

12-

# **FIRST AMENDED CERTIFICATE OF THE MILLERMON FAMILY TRUST**

This is a Certificate of The Millermon Family Trust Agreement as amended on the 13<sup>TH</sup> day of March, 1995, hereafter referred to as the "Trust Agreement."

I

## **IDENTIFICATION OF THE TRUST**

Under the terms of the Trust Agreement, **EDWARD A. MILLERMON** and **MARY MAXINE MILLERMON**, husband and wife, residents of Douglas County, Nevada, were the Grantors and initial Trustees of the trust. On July 15, 1994, **MARY MAXINE MILLERMON** died, leaving her husband **EDWARD A. MILLERMON** as the surviving Grantor and sole Trustee under the Millermon Family Trust Agreement, as amended. The name of the trust created under the terms of the Trust Agreement remains **The Millermon Family Trust**.

II

## **SUCCESSOR TRUSTEES**

In the event **EDWARD A. MILLERMON** shall resign or otherwise become unable to act as a Co-Trustee, then **WAYNE EDWARD MILLERMON, JOHN SILVERBERG** and **HELEN PASSARINO** shall act together as successor Co-Trustees. In the event any one of these Co-Trustees shall resign or otherwise become unable to act as a Co-Trustee, then the remaining Co-Trustees shall act alone.

In the event all Trustees named in the Trust Agreement shall resign or otherwise be unable to act hereunder, the last surviving named Trustee to resign or otherwise become unable to so act shall appoint a successor Trustee. In the event such last surviving named Trustee fails or is unable to make such an appointment, the beneficiaries under the Trust shall secure the appointment of a successor Trustee or Trustees by a court of competent jurisdiction, at the expense of the Trust, which expense shall be borne proportionately by the respective trusts and shares then constituted.

III

## **POWERS OF TRUSTEES**

**Generally.** Subject to any limitations stated elsewhere in the Trust Agreement, the Trustees are vested with the power to do and perform all acts necessary to accomplish the proper management and distribution of the Trust and the trust estate. In addition to the powers enumerated at NRS 163.265 through NRS 163.410, which are hereby incorporated into the Trust Agreement by this reference as though fully set forth at length, as well as any powers now

or hereafter conferred by law affecting the Trust and the trust estate, the Trustees are hereby vested with the following powers:

(1) **Retention of Property.** To hold any property received into the Trust at its inception or subsequently added to it or acquired pursuant to proper authority, which the Trustees in the exercise of their absolute discretion and intelligence may deem to be in the best interests of the Trust.

(2) **Operation of Business.** Subject to the same restrictions and limitations set forth above, the Trustees may continue the operation of any business lawfully received into the Trust whether organized as a sole proprietorship, partnership or corporation; to do and perform all acts that Trustees, in their discretion, deem necessary or advisable in the operation of such business; and to dissolve, liquidate or sell such business at such time and on such terms at Trustees, in their discretion, deem in the best interest of the Trust and the respective trusts and shares therein created.

(3) **Investment Powers.** To invest and reinvest the trust estate in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not being limited to, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts, investment companies, certificates of deposit, bonds and/or mutual funds, that men or women of prudence, discretion and intelligence acquire for their own account, including any common trust fund administered by the successor Trustees. The investments need not be diversified.

(4) **Management Powers.** To manage and control the trust estate and to encumber, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair trust property or otherwise dispose of any of the trust property; to grant options; to lease trust property for any purpose and for terms within or extending beyond the duration of the Trust, including exploration for the removal of gas, oil and other minerals; and to enter into community oil leases, pooling and utilization agreements; to create restrictions, easements and other servitudes; to compromise claims existing in favor of or against the trust; to carry insurance of such kinds and in such amounts as the Trustees may deem advisable, at the expense of the trust; to commence or defend, at the expense of the trust, such litigation with respect to the trust or any property of the trust estate as the Trustees may deem advisable and to compromise or otherwise adjust any claims or litigation against or in favor of the trust.

(5) **Loans of Trust Assets.** To make loans in such amounts, upon such terms, at such rates of interest and on such security as Trustees deem prudent, provided such loans are evidenced by promissory notes; to purchase a holder's interest in a secured promissory note and the security therefor at such discount as Trustees shall deem prudent, taking into account the terms thereof, the rate of interest and the nature of the security.

(6) **Money Borrowed.** To borrow money for any trust purpose upon such terms and conditions as the Trustees may deem proper, and to obligate the trust estate for repayment; to encumber the trust estate or its property by mortgage, deed of trust, pledge or otherwise, using such procedure to

consummate the transaction as the Trustees may deem advisable. The power of the Trustees to borrow shall include the power to borrow money on behalf of one trust from any other trust provided for in the Trust Agreement and to obligate the trusts, or any of them, provided for in the Trust Agreement to repay such borrowed money.

**(7) Income v. Principal.** To determine what is principal or income of the trust estate and apportion and allocate such principal or income in accordance with the provisions of the applicable statutes of the State of Nevada as they may now exist and may from time to time be enacted, amended or repealed; any such matter not provided for either in this instrument or under the laws of the State of Nevada shall be determined by the Trustees in accordance with accepted accounting practices.

**(8) Distribution of Assets.** To partition, allot and distribute the trust estate, on any division or partial or final distribution of the trust estate, in money, undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustees, and to sell such property as the Trustees may deem necessary to make any division or distribution. In making any division or partial or final distribution of the trust estate, the Trustees shall be under no obligation to make a pro rata division, or to distribute the same assets to beneficiaries similarly situated, but rather, the Trustees may, in their discretion, make a non-pro rata division between the trusts or shares and non-pro rata distributions to such beneficiaries, as long as the respective assets allocated to separate trusts or shares, or distributed to such beneficiaries, have equivalent or proportionate fair market value. After any division of the trust estate, Trustees may make joint investments with funds from some or all of the several shares or trusts, but Trustees shall keep a separate account for each share or trust.

**(9) Transactions with Trustees.** To loan or advance the Trustees' own funds to the Trust for any trust purpose, with interest at current rates; to receive security for such loans in the form of a mortgage, pledge, deed of trust or other encumbrance of any assets of the Trust; to purchase assets of the Trust at their fair market value as determined by an independent appraisal of those assets; and to sell property to the trust at a price not in excess of its fair market value as determined by an independent appraisal.

**(10) Transactions With Grantors and Beneficiaries.** To purchase, at fair market value, securities or other property from, or otherwise contract with Grantors, or either of them, the beneficiaries under the Trust or any of the respective trusts and shares therein created, or the legal representatives of their respective estates, and make secured or unsecured loans to Grantors, or either of them, beneficiaries hereunder or the legal representatives of their respective estates, in such amounts, upon such terms, at such rates of interest and on such security as Trustees deem prudent.

**(11) Distributions to Beneficiaries.** To make distributions directly to any beneficiary, to the guardian of such beneficiary's person or estate or to any other person deemed suitable by Trustees for the benefit of a beneficiary, or by direct payment of such beneficiary's expenses.



**(12) Securities.** To acquire, register or qualify for exemption from registration, and sell any securities (including options, whether "puts" or "calls") or other property held under the Trust in the name of Trustees or in the name of a nominee with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery; however, the books and records of Trustees shall show that all such investments are part of the Trust and the respective trusts therein created; and to enter into short sales of securities. To have all the rights, powers and privileges of an owner with respect to the securities held in trust including, but not limited to, the power to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustees may deem advisable; and to exercise and sell stock subscription or conversion rights.

**(13) Tax Liabilities.** To take any action and to make any election, in the Trustees' discretion, to minimize the tax liabilities of the Trust and its beneficiaries, and the Trustees shall have the power to allocate the benefits among the various beneficiaries, and the Trustees shall have the power to make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election or any investment or administrative decision that the Trustees believe have had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

**(14) Administration Expenses.** To pay all taxes, assessments, fees, charges and other expenses incurred in the administration of the Trust and the respective trusts and shares therein created, and to employ and pay reasonable compensation to agents and counsel, including investment counsel. Notwithstanding any other provision of the Trust Agreement, all taxes, assessments, fees, charges and other expenses incurred by the Trustees in the administration or protection of the Trust, including the compensation allowed by any court to the Trustees for their services hereunder, shall be a charge upon the trust estate and shall be paid by the Trustees out of the income therefrom, or in the event and to the extent that the income may be insufficient, then out of the principal of the trust estate, prior to final distribution of the trust property; and the determination of the Trustees with respect to all such matters shall be conclusive upon all persons howsoever interested in the Trust.

**(15) Expenses of Last Illness.** To pay the expenses of the last illness, funeral and burial of each Grantor and the estate, inheritance, succession and other death taxes, including any interest and/or penalties thereon, imposed under the laws of any jurisdiction by reason of the death of either Grantor or with respect to the transfer or receipt of any property passing, or which has passed, under or outside the Trust and any amendment hereto, regardless of whether the same is included in the probate estate of a deceased Grantor.

**(16) Retention of Professionals.** To retain such advisors, agents and counsel, including legal, tax and/or investment counsel, as Trustees deem advisable, to make recommendations to Trustees and to assist Trustees in exercising the powers granted to Trustees pursuant to the Trust Agreement. Such advisors, agents or counsel shall be appointed or removed by Trustees by written instrument, signed and acknowledged by Trustees and delivered to the advisors, agents or counsel so appointed or removed; and reasonable compensation for all services performed by such advisors, agents or counsel shall be paid by the Trust, or the respective trusts and shares therein created, as a cost of administration thereof and shall not affect the compensation to which Trustees shall be entitled.

**(17) Funds on Deposit.** To hold funds on deposit in one or more accounts, with various financial institutions or brokerage companies, and in such form of account, whether or not interest bearing, as Trustees may determine, without regard to the amount of any such deposit or whether it would otherwise be a suitable investment for funds of the Trust.

**(18) Safe Deposit Boxes.** To open and maintain safe deposit boxes in the name of Trustees.

**(19) Power to Terminate Trust.** If any trust created by the Trust Agreement has at any time, in the opinion of the Trustees, reached a point where it is not economically feasible to continue, the Trustees may, in their discretion but are not required to, terminate such trust and, regardless of the age of the beneficiaries thereof, distribute the principal and any accrued or undistributed net income thereof to such beneficiaries, or to their guardian or other fiduciary.

**(20) Release/Restriction of Powers.** To release or restrict the scope of any power that the Trustees may hold in connection with the Trust, whether such power is expressly granted therein or implied by law. The Trustees shall exercise this power in a written instrument executed by the Trustees specifying the power to be released or restricted and the nature of the restriction.

**Powers Not Limited.** The enumeration of the powers set forth above shall not limit the general or implied powers of Trustees. No exercise of any power granted to Trustees shall operate to increase the estate tax or income tax liability of the Trust nor any of the separate trusts or shares therein created. Trustees shall have such additional powers as are now or may hereafter be conferred upon Trustees by law that may enable Trustees to administer the Trust and the respective trusts and shares therein created, subject only to limitations expressly provided therein. In no event shall this paragraph be construed as giving Trustees the authority to possess a power which will cause the Trust, or any beneficiary named therein, to incur any additional tax liability.

**EDWARD A. MILLERMON and MARY MAXINE MILLERMON**, the Grantors and Trustees of The Millermon Family Trust Agreement, under the terms of the Trust Agreement, hereby certify that this **Certificate of The Millermon Family Trust Agreement** is an accurate summary of the

provisions of the Trust Agreement identifying the trust, naming the Trustees and the successor Trustees, and specifying the powers of the Trustees. Any person or entity transacting business with the Trustees may rely upon this Certificate without reviewing the entire Trust Agreement.

Dated this 13 day of March, 1995.

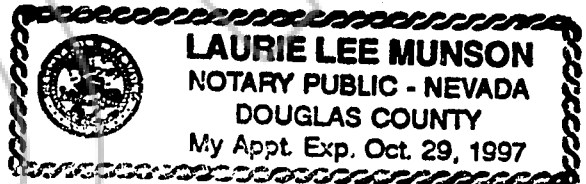
Edward A. Millermon  
**EDWARD A. MILLERMON**

**SURVIVING GRANTOR AND TRUSTEE**

STATE OF NEVADA )  
  : ss.  
County of Douglas )

On the 13<sup>th</sup> day of March, 1995, personally appeared before me, a Notary Public, **EDWARD A. MILLERMON**, personally known to me to be the person whose name is subscribed to the above instrument, who acknowledged that he executed the above instrument.

Laurie Lee Munson  
Notary Public



REQUESTED BY  
Sheerin Walsh Keele  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

'95 MAR 14 P4 24

LINDA SLATER  
RECORDER

\$12 PAID DEPUTY

357839

BK 0395 PG 1718