

2010-009938

Klamath County, Oregon



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08/20/2010 11:07:19 AM

Fee: \$82.00

Returned to County
Elizabeth
Schmitt

GENERAL POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

I, John Malcolm Schmitt ("Principal") maintaining an address at 5016 Southview Drive, Klamath Falls, OR 97603 do hereby make and appoint Rob Stewart Schmitt ("Agent") maintaining an address at: 3090 Glascock, #213, Oakland, CA 94610 my true and lawful attorney-in-fact for me and in my name, and in my behalf.

My Agent shall have full power and authority to perform any act, power, duty, legal right or obligation whatsoever that I now have or may later acquire in connection with or relating to any person, item, transaction, thing, business, property, real or personal, tangible or intangible, or matter whatsoever as I could do if personally present. I hereby ratify and confirm all acts that my Agent, or my Agent's substitute or substitutes, shall lawfully do or cause to be done by virtue of this power of attorney and the rights hereby granted. My Agent's powers and authority shall include, but not be limited to:

1. To conduct, engage in, and transact any and all lawful business of whatever kind or nature, on my behalf and in my name.
2. To enter into binding contracts on my behalf and to sign, endorse and execute any written agreement and document necessary to enter into any such contract and/or agreement, including but not limited to applications, assignments, bills of sale or lading, bonds, contracts, covenants, conveyances, deeds, options, trust deeds, security agreements, leases, mortgages, notes, insurance policies, receipts, title documents, checks, drafts, letters of credit, stock certificates, proxies, warrants, commercial papers, withdrawal and deposit slips, certificates of deposit of, or investments with or through banks, savings and loan, brokers, mutual fund companies or other institutions, proofs of loss, evidences of debts, releases, and satisfaction of mortgages, lien, judgments, security agreements and other debts and obligations and such other instruments in writing of whatever kind and nature as may be.
3. To request, ask, demand, sue and take any and all legal steps necessary to recover and collect any amount or debt owed to me.
4. To adjust, compromise and settle any claim, against me or asserted on my behalf against any other person or entity.
5. To receive, hold, possess and/or invest any and all sums of money, accounts, debts, bonds, commercial papers, checks, drafts, causes of action, bequests, deposits, notes, interests, dividends, certificates of deposit, any and all documents of title and demands whatsoever, whether agreed to or disputed, now due or due in the future, owned by, due, owing payable, or belonging to, me or in which I have or may hereafter acquire any interest, to have, or use.

6. To maintain, manage, insure, lease, rent, sell, mortgage, improve, repair, exchange, invest, reinvest and in any other manner (on such terms and at prices my Agent may deem proper) deal with all, any part or any interest in any real or personal property or asset whatsoever, tangible or intangible (now owned or acquired in the future by me) and to execute any necessary document, instrument or deed for such transactions. This includes the right to sell or encumber any homestead that I now own or may own in the future; the right to remove tenants and to recover possession; and the right to ask for, demand, sue for, collect, recover and receive all monies which may become due and owing to me by reason of such transaction.
7. To apply for, purchase, maintain and/or deal with insurance and annuity contracts, insurance policies, including life insurance upon my life or the life of any other appropriate person and to make any elections and disclaimers under such policies.
8. To receive, deposit, hold, demand, deal with and/or sue to recover all payments I receive from any annuity, pension, retirement benefits, retirement plans, insurance benefits and government program including, but not limited to, Social Security and Medicare; to prepare applications, provide information, and perform any other reasonable request by any government or its agencies in connection with governmental benefits (including but not limited to, medical, military and social security benefits), and to appoint anyone, including my Agent, to act as my "Representative Payee" for the purpose of receiving Social Security benefits.
9. To open, maintain and/or close bank accounts, including, but not limited to, checking accounts, savings accounts, certificates of deposit, investment accounts, brokerage accounts, retirement plan accounts, and other similar accounts with financial institutions; to conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, negotiating or endorsing any checks or other instruments, obtaining bank statements, passbooks, drafts, warrants, money orders, certificates, cashier checks, cash or vouchers payable to me by any person, firm, corporation or political entity; to perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.
10. To have access to any safe deposit box, vault or other storage area owned or leased by me alone or in conjunction with any other person, including access to their contents, and to examine, remove, keep or otherwise dispose of the contents.
11. To exercise any and all rights, including proxy rights, with respect to stocks, bonds, debentures, commodities, options or any other investments.
12. To maintain and/or operate any business that I currently own or have an interest in or may own or have an interest in, in the future.

13. To employ any professional and/or business assistance as may be appropriate, including but not limited to, attorneys, accountants, investment professionals, brokers and real estate agents.
14. To prepare, or cause to be prepared, sign, and/or file any documents with any federal, state, local or other governmental body, including, but not limited to, federal, state, local or other income and tax returns and necessary and/or related documents; to obtain or provide information to and from any agency, including governmental agencies, relating to tax matters and to negotiate, compromise or settle any matter with such agency.
15. To make gifts and charitable contributions of my real, personal, tangible or intangible property, to such persons or organizations without regard to whether such gifts are a part of my estate planning or otherwise, and if necessary, to file any state and federal gift tax returns and documents. Gifts to minors may be made to the minor directly or parent, guardian or close friend of the minor or pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers To Minors Act. Any gifts made shall be limited to gifts that qualify for the federal gift tax annual exclusion, shall not exceed in value the federal gift tax annual exclusion amount in any one calendar year, and this annual right shall be non-cumulative and shall lapse at the end of each calendar year. However, my Agent may not, unless specifically authorized by this document, (a) gift, appoint, assign or designate any of my assets, interests or rights, directly or indirectly, to my Agent, my Agent's estate, my Agent's creditors, or the creditors of my Agent's estate, (b) exercise any powers of appointment I may hold in favor of my Agent, my Agent's estate, my Agent's creditors, or the creditors of my Agent's estate, or (c) use any of my assets to discharge any of my Agent's legal obligations, including any obligations of support which my Agent may owe to others, excluding those whom I am legally obligated to support.
16. To transfer any of my assets to the trustee of any revocable trust created by me, if such trust exists at the time of such transfer.
17. To disclaim any interest (subject to other provisions of this document), which might be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate. However, Agent may not disclaim assets, to which I would be entitled, if the result is that the disclaimed assets pass directly or indirectly to my Agent or my Agent's estate.

This General Power of Attorney and the rights, powers, and authority of my Agent shall become effective immediately upon execution of this instrument. The rights, powers, and authority of this document shall remain in full force and effect thereafter until my death or until my disability or incapacity.

As used herein, "disability" or "incapacity" shall mean a lack of capacity to receive and evaluate information effectively, to communicate decisions, and/or to manage my financial resources and affairs properly.

My Agent shall be entitled to reimbursement of all reasonable expenses incurred as a result of carrying out any provision of this Power of Attorney. If desired, my Agent shall also be entitled to reasonable compensation for any services provided as my Agent

If so requested by myself or any authorized personal representative or fiduciary acting on my behalf, my Agent shall provide an accounting for all funds handled and all acts performed as my Agent.

This Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific terms, rights, acts or powers are not intended to restrict or limit the definition or scope of powers granted herein in any manner. If any part of this document is held to be invalid, illegal or unenforceable under applicable law, then the remaining unaffected parts of the document shall still remain in full force and effect and not be affected by any partial invalidity.

No person needs to inquire as to the reasons for the use or issuance of this power-of-attorney or as to the disposition of any proceeds paid to my Agent based on this document.

The powers granted to my Agent by this power-of-attorney are limited to the extent necessary to prevent (a) my income to be taxable to my Agent; (b) my Agent to have any rights or ownership with respect to any life insurance policies I may own on the life of my Agent; and/or (c) my assets to be subject to a general power of appointment by my Agent.

Any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. If this General Power of Attorney is terminated by operation of law, any person relying in good faith on the authority of this document, without notice of such termination, shall be held harmless.

Agent shall not be liable for losses resulting from judgment errors made in good faith. However, Agent will be liable for breach of fiduciary duty, failure to act in good faith and/or willful misconduct, while acting under the authority of this Power of Attorney.

I may revoke this Power of Attorney at any time by providing written notice to my Agent.

Signed on 08/20/10 (date), at Klamath Falls (city),
Oregon (state).

x John Malcolm Schmitt
Signature of Principal

State of Oregon)
County of Klamath) ss

The foregoing instrument was acknowledged before me this 20th day of August, 2010 by John Malcolm Schmitt (name of Principal), who is personally known to me or who has produced an Oregon driver's license as identification.



Tammy Kolii
Signature of person taking acknowledgment
(Notary Public)

TAMMY KOLII
Name typed, printed, or stamped

and Consultant Company agrees that Consultant will commence performing Services on the revised commencement date as determined by the Client unless under situations beyond Consultant's control.

3. Compensation, Time Records, and Deductions. Employer agrees to pay Consultant Company in accordance with the compensation plan set forth in Annex C hereto, for the services of Consultant Company's Consultant. Consultant will record on Employer's prescribed weekly time record, and in accordance with any procedures established by Employer, Consultant's hours worked on each day, and shall obtain on each time record Client's signature confirming and approving the hours worked by Consultant.

Consultant Company agrees that such Client approved time record shall be conclusive as to time worked each day by Consultant. Employer may elect to modify these procedures in writing, and Consultant Company and Consultant agree to be bound by any such future changes.

Consultant Company will work and be paid for a standard 40 hours week as per the agreement, or time and materials based upon the nature of the contract or otherwise agreed. Billable hours exceeding the standard 40 hours week must be approved by the Client in the first instance and will only be accepted with Client approval on Time Sheet.

Consultant Company represents and warrants that during the term of this Agreement, Consultant Company will pay all state, federal, social security and payroll taxes which may be due and are attributable to the compensation paid by Employer to Consultant Company, and/or the services performed by Consultant, and that Employer shall have no responsibility to withhold or pay such taxes. Consultant Company indemnifies and holds Employer harmless against all tax liability for State and Federal withholding taxes, State and Federal payroll taxes, including both Employer's and Principal's shares, and any and all other taxes of whatever nature, generated by Consultant Company's performance of services for Employer, utilizing the consulting services of Consultant.

Consultant shall submit accurate invoices to Employer with invoice numbers. Consultant shall bill Employer on the last working day of each month for the previous month's work unless otherwise stated herein. Employer shall pay Consultant for the hours confirmed by Client as work for the preceding period by Consultant. Incorrect invoices shall be rejected and mailed back to Consultant with an explanation.

Employer will pay Consultant Company 30 days net contingent upon payment to Employer by Client. Employer anticipates payment from Client 30 days net.

Employer and Consultant Company must comply with billing protocol enforced by the Client. Therefore, any additional specified terms, if applicable, shall be indicated on Consultant Company contract.

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4. Exclusivity. Consultant Company agrees that during the term of this Agreement, Consultant shall provide full time Services to the extent required by Employer's Clients and shall not perform services for others during such hours as Consultant is performing such Services for Employer's Clients.
5. Non-Competition. During the term of this Agreement and for one year after the termination of this Agreement, regardless of reason for termination, and whether with or without causes, Consultant Company agrees that neither Consultant Company nor Consultant shall, as a principal, employer, stockholder, partner, agent, consultant, independent contractor, employee, or in any other individual or representative capacity
- (a) provide any Services to any Client to which, within one year prior to such termination of this Agreement
 - (i) Consultant or Consultant Company has provided Services in any capacity on behalf of Employer; or
 - (ii) Consultant or Consultant Company has been introduced by Employer for the purpose of employment or contracting; or
 - (iii) Consultant or Consultant Company has been provided information only by Employer for the purpose of employment or contracting; or
 - (iv) Consultant or Consultant Company has been provided information for the purpose of employment or contracting by any Client for which Consultant or Consultant Company has performed Services in any capacity on behalf of Employer.
 - (b) retain or attempt to retain, directly or indirectly, for itself or any other party, the Services of any person, including any of Employer's employees, who were providing Services to or on behalf of Employer within ninety days prior to the termination of this Agreement, and to whom Consultant Company or Consultant have been introduced or about whom Consultant Company or Consultant have received information through Employer or through any Client for which Consultant has performed Services in any capacity on behalf of Employer.

Employer also agrees that they shall not hire or attempt to hire any of Consultant Company's Consultants/Representatives, directly or indirectly, on temporary or permanent basis.

Consultant Company and Consultant must understand the severity of the above provisions. If Consultant Company or Consultant choose not to comply with the provisions set forth, it shall be obligated to pay the Employer 25% of compensation earned, as liquidated damages for breach of this provision. However this agreement does not restrict Consultant Company from working with other vendors.

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6. **Discharge.** Employer may terminate this Agreement at any time, at will, and without cause, upon ten days' written notice to Consultant Company.
7. **Confidentiality and Nondisclosure.** Consultant Company and Consultant acknowledge that confidential information and materials regarding Employer and its Clients may be disclosed solely for the purpose of assisting Consultant in performing his/her duties. Such information and materials are and remain the property of Employer and its Clients respectively.

As used in this Agreement, the phrase "confidential information and materials" includes but is not limited to all non-public information belonging to Employer or Clients relating to their respective services and products, customers, business methods, strategies and practices, internal operations, pricing and billing, financial data, costs, personnel information (including but not limited to names, educational background, prior experience and availability), customer and supplier contacts and needs, sales lists, technology, software, computer programs, other documentation, computer systems, inventions, developments, trade secrets of every kind and character, that employer keeps in confidence and all other information that might reasonably be deemed confidential.

Consultant Company and Consultant acknowledge that Consultant may use such confidential information and material only during the term of this Agreement and solely for the purpose of rendering services as provided hereunder, and that this right expires upon termination of this Agreement. Consultant Company and Consultant therefore agrees not to use for their own benefit or for the benefit of any other person, except as specifically authorized in writing in advance by all owners of such information and materials, or divulge to any person for any reason, any such information and materials related to the business of Employer, any of its Clients, or their customers, Clients and affiliates, either at any time during the term of this Agreement and at any time after its termination.

Consultant Company and Consultant agree to take any and all reasonable actions, including those requested by Employer or Client, to prevent such disclosure and preserve the security of confidential information and materials. Consultant Company and Consultant further agree that neither Consultant Company nor Consultant will directly or indirectly disclose to any person, including to the Client or to any co-workers either during or after Consultant's term hereof, Consultant Company's rates and terms (disclosure to a spouse or financial institution shall be permitted so long as further disclosure by such spouse or institution is prohibited).

The term "confidential information and materials" shall not include any information or materials which:

- (a) Was in the public domain at the time of the disclosure to Consultant Company or Consultant, subject to clause (b);
- (b) Enters into the public domain through no fault of Consultant Company or Consultant subsequent to the time of disclosure to Consultant Company or Consultant;

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(c) Was in Consultant Company or Consultant's possession free of any obligation of confidence at the time of disclosure to Consultant Company or Consultant;

(d) Is rightfully obtained by Consultant Company or Consultant from third parties;

(e) Is released for disclosure by Employer;

(f) Is identified by Employer as no longer confidential information and materials;

(g) The Consultant Company or Consultant is required to disclose by law, order, or regulation, or by any governmental agency or force of governmental authority, provided that, before such disclosure, reasonable notice of such potential disclosure shall be given to Employer; or

(h)) The Consultant Company or Consultant is required to disclose pursuant to a subpoena, court order, or other legal or administrative process provided that, before such disclosure, reasonable notice of such potential disclosure shall be given to Employer.

8. Return of Property. Upon termination of an assignment with any Client, Consultant Company and Consultant will deliver to the Client all items, documents, or materials of any nature that are in Consultant Company's or Consultant's possession or control and that relate to the assignment or activities of the Client. Consultant Company and Consultant also agree that upon termination of this Agreement, Consultant Company and Consultant will deliver to Employer all items, documents, or material of any nature in Consultant Company's or Consultant's possession or control that were given to Consultant Company or Consultant by Employer and that relate to Consultant's employment with Employer. Failure to do so will result in the delay of the final payment to the Consultant Company.

9. Proprietary Rights. Consultant Company and Consultant shall disclose fully and promptly to Employer and to any Client for which Consultant has performed work, any and all inventions, processes, innovations, discoveries, developments, designs, techniques, formulae, improvements, computer programs and other technical materials relating to the business of Employer or Client which Consultant shall discover, conceive, make, generate or reduce to practice, along or jointly with others, during his/her employment with Employer, and resulting from such employment, whether or not they are patentable or copyrightable (collectively, "Proprietary Materials").

Consultant Company and Consultant hereby agree to assign to such Client his/her rights and interests in any Proprietary Materials, including copyrights to all copyrightable Proprietary Materials and all patent rights unless specifically directed otherwise in writing by Employer. No rights shall be reserved to Consultant Company or Consultant. Consultant Company or Consultant agrees to execute and transfer at any time, upon Employer's request, any certification, affidavit or other document confirming the Client's ownership rights under this Section.

Upon request at any time during or after the term of this Agreement, and at the expense of Employer, or its Client for whom the work in question was performed,

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Consultant Company and Consultant agree to assist Client, including its attorneys, in applications for patents or copyrights relating to Proprietary Materials. Assistance in preparing and prosecuting such applications shall include assistance regarding litigation, and upon Employer's or said Client's request, the execution of all papers and performance of all tasks that may reasonably be necessary to protect the rights of Client and to vest in it, or its assigns, ownership of the Proprietary Materials.

10. Representations. Consultant Company and Consultant warrant that all information provided by them (including, but not limited to resume, education, interview and references) is true to the best of their knowledge. Consultant Company and Consultant further warrant that neither is restricted by, and have no conflict of interest derived from, any employment or other agreement and have no other interest or obligation that would interfere with their performing work as directed under this Agreement, and they shall inform Employer immediately should such a restriction or conflict arise. Consultant Company and Consultant understand that any misstatements or lack of candor by Consultant Company and Consultant concerning Consultant's qualifications or availability to any Client may subject Consultant Company and Company to damages for any harm caused to Employer.
11. Resignation. Consultant Company may terminate this Agreement before the expiration of the term of this Agreement, with or without reason, as of a specified date that is at least two weeks after Employer receives written notice from Consultant Company of its intention to terminate as of the specified date.
12. Remedies for Breaches. Consultant Company and Consultant agree that monetary damages would be an inadequate remedy for any breach of Paragraphs 4, 5, 7, 8, or 9, regarding respectively, Exclusivity, Non Competition, Confidentiality and Nondisclosure, Return of Property, and Proprietary Rights, because damages for such breaches are not susceptible to exact measurement in dollars and that Employer would be irreparably harmed by such breach. Therefore, Employer shall be entitled to temporary restraining orders, temporary injunctions and permanent injunctions to prohibit such breaches. This paragraph in no way limits the remedies Employer has at law or equity for breaches by Consultant Company and/or Consultant of any of the paragraphs mentioned in this paragraph or of any other provision of this Agreement.
13. Effect of Agreement. This Agreement shall inure to the benefit of and shall be binding on the parties hereto, the successors, heirs and personal representatives of Employer, and the heirs and personal representatives of Consultant Company and Consultant. Consultant Company's right, obligations and duties under this Agreement shall not be assignable, and only Consultant shall perform services, as Consultant Company's Consultant for Employer's Clients. Termination of employment as provided in Paragraphs 6 and 11 shall terminate this Agreement except that Paragraph 5, 7 and 9 shall remain in effect for the periods specified in those paragraphs.
14. Notices. Any notice required or permitted to be given under this Agreement by Consultant Company or Consultant shall be sufficient if it is given orally and followed up within three business days in writing, and if it is sent by registered mail, return receipt requested, to the Employer at the address above.

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