

2011-013983

Klamath County, Oregon



00111593201100139830230235

12/20/2011 09:19:28 AM

Fee: \$147.00

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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### **DURABLE POWER OF ATTORNEY**

#### **WARNING TO PERSON EXECUTING THIS DOCUMENT**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. IT CREATES A DURABLE POWER OF ATTORNEY WHICH BECOMES EFFECTIVE IMMEDIATELY. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

**1. THIS DOCUMENT MAY PROVIDE THE PERSON YOU DESIGNATE AS YOUR AGENT WITH BROAD POWERS TO DISPOSE, SELL, CONVEY, AND ENCUMBER YOUR REAL AND PERSONAL PROPERTY.**

**2. THESE POWERS WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY.**

**3. YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS DURABLE POWER OF ATTORNEY AT ANY TIME.**

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## **DURABLE POWER OF ATTORNEY**

I, JOSEPH P. MOFFA, SR., as Principal, make this Power of Attorney as of the date set forth opposite my signature at the end of this instrument. The personal pronoun "I" and its variations as used herein shall refer to the Principal.

**THIS POWER OF ATTORNEY SHALL BE EFFECTIVE AS OF THE DATE HEREOF AND SHALL NOT BE AFFECTED BY THE SUBSEQUENT INCAPACITY OF THE PRINCIPAL.**

### **ARTICLE ONE: IDENTIFICATION OF AGENTS**

**A. Identification of Agent.** I hereby appoint YVONNE M. COFFMAN as my agent.

**B. Identification of Alternate Agents.** If my agent resigns, dies, becomes incapacitated (as defined herein), or otherwise fails to act or ceases to serve as my agent for any other reason, then I appoint EILEEN T. MOFFA as alternate or substitute agent with all the same powers granted to my original agent.

The term "my agent" as used herein shall include any alternate or substitute agent.

**C. Form of Signature.** When my agent signs on my behalf under the powers given in this instrument, the form of signature authorized in California Civil Code section 1095 shall be used. For example:

"JOSEPH P. MOFFA, SR., by YVONNE M. COFFMAN, as  
Attorney-in-Fact."

**D. Manner of Resignation or Declination.** Any resignation or declination to act by my agent or agent's substitutes shall be in writing, which writing shall be attached to the original of this instrument and recorded in the same county or counties as the original, if the original is recorded.

### **ARTICLE TWO: DETERMINATION OF INCAPACITY**

**A. Determination of Incapacity.** A person's "incapacity" under this instrument shall be deemed to exist when the incapacity has been declared by a court of competent jurisdiction, or when a conservator for such person has been appointed, or upon presentation of a joint or separate written statement(s) of opinion signed either: (i) by two physicians licensed to practice in the state of such person's residence, neither of whom is related to such person, (ii) by one licensed physician and all of the Principal's then-living children, or (iii) by one licensed physician and the remaining Agent or Agents, if any, which states that such person is: (a) incapable of caring for himself or herself or (b) is physically or mentally incapable of managing his or her financial affairs.

**B. Effective Date.** The effective date of such incapacity shall be the date of the decree adjudicating the incapacity, the date of the decree appointing the conservator, or as of the last date of execution of the signed statement(s) provided above, as the case may be. My agent shall

promptly attach said decree or statement(s), as the case may be, to the original of this instrument. If the original of this instrument has already been recorded at the time of such incapacity, then the original(s) of the statement(s) provided above, or a certified copy of the decree declaring incapacity or appointing a conservator, as the case may be, shall be attached to a copy of this instrument and shall be recorded in the same county or counties as the original.

**C. Reliance by Third Parties.** Third parties may rely on such evidence in dealing with my Agent (including transfers of property or documents of ownership or control to, or otherwise dealing with, an Agent appointed by this instrument or in accordance with its terms) and shall have no liability to any person for good faith dealings based on such reliance.

**D. Capacity Regained.** Notwithstanding the foregoing, if a person is determined to be incapacitated, that person may petition a court for a determination that no incapacity exists. A person will be deemed to have regained capacity if there is a finding to that effect by a court of competent jurisdiction, or when a conservatorship for such person has been judicially terminated, or upon presentation of joint or separate statements of opinion signed either by: (i) two licensed physicians, licensed to practice in the state of such person's residence, neither of whom is related to such person, (ii) by one licensed physician and all of the Principal's then-living children, or (iii) by one licensed physician and the remaining Trustee or Trustees, if any, which states that such Principal is: (a) capable of caring for himself or herself, or (b) is physically or mentally capable of managing his or her financial affairs. If the original of this instrument is recorded, then, when such event occurs, a certified copy of the decree declaring such person's capacity or terminating the conservatorship, or the statement(s) provided above, shall be attached to a copy of this instrument and shall be recorded in the same county or counties as the original.

**E. Waiver of Physician-Patient Privilege.** By reason of signing this instrument, I voluntarily waive any physician-patient privilege or psychiatric-patient privilege that may exist in my favor and hereby authorize physicians to examine me and disclose my physical or mental condition in order to determine incapacity or capacity for purposes of this Declaration.

**F. Indemnification of Physician.** In order to induce physicians to execute such certificate of incapacity or capacity, as the case may be, I, my estate, and my heirs, alternates, and assigns, will indemnify, defend, and hold any physicians free and harmless from and against any and all liability, loss, damages, and costs, including reasonable attorneys' fees, howsoever arising in connection with the execution of such certificates.

### **ARTICLE THREE: AGENT'S POWERS OVER FINANCIAL AFFAIRS**

**A. General Scope of Appointment.** I appoint my agent with full power of substitution, revocation, and delegation. I give my agent the full power and authority with respect to my assets to do, execute, and perform any act, deed, matter, or thing that in my agent's opinion ought to be done, executed, or performed in conjunction with this power of attorney, of every kind or nature, as fully and effectively as I could do if personally present and able to act, including bringing suit against any bank or other entity that fails or refuses to honor this power of attorney. The enumeration of specific powers as hereinafter set forth shall not limit or restrict, and is not intended to be construed or interpreted as limiting or restricting, the general powers granted to my agent except where powers are expressly restricted. I give my agent such powers

to use for my benefit and on my behalf. My agent's primary responsibility is to assure that I am comfortably supported for the rest of my life in a fashion consistent with my accustomed manner of living. My agent shall use the powers granted hereunder in a fiduciary capacity.

**B. Grant of Specific Powers.** As to any assets standing in my name, held for my benefit, or acquired for my benefit, I give my agent the following specific powers:

**B.1. Retain Property Without Diversification.** To hold and retain in the form received any and all property coming into my agent's possession. My agent shall not be required to dispose of any property or investments which might be considered speculative, nor to diversify any such investments coming into his or her possession.

**B.2. Invest and Purchase Property Without Diversification.** To purchase, acquire, and invest and reinvest in any of the following: (i) any form of securities, including, common or preferred stock, mutual funds, index funds, shares of investment trusts and investment companies, bonds, debentures, stock options, financial and commodities future contracts, forward and leverage contracts, publicly traded limited partnership interests, and securities providing tax-free or partially tax-free income, as well as any securities received upon reorganization, split-up, stock dividend, or other like occurrence; (ii) deeds of trust, notes, mortgages, and pooled mortgage funds or mortgage participations; (iii) real property of any residential, commercial, agricultural, or other nature, including, but not limited to, undivided interests, life estates, term interests, and remainder interests; (iv) business interests, including interests in sole proprietorships, partnerships (general or limited), corporations, joint ventures, or other form of business entity; (v) tangible personal property, including, but not limited to, precious metals, jewels, foreign currency, works of art, antiques, and coins, stamps, rare books, fine wine, or other collectibles, and motor vehicles, recreational vehicles, and boats, if any; and (vi) any other property, real, personal or mixed, that my agent may select. My agent shall not be bound by any legal restrictions on investments by fiduciaries, and may hold, acquire, retain, invest in, or improve assets on any reasonable basis, notwithstanding the normal duty of fiduciaries to avoid or dispose of assets which are unproductive, under-productive or of a wasting or over-productive nature. My agent may consider individual investments as part of an overall investment strategy. Investments need not be diversified.

**B.3. Bank Accounts and Financial Institutions.** To withdraw from, transfer, or close any accounts with financial institutions, including without limitation checking, savings, money market, and cash management accounts, certificates of deposit, and margin accounts, common trust funds, mutual funds, treasury bills and notes, and any other type of cash funds or cash equivalents held in my sole name, jointly in my name with others, or opened for my benefit, and to negotiate, endorse or transfer any checks or other instruments affecting such accounts, and to endorse, deposit, or collect any checks or drafts made payable to me or to my order. My agent shall also have the power to: open and maintain any such bank or other similar accounts with any financial institution, including brokerage houses, and to hold moneys in such accounts for such periods, and at such rates of interest, as he or she may determine, without liability for any loss of income. Such accounts shall also remain subject to withdrawal, and all checks, drafts, and other obligations of my agent shall be honored by said depositories upon the signature of my agent. The banking institution, brokerage firm, or any other institution that establishes accounts pursuant to this subparagraph is advised that there is nothing in this instrument that requires such



institution to exercise any discretion other than that required in normal banking procedures or brokerage procedures.

**B.4. Safe Deposit Boxes.** To enter, establish, close, maintain, and have access to any safe deposit box held in my name alone or jointly with another person, whether or not the institution renting such box has its own form of power of attorney for such purposes and to remove all or any of the contents of such box.

**B.5. Securities.** To exercise all the rights, powers, and privileges of an owner of any securities, including, but not limited to, the power to: (a) vote, give proxies, and to pay calls or assessments; (b) participate in voting trusts, pooling agreements, reorganizations, consolidations, mergers, and liquidations; (c) deposit securities with and transfer title to any protective or other committee under such terms as my agent may deem advisable; (d) exercise or sell stock subscription or conversion rights; (e) accept and retain as an investment any securities or other property received through the exercise of any of the foregoing powers; and (f) hold a security in the name of a nominee or in other form so that title may pass by delivery.

**B.6. Deal with Property.** To: (a) purchase, hold, manage, and grant security interests in real and personal property, including, but not limited to, precious metals, jewels, foreign currency, works of art, antiques, and coins, stamps, rare books, fine wine, or other collectibles, and motor vehicles, recreational vehicles, and boats, if any, on such terms and conditions that my agent deems proper; (b) sell, exchange, or liquidate any of my real or personal property, for cash or on terms, at public or private sale; (c) lease my real or personal property or contract for terms within or beyond my life expectancy and for any purpose, including oil leases and pooling, unitization, repressurization, community, or other types of agreements relating to the exploration, development, and conservation of gas, oil, timber, and other minerals or natural resources; (d) eject, evict or remove tenants or other persons from, and recover possession of, my real property by all lawful means, and to collect rents and profits from my real or personal property; (e) abandon any of my real or personal property or interest therein; (f) grant an option involving disposition of any of my real property or personal and take or purchase an option for the acquisition of any asset; (g) partition, divide, subdivide, assign, develop, and improve any of my real property; (h) adjust boundaries and create easements and servitudes; (i) dedicate land or easements to public use with or without consideration; (j) improve, remodel, and repair any of my property, and to remove, demolish, or otherwise dispose of any improvements to my real property. My agent's authority to deal with real property as provided in this instrument includes, but is not limited to, the real property described in Exhibit A attached hereto and incorporated herein by reference, which Exhibit A may be changed from time to time by me or my agent as I acquire and sell real property during my lifetime.

**B.7. Retirement Plans.** With respect to any retirement plan in which I am the participant (including, without limitation, plans for self-employed individuals, qualified and non-qualified plans, and individual retirement accounts), my agent is authorized to exercise all rights and options that I may have, including, but not limited to, the rights to elect retirement on my behalf, select various payment options, make beneficiary designations under such plans and change any existing beneficiary designations, make voluntary contributions to such plans, make so-called "roll-overs" of plan benefits into other retirement plans, borrow from such plans if authorized by the plan, and sell assets to or purchase assets from the plan if authorized by the

plan, and with respect to any such plans in which I may have an interest, but in which I am not the participant, my agent is authorized to make any necessary consents, or waivers on my behalf.

**B.8. Insurance.** To insure my life or the life of anyone in whom I have an insurable interest, insure any asset in which I have an interest, pay all insurance premiums, select any options under such policies, increase or decrease coverage under any such policy, borrow against any such policy, pursue all insurance claims on my behalf, adjust insurance losses, designate and change beneficiaries of insurance policies insuring my life and beneficiaries under any annuity contract in which I have an interest, purchase or maintain any medical insurance on me, my spouse (if any), or any of my descendants (if any), or to cancel any of the policies described herein.

**B.9. Collect and Recover Assets, Compromise Claims, and Litigate.** To demand, sue for, and collect all sums of money, debts, accounts, legacies, bequests, interest, dividends, annuities, and demands that are now, or may later become, due or payable to me, including any benefits payable by any governmental body or agency (such as Supplemental Social Security (SSI), Medi-Cal, Medicare, and Social Security Disability Insurance (SSDI) and for purposes of receiving Social Security benefits my agent is hereby appointed as my Representative Payee), and to take all lawful means to recover such assets, and to compromise claims for such assets and grant discharges for such assets in my name. To prosecute or defend actions, claims, or proceedings for the protection of my property, including the power to: renew, extend, compromise, arbitrate, adjust, and settle or release (with or without consideration), any claim, debt, or obligation held by or asserted against me or my property or which affects my property; to foreclose, extend the time of payment for, assign, partially release, or discharge mortgages, deeds of trust, security interests, and other liens; and with respect to deeds of trust, to execute subordinations, acreage or lot releases, and requests for partial or full reconveyance.

**B.10. Make Loans and Borrow Funds.** To loan any of my assets to my spouse (if I am married at such time) and any descendant of mine, or their personal representatives or a trustee for their benefit, which loans shall bear such interest, or no interest, and shall be secured or unsecured, as agent shall deem advisable. My agent is also authorized to borrow, alone or jointly with others, any money for any purpose from any person, corporation, or financial institution, on such terms and conditions as my agent deems reasonable, and to guarantee the obligations of any business in which I own an interest or the obligations of any member of family (other than my agent). My agent may encumber my property by mortgage, deed of trust, pledge, security interest, or otherwise. My agent may replace, renew, refinance, and extend any encumbrance, and repay loans or other obligations, and satisfy any guarantees which become enforceable against me or my estate.

**B.11. Credit Cards.** To use any credit cards in my name to make purchases and to sign charge slips on my behalf as may be required to use such credit cards; and to close my charge accounts and terminate my credit cards under circumstances where my agent considers such acts to be in my best interests.

**B.12. Employ Professional Advisors.** To employ and discharge any accountants, attorneys, investment counsel, real estate brokers, property managers, bookkeepers, consultants, custodians, auditors, appraisers, or any other professionals that my agent deems



reasonably necessary for the proper management and protection of my affairs, for the maintenance of proper accounts and records, and for advice in carrying my agent's duties and responsibilities under this instrument. Without limiting the foregoing, my agent is authorized to employ investment managers, investment agents, or other investment specialists as he or she deems necessary or desirable. Specifically, my agent is authorized to appoint an investment manager to manage all or any part of my assets and to delegate to such manager investment discretion which is not inconsistent with my agent's duties under this instrument or applicable law. Such appointment may include the power to acquire and dispose of assets without first obtaining my agent's consent. My agent may pay reasonable compensation to any such professionals hired by my agent from my assets. Any compensation paid to such professionals may be taken into consideration in determining the reasonableness of any compensation taken or requested by my agent hereunder. The foregoing provisions are not intended to relieve my agent of the duty to exercise reasonable care and prudence in selecting, employing, and supervising any such professionals.

**B.13. Represent Me in Tax Matters.** To prepare, sign, and file federal, state or local, income, gift, other tax returns of all kinds, FICA returns, payroll tax returns, claims for refunds, requests for extensions of time, petitions to the tax court or other courts regarding tax matters, and any and all other tax related documents, including, without limitation, receipts, offers, waivers, consents (including, but not limited to, consents and agreements under Internal Revenue Code §§ 2032A, 2033A, 1361-1363, or any alternate section thereto), closing agreements and any power of attorney form required by the Internal Revenue Service, the Franchise Tax Board, or other taxing authority with respect to any tax year between 1980 and 2050; to pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service, the Franchise Tax Board, or other taxing authorities; to exercise any elections (or to revoke elections where permissible) I may have under federal, state, or local tax law, including without limitation the election to have a corporation in which I am a shareholder taxed as an "S Corporation" under Subchapter S of the Internal Revenue Code, and elections affecting the allocation of my exemption from the generation-skipping transfer tax under Chapter 13 of the Internal Revenue Code; and generally to represent me in all tax matters and proceedings of all kinds, and for all periods, before all officers of the Internal Revenue Service, Franchise Tax Board, and any other taxing authority.

**B.14. Disclaim, Renounce, and Assign Interests.** To execute and deliver disclaimers as provided under the Internal Revenue Code and the California Probate Code as now existing or as hereafter amended; to renounce or assign any gift, inheritance, bequest or right of succession, with or without consideration.

**B.15. Change Character of Property.** To execute documents of transfer or conveyance or marital property agreements that convert the character of property in which I have an interest from joint tenancy to community property with my spouse (if I am married at such time) for the purpose of obtaining a step-up in basis on the entire value of such property pursuant to Internal Revenue Code § 1014, as amended from time to time, if my agent deems such transaction to be in my best interests or the best interests of the beneficiaries of my estate.

**B.16. Miscellaneous Powers.** To open, read, respond to, and redirect my mail; cancel or continue any of my club, church or other organization memberships, and to continue

any payments or contributions incidental to such memberships; take custody of all my important documents, including but not limited to my will, trust agreements, deeds, leases, life insurance policies, contracts, and securities; to enter into oral or written agreements on my behalf; to continue to pay any installment obligations I may incur; to execute, acknowledge, and deliver any agreement, stock power, deed, leases and assignments of leases, assignments of accounts receivable, and notices of the expected assignments of such accounts and cancellation of such notices, covenants, indentures, mortgages, deeds of trust and reconveyances thereunder, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgments, and other debts, or any other document for the accomplishment of, or relating to, any acts authorized by this instrument; and to perform all, any, and every act required to be done as fully as I could do if personally present and able to act.

#### **B.17. Powers Relating to Trusts.**

**B.17.a. Amend and Revoke Trusts.** To transfer any asset in which I have an interest to any trust that I have established and to exercise any power of withdrawal, amendment, or revocation (in whole or in part) that I may have with respect to any such trust or trusts. The authority to amend trusts shall include, without limitation, amendments that my agent determines are necessary or appropriate in order to take advantage of planning opportunities that will minimize taxes (for example, amendments made in response to changes in tax law). The authority to revoke trusts (in whole or in part) shall include revocations made for the purpose of making assets available with which to make death bed gifts to minimize death taxes, or for the purpose of making transfers for the purpose of qualifying me for public benefits as otherwise provided herein. Notwithstanding the foregoing provisions of this subparagraph, my agent shall not amend or revoke existing trusts if doing so would materially change the dispositive provisions of my existing estate plan.

**B.17.b. Deal with Trustees and Accountings.** I also authorize my agent (except where my agent and the trustee are the same person, in which case my alternate agent named herein, if any, shall act hereunder) to make demand on any trustee of a trust in which I have a beneficial interest for information or an accounting as provided in the California Probate Code, to initiate any proceedings against the trustee on my behalf, to waive the requirement that such trustee make any accounting or report that might otherwise be required by applicable law, and to review on my behalf and approve any such accountings that are made. I further authorize my agent to resign as trustee on my behalf if I am then acting as trustee or to consent to the resignation of another trustee or co-trustee then acting under any trust in which I have a beneficial interest.

**B.17.c. Powers of Appointment and Withdrawal Rights.** To exercise (in whole or in part), release, or let lapse any general or special powers of appointment that I may have, including but not limited to the exercise of annual withdrawal rights from trusts, such as so-called "five or five powers" or "Crummey powers."

**B.18. Powers Relating to Gifts.** To make gifts on the terms and conditions set forth below:

**B.18.a. General Gift Authority.** My agent is authorized to make gifts, grants, or other transfers without consideration, either outright or in trust, for any legitimate estate planning purpose, to or for the benefit of my spouse, my descendants, or charitable organization (including, without limitation, any private charitable foundation, charitable remainder trust, or charitable lead trust established by me, as well as any public charity). Such gifts may include the forgiveness of indebtedness, the completion of any charitable pledges I have made, and the direct payment of tuition and medical care for the benefit of any such person pursuant to the provisions of Internal Revenue Code § 2503(e). Such gifts may be made in cash or in kind, or partly in each, on a pro rata or non-pro rata basis. If my agent is other than my spouse and if any gifts are made to any individuals other than my spouse, then such gifts shall be made equally to all descendants of the same generation. For example, if a gift is made to a child or grandchild of mine, as the case may be, then a similar gift or gifts of the same amount must be made to each then living child or grandchild of mine, as the case may be.

Notwithstanding the foregoing, and subject to the provisions of paragraph B.19 below, in the event my agent is making gifts on my behalf for public benefits planning, then, and in that event, the requirement that such gifts be made equally to all descendants of the same generation shall be waived.

**B.18.b. Death Bed Gifts.**

**(1) Circumstances for Making and Amount of Death Bed Gifts.** Without limiting my agent's authority to make gifts under subparagraph a. immediately preceding, if my agent determines that: (1) I am terminally ill and it is unlikely that I will live, and (2) my estate is or may be subject to death taxes (even if my spouse is likely to survive me and death taxes would be deferred until my spouse's death by reason of the unlimited marital deduction), then my agent, in my agent's sole discretion, may make gifts up to the full amount of the federal gift tax annual exclusion under Internal Revenue Code § 2503(b) or successor statute, taking into account, if I am married, the amount that may be given by me from my separate property, if any, if my spouse is willing to sign a consent to split the gift pursuant to § 2513 of the Internal Revenue Code (hereinafter referred to as "death bed gifts").

**(2) Permissible Donees.** My agent is authorized to make death bed gifts to the following individuals:

First, to my then living children; provided, however, that if sufficient funds or suitable property are not available to make the full amount of such gifts to all of my said children, then the funds or property that are available shall be apportioned equally among my said children.

Second, if there are sufficient funds or suitable property remaining after making the foregoing gifts to my then living children, then out of the remaining funds or property gifts shall be made to the then living children of my said children (i.e., my grandchildren), in equal shares, per capita and not by right of representation; provided, however, that if sufficient funds or suitable property are not available to make the full amount of such gifts to all of such grandchildren,

then the funds or property that are available shall be apportioned equally among said grandchildren.

**(3) Completion of Death Bed Gifts Prior to My Death.** I request that my agent take all action reasonably necessary to ensure that the death bed gifts authorized hereunder are completed for federal gift tax purposes prior to my death, including making gifts by wire transfer, electronic funds transfer, or other method that is reasonably calculated to complete such gifts prior to my death. If I am in an irreversible coma or vegetative state and my life is being prolonged solely by artificial means under circumstances where the timing of my death may be subject to the control of my health care agent, the conservator of my person, or other legal representative, then I request that my agent hereunder confer with such health care agent, conservator, or legal representative concerning the timing of such gifts in relation to the timing of my death.

**(4) Effect on Testamentary Plan.** It is my desire that my agent make such death bed gifts in order to save death taxes even if doing so is inconsistent with my testamentary plan. For example, if my will or living trust provides for distribution of my estate to my children in equal shares upon my death, it is my desire that my agent include my grandchildren in such death bed gifts if death taxes could thereby be reduced, even if the effect would be to reduce the amounts passing to my children at my death or shift the total amount passing to each line of descent.

**(5) Effect of Pay-on-Death, Joint Tenancy, and Similar Arrangements.** Notwithstanding the provisions of the preceding subparagraph (4), I hereby confirm any pay-on-death, joint tenancy, or other such designations or arrangements made by me during my lifetime with respect to any bank, brokerage, or similar accounts, including but not limited to any such designations made for the benefit of my agent. My agent shall not be required to "break" any such accounts in order to make the death bed gifts described hereinabove, even if such funds are the only funds available with which to make such gifts; provided, however, that if doing so would save death taxes, my agent may distribute the funds or property in any such account to the person or persons who would otherwise take such account upon my death if doing so would reduce the amount of, or possibility of, death taxes. The foregoing may be illustrated by the following examples:

Example 1: Principal (P) has two children, A and B. A is P's agent under a Durable Power of Attorney. P owns a savings account in P's sole name with a balance of \$20,000 and a checking account with a balance of \$10,000 on which P has added A as joint tenant with right of survivorship. A is authorized to make death bed gifts to A and B entirely from the savings account. A need not "break" the joint tenancy account, the proceeds of which will pass to A at P's death by right of survivorship.

Example 2: Assume the same facts as Example 1, except that the balance of P's savings account is only \$10,000, not \$20,000. A is authorized to make gifts of \$5,000 each to A and B from P's savings account. A may also withdraw \$5,000 from the checking account as a further gift to A. B thus receives a death bed gift of \$5,000 while A receives a death bed gift of \$10,000. Notwithstanding that inequality, A need not make any further gift to B from the checking account, even though a balance of \$5,000 remains



in that account and even though doing so would reduce estate taxes at P's death. The additional gift to A is simply an acceleration of the amount A would have received upon P's death anyway by right of survivorship. Requiring A to make a gift to B from the checking account would be inconsistent with P's intent that the balance of such account pass to A at P's death by right of survivorship.

**B.18.c. Limitation on Gifts to Agent.** Notwithstanding the provisions of subparagraph B.18.b. above, any gifts my agent is authorized to make to himself or herself, or for his or her benefit, either directly or indirectly, including the discharge of his or her legal obligations, shall be limited to the greater of: (1) five thousand dollars (\$5,000), or (2) five percent (5%) of my net worth during any calendar year, which power shall be non-cumulative and shall lapse at the end of each calendar year; provided, however, that gifts to my agent may exceed such limitation if any one of the following conditions is met: (1) the individual I have named in subparagraph B.19.e. as "Special Agent" for this limited purpose only, consents in writing to the gift to my agent, (2) my then living adult children (other than my agent) unanimously consent in writing to the gift to my agent, or (3) court approval of the gift to my agent is obtained on petition of my agent or any other interested person pursuant to Probate Code § 4540.

**B.18.d. Income Tax Effects.** In making gifts hereunder, my agent may, but shall not be required to, consider the income tax effects of making a gift of any asset the income tax basis of which differs from fair market value, including the possibility of a step-up in basis at my death (or the death of my spouse with respect to community property) pursuant to Internal Revenue Code § 1014. In that regard, my agent shall have the sole discretion to determine whether the estate tax savings of making such gifts outweigh the income tax consequences.

**B.18.e. Gifts are Discretionary.** My agent shall have the sole discretion to determine whether and to what extent to make gifts hereunder; provided, however, that, except as otherwise provided above in subparagraph B.18.b, it is my desire that the donees of each generation be treated equally. Nothing stated herein shall be construed to require my agent to make any such gifts and my agent shall not be liable to any person for failing to make any gifts authorized hereunder, or for the manner in which such gifts are made, except for his or her bad faith, willful misconduct, or gross negligence, including without limitation the death tax or income tax consequences to my estate, beneficiaries, or heirs at law of mine. My agent shall be held free and harmless from any such liability, loss, cost, or expense, including reasonable attorneys' fees, arising from my agent's acts or omissions in connection with making any gifts under the provisions of this instrument.

**B.18.f. Payments to or for Benefit of Minors.** If a gift is made hereunder to any person who is under the age of twenty-one (21), and if no trust is established for such person, such person's gift may, in the discretion of my agent, be distributed to an adult member of such person's family (to be selected by my agent) as custodian until such age as my agent determines (but not to exceed 21 years), under the California Uniform Transfers to Minors Act.



**B.18.g. Consent to Split Gifts.** My agent is authorized to consent to split gifts made by my spouse (if I am married at such time) under § 2513 of the Internal Revenue Code or successor statute, and similar provisions of any state or local gift tax laws.

**B.19. Public Benefits Planning.**

**B.19.a. General Authority.** To apply for, to make any elections required, to maximize, and maintain, and avoid recovery from any and all public benefits, governmental programs, insurance benefits and retirement benefits to which the Principal may be entitled or may in the future become entitled, or to take actions necessary to avoid recovery from any entity providing such benefits. Such public benefits shall expressly include, but not be limited to: Veteran's benefits, Social Security (SSA), Social Security Disability Insurance (SSDI), Medicare, Medi-Cal or Medicaid, In-Home Supportive Services (IHSS), Supplemental Security Income (SSI) and so forth. To the extent necessary to accomplish the foregoing objectives, the agent is authorized to take any number of the following actions, which list is illustrative and not exhaustive:

1. Modifying or revoking, in whole or in part, any trust established by the Principal;
2. Create, on behalf of the Principal, any number of irrevocable trusts;
3. Effecting a transfer of the Principal's residence, or interest therein, to the Principal's spouse or to other permissible transferees under applicable laws and regulations then in effect, including but not limited to, agreeing to a transmutation of such residence to the separate property of the Principal's spouse, and transferring the Principal's residence to an Intentionally Defective Grantor Trust (IDGT);
4. Executing an Occupancy Agreement on the Principal's behalf concurrently with the gifting of any real property or interest therein.
5. Making gifts of the Principal's property, even to the extent such gifts may be in excess of the annual gift tax exclusion amount, to the Principal's spouse and to other permissible transferees;
6. Changing the character of the Principal's property from community property to shares of separate property;
7. Consenting on the Principal's behalf to support orders sought and obtained by the Principal's spouse for his or her proper support and to avoid his or her impoverishment;
8. Transferring and transmuting ownership in any of the Principal's assets to the Principal's spouse, as his or her separate property, in order to, among and including other reasons, to fund the Community Spouse Resource Allowance (CSRA) fully;
9. Consenting to a change in beneficiary designations and/or, where appropriate, to a change in ownership, on the Principal's behalf as to all insurance policies, annuity policies, retirement plans, pension plans, and the like;
10. The Agent may on behalf of the Principal consent to a dissolution of marriage;
11. The Agent has the power to purchase interests in assets owned by the Agent including but not limited to real property owned by the Agent; and

12. Taking any other action which the agent in his or her best judgment considers necessary to accomplish the goals set forth herein regarding the qualification for and continuation of public benefits for the Principal.

**B.19.b. Defense of Actions.** Should it become necessary, the agent herein is hereby authorized to defend actions taken pursuant to these public benefits planning provisions, including but not limited to the retention of legal counsel, hiring other professionals, and to pay for such legal and professional services from the Principal's assets and income.

**B.19.c. Self-Dealing Authorized.** For the purposes of public benefits planning, the agent is authorized 1) to purchase any of the Principal's assets at fair market value, 2) to transfer any of the Principal's assets, and/or 3) to engage in any transactions which the agent considers in the Principal's best interest and in furtherance of the public benefits planning goals, irrespective of any concurrent interest or benefit which may be conferred thereby to the agent personally.

**B.19.d. Removal of Assets from Trust.** If any of Principal's assets are held in a revocable trust, the agent is authorized to remove those assets from such trust, to the extent that is necessary to effect any of the above-described transfer of assets, or for general eligibility purposes.

**B.19.e. Appointment of Special Attorney-in-Fact.** In the event that the agent is the Principal's spouse, or in the event that the agent is or may be the possible recipient of the Principal's assets, EILEEN T. MOFFA shall be appointed as special agent for the purpose of executing all necessary documents to effectuate any of the public benefits planning actions, including the transfer of any real property, as authorized herein.

**B.19.f. Receipt of Benefits by Agent.** The agent is authorized to take possession of all such benefits and to distribute such benefits to or for the Principal's benefit.

#### **ARTICLE FOUR: POWERS CONCERNING PERSONAL CARE**

With respect to my personal care, I grant to my agent the following powers:

**A. Personal Care and Maintenance.** Subject to any provisions of Article Three concerning public benefits planning, to do all things and enter into all transactions necessary to provide for my personal care, to maintain me in my customary standard of living, to provide me with suitable living quarters, and to hire, compensate, and discharge household, nursing, and other employees as my agent considers advisable for my well-being. The above shall specifically include, without limitation, the authority to pay the ongoing maintenance costs of my present residence or residences, such as interest, taxes, insurance, repairs, rent and the like, and to procure and pay for clothing, transportation, recreation, travel, medicine, medical care, food, and other needs, and to make arrangements and enter into contracts with hospitals, hospices, nursing homes, convalescent homes, and similar organizations or facilities.

**B. Veterinary Care.** To arrange and pay for the care, feeding, veterinary treatment as needed, and disposition of my pets.

**C. Burial and Funeral Arrangements.** To make advance arrangements for my funeral and burial or cremation in accordance with my wishes that have been made known to my agent; provided, however, that if I have executed an Advance Health Care Directive that is then in effect and in which I have expressed a preference for the disposition of my remains, or if I have granted my health care agent the authority or discretion to make such arrangements, then the provisions of said Advance Health Care Directive shall supersede the provisions of this paragraph; provided further, however, that my agent hereunder may pay for any such arrangements made by my health care agent or may reimburse my health care agent for any such costs or expenses which are incurred by my health care agent in that regard.

**D. Access to Medical and Other Personal Information.** To request, review, and receive any information, verbal or written, regarding my personal affairs or my physical or mental health, including medical and hospital records, and to execute any releases or other documents that may be required in order to obtain this information. In order to assist my agent in exercising these powers, I have made detailed waivers and authorizations hereinbelow.

**E. Employment and Discharge.** To employ and discharge physicians, dentists, nurses, therapists and other professionals as my agent may deem necessary for my physical, mental and emotional well-being; and to pay them, or any of them, reasonable compensation. My agent may also employ and discharge barbers, beauticians, housekeepers, secretaries and others who are not health care professionals, and to pay them reasonable compensation.

**F. Execute Documents and Contracts.** To sign, execute, deliver, acknowledge and make declarations in any document or documents that may be necessary, desirable, convenient or proper in order to exercise any of the powers described herein; to enter into contracts; and to pay reasonable compensation or costs in the exercise of any such powers.

**G. Coordination with Health Care Power.** If I have executed an Advance Health Care Directive which is then in effect, the provisions of that instrument shall take precedence over the foregoing provisions of this Article. Moreover, I direct that my agent under this instrument carry out the instructions of my health care agent with respect to payment for my health care and related services provided to me as authorized by my health care agent from time to time.

#### **ARTICLE FIVE: MISCELLANEOUS PROVISIONS CONCERNING POWERS**

**A. Excluded Powers.** My agent shall not have the power to: use my assets to pay for my agent's own legal obligations, to exercise the incidents of ownership over any life insurance policies I own on my agent's life, to make gifts to my agent or any other person or entity (except as otherwise provided herein), or to hold or exercise any powers which I may have over assets my agent has given to me or over assets held in an irrevocable trust of which my agent is a grantor.

**B. Incidental Powers.** I grant my agent full power and authority to do and perform all and every act and thing whatsoever requisite, necessary, and proper to be done in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all 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 of the rights and powers herein granted. This instrument is to be construed and interpreted as a general power of attorney. The enumeration of specific items, acts, rights, or powers herein does not limit or restrict, and is not to be construed or interpreted as limiting the general powers herein granted.

**C. Ratification.** I hereby ratify and confirm all that my agent shall do or cause to be done under the authority granted in this instrument, and all promissory notes, bills of exchange, drafts, other obligations, agreements, stock powers, instruments, and other documents, signed, endorsed, drawn, accepted, made, executed or delivered by my agent shall bind me, my estate, my heirs, alternates, and assigns.

#### **ARTICLE SIX: THIRD PARTY RELIANCE**

For the purpose of inducing any physician, hospital, bank, broker, custodian, insurer, lender, transfer agent, taxing authority, governmental agency, or other third party to act in accordance with the powers granted in this instrument, I hereby represent, warrant, and agree that:

**A. Hold Harmless with Respect to Notice of Revocation, etc.** If this instrument is revoked or amended for any reason, I, my estate, and my heirs, alternates, and assigns will hold such party or parties harmless from any loss suffered, or liability incurred, by such party or parties in acting in accordance with this instrument prior to that party's receipt of written notice of any such termination or amendment.

**B. Power to Act Alone.** The powers conferred on my agent by this instrument may be exercised by my agent alone and my agent's signature or act under the authority granted in this instrument may be accepted by third parties as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf.

**C. Reliance upon Representations of Agent.** No person who relies upon any representation my agent may make regarding: (a) the fact that the powers of my agent hereunder are then in effect, (b) the scope of my agent's authority under this instrument, (c) my competency at the time this instrument is executed, (d) the fact that this instrument has not been terminated or revoked, or (e) the fact that my agent continues to serve as my agent, shall incur any liability to me, my estate, my heirs, alternates, or assigns for permitting my agent to exercise any power granted in this instrument, nor shall any person who deals with my agent be responsible to determine or insure the proper application of funds or property.

**D. Waiver of Privileges.** All third parties from whom my agent may request information regarding my health or personal affairs are hereby authorized to provide such information to my agent without limitation and they are released from any legal liability whatsoever to me, my estate, my heirs, alternates or assigns for complying with my agent's requests. With specific reference to medical information, including information about my mental condition, I am authorizing in advance all physicians and psychiatrists who have treated me, and all other providers of health care, including hospitals, to release to my agent all information or photocopies of any records which my agent may request. If I have the capacity to confirm this authorization at the time of the request, third parties may seek such confirmation from me if they

so desire. If I do not have the capacity to make such a confirmation, all physicians, hospitals, and other health care providers are hereby authorized to treat my agent's request as that of a legal representative of an incompetent patient (as contemplated by section 56.11(c)(2) of the California Civil Code, or any alternate section thereto) and to honor such requests on that basis. I hereby waive all privileges which may be applicable to such information and records, and to any communication pertaining to me and made in the course of a lawyer-client, physician-patient, psychiatrist-patient, clergyman-penitent, or sexual assault victim-counselor relationship.

**E. Enforcement and Damages for Non-Compliance.** My agent shall have the right to seek appropriate court orders mandating acts which my agent deems appropriate if a third party refuses to comply with actions taken by my agent which are authorized by this instrument or enjoining acts by third parties which my agent has not authorized. In addition, my agent may sue a third party who fails to comply with actions I have authorized my agent to take and demand damages, including punitive damages, on my behalf for such noncompliance.

#### **ARTICLE SEVEN: NOMINATION OF CONSERVATOR**

If protective proceedings of my person or estate or both are begun after I sign this instrument, I nominate for the Court's consideration the following persons as conservators of my person and estate, respectively, in the following order of preference:

As conservator of my person:

- (1) YVONNE M. COFFMAN
- (2) EILEEN T. MOFFA

As conservator of my estate:

- (1) YVONNE M. COFFMAN
- (2) EILEEN T. MOFFA

It is my desire that my conservator be granted authority to exercise independently all of the powers specified in §§ 2590 and 2591 of the California Probate Code. I hereby revoke all prior conservatorship nominations that I have made.

#### **ARTICLE EIGHT: GENERAL PROVISIONS**

**A. Compensation of Agent.** My agent shall be entitled to fair and reasonable compensation for services as agent hereunder. In determining what constitutes "fair and reasonable" compensation, the following factors may be considered: (1) the time spent by my agent in administering my affairs hereunder, (2) my net worth, (3) the nature of the assets subject to my agent's control, and (4) the fees charged by professional fiduciaries acting in the same or similar capacities under similar circumstances. In addition to compensation for services, my agent shall be entitled to reimbursement for all out-of-pocket expenses incurred in administering my affairs hereunder, including, without limitation, reasonable travel expenses, including land and air transportation, lodging, and meals.



**B. Termination on Death.** This power of attorney shall terminate immediately upon my death and all authority of my agent hereunder shall thereupon cease. All of my assets, property, documents, personal papers, and other things then in the possession and control of my agent shall be delivered to my personal representatives, trustees, or alternates in interest, as the case may be.

**C. Revocation and Amendment.** I revoke all prior durable or general powers of attorney that I may have executed (except any Advance Health Care Directive) and I retain the right to revoke or amend this instrument and to substitute others in my agent's place. Amendments to this instrument shall be made in writing by me personally (not by my agent), such amendments to be attached to the original of this instrument and recorded in the same county or counties as the original if the original is recorded.

**D. Inadvertent Termination.** Notwithstanding the provisions of California Civil Code § 2355, none of the following events shall terminate this durable power of attorney: (1) the death of my agent, (2) my agent's renunciation of the agency created hereby, (3) my agent's incapacity to act as agent, or (4) a vacancy in the office of agent. If any of those events occurs, the authority of my agent is merely suspended until a new or alternate agent is in office and is acting as agent under this instrument.

**E. Designation of Alternates.** If there is no alternate agent named herein who is then able and willing to serve, my agent or alternate agents (in the order of preference indicated hereinabove) shall each have the power to: designate an alternate agent to serve hereunder by written instrument delivered to the designee together with a copy of this instrument. Upon acceptance of appointment by such designee, the written designation and the designee's acceptance thereof shall be attached to the original of this instrument and a copy thereof shall be delivered to me.

**F. Alternate's Liability.** No alternate agent shall be liable for any act, omission, or default of a prior agent. Unless requested in writing within sixty (60) days of appointment by me or by an adult member of my family, no alternate agent shall have any duty to investigate or review any action of a prior agent. The alternate agent may accept the accounting records of the prior agent showing assets on hand without further investigation and without incurring any liability to any person claiming or having an interest in the principal's assets.

**G. Photocopies.** Only one original of this instrument has been executed. My agent is authorized to make photocopies of this instrument and any attached documents (such as certificates of incapacity) as frequently and in such quantities as my agent deems appropriate. Each photocopy shall have the same force and effect as the original, and all parties dealing with my agent are authorized to rely fully on any such photocopy showing my signature thereon.

**H. Definition of "Children," "Grandchildren," and "Descendants"-. I have four (4) children now living, as follows:**

YVONNE M. COFFMAN  
EILEEN T. MOFFA  
JOSEPH P. MOFFA, JR.  
HOLLY L. MARTIN

The term "child" or "children," if used herein, shall refer to my said named children only. The term "grandchildren," if used herein, shall refer to the children of said children named above. The term "descendants," if used herein, shall refer to lineal issue of mine of all degrees, including children, grandchildren, and more remote descendants. The terms "children," "grandchildren," "descendants," and other class terminology in this instrument include claimants whose membership in the class is based on adoption or birth out of wedlock, provided the person so born lived for a significant time during minority as a member of the household of the relevant natural parent or the household of that parent's parent, brother, sister, or surviving spouse. Such term shall not include persons on the basis of any foster or step relationship. The rights of a person who would be included in a class gift term on this basis, or on the basis of birth in wedlock, are not affected by subsequent adoption of that person (or of one through whom he or she claims) by another, whether within or outside the family. Whether a person has "lived for a significant period during minority as a member of the household" shall be determined in the reasonable discretion of my agent.

**I. Severability.** If any provision of this instrument is held invalid by a court of competent jurisdiction, the remaining provisions of this instrument shall nevertheless remain valid.

**J. Language.** As used herein, the singular or plural form of nouns, the masculine, feminine, or neuter form of pronouns, and the past, present, or future tense of verbs, shall each be construed to include the other such form or forms as the context requires. The headings used herein are for reference purposes only and shall not be considered in construing this instrument.

**K. Governing Law.** This instrument shall be governed by the laws of the State of California in all respects.

**L. Exculpation.** Neither my agent nor any of my agent's substitutes shall incur any liability to me, my estate, my heirs, alternate or assigns for acting or refraining from acting hereunder, except for bad faith, willful misconduct, or gross negligence. Neither my agent nor my agent's substitutes shall have any responsibility to make my assets productive of income, to increase the value of my estate, to diversify my investments, or to enter into transactions authorized by this instrument.

**M. Consent to Joint Representation.** This instrument was prepared for me by Gaw, Van Male, Smith, Myers & Reynolds ("the Firm"). I understand that the Firm's subsequent concurrent representation of my agent and me would create a situation where a conflict of interest exists or may arise. I understand that, under the ethical rules governing attorneys in California, the Firm may not represent my agent under such circumstances without my informed written consent and that, in the absence of such consent, the Firm would be required to refer my agent to another attorney. I understand that such adverse consequences may include, without limitation, the fact that matters which the Firm discusses either with my agent or me alone would not be protected by the attorney-client privilege from disclosure to the other; that if a difference of opinion arose concerning my proposed estate plan, the Firm could point out the advantages and disadvantages of such differing opinions but could not advocate one position over the other; and if an actual conflict arose between my agent and me of such a nature that it is impossible in

the Firm's judgment to perform its obligations to both my agent and me, it would become necessary for the Firm to withdraw as joint attorney and to advise my agent to seek independent counsel, with the likelihood that additional attorneys fees would be incurred.

Furthermore, because I believe that the Firm is likely to have a greater knowledge and understanding of my wishes and desires with respect to the administration and distribution of my estate than would another attorney if the firm were precluded from representing my agent, it is my desire that the Firm not be precluded by ethical constraints from discussing matters relating to my estate planning with my agent and, if my agent so desires, from agreeing to represent my agent in his or her capacity as agent under this instrument. The foregoing shall not be construed as directing or obligating my agent to hire the Firm, but is merely intended to allow my agent to exercise that choice if my agent so desires, recognizing that my agent may hire any attorney he or she wishes to advise my agent concerning the duties and responsibilities as agent under this instrument. To that end, I expressly waive any potential conflict of interest in the event my agent wishes to hire the Firm to represent my agent concerning my agent's duties and responsibilities under this instrument, notwithstanding the potential adverse consequences of such joint representation described hereinabove.

Without limiting the generality of the foregoing, because I consider the provisions of this instrument that authorize my agent to make death-bed gifts to be an integral aspect of my estate plan, and because I recognize that, by their very nature, such gifts are often made under exigent circumstances (such as impending death), I hereby specifically consent to the joint representation of both my agent and me with respect to the making of such gifts under authority granted in this instrument, notwithstanding the potential conflict of interest and notwithstanding the potential adverse consequences of such joint representation.

This Durable Power of Attorney was executed on <sup>November</sup>~~October~~ 4, 2011, at Fairfield, California.

Joseph P. Moffa  
JOSEPH P. MOFFA, SR.  
My current address is:  
859 Oxford Way  
Benicia, CA 94510

STATE OF CALIFORNIA )  
COUNTY OF SOLANO ) ss.

On this <sup>November</sup>~~October~~ 4, 2011, before me, Donna Kiernan, a Notary Public, personally appeared JOSEPH P. MOFFA, SR., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,



Donna Kiernan  
Notary Public

**EXHIBIT A**

1. That certain real property in the City of Chiloquin, County of Klamath, State of Oregon, commonly known as 37742 Deerfield Rd. (Map Number: M-124520), and more particularly described as follows:

Lot 24 of Block 6, Oregon Shores Unit 1, Klamath County, Oregon.

Unofficial  
Copy