



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: PES-09-292925

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DECLARATION

THE ESTATE OF JAMES CURTIS ROTH

001P03129531

Instructions:

Please place this sheet on top of the document to be scanned.

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FILED
San Francisco County Superior Court
FEB 18 2011
CLERK OF THE COURT
BY: *Heather Adams*
Deputy Clerk

8 Attorney for JILLA LEVINGTON ROTH, Executor

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

11
12) Case No: PES-09-292925
13) AMENDED
14) DECLARATION OF ATTORNEY IN
15) RESPONSE TO EXAMINER'S NOTES
16) RE: NOTICE; FTB NOTICE;
17) PROPERTY ON HAND;
18) & SUPPLEMENTARY
19) INFORMATION; TERMINATION OF
20) ESTATE ADMINISTRATION;
21) ORDINARY ATTORNEY'S FEES
22)
23) DATE: FEBRUARY 8, 2011
24) TIME: 9:00 AM
25) ROOM: 204

ESTATE OF
JAMES CURTIS ROTH,
Decedent
JILLA LEVINGTON ROTH,
Executor

26 I, HELENE V. WENZEL, am an attorney licensed to practice law in the State of
27 California. My business address is 2000 Van Ness Avenue, San Francisco, CA 94109. I
28 represent JILLA LEVINGTON ROTH, Executor of the estate of JAMES CURTIS ROTH,

Amended Declaration: Examiner's Notes; Supplement; Termination of Administration

Case No. PES-09-292925

1 her spouse.

2 I make this DECLARATION in response to Examiner's notes (2/4/11); and to provide
3 additional information to the Court regarding this particular administration.

4
5 1. **Notice of Hearing:** The full title of the pleading was inadvertently left
6 incomplete ("Petition for Final Distribution") on the Notice of Hearing after Exhibits A-E
7 were attached. Attorney understands that such failure to comply with California Rule of Court
8 7.50 is grounds for requiring re-noticing. However, every person and entity noticed was also
9 sent a complete copy of the pleading, **FIRST AND FINAL REPORT OF EXECUTOR ON**
10 **WAIVER OF ACCOUNT AND PETITION FOR FINAL DISTRIBUTION FOR**
11 **ALLOWANCE OF COMPENSATION TO ATTORNEY FOR ORDINARY SERVICES.**
12 Attorney begs the Court waive exact notice in this instance.

13 2. **Notice to Franchise Tax Board:** Notice of administration of this estate has
14 been sent to the FTB; the FTB Certification that no taxes are owed on the estate has been
15 received and filed under separate cover today.

16 3. **Decedent's Agreement with Nestworth, Inc.** Months prior to his marriage the
17 decedent had entered into a Forward Purchase Agreement granting NestFund an option to
18 purchase his real property at his death (or at 90 years of age), in return for which he was
19 receiving a monthly payment. The Agreement sets forth, among:

20 "A. James C. Roth, an unmarried man ("James Roth"), and NestFund entered into that
21 certain NestWorth Forward Purchase Agreement (the "Forward Purchase Agreement") dated as
22 of January 9, 2009, under which James Roth granted NestFund an option to purchase certain real
23 property commonly referred to as **3781 Cesar Chavez Street, San Francisco, California 94110**,
24 and more particularly described on Exhibit A attached hereto (the "Property"). Under the Forward
25 Purchase Agreement, James Roth had the right to receive certain payments of "Consideration" (all
26 capitalized terms used but not defined in this Termination Agreement have the meanings contained
27 in the Forward Purchase Agreement).

26 **Amended Declaration: Examiner's Notes; Supplement; Termination of Administration**

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1 B. James Roth is deceased. Executor has represented that the last will of James Roth
2 has been proved, and that the Superior Court of California has appointed her as the executor of the
3 estate of James Roth and personal representative with full authority to administer the estate,
4 including dealing with the Property.”

4 **NESTWORTH TERMINATION AGREEMENT, attached hereto as EXHIBIT 1.**

5 4. The administration of the decedent’s estate was complicated by the terms of this
6 Agreement which his widow, JILLA LEVINGTON ROTH, the Executor had to consider.
7 She had the option of selling the property to Nestworth (purchase forward) or ending the
8 Agreement and either keeping or selling the house herself. After many months of investigation
9 and consideration of her finances, she chose to buy out the Agreement and then to sell the
10 property.

11 5. While these negotiations were ongoing, the Executor acted under the terms of
12 the decedent’s Will, **ARTICLE TWO:**

14 **2.1. SPECIFIC GIFTS OF TANGIBLE PERSONAL PROPERTY**

15 “My Executor shall distribute all of my remaining tangible personal property, including
16 my interest in any insurance on that property, in accordance with the provisions of a
17 document that I will execute after the execution of this Will & Testament [&
18 Testament] which document will be dated, signed by me personally, and attached to this
19 Will & Testament [& Testament] **If I fail to execute such a document or, even if
20 I do execute such a document but not all of my personal tangible property is
21 disposed of by its provisions, I give all of my tangible personal property that is not
22 distributed in accordance with such writing, as the case may be, including any
23 insurance on that property, outright to Jilla Levington, if she survives me.”**

20 No such document has been found at or since his death, leaving all to Jilla Levington
21 Roth, who became the decedent’s lawfully wedded spouse prior to his death.

23 6. The Executor acted under the terms of the decedent’s Will,: **ARTICLE FOUR,**
24 **Sections 4.5 GENERAL POWERS OF EXECUTOR; 4.5. l. and 4.5.m regarding real and**
25 **tangible property; and 4.8 POWER TO SELL, LEASE AND GRANT OPTIONS TO**

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1 **PURCHASE PROPERTY.**

2 **LAST WILL AND TESTAMENT OF JAMES C. ROTH, attached hereto as EXHIBIT 2.**

3 7. **Distribution of Tangible Personal Property Without a Court Order.** As a
4 result of Executor's exercise of what she believed to be her duties and authority as set forth in
5 the Will, all tangible property, listed in the Inventory and Appraisal has been distributed to
6 charities, sold or kept by her, without a Court Order.

7 8. **Sale of Real Property Without a Court Order.** Following the termination
8 of the Nestworth Agreement in February 2010, after several months of negotiations, in April
9 2010, Executor completed a sale of the house to GEDALIA POTASH for \$870,000.00, the
10 same purchase price as that in the Nestworth Agreement. Executor paid off the Nestworth
11 balance due (monies which had already been distributed to the deceased over the term of the
12 agreement); and financed a Deed of Trust in the amount of \$320,000 at 8.22% per annum with
13 CHABAD, San Francisco, for monthly payments of \$2500.00 until the balance of \$320,000 is
14 paid off. Executor did not seek Court supervision, did not file a Notice of Proposed Action; and
15 did not have a Court Order authorizing this sale..

16 **CONTRACT FOR SALE & PURCHASE, attached hereto as EXHIBIT 3 (Executed in Parts)**

17 9. **Attorneys Fees.** The very unexpected death of James Curtis Roth coming only
18 months after the couple's honeymoon, made for a very difficult situation for the surviving
19 spouse. The Nestworth Agreement holding the decedent's house added more complications to
20 the probate. Under the circumstances, Attorney had agreed with Executor to accept a flat fee
21 for the Probate. In November 2010, shortly before she was to leave the country, Ms.
22 Levington Roth and attorney Wenzel reached an agreement, **attached hereto as Exhibit 4,**

23

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1 under which attorney accepted a check in the amount of \$7,000.00 which she deposited into her
2 Client Trust Fund until such time as the Probate is terminated and the Court makes an Order
3 authorizing payment for ordinary legal services rendered.

4 10. Executor moved to Costa Rica in late November or early December, having
5 executed all papers understood to be necessary for attorney to file in order to terminate the
6 estate administration.. She is unavailable for any Court appearances.

7 11. Under the particular circumstances of this administration, and given that the
8 Executor is now living in Costa Rico where she is unable to participate easily in any further
9 Court matters, including continuances, etc, I ask this Court to waive proper Notice; and
10 authorize payment of my attorney fees.
11

12 I sign this Declaration under penalty of perjury under the laws of the State of California
13 on February 17, 2011.
14

15 
16 _____
17 **HELENE V. WENZEL**

18
19
20
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24
25
26 **Amended Declaration: Examiner's Notes; Supplement; Termination of Administration**

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TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT ("Termination Agreement") is entered into as of February 12, 2010, between **NESTFUND, LLC**, a California limited liability company (including its successors and assigns, "NestFund"), and **JILLA LEVINGTON ROTH**, an unmarried woman, as executor of the estate of James C. Roth ("Executor").

RECITALS

A. James C. Roth, an unmarried man ("James Roth"), and NestFund entered into that certain NestWorth Forward Purchase Agreement (the "Forward Purchase Agreement") dated as of January 9, 2009, under which James Roth granted NestFund an option to purchase certain real property commonly referred to as 3781 Cesar Chavez Street, San Francisco, California 94110, and more particularly described on Exhibit A attached hereto (the "Property"). Under the Forward Purchase Agreement, James Roth had the right to receive certain payments of "Consideration" (all capitalized terms used but not defined in this Termination Agreement have the meanings contained in the Forward Purchase Agreement).

B. James Roth is deceased. Executor has represented that the last will of James Roth has been proved, and that the Superior Court of California has appointed her as the executor of the estate of James Roth and personal representative with full authority to administer the estate, including dealing with the Property.

C. As provided in the Forward Purchase Agreement, NestFund has exercised its Option to purchase the Property. Accordingly, NestFund has the right to purchase and sell the Property.

D. Executor wishes to cancel and terminate NestFund's right to purchase and sell the Property. NestFund has agreed to cancel and terminate its right to purchase and sell the Property and terminate the Forward Purchase Agreement in accordance with the terms and conditions of this Termination Agreement.

AGREEMENT

THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NestFund and Executor agree as follows:

1. Performance under Forward Purchase Agreement. The parties agree as follows:

(a) Consideration has been properly paid by NestFund in the amount of Nineteen Thousand Five Hundred Seventy-Five Dollars (\$19,575.00). No further Consideration is payable, and there are no defaults or failures to perform on the part of NestFund under the Forward Purchase Agreement.

(b) No material capital improvements to the Property have been performed after the Effective Date.

2. Termination. Upon the Closing Date hereunder, the exercise of the Option shall no longer be effective and the Forward Purchase Agreement shall be terminated for all purposes, with no further obligations of the parties thereunder, except such obligations as shall survive termination of the Forward Purchase Agreement by the express terms thereof. Such termination shall not affect any continuing obligations under this Termination Agreement.

3. Closing.

(a) On or before the business day prior to the Closing Date, Executor shall deposit either in an escrow account at a title company designated by NestFund (the "Escrow") or in a NestFund bank account designated by NestFund, immediately available funds in the amount of One Hundred Ninety-Three Thousand Five Hundred Seventy-Five Dollars (\$193,575.00) (the "Termination Payment") plus any service fees payable pursuant to Section 4.6 of the Forward Purchase Agreement. The parties agree to the calculation of the Termination Payment set forth in Schedule 1 attached hereto.

(b) On or before the business day prior to the Closing Date, NestFund shall deposit in the Escrow or deliver to Executor such release documents as may be reasonably requested by Executor upon no less than five (5) days' advance notice, as provided in Section 1.6.2 of the Forward Purchase Agreement.

(c) When each party has satisfied the obligations set forth in subsections 3(a) and 3(b) above, the Termination Payment shall be immediately released to NestFund (pursuant to the wiring instructions of NestFund, if necessary), and Executor shall instruct the Escrow, if any, accordingly. Effective upon such release or wiring, the "Closing" and the "Closing Date" shall be deemed to occur. The Closing must occur on or before March 10, 2010. Executor may select a Closing Date prior to March 10, 2010, upon notice to NestFund.

(d) Executor shall be responsible for all Closing costs, as further provided in Sections 3.4.2, 3.5.3 and other provisions of the Forward Purchase Agreement.

4. Representations, Warranties and Covenants. The representations, warranties and covenants contained in this Section 4 are made by Executor as of the date hereof and as of the Closing Date in order to induce NestFund to enter into this Termination Agreement. The accuracy and completeness of the representations, warranties and covenants set forth in this Section 4 are a condition precedent to NestFund's obligations under this Termination Agreement and shall survive the termination of this Termination Agreement.

(a) Transfer of Property; Homestead. Executor has not transferred or agreed to transfer the Property to any other person or entity, and is not aware of any prior transfer of, or agreement to transfer, any interest in the Property by James Roth (other than pursuant to the Forward Purchase Agreement). No person or entity is occupying or

has a right to occupy the Property. Executor has delivered to NestFund accurate copies of all documents pertaining to any offers to purchase the Property, whether conditional or unconditional. Executor does not have, and is not aware of any other person who might have, any homestead rights with respect to the Property, and hereby waives any homestead rights.

(b) Authority and Waivers. Executor has full capacity and authority on her own behalf and on behalf of the estate of James Roth to enter into this Termination Agreement and this Termination Agreement constitutes the legal, valid and binding agreement on behalf of Executor and the estate of James Roth and is enforceable against Executor and the estate of James Roth in accordance with its terms. Executor hereby waives (i) any right to a family allowance from the estate of James Roth; (ii) any right to have a probate homestead set aside from the estate of James Roth; and (iii) any right to declare a homestead in the property of James Roth.

(c) Conflict. The execution, delivery and performance of this Termination Agreement will not conflict with, or result in a breach of, any of the terms or conditions of, or constitute a default under, any note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, agreement, lease, or other agreement or instrument to which Executor or, to Executor's knowledge, the estate, is a party, or by which any portion of the Property may be bound.

(d) No Advice. In entering into Termination Agreement, Executor is not relying and shall not rely on any information or representation that may have been provided or is purported to have been provided by NestFund, its agents or affiliates, or any of their officers, employees or agents, regarding: (i) the value of the Property; (ii) the advisability of entering into the Termination Agreement; or (iii) the tax implications and consequences of entering into the Termination Agreement. Executor has made, and will make, his, her or its own investigation regarding such matters and has been advised by NestFund to discuss them with Executor's legal, financial and tax advisors.

(e) Listing. If the Closing has not occurred on or before March 10, 2010, Executor shall deliver to NestFund, on or before March 11, 2010, a listing agreement entered into at arm's length with a professional third-party real estate broker, which agreement shall list the Property for sale effective as of March 10, 2010, for a non-cancellable period of twelve (12) months, and which appoints NestFund as agent and attorney-in-fact for Executor in connection with the sale.

5. Indemnification by Executor. Executor hereby agrees to indemnify and hold NestFund harmless from, and against, any and all claims, damages, liabilities, actions and expenses (including Attorneys' Fees) of every kind arising out of or relating to: (i) a breach of any of Executor's representations or warranties under this Termination Agreement; (ii) any act or omission by Executor or Executor's agents; or (iii) the Property or its prospective sale and the Escrow. This indemnity shall survive the Closing Date.

6. Successors and Assigns. This Termination Agreement shall be binding on Executor's and NestFund's successors and assigns. All references to Executor and NestFund shall include such permitted successor and assigns, as applicable.

7. Choice of Law; Venue. This Termination Agreement shall be governed by and construed in accordance with California law without reference to its conflict of laws principles. The parties agree that all actions or proceedings arising in connection with this Termination Agreement shall be litigated or arbitrated only in the state and federal courts located in or having jurisdiction with respect to the county in which the Property is located. Executor waives any right Executor may have to assert the doctrine of forum non conveniens or to object to such venue.

8. Severability; Waivers. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any provision. No waiver of any rights or remedies in connection with this Termination Agreement shall be effective unless such waiver is in writing and signed by the party to be bound. No delay, failure or waiver in exercising any right shall be construed as continuing, or as a waiver or release of, any subsequent right, remedy or recourse.

9. Attorneys' Fees. If a lawsuit or arbitration proceeding is commenced in connection with this Termination Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recover Attorneys' Fees.

10. Notices. Any notice, demand or request required or permitted to be given under this Agreement must be given in writing at the addresses set forth in Schedule 1 and transmitted by overnight delivery by a nationally recognized overnight courier service. Any such notice, demand or request shall be deemed received on the business day immediately following deposit with the overnight courier service. Each party shall have the right to change the place to which notice shall be delivered or to specify one additional address to which copies of notices shall be delivered, in either case by similar notice delivered in the same manner.

11. Entire Agreement; Amendment. All prior agreements, understandings, representations, warranties and negotiations between the parties, if any, whether oral or written, relating to the substance of this Termination Agreement are merged into this Termination Agreement. This Termination Agreement, together with applicable provisions of the Forward Purchase Agreement referenced herein, constitutes the entire agreement between the parties pertaining to the subject matter contained in them. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the party to be bound.

12. No Third-Party Beneficiaries. This Termination Agreement is entered into for the protection and benefit of NestFund and Executor, on her own behalf and on behalf of the estate of James Roth, and their respective permitted successors and assigns. No other person shall have any rights or causes of action under this Agreement.

13. Time of Essence. Time is of the essence in the performance of this Termination Agreement.

14. Counterparts; Electronic Signatures. This Termination Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same agreement. A signed copy of this Termination Agreement transmitted by a party to another party via facsimile or by electronic means shall be binding on the signatory to that copy.

15. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, NESTFUND AND EXECUTOR HEREBY VOLUNTARILY, UNCONDITIONALLY AND IRREVOCABLY WAIVE TRIAL BY JURY UNDER ALL CIRCUMSTANCES WHETHER IN ANY LITIGATION OR PROCEEDING IN A STATE OR FEDERAL COURT RELATED TO, OR ARISING OUT OF, THIS TERMINATION AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS OR DISPUTES HOWEVER ARISING (INCLUDING TORT CLAIMS AND CLAIMS FOR BREACH OF DUTY) BETWEEN NESTFUND AND EXECUTOR.

IN WITNESS WHEREOF, the parties have executed this Termination Agreement as of the date first set forth above.

NESTFUND:

NestFund, LLC,

a California limited liability company

By: _____

Name: _____

[Handwritten signature]
[Handwritten name: Graham Williams]

EXECUTOR:

[Handwritten signature]
Signature
[Handwritten signature]
**Jilla Levington Roth, as Executor of the
Estate of James Roth**

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

CITY OF SAN FRANCISCO

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF ARMY STREET,
DISTANT THEREON 85 FEET EASTERLY FROM THE EASTERLY LINE OF
DOLORES STREET; THENCE EASTERLY 32 FEET 4 INCHES ALONG SAID
SOUTHERLY LINE OF ARMY STREET; THENCE AT A RIGHT ANGLE
SOUTHERLY 62 FEET; THENCE AT A RIGHT ANGLE WESTERLY 7 FEET 4
INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 28 FEET; THENCE AT A
RIGHT ANGLE WESTERLY 25 FEET; THENCE AT A RIGHT ANGLE NORTHERLY
90 FEET TO THE POINT OF THE BEGINNING.

BEING A PORTION OF HORNER'S ADDITION BLOCK NO. 34.

LOT 030, BLOCK 6577

**LAST WILL & TESTAMENT
OF
JAMES C. ROTH**

I, **James C. Roth**, an a resident/domiciliary of the City & County of San Francisco, State of California, hereby declare this to be my last Will & Testament. I hereby revoke all of my previous wills and codicils.

**ARTICLE ONE
INTRODUCTORY PROVISIONS**

1.1. MARITAL STATUS. I am not now married. I was once married to **Norma Kay Hawkins**, but our marriage was dissolved in 1971 in the State of Michigan. At the time of execution of this Will & Testament, I am engaged to be married. My fiancée's name is **Jilla Levington** and I intend to marry her within the terms of this instrument.

1.2. NO CHILDREN. I have never had any children.

1.3. DEFINITION OF ISSUE. As used in this Will & Testament, the term "issue" refers to all lineal descendants of all generations, with the relationship of parent and child at each generation being determined by defining "child" and "children" to refer to natural children and children who have been, or will be, adopted during minority by the parent or parents from, or through, whom the right to inherit or to take is determined.

1.4. NO CONTRACT AFFECTING WILL. I have not entered into any contract to make, revoke a testamentary gift, or to revoke a will or a testamentary gift, or to die intestate.

1.5. NO EXERCISE OF POWER OF APPOINTMENT. I intentionally refrain from exercising any power of appointment that I now possess or that hereafter may be conferred on me.

**ARTICLE TWO
SPECIFIC GIFTS OF TANGIBLE PERSONAL PROPERTY**

1.1. SPECIFIC GIFTS OF TANGIBLE PERSONAL PROPERTY BY SEPARATE WRITING ATTACHED TO THIS WILL & TESTAMENT & TESTAMENT. My Executor shall distribute all of my remaining tangible personal property, including my interest in any insurance on that property, in accordance with the provisions of a document that I will execute after the execution of this Will & Testament & Testament, which document will be **dated, signed by me personally, and attached to this Will & Testament & Testament**. If I have executed more than one such document, which was **dated, signed by me personally, and attached to this Will & Testament & Testament**, the most recently executed document shall control in all respects. It shall be my duty to execute such document(s).

Last Will & Testament of James C. Roth

Page 1



JAMES C. ROTH

even if I do create such a document but not all of my tangible personal property is disposed of by its provisions, I give all of my tangible personal property or that portion of my tangible personal property that is not distributed in accordance with such writing, as the case may be, including any instances of that property outright to **Jilla Levington**. If she survives me, **Jilla Levington** does not survive me, or if in the Executor's sole and absolute discretion any specific item or tangible personal property should not be distributed to **Jilla Levington**, then the Executor may, either with the right, title, estate, or dispose of such items as part of the residue of my estate. Any proceeds from the sale of such items shall be added to the residue of my estate and disposed of accordingly. The term "**tangible personal property**" includes, but is not limited to, all of my jewelry, clothing, personal automobiles, boats, household furniture, works of art, televisions, computer hardware, software, documents, papers, writings, photos, personal effects, and any tangible items, such as bullion or coins and articles held for investment purposes and all other property of a social or personal nature.

ARTICLE THREE RESIDUARY PROVISIONS

- 3.1. **DISPOSITION OF THE RESIDUE OF MY ESTATE.** I give the residue of my estate as follows:
- a. I give the residue of my estate outright to **Jilla Levington**, my fiancée, if she survives me;
 - b. if **Jilla Levington** does not survive me, the executor shall, but in no event shall distribute more than an equal share to the following persons: my father, **Carl Roth**, my mother **Keene**, and my sister **Gretchen Roth**. If one or more of these persons does not survive me, the balance will be distributed to the residue of my estate outright and in equal shares to all of those persons who do survive me;
 - c. If the residue of my estate is not completely distributed by the preceding provisions of this article, I distribute my portion of the residue to my heirs at law.

ARTICLE FOUR EXECUTOR

- 4.1. **NOMINATION OF EXECUTOR.** I nominate my fiancée, **Jilla Levington**, who resides in San Francisco, California, as the initial Executor of this Will & Testament.
- 4.2. **SUCCESSOR EXECUTORS.** If **Jilla Levington** is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as Executor, or if at any time the office of Executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor Executor or Co-Executors have been designated under any other provision of this Will & Testament, then I nominate my friend, **Alexander J. Horne**, who resides in Encinitas, California, as the successor Executor of this Will & Testament. If **Alexander J. Horne** is unwilling to act as Executor, or if at any time the office of Executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor Executor or Co-Executors have been designated under any other provision of this Will & Testament, then I nominate my dear friend **Marcie Commins**, who resides in El Cerrito, California, as the successor Executor of this Will & Testament. If **Marcie**

Commins is unwilling to serve as Executor, or if at any time the office of Executor becomes vacant for any reason of death, incapacity, or any other reason, and no successor Executor or Co-Executor has already been designated under any other provision of this Will & Testament, then a new Executor or Co-Executors shall be appointed by the Court from among the current members in good standing of the **Professional Fiduciary Association of California**. (The address of the **Professional Fiduciary Association of California** is One Capitol Mall, Suite 120, Sacramento, CA 95814. Tel: (916) 446-7222 or (916) 446-9330. Email: pfac@amgroup.net).

4. **DEFINITION OF EXECUTOR.** The term "Executor," as used in this Will & Testament, shall include each personal representative of my estate who is serving at the pertinent time.

4.1 **WAIVER OF BOND.** No bond or undertaking shall be required of any Executor named in this Will & Testament.

✓ 4.2 **GENERAL POWERS OF EXECUTOR.** The Executor shall have full authority to administer my estate under California's **Independent Administration of Estates Act**, subject to any limitations as that is stated elsewhere in this Will & Testament. The Executor shall have, in addition to all of the powers now or hereafter conferred on Executors by law, and any powers enumerated or otherwise in this Will & Testament, the power to perform any of the acts specified in this section:

- (a) Take possession and control of all of my estate subject to disposition by this Will & Testament and collect all debts due to me or to my estate;
- (b) Receive rents, issues, and profits from all real and personal property in my estate and the same estate, as well as all property held over by order of court to my heirs at law or other relatives;
- (c) Pay taxes and take all steps reasonably necessary for the management, preservation, and preservation of all property in my estate;
- (d) Commence and prosecute, either individually or jointly with my heirs at law or other relatives, actions necessary or proper to quiet title to or to recover possession of any real or personal property in my estate;
- (e) Vote in person, and give proxies to exercise any voting rights with respect to me, the estate, members of a nonprofit corporation, or any other property in my estate, and attend, convene, meet, regulate, convene to the holding of a meeting, and authorize, ratify, approve, or disapprove any action that would be taken by shareholders, members, or property of them;
- (f) Sustain the my party of my estate against damage or loss, and insure the Executor against liability to third persons;
- (g) Deposit money belonging to my estate in an insured account by a financial institution and contract;
- (h) Receive and give on behalf of my estate and pledge, hypothecate, or otherwise encumber real or personal property of my estate, real or personal, as security for any sums so borrowed;
- (i) Pay or cause to be paid damages reasonably incurred in connection with or in the administration of my estate, including but not limited to expenses of storage, freight, insurance, delivery, packing, and insurance; and, on any accounting, treat any such expenses as if they were an expense of the administration of my estate;

- (j) If any asset of my estate consists of an option right, exercise the option after death or after the order of court, on a showing that the exercise would be to the advantage of my estate, and then in favor of property in my estate to acquire the property covered by the option.
- (k) Hold a security in the name of a nominee or in any other form without disclosure of my estate so that title to the security may pass by delivery:
- ✓ (l) Sell at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate on such terms and conditions as I may determine to be in the best interest of my estate.
- ✓ (m) Dispose of or abandon tangible personal property, except tangible personal property that is a special right, when the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.
- (n) Compromise or settle any claim, action, or proceeding by or for the benefit of or against me, my estate, or the Executor, subject only to any confirmation of court that may be required by law, and
- (o) Employ professional investment counsel to make recommendations with respect to and when necessary invest the assets of my estate and, or any account that I may have, and to pay expenses incurred as expenses of the administration of my estate.

16. POWER TO INVEST. The executor shall have the power to invest and reinvest any money of my estate not reasonably required for the immediate administration of my estate in any kind of property, real, personal, or mixed, and in any kind of investment, including but not limited to improved and unimproved real property, interest-bearing accounts, certificates of deposit, corporate and governmental obligations of any kind, preferred or common stocks, mutual funds, annuities, and trusts, money market funds, taxable and tax-exempt commercial paper, repurchase agreements, and stocks, obligations, and shares of unit investment trusts and other funds of any corporation or entity.

17. DIVISION OR DISTRIBUTION IN CASH OR IN KIND. In order to satisfy a pecuniary gift, to distribute or divide estate assets into shares or partial shares, the Executor may distribute or divide these assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this Will & Testament shall be valued at its fair market value at the time of distribution.

18. POWER TO SELL, LEASE, AND GRANT OPTIONS TO PURCHASE PROPERTY. The Executor shall have the power to sell at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate on such terms and conditions as the Executor determines to be in the best interest of my estate.

19. POWER TO MAKE TAX ELECTIONS. To the extent permitted by law, and without regard to the resulting effect on any other provision of this Will & Testament, or my personal income tax or my estate, or on the amount of taxes that may be payable, the executor shall have the power to choose a valuation date for tax purposes; choose the methods to pay any death tax liability of my estate or my estate for state or federal estate or income tax purposes as an income tax deduction or as a tax credit; and claim all or any portion of any interest in property passing to my estate.

after my death, and determine when an item is to be treated as taken into income or used as a tax deduction.

4.10. POWER TO PURCHASE ESTATE PROPERTY. The Executor shall have the power to sell any property of my estate to, or exchange any property of my estate with the property of, any person serving as Executor at the time of the sale or exchange, provided that any such sale or exchange shall be for adequate consideration.

4.11. POWER TO CONTINUE OR SELL BUSINESS. The Executor shall have the power to continue the operation of any business that I may own, or in which I have an interest at my death, for such a time and in such a manner as the Executor deems advisable and in the best interests of my estate, or sell or liquidate the business (or interest in a business) at such time and on such terms as the Executor deems advisable and in the best interests of my estate.

4.12. PAYMENTS TO LEGALLY INCAPACITATED PERSONS. If at any time any beneficiary under this Will & Testament is a minor or it appears to the Executor that any beneficiary is incompetent, incompetent or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the Executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian, to the fiduciary or custodian under the **Uniform Gifts to Minors Act** or **Uniform Transfers to Minors Act** of any state; to the beneficiary's custodian under the **California Uniform Transfers to Minors Act** until the beneficiary reaches the age of twenty-five (25); to one or more suitable persons, as the Executor deems proper, such as a relative or a person residing with the beneficiary, now used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name at any financial institution. If there is no custodian then serving or nominated to serve by me for a beneficiary, the person, representative or Executor, as the case may be, shall designate the custodian. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the Executor for all purposes.

ARTICLE FIVE CONCLUDING PROVISIONS

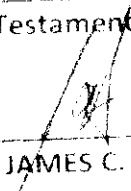
5.1. DEFINITION OF DEATH TAXES. The phrase "death taxes," as used in this Will & Testament, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

- (a) Any additional tax that may be assessed under Internal Revenue Code Section 2012A;
- (b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the Internal Revenue Code, unless the applicable tax statutes provide that the generation-skipping transfer tax is a direct transfer of property payable directly out of the assets of my gross estate;

5.2. PAYMENT OF DEATH TAXES. The Executor shall pay death taxes, whether or not attributable to property inventoried in my probate estate, by prorating and apportioning them among the persons interested in my estate as provided in the California Probate Code.

Last Will & Testament of James C. Roth

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JAMES C. ROTH

5.3. **SIMULTANEOUS DEATH.** If any beneficiary under this Will & Testament and I die simultaneously, or if it cannot be established by clear and convincing evidence whether the beneficiary or I died first, I shall be deemed to have survived that beneficiary, and the Will & Testament shall be construed accordingly.

5.4. **PERIOD OF SURVIVORSHIP.** For the purposes of this Will & Testament, a beneficiary shall not be deemed to have survived me if that beneficiary dies within thirty (30) days after my death.

5.5. **INTENTIONAL OMISSION OF CHILDREN BORN OR ADOPTED AFTER THE EXECUTION OF THIS WILL & TESTAMENT.** Except as I have otherwise provided in this Will & Testament, I have intentionally failed to provide for any children born to or adopted by me after this Will & Testament, after the execution of this Will & Testament.

5.6. **NO-CONTEST CLAUSE.** If any person, directly or indirectly, contests the validity of this Will & Testament in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or opposes, objects to, or seeks to invalidate any contract, agreement (including an interest agreement), declaration of trust, beneficiary designation, specifically the beneficiary designation that I executed with regard to my SEP-IRA with Vanguard (Vanguard Prime Money Market Fund, Fund/Account No. 0030/88017746793) and the beneficiary designation that I executed with regard to my IRA with Vanguard (Vanguard Prime Money Market Fund/Account No. 0030/09917921422), or other document executed by me (or for my benefit) that is a part of my integrated estate plan, or seeks to succeed to any part of my estate otherwise than in the manner specified in this Will & Testament, any gift or other interest given to that person under this Will & Testament shall be revoked and shall be disposed of as if he or she had predeceased me without issue. I specifically exempt petitions under California Probate Code Sections 1330 et seq. from the effect of this clause.

5.7. **DEFINITION OF INCAPACITY.** As used in this Will & Testament, an individual shall be deemed to be incapacitated or to lack capacity if:

- (a) she or he is an emancipated minor;
- (b) A duly appointed conservator of the person or estate is acting on behalf of the individual;
- (c) A court of appropriate jurisdiction has determined that the individual is incapacitated, incompetent, or lacks sufficient capacity to manage his or her affairs; or
- (d) Two licensed physicians, one of whom is the individual's attending or treating physician, or two other persons who have personally examined the individual, and neither of whom is related to the individual within and including the second degree of consanguinity, have determined or certify under penalty of perjury that in their respective opinions, the individual is substantially unable to manage his or her personal resources or to resist fraud or undue influence.

5.8. **NUMBER AND GENDER.** As used in this Will & Testament, references in the masculine gender shall be deemed to include the feminine and neuter gender, and vice versa, and references to the singular shall be deemed to include the plural, and vice versa, wherever the context so permits.

5.30. **CAPTIONS.** The captions appearing in this Will & Testament are for convenience and reference only, and shall be disregarded in determining the meaning and effect of the provisions of this Will & Testament.

5.31. **SEVERABILITY CLAUSE.** If any provision of this Will & Testament is invalid, that provision shall be disregarded, and the remainder of this Will & Testament shall be construed as if the invalid provision had not been included.

5.32. **CALIFORNIA LAW TO APPLY.** All questions concerning the validity and interpretation of this Will & Testament shall be governed by the laws of the State of California in effect at the time this Will & Testament is executed.

5.33. **GIFTS TO HEIRS AT LAW.** For any gift to my "heirs at law" that is made outright in this Will & Testament, those heirs at law shall be determined as if I had died intestate at the time of the distribution prescribed in this Will & Testament, and the identity and shares of those heirs at law shall be determined according to the California laws of succession that concern separate property that was not acquired from a previously deceased spouse and that are in effect at the time I am deemed to have died. For any assets of my trust estate created by this Will & Testament to be distributed to my heirs at law, those heirs at law shall be determined as if I had died intestate, and only following the termination of the trust of each share, and the identity and shares of those heirs at law shall be determined according to the California laws of succession that concern separate property not acquired from a previously deceased spouse and that are in effect at the time I am deemed to have died.

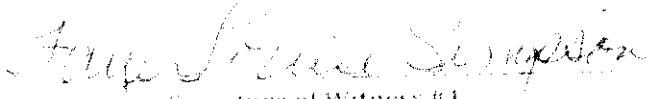
This Will & Testament is executed on May 19, 2009, at San Mateo, California.

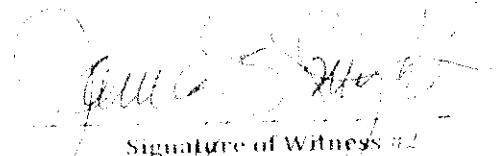


JAMES C. ROTH, Testator

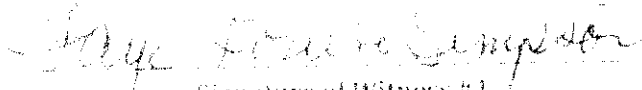
On the date written below, the Testator, **James C. Roth**, declared to us that this instrument, consisting of eight (8) pages including this page, was the Testator's Last Will & Testament and asked us to witness it. The Testator then signed this Will & Testament in our presence, all of us being present at the same time. At the Testator's request, in the Testator's presence, and in the presence of one another, we subscribe our names as witnesses.

We believe that the Testator is 18 or more years of age, is of sound mind and free will, and is under no constraint, duress, fraud, duress, menace, or undue influence.


Signature of Witness #1
EAVE LOUISE SIMPSON



Signature of Witness #2
JAMES B. CREIGHTON

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 19, 2019, at San Mateo, California.


Signature of Witness #1

Name & Address of Witness #1

EAVE LOUISE SIMPSON
275 Del Prado Dr.
Daly City, CA 94015


Signature of Witness #2

Name & Address of Witness #2

JAMES B. CREIGHTON
1 Daniel Burnham Court, Unit 1512
San Francisco, CA 94109