Written Notice. The Trustees shall advise the beneficiary that the beneficiary must exercise the beneficiary's withdrawal right within the time specified in the Written Notice. The Trustees shall further advise the beneficiary that the right to withdraw the property shall lapse at the end of the period specified in the Written Notice (the "Lapse Date"). In the event the Written Notice does not specify the Lapse Date, the Trustees shall notify the beneficiary that the withdrawal right will lapse thirty (30) days after the date of the Trustees' notification to the beneficiary of the withdrawal right.

9.3 Beneficiary's Right. Each beneficiary who receives notification of his or her withdrawal amount shall have the absolute right to withdraw from the principal of the appropriate Trust Estates the property specified in the Trustees' notification.

9.4 Method of Exercise. To exercise a withdrawal right, the applicable beneficiary must deliver to the Trustees, on or before the Lapse Date, a written notice of intent to exercise the withdrawal right.

9.5 Disabled Beneficiaries. The Trustees shall send notice to a Disabled Beneficiary's natural or legal guardian other than the transferor. It will be the responsibility of the natural or legal guardian to determine whether to exercise the withdrawal right on behalf of the Disabled Beneficiary. If the natural or legal guardian determines that the right should be exercised, the exercise shall be made in accordance with the provisions set forth herein.

9.6 Payment of Amounts Withdrawn. The Trustees shall distribute the amount withdrawn on the date specified in the beneficiary's notice of withdrawal.

9.7 Duty of Trustees to Inform Beneficiaries of Withdrawal Rights. The Trustees shall only have a duty to inform beneficiaries of withdrawal rights as specified in the Written Notice. If no directions are given in the Written Notice, or if no Written Notice is provided to the Trustees when the transfer is made, the Trustees shall not give any notification to the beneficiaries of the appropriate Trusts.

ARTICLE X

GENERAL TRUST PROVISIONS

10.1 Insurance.

A. Insured's Power. No person whose life is insured by an insurance policy owned by any of the Trusts at any time created or existing pursuant to the terms of this Trust Agreement shall have any ownership right in such insurance policy. If one of the Trusts becomes the owner of life insurance insuring the life of a person serving as Trustee of such Trust, then the co-



Trustee, if any, shall own all incidents of ownership in the insurance. If the insured is the sole Trustee, the insured shall designate any natural adult person, bank, or trust company to act as his or her co-Trustee for the sole purpose of exercising all rights, privileges, and incidents of ownership pertaining to the insurance.

B. Duties of Trustees. The Trustees may purchase insurance on the lives of one or both of the Settlers or upon the lives of any other persons in whom the Settlers have an insurable interest. The Trustees may purchase insurance, act as broker on the sale, and receive a commission as a result of the sale. The Trustees may also accept insurance policies as a transfer to any of the Trusts at any time created or existing pursuant to the terms of this Trust Agreement.

To the extent possible, the Trustees shall pay premiums, assessments, or other charges upon the policies and otherwise preserve them as binding contracts of insurance.

Upon the death of the insured, or upon the maturity date of any policy assigned or payable to the Trustees, the Trustees shall collect all proceeds due on the policies and may, if the Trustees deem it advisable, exercise any settlement options available under such policies. The Trustees are authorized to compromise and adjust claims arising out of the insurance policies upon such terms and conditions as the Trustees deem advisable. To the extent necessary, the Trustees may maintain or defend any dispute. The Trustees, however, shall be under no duty to maintain or enter into any litigation unless the Trustees' expenses, including attorneys' fees and costs, have been advanced or guaranteed in an amount and in a manner reasonably satisfactory to the Trustees.

The Trustees' receipt to the insurer shall be a full discharge of the insurer concerning the monies receipted, and the Trustees alone shall thereafter be required to see to the application of the proceeds.

C. Discretion of Trustees to Pay Premiums. If any of the Trust Estates is insufficient to pay the premiums or other charges on policies of insurance that comprise part of such Trust Estates, the Trustees may, in the Trustees' discretion, pay the premiums or other charges. The Trustees may raise funds necessary to pay the premiums by: (i) selling at public or private sale, without notice to the Settlers, any beneficiary, or any other person, a sufficient portion of the principal of the applicable Trusts; (ii) borrowing on the security of the principal of the applicable Trusts or any part thereof or on any of the insurance policies; (iii) applying the dividends on any of the policies; or (iv) surrendering any of the policies for their cash surrender values. The Trustees may also, in the Trustees' discretion, convert any policy on which premiums have not been paid due to insufficient funds into a paid-up policy pursuant to the terms of the policy. Finally, the Trustees may advance sufficient funds to pay premiums or charges upon a policy. In that event, the Trustees may reimburse Trustees, from the appropriate Trusts, for the amounts of appropriate advances.

10.2 Spendthrift Clause. The interest of each beneficiary in the income or principal of any of the Trusts at any time created or existing pursuant to the terms of this Trust Agreement shall not be subject to the claims of any creditor, any spouse for alimony or support, or others. No creditor may attach, garnish, or lien the assets of the applicable Trusts. No beneficiary may voluntarily or involuntarily alienate or encumber such beneficiary's interest in the applicable Trusts or the assets

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of such Trusts. This provision shall not restrict the exercise of any power of appointment or withdrawal that is granted to a beneficiary by this Trust Agreement.

10.3 Perpetuity Savings Clause. The Trustees shall not continue any of the Trusts at any time created or existing pursuant to the terms of this Trust Agreement beyond the period set forth by the Rule Against Perpetuities as applied under the laws of the state having jurisdiction of the Trusts in question. Upon the expiration of the Rule Against Perpetuities period, the Trustees shall terminate the applicable Trusts and shall distribute the assets of such Trusts to the beneficiaries of such Trusts who are then permissible distributees of such Trusts in accordance with their relative interests in such Trusts. If the permissible distributees' relative interests are uncertain, the Trustees shall distribute the property of such Trusts to the permissible distributees as the Trustees deem to be consistent with the Settlor's intent as set forth in this Trust Agreement. In the event the Trustees are uncertain as to the Settlor's intent, the Trustees may seek instructions from a court having jurisdiction over the administration of the Trusts.

10.4 Governing Law. This Trust Agreement and all of the Trusts at any time created or existing pursuant hereto shall be construed in accordance with the laws of the **STATE OF UTAH**, and the courts of **SALT LAKE COUNTY, UTAH**, shall have exclusive jurisdiction over all matters arising in connection with this Trust Agreement.

10.5 Definitions and Technical Directions. Where applicable in this Trust Agreement, the following terms and directions shall have the following meanings:

A. **"issue".** This term means lineal descendants of the ancestor in question and includes both the natural and the adopted issue of such ancestor. For purposes of this Trust Agreement, no person can be an adopted issue unless his or her adoption occurs before his or her twenty first (21st) birthday. In the event an adopted person is also part of an ancestor's natural issue, that person shall take only in one capacity, which shall be the capacity in which that person receives the larger share.

B. **"child in being".** This term means a child who is born alive shall be treated as a child in being during the actual period of gestation for purposes of: (i) determining if a person died without children or issue surviving; and (ii) determining if a person is entitled to share in a distribution of applicable Trust Estates. A child in being's rights shall be enforceable beginning at birth.

C. **"per stirpes".** This term means that if any designated beneficiary is dead at the time such beneficiary's right to a distribution would have vested if such beneficiary had been alive, then that distribution shall be distributed to such deceased beneficiary's issue by right of representation. For instance, if on the date the right to distribution vests a beneficiary is deceased, distribution shall be made to such beneficiary's children in equal shares. If the deceased beneficiary has a child who is also deceased, such deceased child's share shall be distributed to such deceased child's children in equal shares. If a deceased beneficiary has no issue, such beneficiary's share shall lapse. Distribution on account of any other deaths shall be handled in like manner.

10.6 Invalid Provisions. If any provision of this Trust Agreement is held to be invalid, no other provision shall be affected. All other provisions shall be given full force and effect.

10.7 Survivorship. In determining the beneficiaries of any of the Trusts at any time created or existing pursuant hereto, a person shall be deemed to have survived another person, a point in time, or an event, as the case may be, only if such survivorship is for at least a thirty (30) day period. This rule shall not apply, however, in any case where its application would cause an otherwise valid provision of this Trust Agreement to be void because of the Rule Against Perpetuities, the rule limiting suspension of the power of alienation, the rule against accumulation, or any similar rules.

10.8 Age. A person attains a specific age (for example age twenty-one (21)) at the beginning of the day that begins such person's next year of life (for example the beginning of the person's twenty second (22nd) year of life). Any person whose birthday falls on February 29 shall be deemed to have a birthday on February 28 for all purposes of this Agreement.

10.9 Number and Gender. The singular shall be interpreted as the plural and vice versa, if such treatment is necessary to interpret this Trust Agreement in accordance with the manifest intent of the Settlor. Likewise, if either the feminine, masculine, or neuter gender should be one of the other genders, it shall be so treated. The terms "Trustee and Trustees" are used in the neuter throughout this Trust Agreement and apply to an individual trustee or trustees and to any co-trustee or co-trustees, as the context so requires.

10.10 Paragraph Headings. The paragraph and other headings used herein are for convenience and shall not be used in the interpretation of this Trust Agreement.

10.11 Revocability and Irrevocability of Certain Trusts at Certain Times. During Settlor's joint lives, Settlor, acting jointly, reserve the right, at any time and from time to time, without the consent of any other person and without notice to any person other than the Trustees, to alter, amend, or revoke the Trust hereby created in whole or in part, or to change the terms or beneficiaries hereof, by delivering to the Trustees at any time during the joint lives of Settlor a written notice of such alteration, amendment, revocation, or change signed by both of the Settlor. Upon any such revocation the Trustees, upon receiving a proper receipt, shall deliver to Settlor all property then in the Trustees' hands in respect of which the Trust has been revoked; and shall execute and deliver any instruments which may be necessary to release any interest the Trustees may have in such property. Upon the death of the first to die of Settlor, this Trust Agreement, together with the Trusts which are created upon the death of the first to die of Settlor, shall become irrevocable.

Attestation

The above Trust Agreement, was on the above date executed and acknowledged by **RALPH W. BURROWS** and **IDA B. BURROWS**, in the presence of each of us, and at the same time, we, at their request, in their presence and in the presence of each other, hereunto subscribed our names as witnesses thereto; this attestation clause having been first read aloud; and we hereby certify that at the time of execution hereof to the best of our knowledge the above named individuals are of legal age or older, of sound mind, and under no constraint or undue influence; and that each witnesses is of legal age or older.

Marilyn S. Moon of 1291 East 7575 So.
Witness Signature

Melinda Leigh 84047

Lorna S. Moon of 1291 E 7575 So
Witness Signature

Melinda 84047

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF UTAH

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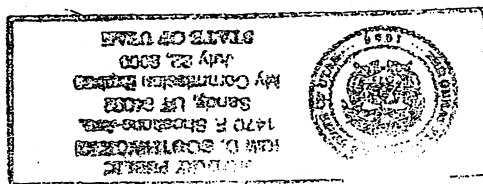
)ss.

COUNTY OF SALT LAKE

)

On Oct. 2nd 1992 personally appeared before me the undersigned notary, the following persons: MARILYN & LORNA S. MOON, who were proven to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to on this instrument, and acknowledged that he/she/they executed the same.

(Seal)



Kim D. Southward
Notary Public

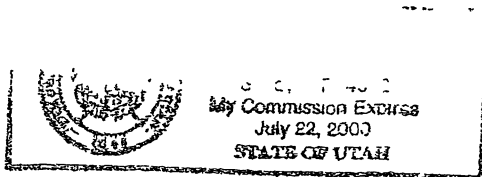
IN WITNESS WHEREOF, this Trust Agreement has been executed on the day and year first above written.

Ralph W. Burrows
RALPH W. BURROWS, Settlor and Trustee

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

On this date of Oct. 2nd, 1997, before me, the undersigned notary, personally appeared **RALPH W. BURROWS**, who is personally known to me to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

(Seal)



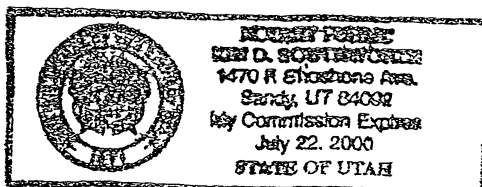
Kim D. Southward
Notary Public

IDA B. Burrows
IDA B. BURROWS, Settlor and Trustee

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On this date of Oct. 2nd, 1997, before me, the undersigned notary, personally appeared **IDA B. BURROWS**, who is personally known to me to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

(Seal)



Kim D. Southward
Notary Public

Tab 5

Durable Power of Attorney

For Asset Management

KNOW ALL MEN BY THESE PRESENTS

THAT **IDA B. BUROWS** has made, constituted, and appointed, and by these presents does make, constitute, and appoint, **RAYMOND R. BURROWS** her true and lawful Attorney for her and in her name, place, and stead and for her use and benefit to ask, demand, sue for, recover, collect, and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities, and demands whatsoever, as are now or shall hereafter become due, owing, payable, or belonging to **IDA B. BUROWS**, and have, use, and take, all lawful ways and means in her name or otherwise, for the recovery thereof by attachments, arrests, distress, or otherwise, and to compromise and agree for the same, and make acquittances or other sufficient discharges for the same, for her and in her name to:

Make, seal, and deliver

Bargain, contract, agree for

Purchase, receive, and take lands, tenements, and hereditaments, and accept the seizing and possession of all lands, and all deeds and other assurances in the law thereof; and to lease, let, demise, bargain, sell, remise, release, convey, mortgage, and hypothecate, lands, tenements, and hereditaments, upon such terms and conditions and under such covenants as such Attorney shall think fit.

Also to make decisions with respect to the medical care of **IDA B. BUROWS** and all other matters concerning her health, including, but not limited to, choosing health care providers, making determinations with respect to the nature and location of such care, and the execution and delivery of all documents, contracts, and agreements in connection with such health care related decisions.

Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, chooses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, including all business related to accounts in financial institutions. Also to gift property, whether real or personal, or sums of money or any other items belonging to **IDA B. BUROWS**, and also for **IDA B. BUROWS** and in her name and as her act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases, and satisfactions of mortgage, judgment, and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

GIVING AND GRANTING unto **RAYMOND R. BURROWS**, said Attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as **IDA B. BUROWS** might or could do if personally present herself, thereby ratifying and confirming all that her said Attorney, **RAYMOND R. BURROWS**, shall lawfully do or cause to be done by virtue of these presents.

THIS POWER OF ATTORNEY shall not be affected by the subsequent disability or incompetence of **IDA B. BUROWS**.

TO INDUCE ANY third party to act **hereunder**, **IDA B. BUROWS** hereby agrees that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and **IDA B. BUROWS**, for herself and for her heirs, executors, legal representatives, and assigns, hereby agrees to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

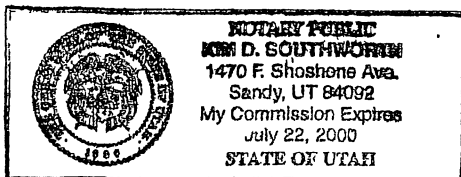
IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of Oct., 1997.

Ida Burton Burrows
IDA B. BUROWS

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

On this date of Oct. 2nd 1997, before me, the undersigned notary, personally appeared **IDA B. BUROWS**, who is personally known to me to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose.

(Seal)



Kim D. Southworth
NOTARY PUBLIC