

**Declaration of Trust  
of  
Jayne Smith**

This Trust Agreement is entered into this Fifth day of May, 2005, by and between Grantor Jayne Smith, hereinafter called "Grantor", and Jayne Smith, hereinafter referred to as "Trustee."

ARTICLE 1  
BACKGROUND PROVISIONS

1.1 **Trust Property.** The Grantor has transferred and delivered, or will transfer and deliver, to the Trustee, without consideration, the property described in Schedule A attached hereto. Also, the Grantor has designated, or may designate, the Trustee as beneficiary of certain life insurance policies and may hereafter designate the Trustee as beneficiary under any pension, profit sharing or other forms of employee benefit plans in which the Grantor has a beneficial or assignable interest. Additional property, real or personal, or an interest therein, acceptable to the Trustee, may be transferred to this trust by the Grantor of any other person. The Trustee agrees to hold, manage and distribute the property described in Schedule A, and all other property hereafter received, as hereinafter provided.

It is the expressed intention of the Grantor to transfer to this trust all of his property, whether real, personal or mixed, of whatsoever nature and wheresoever located, regardless of whether title to such property has actually been changed to the name of this trust. If any asset of the Grantor is not listed on Schedule A to this trust, it is the intention of the Grantor that such property be added to and included on such Schedules and be deemed to be an asset of this trust.

1.2 **Person Serving as Trustee.** At the time of the execution of this agreement, the Trustee of this trust shall be Jayne Smith. Upon the death or disability of the Trustee, Jonathan Smith shall serve as Successor Trustee of this trust. In the event that Jonathan Smith is unable to serve, then James Smith shall serve as Successor Trustee of this trust. The Trustee of this trust may appoint any additional or successor Trustee, as such Trustee determines is reasonable or appropriate in the proper administration of this trust.

1.3 **Authority of Trustee.** Any action taken by any Trustee shall be binding on the trust estate and may be relied upon by third parties dealing with the trust. Documents of title shall be titled in the name of the trust.

1.4 **Beneficiaries.** The beneficiary of this trust shall be Jayne Smith. The contingent beneficiaries and remainder persons of this trust shall be as set forth below in this trust instrument.

1.5 **Name of Trust.** This trust shall be referred to and described as The Jayne Smith Living Trust, u/d/t May 5, 2005.

1.6 **Property to Retain its Character.** All property now or hereafter conveyed or transferred to the Trustee to be held by the Trustee pursuant to this Declaration shall remain the

## ARTICLE 2

### OPERATION OF THE TRUST DURING THE LIFETIME OF GRANTOR

2.1 **Property.** During the lifetime of the Grantor, the Trustee shall pay to the Grantor or shall apply for the Grantor's benefit, the net income of the trust property in quarter-annual or more frequent installments. If the Trustee considers the net income insufficient, the Trustee shall pay to the Grantor or apply for the Grantor's benefit, as much of the principal of the trust property as is necessary in the Trustee's discretion for the Grantor's proper health, support, maintenance, comfort, and welfare.

2.2 **Incapacity of Grantor.** If at any time, the Grantor has become physically or mentally incapacitated, whether or not a court of competent jurisdiction has declared the Grantor incompetent, mentally ill, or in need of a conservator, the Trustee shall apply for the benefit of the Grantor, such amounts of net income or principal necessary in the Trustee's discretion for the proper health, support, comfort and maintenance of the Grantor, until the incapacitated Grantor is again able to manage his affairs, or until the death of the Grantor. Any income in excess of the amounts applied for the benefit of the Grantor shall be accumulated and added to principal.

2.3 **Incapacity of Trustee.** If the Grantor is serving as Trustee and the Grantor becomes unable to participate in trust activities because of illness, disability or for any other reason, the Successor Trustee may, during such period of incapacity, act as Trustee under this instrument and make any and all decisions regarding the trust estate. The determination of whether or not the Trustee is incapable of acting shall be made by the Successor Trustee.

A. In the event that the Successor Trustee shall deem the Trustee to be unable to participate in trust activities because of illness, disability or for any other reason, the Successor Trustee shall prepare a declaration briefly stating the reasons necessitating the replacement of the incapacitated Trustee.

B. The Successor Trustee shall obtain an affidavit or declaration from a licensed physician who has examined the Trustee to be replaced certifying the need for a Successor Trustee. A copy of the declaration of the Successor Trustee and of the declaration of the licensed physician shall be personally delivered to the Trustee who is or are to be replaced. The delivery of these declarations shall be made by an individual other than the Successor Trustee and the examining physician. The notice shall be made by personal delivery, if at all possible to do so.

C. The person serving notice on the Trustee to be replaced shall inquire of this person whether or not it is their desire to be replaced as Trustee. If it is the currently serving Trustee's desire to remain serving as Trustee, the person serving delivery shall notify the named Successor Trustee and no change in Trustee shall result. If the currently serving Trustee indicates it is such Trustee's desire to be replaced, or if such currently serving Trustee is incapable or otherwise unable to communicate to the person serving the notice, the person serving notice shall prepare a declaration indicating this response.

D. If the notice is given by personal delivery and the currently serving Trustee has not indicated a desire to remain as Trustee, the Successor Trustee shall immediately assume the duties as Trustee.

E. If personal delivery is impractical or impossible, the Successor Trustee may assume the duties of Trustee seven (7) days after such notice is posted by ordinary mail by a stamped envelope bearing the most recent available address of the Trustee to be replaced. Such notice shall also indicated a phone number and address to which the Trustee to be replaced should communicate if it is such Trustee's desire not to be replaced.

F. The declaration of the Successor Trustee, the declaration of the licensed physician, and the declaration of the person serving notice to the Trustee to be replaced shall all be made under penalty of perjury.

G. Any person dealing with the trust may rely upon these declarations. All transactions entered into by the Successor Trustee and any other person dealing with the trust in reliance on these declarations in good faith shall be conclusive and binding upon the trust.

H. The Successor Trustee acting in good faith shall incur no liability to the Grantor of this trust or any beneficiary of this trust or any remainder men of this trust as a result of any action taken according to this provision.

**2.4 Revocation During the Grantor's Lifetime.** During the lifetime of the Grantor, this trust may be revoked in whole or in part with respect to all property only by an instrument in writing signed by the Grantor and delivered to the Trustee. On revocation, the Trustee shall promptly, within a reasonable period of time, deliver to the Grantor all of the property of the Grantor which was held and administered by the Trustee. The Trustee shall also account for the Trustee's acts since the preceding account. If this instrument is revoked with respect to all or a major portion of the assets subject to it, the Trustee shall be entitled to retain sufficient assets reasonably necessary to secure payment of liabilities lawfully incurred by the Trustee in the administration of the trust, including Trustee's fees that have been earned, unless the Grantor shall indemnify the Trustee against loss or expense.

**2.5 Amendment During the Grantor's Lifetime.** The Grantor may at any time during the Grantor's lifetime amend any of the terms of this instrument by an instrument in writing signed by the Grantor and delivered to the Trustee. No amendment shall substantially increase the duties or liabilities of the Trustee or change the Trustee's compensation without the Trustee's consent, nor shall the Trustee be obligated to act under such an amendment unless the Trustee accepts it. If a Trustee is removed, the Grantor shall pay to the Trustee any sums due and shall indemnify the Trustee against liability lawfully incurred by the Trustee in the administration of the Trust.

ARTICLE 3  
DISTRIBUTION OF TRUST  
ESTATE UPON DEATH OF GRANTOR

**3.1 Payment of Expenses.** On the death of the Grantor, the estate and inheritance taxes,

<http://BidwellLaw.com>

including interest and penalties arising because of the Grantor's death, shall be attributed according to California law. All last illness and funeral expenses of the Grantor, attorney's fees, and other costs incurred in administering the Grantor's probate assets shall be attributed to the trust estate as a whole.

**3.2 Distribution of Tangible Articles.** Upon the death of the Grantor, the Trustee of the trust estate shall distribute all jewelry, clothing, household furniture and furnishings, personal automobiles, boats, and other tangible articles of a personal nature, or interest in any such property together with any insurance shall be distributed to in equal shares to the Grantor's children. The Trustee is directed to pay heed to any instructions given him or her by the Grantor, either orally or in an instrument of writing, regarding any specific distributions of personal property to the above-named beneficiaries or to any other person.

**3.3 Distribution of Trust Assets.** Upon the death of the Grantor, all the rest, residue and remainder of the trust assets shall be distributed in equal shares to the Grantor's three children; Jonathan Smith, James Smith, and Joshua Smith, outright and free of trust or to the descendant or descendants of such children if any of them shall be deceased, such descendants shall take in equal shares, outright and free of trust, that share their parent would have taken if living.

#### ARTICLE 4 SUB-CHAPTER S STOCK

**4.1 Qualified Sub-Chapter S Trust.** In the event that the trust should be the recipient at any time of any stock that either is, or in the Trustee's discretion, ought to be treated as a qualified Sub Chapter S trust, the trust shall be held, managed and administered under the following additional terms and conditions:

**4.2 Treatment as Qualified Sub-Chapter S Trust.** Notwithstanding any other provision in this Trust Agreement relating to the trust created herein, or any trust later created by this agreement, the Trustee is directed to cause each such trust to be and to continue to be a "qualified Sub-chapter S trust" as described in the provisions of Section 1361(d) of the Internal Revenue Code of 1986, as amended.

**4.3 Terms and Conditions of Trust.** With respect to any qualified Sub-Chapter S trust: there shall be only one current income beneficiary of the trust during the life of the current income beneficiary [Section 1361(d)(3)(A) of the Internal Revenue Code.]; and any distributions of income or principal from the trust during the life of the current income beneficiary shall be made only to that beneficiary [Section 1361(d)(3)(A) of the Internal Revenue Code.] who must be a citizen or resident of the United States [Section 1361(d)(3)(B) of the Internal Revenue Code; and the income interest of the current income beneficiary must terminate on the death of the current income beneficiary or the termination of the trust, whichever occurs first; and the trust must distribute all if its assets to the current income beneficiary on termination of the trust during that beneficiary's life; and all the income of the trust, as defined in Section 643(b) of the Internal Revenue Code. shall be distributed currently to the current income beneficiary [within in the meaning of Section 1361(d)(3)(B) of the Internal Revenue Code.]. Further, any income that is accrued, accumulated, or undistributed on the

death of the current income beneficiary shall be distributed in a manner permitted by Section 1361(d)(3)(B) of the Internal Revenue Code.

4.4 Preservation of Sub-Chapter S Status. In the event that any provision of this trust shall not be in conformity with the law describing a qualified Sub-Chapter S trust, the Trustee is directed to amend such trust, or to make such distributions outright to any beneficiary to preserve the Sub-Chapter S status of any shares held by the Trustee.

4.5 Authority of Trustee to Terminate. The Trustee may, in his sole and absolute discretion, terminate or cause to be terminated the Sub-Chapter S status of any shares owned by the trust if the Trustee shall deem it reasonable or appropriate to do so.

4.6 Authority of Trustee to Amend. It is the express intention of the Grantors that if the trust is the owner of any shares of any corporation which has Sub-Chapter S status that such status not be terminated other than by the express intention and act of the Trustee. Accordingly, the Trustee is authorized to amend, insert or revoke any provision into the trust instrument necessary for it to maintain its Sub-Chapter S status.

4.7 Powers of Trustee for Sub-Chapter S Trust. In addition to any other power given to the Trustee not inconsistent with the foregoing qualified Sub-Chapter S trust, the Trustee is vested with the following powers: the power to consent to a Sub-Chapter S election, including consent on behalf of the decedent for the portion of the year prior to the date of death; and the power to enter into agreement respecting short period allocations; and the power to enter into agreement respecting distributions of income, including distributions of Sub-Chapter C earnings and profits; and the power to pay estate tax in installments, and retain S corporation stock during the payment period; and the power to sell S corporation stock; and the power to distribute S corporation stock to beneficiaries, unequally if necessary, in a manner to preserve the election and to qualify a trust as a qualified Sub-chapter S trust.

4.8 Indemnification. The Trustee shall not be personally liable on any Trust obligations and in the event he shall be required to personally defend against any such claim, he shall be entitled to indemnification by the Trust for such defense on each of such claims and the costs of any such personal defense shall be borne by the Trust Estate.

## ARTICLE 5 POWERS OF THE TRUSTEE

5.1 Powers Identified. To carry out the purposes of any trust created under this instrument and subject to any additions or limitations stated elsewhere in this Trust Agreement, the Trustee is vested with the following powers with respect to the trust estate and any part of it, in addition to those powers now or hereafter conferred by law:

5.2 Power to Retain Property. To continue to hold any property, including shares of the Trustee's own stock, that the Trustee receives or acquires under the trust as long as the Trustee deems advisable.

5.3 Power to Operate Business. To continue to participate in any business or other enterprise at the risk of the trust estate and to effect incorporation, dissolution or other change in the form of organization of the business or enterprise.

5.4 Power to Purchase, Sell, Exchange, Repair, etc. To manage, control, grant options or sell (for cash or on deferred payments), convey, exchange, partition, divide, subdivide, improve and repair trust property; and to create restrictions, easements and other servitudes, with or without consideration.

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

5.6 Power to Borrow. To borrow money and to encumber or hypothecate trust property by mortgage, deed of trust, pledge or otherwise.

5.7 Power to Insure. To carry, at the expense of the trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the trust estate and the Trustee against any hazard.

5.8 Power to Commence or Defend Litigation and Power to Compromise Claims. To commence or defend litigation with respect to the trust or any property of the trust estate as the Trustee may deem advisable, at the expense of the trust. To compromise or otherwise adjust any claims or litigation against or in favor of the trust.

5.9 Investment Powers. To invest and reinvest all or any part of the trust estate in such common or preferred stocks, shares and investment trusts, and investment companies, bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate or other property as the Trustee, in the Trustee`s discretion, may select. The Trustee may continue to hold in the form of which received, (or the form to which changed by reorganization, split-up, stock dividend, or other like occurrence), any securities or other property the Trustee may at any time acquire under this trust, it being the Grantor`s express desire and intention that the Trustee shall have the full power to invest and reinvest the trust funds without being restricted to forms of investment that the Trustee may otherwise be permitted to make by law. The investments need not be diversified.

5.10 Power to Manage Securities. With respect to securities held in the trust, to have all the rights, powers and privileges of an owner, including, but not limited to, the power to vote, give proxies, and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales and leases, and incident to such participation, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscription or conversion rights; provided, however, that the Corporate Trustee may vote its own shares in the election of directors only in the manner determined and directed by Grantor during the Grantor`s lifetime, or by the beneficiary or after the Grantor`s death a majority of the beneficiaries of the trusts hereunder containing such shares.

5.11 Power to Retain or Purchase Unproductive Property. To retain, purchase or otherwise

5.12 Power to Hold Property in Nominee. To hold securities or other property in the Trustee's own name or in the name of its nominee with or without disclosing any fiduciary relationship.

5.13 Power to Advance Funds. To loan or advance the Trustee's funds to the trust for any trust purpose, such advances, with interest at the then current rates, to constitute a first lien upon the entire trust estate and to be repaid out of principal or income.

5.14 Power to Budget. To budget the estimated annual income and expense of the trust in such manner as to equalize, as far as practicable, periodical income payments to beneficiaries.

5.15 Power to Determination of Principal and Income. Except as otherwise specifically provided in this instrument, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Principal and Income Law from time to time existing. Any such matter not provided for either in this Trust Agreement or in the Principal and Income Law shall be determined by the Trustee in his or her discretion.

5.16 Power to Division and Distribution in Kind. In any case in which the Trustee is required, pursuant to the provisions of the trust, to divide any trust property into parts or shares for the purpose of distribution, or otherwise, the Trustee is authorized, in the Trustee's absolute discretion, to make the division and distribution in kind, including undivided interests in any property, or partly in kind and partly in money, and for this purpose, to make such sales of the trust property as the Trustee may deem necessary on such terms and conditions as the Trustee shall see fit.

5.17 Power to Transact with Estate of Grantor. If the Trustee deems it necessary or for the protection of the estate of the Grantor, or in the best interests of such estates or this trust and the beneficiaries thereof, the Trustee, in his or her sole and absolute discretion, may with trust funds, purchase any securities or other property at a fair value from the legal representatives of such estate and retain such property as part of the trust estate, and make secured or unsecured loans of trust funds, at the then current rate of interest, to such legal representatives without any liability for loss resulting to the trust estate by reason of any such purchase or loan.

5.18 Power to Invest in Life Insurance. The Trustee shall have the power to apply for, own, receive as a part of the trust assets, hold, and/or pay premiums upon life insurance in any form and upon the life of any person or persons, as the Trustee may deem advisable. The Trustee is authorized to exercise all rights under such policies and no company issuing the same shall be required to determine the extent of the authority of the Trustee.

5.19 Power to Adjust for Tax Consequences. The Trustee shall have the power, in the Trustee's absolute discretion, to take any action and to make any election to minimize the tax liabilities of this trust and its beneficiaries, or between the income and principal accounts, to compensate for the consequence of any tax election or any investment or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

5.20 Power to Purchase Discount Treasury Bonds. The Trustee shall have the power to purchase at less than par, obligations of the United States of America that are redeemable at par in payment of any federal estate tax liability of the Grantor's estate in such amounts as the Trustee deems advisable. The Trustee may borrow funds and give security in order to effect a purchase and shall resolve any doubt concerning the desirability of making the purchase or its amount in favor of making the purchase and in purchasing a larger amount than may be necessary. The Trustee shall incur no liability for losses resulting from a decision either to purchase or not to purchase which is made in good faith. The Trustee is directed to use such bonds to the fullest possible extent in paying the federal estate tax obligation of the Grantor.

5.21 Savings Clause. Notwithstanding anything to the contrary contained in this trust, no allocation or distribution of property or charge against any property or any request made hereunder which would cause any portion of any charitable deduction otherwise allowable to the estate to be disallowed and any such power, discretion or authorization which would cause such disallowance shall be null and void with respect to any charitable deduction property.

5.22 Delegation of Authority. The Trustees may delegate to any one of the Trustees or to others, any non-discretionary power, including but not limited, to the power singly or with others to sign checks; withdrawal slips; instructions for the receipt or delivery of securities or other property and the payment or the receipt of money; and the power, singly or with others, to access any safe deposit box or other place where the property of any trust created pursuant to this agreement is deposited.

5.23 Equitable Adjustment. In the event the Trustee should determine to charge any item of administration expense against any gift made hereunder and to reduce, accordingly, the amount of property otherwise passing pursuant to such gift, no adjustment shall be required to be made among the beneficiaries of property passing under the Grantor's Will by reason of any such charge.

5.24 Interested Persons Exercising Discretionary Powers. The exercise by the Trustee of the discretionary powers herein granted with respect to the allocation or distribution of property in kind or the charge of expenses, including taxes, against property or gifts and making adjustment with respect thereto shall be final and conclusive upon all interested persons and shall not be subject to any review. It is the intention of the Grantor that the Trustee shall have the greatest latitude in exercising such discretionary powers; provided, however, that under no circumstances shall any beneficiary to whom any property hereunder may be allocated or distributed or against which such expenses, including taxes, may be charged, participate in the exercise of any such discretionary power.

5.25 Exoneration Clause. The Trustee shall be and hereby is absolved and exonerated from any individual responsibility or liability for any loss which may result to any property passing under this Trust or otherwise than under this Trust, or which may result to any person in connection with the exercise or non-exercise of the powers, authority or elections granted to the Trustee under this Trust or conferred by law so long as the Trustee shall have been acting in good faith and without gross negligence.

5.26 Authority of Trustees. Any action taken by any Trustee of this trust shall be binding

on the trust estate and may be relied upon by third persons dealing with the trust estate.

5.27 Guarantee of Debts. The Trustee hereby has the authority to guarantee the personal debts of the trust or third parties.

5.28 Brokerage Accounts. The Trustee may transact business with brokerage firms and accordingly, shall have the following powers:

A. Brokerage Account. The Trustee shall be empowered to maintain an account with a stock brokerage firm, to execute all documents necessary for the opening and maintenance thereof, and to buy, sell and otherwise trade securities on behalf of the trust.

B. Margin Trading. The Trustee shall be empowered to maintain a margin account with a stock brokerage firm, to execute all documents necessary for the opening and maintenance thereof, to borrow money from such a firm and to pledge securities owned by the Trust as collateral and to grant security interest therein. The Trustee shall be empowered to permit the stock brokerage firm to re-lend these securities in the ordinary course of its business.

C. Options Trading. The Trustee shall be empowered to maintain a stock option account with a stock brokerage firm, to execute all documents necessary for the opening and maintenance thereof, and to buy, sell and otherwise trade stock options, including \*puts and calls, whether or not covered by like securities held in the brokerage account.

D. Trading by Third Parties. The Trustee shall be empowered to retain, employ or otherwise engage the services of, as well as to remove or replace, any qualified person or firm, including a bank, trust company, broker/dealer, investment advisor or portfolio manager for the purpose of providing advice, aid and assistance to the Trustee concerning transactions in securities to be made on behalf of the Trust. The Trustee shall be empowered to appoint said person or firm as attorney in fact to act on behalf of the Trust, including the power to entertain transactions for the Trusts' accounts with any stock brokerage firm with which the Trust maintains an account.

E. Access to Account by Third Parties. The Trustee shall be empowered to appoint and delegate third parties to perform administrative tasks on behalf of the trust and permit these parties to sign checks or drafts on Trust accounts or otherwise have access to Trust funds to further the purposes of the Trust, and to execute all documents necessary to effectuate this decision.

5.29 Rights, Powers and Privileges of Trustee. The enumeration of certain powers of the Trustee shall not limit his general powers, and the Trustee, subject always to the discharge of his fiduciary obligations, is vested with and shall have all the rights, powers, and privileges which an absolute owner of the same property would have.

## ARTICLE 6

### MISCELLANEOUS PROVISIONS

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

6.2 Payments to Minors or Others Under a Disability. The Trustee, in the Trustee's discretion, may make payments to a minor or other beneficiary under disability by making payments to the guardian or conservator of the Grantor's person, or if payable to someone other than the Grantor, to any suitable person with whom the Grantor resides, or the Trustee may apply payments directly for the beneficiary's benefit. The Trustee in his or her discretion may make payments directly to a minor if in the Trustee's judgment the minor is of sufficient age and maturity to spend the money properly.

6.3 No Physical Division of Trust Property Required. There need be no physical segregation or division of the various trusts except as segregation or division may be required by the termination of any of the trusts, but the Trustee shall keep separate accounts for the different undivided interests.

6.4 Income Accrued or Undistributed. Income accrued or unpaid on trust property when received into the trust shall be treated as any other income. Income accrued or held undistributed by the Trustee at the termination of any trust created hereunder shall go to the next beneficiaries of the trust in proportion to their interest in the trust. The Trustee shall not be required to prorate taxes and other current expenses to the date of distribution.

6.5 Notice of Events Affecting Interests. Unless the Trustee shall have received actual written notice of the occurrence of an event affecting the beneficiary interests of this trust, the Trustee shall not be liable to any beneficiary of this trust for distribution made as though such event had not occurred

6.6 Definition of "Issue" and "Children". As used herein, the term "issue" shall refer to lineal descendants of all degree, and the term "child" and "children" shall include adopted persons.

6.7 Definition of "Education". Whenever provision is made herein for payment for the education of a beneficiary, the term "education" shall be construed to include, without limitation, college and post-graduate study, so long as pursued to advantage by the beneficiary, at an institution of the beneficiary's choice; and in determining payments to be made for such college or post-graduate education, the Trustee shall take into consideration the beneficiary's related living expenses to the extent that they are reasonable.

6.8 Accounting. Any and all accountings shall be made annually or at other reasonable intervals as determined by the Trustee, to the beneficiaries of the trust or to their legal guardians or conservators or to the parents or guardians of any minor beneficiaries. Unless one or more of the beneficiaries (or parent, guardian or conservator) shall deliver a written objection to the Trustee within ninety (90) days of receipt of the Trustee's account, the account shall be deemed settled and shall be final and conclusive in respect to transactions disclosed in the account as to all beneficiaries. After settlement of the account by above, or by agreement of the parties, the Trustee shall no longer be liable to any beneficiary of the trust, including unborn and unascertained beneficiaries, in respect to transactions disclosed in the account, except for the Trustee's intentional wrongdoing or fraud.

6.9 Construction and Purpose. The primary purpose of this trust agreement is to provide for the income beneficiaries and the rights and interests of remainder men are subordinate to that

purpose. The provisions of this agreement shall be construed liberally in the interest of and for the benefit of the income beneficiaries.

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

6.11 Number and Gender; Headings. As used in this instrument, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates. The headings in this instrument are inserted for convenience of reference and are not to be considered in construction thereof.

6.12 Authority of Trustee. No person paying money or delivering any property to the Trustee need see to its application.

6.13 Trustee's Fee and Bond. Any Trustee named or appointed in this Agreement shall be entitled to reasonable compensation. No bond shall be required of any Trustee specifically named in this Agreement, named by the Grantor during the Grantor's lifetime, or named by consent of all Grantor's living beneficiaries after the death of the Grantor.

6.14 Reservation of Use and Occupancy of Home. If at any time the trust estate shall contain any improved real property actually used or suitable for occupancy as a residence, or any interest therein, the Grantor shall have the right to so use it free of rent. The Trustee shall pay the property taxes, assessments, liens, insurance, repairs and other charges or accounts necessary for the general upkeep and reasonable improvement of the property out of principal or income of the trust estate containing such home as the Trustee, in his or her discretion, shall determine. The Trustee, in the Trustee's discretion, may sell said property and replace it or rent or lease another residence suitable for the Grantor as the Trustee deems appropriate.

6.15 Margin Accounts. The Trustee is authorized to buy, sell and trade in securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by them with such brokers as security for loans and advances made to the Trustee.

6.16 Distribution of Assets. Whenever a Trustee is directed to make a distribution of trust assets or a division of trust assets, into separate trusts or shares upon the death of the Grantor, the Trustee may, in the Trustee's discretion, defer such distribution or division until six months after the Grantor's death. When the Trustee defers distribution or division of the trust assets, the deferred division or distribution shall be made as if it had taken place at the time prescribed in this instrument in the absence of this paragraph, and all rights given to the beneficiaries of such trust assets under other provisions of this instrument shall be deemed to have accrued and vested as of this prescribed time.

6.17 Rule Against Perpetuities. Any trust created by this instrument shall, unless terminated earlier, terminate twenty-one years after the death of Grantor and all of the Grantor's issue living at Grantor's death; the trust estate shall then be distributed as provided herein to those persons or organizations then entitled or authorized to receive distributions from the trust.

6.18 Governing Law. This trust has been accepted by the Trustee in the State of California, and its validity, construction and all rights thereunder shall be governed by the laws of that state. If however, the situs or place of administration of the trust is changed to another state, the law of that state shall govern the administration of the trust.

## ARTICLE 7

### RESIGNATION OF TRUSTEE; SUCCESSOR TRUSTEE

7.1 Resignation and Appointment of Successor. Any Trustee may resign at any time upon giving written notice, by certified mail to the last known address of the addressee, thirty (30) days before such resignation shall take effect, to the Grantor, or, after the death of the Grantor, to all adult beneficiaries and to the guardians, conservators or other fiduciaries of the persons or property of any minor or incompetent beneficiary who may then be entitled or authorized, in the Trustee's discretion, to receive payments of income hereunder. If no Successor Trustee is herein designated to act in the event of the resignation of the resigning Trustee, or no Successor Trustee accepts the office, a majority of those to whom such notice of resignation shall be given shall designate a Successor Trustee by written notice to the resigning Trustee. In the event a Successor Trustee shall not be so designated, the resigning Trustee shall have the right to appoint a Successor Corporate Trustee, or the resigning Trustee or any such beneficiary of this trust may secure the appointment of a Successor Trustee by a court of competent jurisdiction at the expense of the trust estate. The resigning Trustee shall transfer and deliver to the Successor Trustee the then entire trust estate and shall thereupon be discharged as Trustee of this trust and shall have no further powers, discretions, rights, obligations or duties with regard to the trust estate and all such powers, discretions, rights, obligations and duties of the resigning Trustee shall inure to and be binding upon such Successor Trustee.

7.2 No Liability for Acts of Prior Trustee. No Successor Trustee, whether or not specifically named herein, shall have any responsibility for the acts or omissions of any prior Trustee and no duty to audit or investigate the accounts or administration of any such Trustee.

Executed as of the day and year first-above written.

---

Jayne Smith

### **Explanation of Paragraphs.**

The first paragraph is a declaration of intent. The person making the declaration intends to create a trust. The creator of the trust is called either the Grantor or the Trustor.

### ARTICLE 1 -- BACKGROUND PROVISIONS

1.1 **Trust Property.** Schedule A lists all property transferred into the trust. "Transfer into the trust" is the most important concept of a trust. Transferring assets into a trust is also called

funding a trust. Without transfer or funding, your trust is nothing but a glorified will. Legal title of property must have the trust as the owner for the trust to operate, control manage and distribute the property.

The best example is your home. Ownership of your home is established by a grant deed conveying the real property from the previous owner to you. The grant deed is recorded with the county recorder to put the whole world on notice you own the property. To sell the property, you must sign a new grant deed transferring the property to the new owner and record the new deed with the county. If the property is in your name and you are dead or incapacitated, obviously you are unable to sign the deed. The county will not accept a new deed without your signature unless a judge of the Superior Court of California authorizes the sale. Obtaining a court's authorization is known as probate.

1.2 **Person Serving as Trustee.** Each trust has three actors: the Grantor; also known as Trustor or Setlor, trustee, and beneficiary. The Grantor is the person who creates the trust. The trustee is the person who manages the assets of the trust. A trustee has duties and responsibilities, but no rights. The final actor is the beneficiary, the person or persons who are to receive the benefit of the assets of the trust. As long as the grantor is alive and mentally competent, the Grantor, trustee and beneficiary are all the same person.

Upon the disability or death of the Grantor the trust allows for a substitution of a new trustee, known as the successor trustee to manage the assets of the trust.

1.3 **Authority of Trustee.** This paragraph informs third parties to rely on the authority of trustee to act.

1.4 **Beneficiaries.** The Grantor is also the beneficiary. Upon the death of the Grantor, the trust allows for new beneficiaries to step in and enjoy the benefit of the assets under the terms and conditions dictated by Article 3 of the trust.

1.5 **Name of Trust.** A trust may have any name. It is important to include the date of creation of the trust to help distinguish the trust from other trusts.

1.6 **Property to Retain its Character.** This is affirmation the trust is not to change any community property or separate property interests of property transferred into the trust.

## ARTICLE 2 -- OPERATION OF THE TRUST DURING THE LIFETIME OF GRANTOR

2.1 **Property.** This provision is to ensure income is not accumulated inside the trust and flows directly to Grantor. A revocable trust such as this does not have a tax identification number different from the Grantor. The trust=s tax identification number and the Grantor=s social security are the same. The trust is transparent to the federal and state governments for income tax purposes. While the Grantor is living, no additional tax returns on behalf of the trust are required because no income is attributed to the trust.

2.2 **Incapacity of Grantor.** If Grantor becomes incapacitated, the trustee is instructed to provide for the Grantor.

2.3 **Incapacity of Trustee.** The person who created the trust, is also the trustee. A

special feature of a trust is the ability another person to step in and manage the assets of the trust on behalf of the Grantor. This section details the steps necessary to establish incapacity.

**2.4 Revocation During the Grantor's Lifetime.** Trusts fall under two major categories, revocable and irrevocable. Revocable trusts can be destroyed, altered or changed. Irrevocable trusts are fixed and can not be changed. This provision declares this trust can be made void or cease to exist.

**2.5 Amendment During the Grantor's Lifetime.** This provision allows for the amendment of the trust. One line can be amended or the entire trust can be amended. The Grantor would want to amend an entire trust instead of creating a new trust because his or her property has been transferred into the trust.

### ARTICLE 3 -- DISTRIBUTION OF TRUST ESTATE UPON DEATH OF GRANTOR

**3.1 Payment of Expenses.** This provision states that all expenses of the Grantor's estate are to be charged against the trust as a whole and not against any individual's share.

**3.2 Distribution of Tangible Articles.** Tangible assets are assets you can hold and touch. Tangible assets include cars and boats registered with a department of California or a department of the federal government. For example, automobiles are registered with the California Department of Motor Vehicles. Registered assets are transferred using forms mandated by the department of registration. Tangible articles not registered are simply handed to the beneficiary by the successor trustee as directed in your trust. There is no actual transfer of tangible assets into a trust.

**3.3 Distribution of Trust Assets.** This is the paragraph most people think of when they want to make a Will. Typically the assets are distributed to the heirs. But assets may be held in trust and managed under the terms and conditions dictated by the trust.

ARTICLE 4 -- SUB-CHAPTER S STOCK. This Article is for Grantors who own a small business and have elected to have the corporation taxed as a partnership.

ARTICLE 5 -- POWERS OF THE TRUSTEE. This article is to assist the successor trustee in dealing with third parties. If a question is raised as to the ability or authority of the successor trustee to conduct a transaction, the pertinent power can be referred to for confirmation to the third party.

ARTICLE 6 -- MISCELLANEOUS PROVISIONS. This article is primarily to clarify terms.

ARTICLE 7 -- RESIGNATION OF TRUSTEE; SUCCESSOR TRUSTEE. This article is to address potential problems with trustee succession.