

**When Recorded Mail to:**

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Elko, NV 89801

BOOK 395 PAGE 254-258  
OFFICIAL RECORDS  
RECORDED AT THE REQUEST OF  
*P. Michael Marfisi*  
2004 SEP 27 PM 1:44

EUREKA COUNTY, NEVADA  
M.H. REBALEATI, RECORDER  
FILE NO. FEES \$18.00

**192770**

**DECLARATION OF FIRST AMENDMENT to the  
CLEVE D. MALLORY and DELORES D. MALLORY FAMILY TRUST  
dated November 8, 2002**

**TO WHOM IT MAY CONCERN:** PURSUANT TO N.R.S. Chapter 164

On September 24, 2004, the undersigned, CLEVE D. MALLORY and DELORES D. MALLORY husband and wife, of, Crescent Valley, Nevada, 89821 have made and executed their FIRST AMENDMENT to their CLEVE D. MALLORY and DELORES D. MALLORY FAMILY TRUST dated November 8, 2002, (our Trust) wherein and herein the undersigned are Settlers or Trustors, Trustees and Beneficiaries, to which certain real and personal property have been or will be later transferred. Said FIRST AMENDMENT amends our said Trust dated November 8, 2002, in its entirety, and names and identifies the Trustees, successor and special Trustee(s) of the specific trusts and concerning the events of resignation of Trustees, incompetency or the death(s) of either or both Trustors serving as Trustee(s) and the powers and authority of the such Trustee(s). Provisions concerning the named Trustees, special Trustees and successor Trustees, and powers of such Trustee(s) regarding our Trust(s) are recited or paraphrased as follows:

**ARTICLE FIVE**

**Provisions Relating to the Appointment and Removal of Trustees**

**5.1 Original Trustees.** The original Trustees are the Settlers/Trustors, CLEVE D. MALLORY and DELORES D. MALLORY. All power conferred on the original Trustees by the Trust may be exercised by them jointly or by either CLEVE D. MALLORY or DELORES D. MALLORY individually as Trustee for both Settlers acting as Trustee, and all third parties and entities dealing with this Trust shall rely on the act, including the signature, of either CLEVE D. MALLORY or DELORES D. MALLORY serving as Trustee by his or her act alone on behalf of this Trust. For all purposes the foregoing provision is and shall be construed as a General and Durable Power of Attorney from one Settlor/Trustor and Trustee to the other Settlor/Trustor and Trustee, which shall not be affected by the subsequent incapacity or disability of the other. Upon the resignation or incompetency of an original Trustee, the other original Trustee, if competent, shall act as sole Trustee of the entire Trust estate.

5.2 Trustee of Survivor's Trust; Upon the death of one Settlor/Trustor, the surviving Settlor, if competent, may serve as the sole Trustee of the Survivor's Trust as described under Article Three. If the surviving Settlor is incompetent, then the Successor Trustee(s) shall be those as identified in 5.4.

5.3 Successor Trustees of Temporary Decedent's Trust, Credit Shelter Trust and Marital Trust Upon the Death of One Settlor: Upon the death of one Settlor/Trustor, the competent surviving Settlor, as Trustee, shall serve as sole Trustee of the Temporary Decedent's Trust, Credit Shelter Trust and Marital Trust, if such Trust or trusts are then applicable, however, any distributions of principal from said trusts to the surviving Settlor (except as allowed under 3.6.2 hereof), which may require decisions or determinations as to the rules regarding "ascertainable standards", shall be made by SUSANNE ANDERSON MALLORY BODEN, as Special Trustee, until KAMILIN MALLORY attains eighteen (18) years of age, whereupon KAMILIN MALLORY is appointed to serve as Special Trustee to only make such decisions or determinations for such limited purposes, with the assistance of a Certified Public Accountant. If KAMILIN MALLORY is unable or unwilling to serve as Special Trustee, then SUSANNE ANDERSON MALLORY BODEN, may reassume the position as Special Trustee, otherwise the Special Trustee is appointed to serve in the following order, provided he or she has attained eighteen (18) years of age: JUSTIN MALLORY, then TREVOR MORTENSEN, and then SHEYLEIE MORTENSEN, and in all events such Special Trustee shall engage the services of a Certified Public Accountant.

5.4 Successor Trustees of All Trusts Upon the Death, Incompetency or Resignation of Both Settlers. Upon the death, incompetency or resignation of both Settlers/Trustors, then SUSANNE ANDERSON MALLORY BODEN, is appointed as sole Trustee, until KAMILIN MALLORY attains eighteen (18) years of age, whereupon KAMILIN MALLORY is appointed to serve as sole Trustee with the assistance of a Certified Public Accountant. If KAMILIN MALLORY is unable or unwilling to serve as sole Trustee, then SUSANNE ANDERSON MALLORY BODEN, may reassume the position as sole Trustee, otherwise the Trustee is appointed to serve in the following order, provided he or she has attained eighteen (18) years of age: JUSTIN MALLORY, then TREVOR MORTENSEN, and then SHEYLEIE MORTENSEN, and in all events such Trustee shall engage the services of a Certified Public Accountant.

5.5 Resignation of Trustee. Any Trustee, at any time serving hereunder, shall have the right to resign by delivering an instrument of resignation in writing, signed by the resigning Trustee, to the Settlers/Trustors or surviving Settlor/Trustor, if living, and if not, to any other Trustee hereunder or to any beneficiary hereunder, if, for any reason, there shall be no other Trustee then serving.

5.6 Removal of Corporate Trustee.

If at any time there is a corporate Trustee acting hereunder for any Trust, the individual Trustee, if there is one, and if not, then the majority of adult income

beneficiaries of the Trust may remove the corporate Trustee without stating any reason. If the corporate Trustee is removed, and a vacancy in the trusteeship occurs, then the person(s) removing the corporate Trustee shall appoint a successor trustee.

**5.7 Incompetency of Individual Trustee.** If, in the opinion of two duly licensed physicians not in association with each other, any individual Trustee serving in any trustee capacity hereunder, including a Settlor/Trustor serving as Trustee, who has suffered substantial impairment of his or her ability to care for the property of the Trust due to advanced age, illness, infirmity, mental weakness, alcohol abuse, addiction to drugs, or other cause, such Trustee shall be deemed to have resigned as Trustee. The individual, including the other Settlor/Trustor, if competent, or entity named as successor trustee shall, effective upon the date of the second physician's opinion, assume the responsibilities and duties of the resigning Trustee. Any third party having possession of or maintaining record title to any assets or interests of the Trust shall upon notification by the successor trustee of the two physicians' opinions honor the instructions of such successor trustee(s). If no successor trustee is named, as provided above in the preceding sections, a majority of adult income beneficiaries of the Trust may appoint a successor trustee.

**5.8 No Court Proceeding Necessary.** The appointment and qualification of the successor Trustee provided for in sections 5.2 through 5.7, inclusive, shall be effective without the necessity of any court proceeding or decree.

**5.9 Waiver of Bond.** No bond shall be required of any Trustee named or appointed as provided herein.

**5.10 Compensation of Trustee.** Any Successor Trustee, except a beneficiary of this Trust, shall be entitled to reasonable compensation for the Trustee's ordinary services hereunder. All expenses advanced to the Trust by any Trustee shall be reimbursed from the Trust assets.

## **ARTICLE SEVEN**

### **Trust Administrative Provisions**

**7.1 Powers of Trustee.** To carry out the purposes of the Trust, and subject always to the discharge of Trustee's fiduciary obligations and any limitations stated elsewhere herein, Trustee shall be vested with the powers enumerated at NRS 163.265 through NRS 163.410, which are expressly incorporated herein by reference as though fully set forth at length. The incorporation of these powers shall not limit the general or implied powers of the Trustee. The Trustee shall have all such additional powers that may enable a Trustee to administer this Trust and the respective Trusts and shares herein created, subject only to limitations expressly provided herein.

In addition to any powers or duties now or hereafter conferred on the Trustee by law, the Trustee is specifically granted the following powers:

**7.1.1 Power to Deal with Securities and other Real and Personal Property of the Trust.** To purchase, sell and trade in securities (including puts, calls, straddles and other options, covered and uncovered), limited partnerships and commodities or

futures of every kind and nature, engage in any transaction (including "short sales"), mutual funds (including "indexed") on margin or otherwise, and for such purpose, may maintain and operate margin accounts and pledge any security, limited partnership or commodity for any loans or advances made to the Trustee, AND to purchase, sell, encumber, mortgage, any or all of the real and personal property of this Trust.

7.1.2 Power to Consolidate Trust. To consolidate a Trust created by this agreement with any other trust established for the benefit of the same beneficiary or beneficiaries on substantially identical terms.

7.1.3 Power to Terminate Trust. To terminate a Trust created by this agreement and to distribute the remaining assets pursuant to such Trust, if the principal held in such Trust has been reduced to such a level that the Trustee, in the Trustee's sole discretion, determines that it does not justify continued administration hereunder.

7.2 Principal and Income. The Revised Uniform Principal and Income Act, NRS 164.140 et seq., as such Act may be amended from time to time, shall be applicable to this Trust, except as may be otherwise specifically set forth in this agreement.

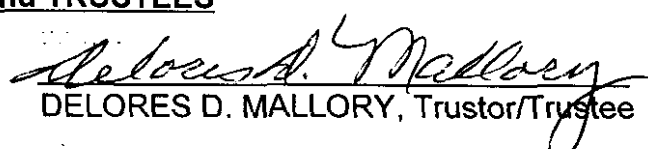
7.3 Applicable Law. All questions pertaining to the validity, interpretation and administration of this agreement shall be determined in accordance with the laws of the State of Nevada.

7.4 Payments to or for the Benefit of Minors or Adults or other Beneficiary Persons Under Disability. Whenever the Trustee is given the power or direction to make payments to or for the benefit of a minor or adult beneficiary or other beneficiary under a disability, then notwithstanding any other provisions in this Trust, the Trustee, in the Trustee's sole and absolute discretion, may, out of such beneficiary's share only, make payments (or no payment) to such minor or adult beneficiary or other beneficiary under disability by making payments to the guardian or conservator of his or her estate and/or person, as the Trustee shall determine, or to any suitable person with whom he or she resides, or the Trustee may apply payments directly for such beneficiary's benefit, or the Trustee may make payments to any duly established custodian for any minor beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any State or of any Federal Act, particularly including Educational Trusts and/or deposits and arrangements for the payment of tuition, books, room and board expenses directly or otherwise to educational institutions or other Trustees or administrators handling such arrangements all for the benefit of the beneficiary. The Trustee, in its discretion, may also make payments (or no payments) directly to a minor or adult beneficiary, if, in the Trustee's judgment, such minor or adult is of sufficient age, maturity, capacity and responsibility, to spend or apply the money properly.

THIS AMENDED DECLARATION OF TRUST is hereby made and a copy of the September 24, 2004, FIRST AMENDMENT TO THE CLEVE D. MALLORY and DELORES D. MALLORY FAMILY TRUST dated November 8, 2002, with all particulars is located with the undersigned at Crescent Valley, Nevada.

**TRUSTORS and TRUSTEES**

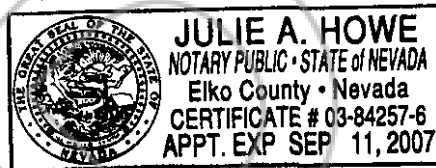
  
CLEVE D. MALLORY, Trustor/ Trustee

  
DELORES D. MALLORY, Trustor/Trustee

STATE OF NEVADA     )  
                                  ) SS.  
COUNTY OF ELKO     )

On Sept. 24, 2004, personally appeared before me, a Notary Public, CLEVE D. MALLORY and DELORES D. MALLORY, husband and wife, personally known (or proved) to me to be the persons whose names are subscribed to the above instrument who acknowledged that they executed the instrument.

Julie A. Howe  
NOTARY PUBLIC



**192770**

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