CLERK'S RECORDS

Volume 1 of 1

Trial Court Cause No. 412249-401

In the County Probate Court No. 4

of Harris County, Texas

Honorable James Horwitz , Judge Presiding

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
6/2/2023 5:34:12 PM
DEBORAH M. YOUNG
Clerk of The Court

In the Estate of: Nelva E Brunsting, Deceased

Appealed to the

First Court of Appeals, at Houston, Texas

Attorney for Appellant(s):

Name: Candice Leonard Schwager

Address: 16807 Pinemoor Way
Houston TX 77058

Telephone no: 832-857-7173

E-mail address: candiceschwager@outlook.com

SBOT no.: 24005603

Attorney for: Candace Louise Curtis

Name of Clerk Preparing the clerk's record: Evony Simon (CCO)

Comment: Please be advised the following documents listed in the designation will not be reflected in the clerks record because;

3. b.	Resignation of Independent Executor was filed in cause #412,249
3. g. and o.	Is the Court reporters records.
3. l.	Order denying Statutory Bill of Review was filed in cause #412,249-404

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OFFICE OF TENESHIA HUDSPETH, COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

CLERK'S NOTATION:

February 14, 2019: Order Denying Pleas and Motions Filed by Candace Curtis, and
February 25, 2022: Order Granting Co-Trustee' Motion for Summary Judgment as to Candace Louise Curtis Only

Teneshia Hudspeth, County Clerk
County Probate Court No. 4
Harris County, Texas

_/S/ Evony Simon_____
Evony Simon, Deputy County Clerk

OFFICE OF TENESHIA HUDSPETH, COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

The State of Texas — County Probate Court No. 4
COUNTY OF HARRIS — Harris County, Texas

AT THE TERM OF THE PROBATE COURT NO. COUNTY PROBATE COURT NO. 4, HARRIS COUNTY, TEXAS, BEGIN IN THE SAID COUNTY ON THE 1st DAY OF JANUARY, 2019 AND WHICH TERMINATES ON THE 30th DAY OF JUNE, 2019, AND ON THE 1ST DAY OF JANUARY, 2022 AND WHICH TERMINATES ON THE 30TH DAY OF JUNE 2022 THE HONORABLE JAMES HORWITZ, SITTING AS JUDGE OF SAID COURT, THE FOLLOWING PROCEEDINGS WERE HAD.

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NO. 412.249-401

PROBATE COURT 4

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
vs.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF HARRIS COUNTY, TEXAS

1 pers. in 4/9/13

PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES

PERSONAL APR 10 2013

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, CARL HENRY BRUNSTING, individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, filing his Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, together with Request for Disclosures, and in support thereof would show the Court as follows:

I.

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

II.

Parties

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting ("Elmer"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2] These estates are collectively referred to herein as the "Estates." In his individual capacity, Plaintiff is referred to herein as "Carl." Carl was previously a successor trustee of the Brunsting Family Living Trust created on October 10, 1996 and restated on January 12, 2005 (the "Family Trust"). Carl is a beneficiary of the Family Trust and the other trusts created by its terms. Elmer was a trustee and a beneficiary of the Family Trust, and Nelva was also a trustee and beneficiary of the Family Trust and its successor trusts. The successor trusts of the Family Trust resulted pursuant to the terms of the

[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's Trust ("Elmer's Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Those are sometimes collectively referred to herein as the "Successor Trusts." Carl is also the beneficiary, but not the trustee, of the Carl Henry Brunsting Personal Asset Trust ("Carl's Trust") which was created pursuant to the terms of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment signed on 8/25/10 (the "8/25/10 QBD"). As will be further discussed herein, Plaintiff believes the 8/25/10 QBD was the result of undue influence, was done when Nelva lacked capacity and/or was created by deception so that Nelva did not understand or consent to the document. In fact, it is far from clear what documents Nelva even signed or knew existed.

3. Defendant Anita Kay Brunsting f/k/a/ Anita Kay Riley is Carl's sister. It is believed that Anita's counsel will accept service, but, if not, Anita can be served with process at her home at 203 Bloomingdale Circle, Victoria, Victoria County, Texas 77904. In her individual capacity and when acting pursuant to the power of attorney purportedly executed by Nelva on August 25, 2010 ("8/25/10 POA"), this Defendant will be referred to herein as "Anita." Anita was named as a successor trustee under the terms of the tainted 8/25/10 QBD. Pursuant to the terms of that document, upon Nelva's death, Anita was to become co-trustee of the Family Trust and the Successor Trusts. On December 21, 2010, however, Nelva purportedly signed a resignation of her position as trustee and appointed Anita to be her successor even before her death. From that point until her mother's death on November 11, 2011, Anita acted as the sole trustee of the Family Trust and the Successor Trusts. As will be discussed herein, Plaintiff believes Anita convinced Nelva to resign from her trustee position and to appoint Anita as her replacement through improper means and for improper purposes. The terms of the tainted 8/25/10 QBD made Anita co-trustee of Carl's Trust.

Anita is also beneficiary and trustee of the Anita Kay Brunsting Personal Asset Trust ("Anita's Trust").

4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Carl's sister. It is believed that Amy's counsel will accept service, but, if not, Amy can be served with process at her home at 2582 Country Ledge, New Braunfels, Comal County, Texas 78132. Pursuant to the terms of the tainted 8/25/10 QBD, Amy became a co-trustee of the Family Trust and the Successor Trusts upon Nelva's death. Anita and Amy in their capacity as trustees of the Family Trusts and the Successor Trusts are sometimes collectively referred to herein as the "Current Trustees". Amy is also the beneficiary and the trustee of the Amy Ruth Brunsting Personal Asset Trust ("Amy's Trust"). The terms of the tainted 8/25/10 QBD also made Amy co-trustee of Carl's Trust.

5. Defendant Carole Ann Brunsting ("Carole") is Carl's sister. Carole may be served with process either at her home at 5822 Jason St., Houston, Harris County, Texas 77074 or at her place of employment at Cameron's offices at 1333 West Loop South, Suite 1700, Houston, Texas 77027. Carole was named in Nelva's health care power of attorney and was made a joint signatory on Nelva's bank account when Anita took over as trustee. Carole is also the beneficiary and trustee of the Carole Ann Brunsting Personal Asset Trust ("Carole's Trust").

6. Candace Louise Curtis ("Candy") is Carl's sister. Candy is named in this action only because these claims impact her rights as a beneficiary of various trusts. Plaintiff does not seek to recover any damages from Candy, and it is anticipated that Candy will waive service of process. Candy and Carl were the only Brunsting siblings whose right to be trustees of their own trusts after Nelva died were extinguished by the changes implemented in the tainted 8/25/10 QBD. Candy is the beneficiary of the Candace Louise Curtis Personal Asset Trust ("Candy's Trust") of which Anita and Amy are the co-trustees.

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III.

Jurisdiction

7. Plaintiff brings this cause of action pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code. More specifically, Plaintiff brings this proceeding to:

(a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;

(b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;

(c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;

(d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;

(e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

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IV.

Venue

8. Venue in this cause is in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all, or substantially all, of the acts giving rise to Plaintiff's claims occurred in Harris County, Texas.

V.

Background Facts

9. On October 10, 1996, Elmer and Nelva established the Family Trust. The Family Trust was restated on January 12, 2005. The Family Trust was initially revocable, but only until the death of either Elmer or Nelva. Thus, when Elmer died on April 1, 2009, the Family Trust became irrevocable. At that point, the Family Trust's assets were to be divided between Elmer's Decedent's Trust and Nelva's Survivor's Trust pursuant to Article VII of the Family Trust.

10. At some point, Anita and Amy implemented a plan to take over their parents' remaining assets and divide the spoils. That plan was made feasible when Carl became seriously ill with encephalitis in July, 2010. Carl had been an obstacle to Anita and Amy's plans, so they seized the opportunity to become even more aggressive in controlling their mother's actions. Carole's initial resistence to Anita and Amy's scheme was apparently eliminated through transfers of assets to which she was not entitled.

11. Anita and Amy carried out their plan of replacing their mother's wishes with their own with the help of Nelva's own legal counsel. The result was the tainted 8/25/10 QBD. Through bullying and deception, that document was executed without regard to Nelva's capacity and notwithstanding Nelva's apparent lack of understanding, knowledge, or consent to what was occurring. The 8/25/10 QBD removed Carl from his successor trustee roles. At that time all prior

powers of attorney were revoked and replaced with one giving Anita control of her mother's affairs. During the same period, Nelva's safe deposit box to which Carl had access was closed and a new one opened giving Anita access instead. Anita and Amy apparently determined which documents would be prepared, regardless of whether Nelva agreed with or even knew what they were doing. The only document which Anita and Amy wanted but seem to have been unsuccessful in implementing was a document intended to exclude Carl's daughter and granddaughter from inheriting through Nelva.

12. Perhaps because it became too difficult to even pretend to be obtaining Nelva's signature on documents needed to take all the steps Defendants wanted to take, or because Anita, Amy, and Carole did not want to wait for Nelva's death to begin using her assets for their own purposes, other steps were taken to obtain complete control of Nelva's assets, however held. Anita and Amy's continued efforts resulted in Nelva's purported resignation as trustee and purported appointment of Anita as substitute trustee of the Family Trust and the Successor Trusts on December 21, 2010. Thereafter, Anita used her position as trustee to repeatedly transfer assets for her own benefit and that of her children, for Amy's benefit and the benefit of Amy's children, and for Carole's benefit. Anita disregarded the terms of the Family Trust as she saw fit. For example, Anita began paying herself an exorbitant trustee's fee. Anita also began paying her own credit card bills, as well as other personal expenses, such as payments for her children's automobiles and educational expenses, from the Family Trust and Successor Trusts' accounts.

13. On December 31, 2010, an account was established, allegedly for Nelva's benefit to be used on day to day expenses but on which Carole was a signatory. Over the next year, more than $150,000 was transferred from trust accounts by Anita and spent by Carole on what appears to be predominantly items for Carole's own benefit. At the same time, Anita was draining the other

accounts owned by Elmer's estate, Nelva, or the Successor Trusts, at least in part for her own purposes and/or other improper purposes.

14. On March 24, 2011, Anita divided the more than 4,000 shares of Exxon Mobile stock purportedly owned by the Family Trust between Elmer's Decedent's Trust and Nelva's Survivor's Trust. Then on May 9, 2011, Anita transferred 1,120 shares of that stock from Nelva's Survivor's Trust to Amy. On June 13, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to herself, and on June 15, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to Candy. An finally, on June 15, 2011, Anita transferred 1,325 shares from Elmer's Decedent's Trust to Carole. No shares were transferred to Carl, despite Anita's knowledge of Carl's serious health crisis and large medical expenses. In fact, Carl's family was not even informed of the transfers of stock and did not learn about them until after Nelva's death.

15. On June 14, 2011, Anita also transferred 135 shares of Chevron stock purportedly owned by Nelva's Survivor's Trust to each of her two children and to each of Amy's two children. No similar gift was made to either Carl's daughter or granddaughter or to Candy's two sons. Moreover, Carl's entire family was excluded from conversations addressing the status of the Brunsting estate, changes in the trusts, and Nelva's removal from involvement with and control over the trusts. Instead of assisting with Carl's medical bills, it is believed that trust assets were used to hire investigators to follow Carl's wife of 30 years and that a GPS tracking device was even placed on Carl's wife's car without her consent, at the apparent direction of Anita and Amy.

16. On Nelva's death on November 11, 2011, Amy joined Anita as co-trustee of the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Assets were to be divided equally into separate trusts for each of the Brunsting children upon Nelva's death. Until the tainted 8/25/10 QBD, each of the Brunsting children would have been trustee of their own trusts, but in the

tainted 8/25/10 QBD, both Carl and Candy were removed as trustees of their own trusts. Instead, Anita and Amy were named co-trustees of both Carl's Trust and Candy's Trust.

17. Of course, by the time of Nelva's death, the remaining assets had already been plundered. Indeed, two days before Nelva died, Anita even closed the safe deposit box used by Nelva and no inventory of its contents have ever been provided although it had been where valuable items and documents had been kept. A number of valuable items remain unaccounted for after Nelva's death, such as a significant amount of savings bonds which it is believed either Anita, Amy, or Carole have not admitted they discovered and kept. Likewise, no effort was made to value, preserve, inventory, and properly divide personal property.

18. Of course, many things have not been accounted for or properly shared with Plaintiff. Plaintiff has not, for example, been provided with a copy of the lease of the most valuable asset his parents owned, a multimiliion dollar farm in Iowa. To the extent information has been provided because Plaintiff has sought it and even filed a pre-suit discovery action to obtain it, that information has made it clear the plundering started long ago and only court intervention or complete dissipation of the assets will stop it. Apparently the Current Trustees believe the division of assets should be made based on the terms of the tainted 8/25/10 QBD, and without taking into consideration what Anita, Amy & Carole have already taken.

V.

Construction of Trust and Suit for Declaratory Judgment

19. The 8/25/10 QBD contains a broad *in terrorem* clause providing that a party forfeits their interest in the resulting trust if contesting its provisions. Plaintiff asserts that the *in terrorem* clause is overly broad and void as against public policy because it prohibits the trust beneficiaries

from questioning any of the circumstances surrounding the Current Trustees' improper actions in this case, thereby preventing them from protecting their interests.

20. In addition, Plaintiff seeks declaratory relief construing the validity, terms, responsibilities, and obligations of the various documents signed or purportedly signed by Elmer and Nelva. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities.

21. If the Court fails to find that the *in terrorem* clause is void as against public policy to the extent it prohibits beneficiaries from questioning the actions resulting in the QBDs and the actions supposedly taken under its terms, Plaintiff asks, in the alternative, that the Court construe the documents at issue herein and declare that Plaintiff's actions in filing and pursuing this action do not violate the *in terrorem* clause.

22. Plaintiff, in fact, seeks to determine and enforce his partents' intent and to further the purposes of that intent. In doing so, Plaintiff was required to bring this action requesting declaratory relief and an accounting. Such actions would not constitute a contest even if the provision were not void because it is against public policy.

23. Plaintiff further asserts that he had just cause to bring this lawsuit and that he has brought the action in good faith. Therefore, no forfeiture should result from the action.

VI.

Demand for Trust Accounting

24. Defendants have provided insufficient, conflicting, and unsupported information to Plaintiff accounting for the assets and transactions concerning the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust.

25. The Texas Trust Code and the trust indentures require the Current Trustees to keep complete and accurate books of account with regard to the trusts, trust property and all transactions pertaining thereto and to provide the appropriate information to the beneficiaries, but they have failed to do so. Plaintiff, therefore, requests that this Court order Defendants to account for the administration of all the trusts.

VII.

Breach of Fiduciary Duties

26. Defendants have breached their duties as fiduciaries, both because of their formal positions as trustees of the various trusts, as agents for Nelva, and/or because of their family relationship to their parents and their brother. Carole also had fiduciary duties to Plaintiff, particularly after becoming a signatory on Nelva's account. Not only is the family relationship one involving a high degree of trust, influence, and confidence, but in this particular case, the fiduciary obligations were magnified because of the dominance on the part of the fiduciaries and the weakness and dependence on the part of the parties to whom Defendants owed fiduciary duties. They have breached their responsibilities by, among other things, transferring valuable property without receiving appropriate consideration and taking assets for their own benefit and use and in violation of their duties and the trust instruments themselves. Breaches of fiduciary duty by Defendants include, but are not limited to, the following:

a. failing to keep and provide clear, regular, accurate, and complete accountings of assets;

b. resisting accountings of property and transactions;

c. failing to abide by the terms of the various trust instruments;

d. failing to preserve property and to prevent losses of property;

e. conveying property in ways which were detrimental and in violation of their obligations;

f. entering into transactions which were not in the best interests of persons and trusts to whom they owed fiduciary obligations;

g. becoming involved in matters in which Anita, Amy, and Carole represented interests which conflicted with those of their parents, Carl, and the trusts and their beneficiaries, including Nelva;

h. failing to be loyal to their family members and the trust beneficiaries and to take actions based upon the best interests of Nelva, Carl, and the trusts;

i. failing to deal impartially, fairly, and equally with Nelva, Carl, and the trusts;

j. failing to prevent transfers, gifts, or removal of assets;

k. failing to make appropriate and equal distributions;

l. failing to adequately inform the beneficiaries about assets and transactions and beneficiaries' rights;

m. misrepresenting or allowing misrepresentations concerning assets and transactions and beneficiaries' rights;

n. failing to prevent transactions which were detrimental to their family members and the trusts;

o. allowing the payment of inappropriate amounts from assets they purportedly held as fiduciaries; and

p. failing to follow and otherwise enforce the terms of the trust instruments.

27. In connection with actions by Defendants with regard to transactions involving self-dealing, Defendants, acting in a fiduciary capacity have the burden of establishing the propriety of

those transactions. Defendants must prove those transactions were fair and equitable to Plaintiff, and the transactions at issue in this case clearly were not.

28. As a result of Defendants' various actions described herein, Plaintiff has been damaged in an amount in excess of the minium jurisdictional limits of this Court.

29. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

VIII.

Conversion

30. Defendants' actions constitute conversion of property to which Plaintiff had a superior right, and as a result of such conversion, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

31. Because Defendants' conversion was committed willfully and maliciously, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

IX.

Negligence

32. Defendants had a duty to Plaintiff to use reasonable care to protect his interests in the capacities specified herein. Defendants failed to exercise such reasonable care, in that they allowed assets rightfully belonging to Elmer's estate, Nelva, and the various trusts of which Plaintiff was a beneficiary to be wrongfully removed, thereby improperly taking them or preventing their distribution to Plaintiff. As a result of Defendants' negligence, Plaintiff has been damaged in amounts in excess of the minimum jurisdictional limits of this Court.

33. Defendants' actions constituted gross negligence in that Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to Plaintiff's rights. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

X.

Tortious Interference with Inheritance

34. Defendants' actions constitute tortious interference with Carl's inheritance rights.

35. As a direct and proximate result of Defendants' tortious interference with Carl's inheritance rights, Carl has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

36. Defendants' various actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts to Carl's detriment. Accordingly, Carl requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

XI.

Constructive Trust

37. Plaintiff seeks the imposition of a constructive trust over the assets to which he is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or related entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's Trusts to the extent needed to reverse the improper transfers. Plaintiff thus requests a distribution of those assets in the

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amount lawfully due the Plaintiff, together with all interest accrued from the time such distribution should have been made.

XII.

Civil Conspiracy

38. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff, as well as the commission of fraud and fraudulent concealment. Such actions by Defendants amount to a civil conspiracy.

39. As a direct and proximate result of the civil conspiracy between the Defendants, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

40. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of Plaintiff. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of the Court.

XIII.

Fraudulent Concealment

41. Plaintiff was not aware of Defendants' wrongful actions. That is because Defendants took affirmative steps to deceive Nelva and Plaintiff and to conceal their wrongful actions from Nelva and Plaintiff. As a result of this affirmative deception by Defendants and Nelva and Plaintiff's reasonable reliance on that deception, Plaintiff did not know of these claims in this action until well after his mother's death on November 11, 2011, and, in fact, Plaintiff still does not know the full extent of his claims.

D-1-GN-23-005625

XIV.

Discovery Rule

42. Plaintiff affirmatively pleads the discovery rule and asserts that his claims have been brought within the required periods from the date when he knew, or reasonably should have known, that his claims had accrued.

XV.

Tolling of Limitations

43. Tex. Civ. Prac. & Rem. Code Ann. §16.062 tolls the limitations period for Plaintiff because of Elmer and Nelva's deaths.

XVI.

Conditions Precedent

44. All conditions precedent to the recovery of the relief sought hereunder have occurred or have been performed. Plaintiff is prosecuting this action in good faith and with just cause for the purpose of determining and protecting the assets of the trusts.

XVII.

Prejudgment Interest

45. Plaintiff is also entitled to prejudgment interest on his claims.

XVIII.

Request for Attorneys' Fees

46. Plaintiff requests that he be allowed to recover his fees and expenses for this action pursuant to Tex. Civ. Prac. Rem. Code Ann. §37.009. Plaintiff further requests that this Court award Plaintiff his costs and reasonable and necessary attorney's fees which had to be incurred prior to and

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in connection with this matter pursuant to Tex. Prop. Code Ann. §114.064. Plaintiff also seeks awards for any appellate fees that may be required in connection with this action.

XIX.

Request for Injunctive Relief

47. Plaintiff also seeks injunctive relief. The expedited consideration of this request is essential due to the need to preserve the information concerning these trusts and the assets in these trusts. Plaintiff asks for an Order preventing Defendants and their agents from destroying, hiding or transferring the records and assets of the Family Trust, the Successor Trusts, and any trust created pursuant to the terms of the 8/25/10 QBD, or taking any other steps normally afforded to parties in Defendants' purported positions with regard to such trusts or the property Defendants have received which would result in a loss or secretion of the property, which would remove property from this Court's jurisdiction or control, or which would frustrate this Court in its exercise of jurisdiction or control, or thwart the purposes of the trust instruments by depriving Plaintiff of his rights.

48. Plaintiff further requests the Court direct Defendants to refrain from conducting any business or entering into any transactions on behalf of the trusts without the prior written consent of Plaintiff during the pendency of this action.

49. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with the assets of the trust to which he is entitled, and that unless appropriate orders are issued by this Court, Defendants will make additional transfers to avoid Plaintiff's rights and this Court's authority. Plaintiff will suffer irreparable harm, damage, and injury unless Defendants, their relatives, partners, agents, servants, attorneys, accountants, employees, assigns, representatives and those persons in active concert or in participation with them are ordered by this Court to secure and preserve all documents and other information concerning the trusts wherever it

may now be located. Plaintiff requests that Defendants be further ordered to refrain from taking any action with regard to the assets formerly or presently owned by Elmer, Nelva, or any of the trusts, moving or transferring any such assets, changing any positions of authority or exercising any powers or rights afforded to them as a result of the trusts, or applicable law. If orders are not entered as requested, Plaintiff will be irreparably harmed because assets can be further transferred, secreted or otherwise disbursed, and Defendants' prior actions while in control of these assets indicates they will indeed take those steps because they have already taken similar steps.

50. Plaintiff has no adequate remedy at law to preserve the assets at issue, and the loss of assets would be irreparable because if the assets are transferred or sold, the cash received in such a transaction could be even more easily be lost, hidden, or removed from this Court's control by Defendants, or if spent, will be lost to Plaintiff.

51. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with assets or income from the Trust, and Defendants and those acting in concert with them will continue to transfer assets in an attempt to avoid Plaintiff's rights. Unless appropriate orders are issued by this Court, nothing will prevent Defendants and those acting in concert with them will from continuing with their prior course of improper conduct. Therefore, Plaintiff will suffer irreparable harm, damage, and injury unless Defendants and their relatives, partners, agents, attorneys, employees, and those persons in active concert or in participation with them are ordered by this Court to cease all disbursements and transfers of assets from Elmer, Nelva, and the trusts, as well as from the assets they have already taken from Elmer, Nelva, and the trusts.

XXI.

Plaintiff's Requests for Disclosures to Defendants

52. Pursuant to Rule 194, T.R.C.P., the Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (l).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the parties listed above be cited to appear and answer, and that on final hearing this Court declare the rights, duties and liabilities of the parties to the Trust and enter a judgment as sought by Plaintiff and for such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

BAYLESS & STOKES

By: _____

Bobbie G. Bayless
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Plaintiff

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared CARL HENRY BRUNSTING, who, being by me duly sworn on oath deposed and said that he is the Plaintiff in this action; that he has read the foregoing pleading and that every statement contained in that document is within his knowledge and is true and correct.

Carl Henry Brunsting
CARL HENRY BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME on the 8th day of April, 2013, to certify which witness my hand and official seal.

SHAWN M. TEAGUE
MY COMMISSION EXPIRES
April 3, 2015

Shawn M. Teague
Notary Public in and for the
State of T E X A S
Printed Name: Shawn M. Teague
My Commission Expires: 4-3-2015

FILED
2/17/2015 5:37:57 PM
Stan Stanart
County Clerk
Harris County

DATA-ENTRY
PICK UP THIS DATE

PROBATE COURT 4

20150217000059570

NO. 412.249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
vs.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF
	§	HARRIS COUNTY, TEXAS

NOTICE OF SUBSTITUTION OF PARTY

02/19/2015 09:56:10 AM

TO THE HONORABLE DISTRICT COURT:

Please take notice that Drina Brunsting, agent and attorney-in-fact for Plaintiff, Carl Henry Brunsting, is substituted for Plaintiff in his individual capacity in the above-captioned cause.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

Bobbie G. Bayless
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 17th day of February, 2015, as follows:

Jason B. Ostrom
Ostrom Morris, PLLC
6363 Woodway Dr., Suite 300
Houston, Texas 77057
713.863.1051 - *via telecopier*

Darlene Payne Smith
Lori A. Walsh
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, Texas 77010
713.658.1921 - *via telecopier*

Bradley Featherston
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
281.759.3214 - *via telecopier*

Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1647 - *via telecopier*

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

PROBATE COURT 4

No. 412,249-401

ESTATE OF	§	PROBATE COURT
	§	
Nelva E. Brunstmg,	§	NUMBER FOUR (4) OF
	§	
Deceased	§	HARRIS COUNTY, TEXAS

02/20/2015 11:34:20007

AGREED DOCKET CONTROL ORDER

The following docket control order shall apply to this case unless modified by the Court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. N/A **JOINDER.** All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THE SCHEDULING ORDER AT THE TIME OF SERVICE

2. ↓ **EXPERT WITNESS DESIGNATION.** Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6:

(a) 7/1/15 Experts for parties seeking affirmative relief.

(b) 8/1/15 All other experts.

3. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise, of Rule 190.3, apply, unless changed below:

(a) By Rules Total hours per side for oral depositions.

(b) Number of interrogatories that may be served by each party on any other party.

4. _____ **ALTERNATIVE DISPUTE RESOLUTION.** ADR conducted pursuant to the agreement of the parties must be completed by this date. **If the parties do not agree on a date and/or facilitator for ADR, the Court may sign an order compelling ADR and appointing a mediator for same.**

5. 8/4/15 **DISCOVERY PERIOD ENDS.** All discovery must be completed before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.

6. **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard as follows:

(a) 8/3/15 Dispositive motions or pleas subject to an interlocutory appeal must be heard by this date.

(b) 8/3/15 Summary Judgment motions not subject to an interlocutory appeal must be heard by this date.

(c) 6/1/15 Rule 166a(i) motions may not be filed before this date.

7. 9/1/15 **CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.

8. 8/4/15 **PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.

02202015 1:39:20008

9. Sept. 4, 2015 Noon **JOINT PRETRIAL ORDER. Parties shall provide to the Court, by fax, email, or delivery to our offices, a copy of the signed Joint Pretrial Order by this date.** Parties shall bring the original Agreed Joint Pretrial Order to the Pretrial Conference.

10. Sept. 11, 2015 10:00 AM **PRETRIAL CONFERENCE. Parties shall be prepared to discuss all aspects of trial with the Court at this time. Parties shall file and exchange (if jury trial) proposed jury charge questions, instructions and definitions at this conference. Parties should be prepared to mark exhibits. Failure to appear will be grounds for dismissal for want of prosecution.**

11. Sept. 14 - 18, 2015 **TRIAL.**

Signed this 19 day of February, 2015.

C. Anderson
Judge Presiding

FILED
2015 FEB 20 AM 8:49
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

Party: Carole Brunsting

Counsel Name: Darlene Payne Smith
SBN: 18643525
Counsel Signature:
Firm: Crain, Caton & James
Address: 1401 McKinney
St 1700, Hous, Tx 77010
Phone: 713-752-8640
Fax: 713-658-1921
Email: dsmith@craincaton.com

Party: Cindy Brunsting

Counsel Name: Jason B. Ostrom
SBN: 24027710
Counsel Signature:
Firm: Ostrom Morris, PLLC
Address: 6363 Woodway Dr., Suite 700
Houston, TX 77056
Phone: 713-863-8891
Fax: 713-863-1051
Email: jason@ostrommorris.com

Party: Amy Brunsting

Counsel Name: Neal Spielman
SBN: 00794678
Counsel Signature:
Firm: Griffin & Matthews
Address: 1155 Dairy Ashford, Suite 300
Houston, Tx. 77079
Phone: 281-870-1124
Fax: 281-870-1647
Email: nspielman@grifmathlaw.com

Party: Carl Brunsting

Counsel Name: Bobbie G. Bayless
SBN: 01940600
Counsel Signature:
Firm: Bayless + Stokes
Address: 2931 Ferndale
Houston, Tx 77098
Phone: 713-522-2224
Fax: 713-522-2218
Email: bayless@baylessstokes.com

PARTY: Anita Brunsting
COUNSEL: Brad Featherston (24038892) BF
The Mendel Law Firm
1155 Dairy Ashford Suite 104, Houston, TX 77079
(O) 281-759-3213 (F) 281-759-3214 Email- brad@mendellawfirm.com

PROBATE COURT 4

No. 412,249-401

IN RE: THE ESTATE OF	§	PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER DENYING PLEAS AND MOTIONS FILED BY CANDACE CURTIS

On this day, the Court considers the following pleadings filed by Candace Louise Curtis:

8/17/2018	"Plea in Abatement"
9/4/2018	"Addendum to Pleas in Abatement in Reply to Stephen Mendel"
10/8/2018	"Nominal Defendant's Verified First Amended Plea in Abatement"
10/19/2018	"Plea to the Jurisdiction"
2/5/2019	"Plaintiff Curtis' Response to Notice of Hearing, Motion for Clarification and to Dismiss; Special Exceptions, Motion in Limine and Memorandum of Points and Authorities in Support"

The Court, after considering the pleadings on file related to:

1) Civil Action No. 4:12-cv-00592 pending in the U.S. District Court for the Southern District of Texas, which was remanded to Harris County Probate Court No. 4 at the request of Candace Curtis, resulting in the U.S. District Court case being closed, remanded and terminated;

2) Cause No. 412,249-402, pending in Harris County Probate Court No. 4, into which the above-referenced U.S. District Court case was transferred on February 9, 2015, and in which Candace Curtis, by and through her counsel, signed an Agreed Docket Control Order and the March 16, 2015 Agreed Order to Consolidate Cases;

3) Cause No. 412,249-401, pending in Harris County Probate Court No. 4, initiated on April 10, 2013, and through which claims have been asserted by Carl Henry Brunsting,

individually and as Independent Executor of the Estate of Elmer H. Brunsting and Nelva E. Brunsting, naming all beneficiaries of the Estate, and counterclaims asserted by Carole Brunsting against Carl Brunsting, as Executor; and

4) Cause No. 2013-05455, filed by Carl Brunsting, as Executor of the Estate of Nelva Brunsting, in the 164th Judicial District Court of Harris County, Texas on January 29, 2013 against Candace Kuntz-Freed and Vacek & Freed as the only defendants (the "District Court Case"), which claims are the subject of a separate Order on Motion to Transfer District Court Proceedings to Probate Court No. 4 signed on even date herewith,

finds that subject matter jurisdiction is proper in Harris County Probate Court No. 4 with regard to the Estates of Nelva and Elmer Brunsting as well as the assets contributed to Trusts related to those Estates. The Court also finds that no other court has dominant jurisdiction regarding claims related to these Estates. Therefore, the Pleas in Abatement, the Plea to the Jurisdiction and all other relief requested by the pleadings first enumerated in this Order, filed by Candace Curtis, lack merit and should be, in all things, DENIED.

Signed on the 14 day of February, 2019.

HONORABLE JAMES HORWITZ
PRESIDING JUDGE

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COUNTY CLERK
HARRIS COUNTY, TEXAS

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02/25/2022 4:03:18 PM
Teneshia Hudspeth
County Clerk
Harris County, Texas
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NO. 412,249-**401**

CARL HENRY BRUNSTING, et al	§	IN PROBATE COURT
	§	
v.	§	NUMBER FOUR (4) OF
	§	
ANITA KAY BRUNSTING, et al	§	HARRIS COUNTY, TEXAS

ORDER GRANTING
CO-TRUSTEES' MOTION FOR SUMMARY JUDGMENT
AS TO CANDACE LOUISE CURTIS ONLY

On the 25 **day of** February **202**2, the Court, at its' discretion, considered, via submission, the Motion for Summary Judgment (the "Motion") filed by AMY RUTH BRUNSTING ("Amy") and ANITA KAY BRUNSTING ("Anita") (the "Co-Trustees"), in their individual capacities and as the co-trustees of The Brunsting Family Living Trust, a/k/a The Restatement of The Brunsting Family Living Trust (the "Trust") originally set for oral hearing on December 14, 2021.

The Court considered the Motion on no-evidence and traditional grounds. Via submission, the Court considered (1) the Motion and its summary judgment evidence, as well as the Co-Trustees' Reply to Candace Louise Curtis's Answer to Co-Trustee's Motion for Summary Judgment and Motion to Strike (the "Reply"); (2) any responses from counsel/pro se parties, including without limitation, the "*Answer to Co-Trustee's Motion for Summary Judgment and Motion to Strike*" filed by Candace Louise Curtis ("Curtis"); and (3) the pleadings on file in this cause.

As part of its consideration of this matter, the Court considered Curtis's position as set forth in her Motion to Strike. The Court **FINDS** that the Motion and the Reply were timely filed, procedurally proper and that the Motion is ripe for ruling. Accordingly, Curtis's Motion to Strike is **DENIED** in all respects.

As part of its consideration of this matter, the Court considered the Co-Trustees' objections to materials submitted by Curtis as summary judgment evidence. The Court **FINDS** that one or more of the submitted exhibits violate the Texas Rules of Evidence for one or more of the reasons described by the Co-Trustees in the Reply. Accordingly, the Court **ORDERS** as follows:

Exhibit	**Exhibit Description**	**Objection to Exhibit**	**Disposition**
Exhibit Pg. 1	Trust Flow Chart	Hearsay; not authenticated; not a testamentary instrument that would alter the 2005 Restated Trust or the 2010 QBDs.	X Sustained ____ Overruled
Exhibit Pgs. 2-3	2007 Amendment	Not authenticated; not a controlling instrument; not relevant to any issue raised by the co-trustees' motion for summary judgment.	X Sustained ____ Overruled
Exhibit Pgs. 4-5	Article III 2005 Restatement	Not authenticated; not relevant to any issue raised by the co-trustees' motion for summary judgment.	X Sustained ____ Overruled
Exhibit Pg. 6	Affidavit filed in federal court Feb. 27, 2012 describing Anita's plan.	Hearsay; not authenticated.	X Sustained ____ Overruled
Exhibit Pgs. 7-10	Nelva Brunstings' hand-written greeting card say-ing "That's Not true!"	Hearsay; not authenticated; the card does not negate the *in terrorem* provisions in the 2005 Restated Trust and/or QBD.	X Sustained ____ Overruled
Exhibit Pgs. 11-13	Estate Plan Purposes	Hearsay; not authenticated; not a testamentary instrument that would alter the 2005 Restated Trust or the 2010 QBDs.	X Sustained ____ Overruled

Exhibit Pg. 14	Estate Planning Attorney-Candace Kunz-Freed explaining the reason for subjecting Nelva to a competency evaluation.	Hearsay; not authenticated.	X Sustained ____ Overruled

Consistent with the above and foregoing, the Court **FINDS** that Curtis has failed to meet her summary judgment burden on the Motion's traditional and no-evidence points. The Court **FINDS** that Curtis has forfeited her interest as a beneficiary of the Trust, by taking one or more actions in violation of the Trust and/or the August 2010 QBD (as such terms are defined in the Motion). The Court **FINDS** that the Co-Trustees shall first recover attorneys' fees from Curtis (and/or from her forfeited interest in the Trust) via Article IV, Section G of the Trust; via Miscellaneous Provisions: Item A of the August 2010 QBD; and/or via the Declaratory Judgment Act.

Accordingly, the Court **GRANTS** the Motion as to Curtis only, **RENDERS** judgment for the Co-Trustees against Curtis only and **ORDERS**:

(1) That Co-Trustees' Motion for Summary Judgment is **GRANTED** as to Curtis in its totality;

(2) That Curtis **TAKE-NOTHING** by way of her claims against Amy, Anita, the Co-Trustees and/or the Trust;

(3) That the Co-Trustees are awarded attorneys' fees payable by Curtis (and/or from her forfeited interest in the Trust) in an amount to be subsequently determined; and

(4) That court costs are taxed against the party incurring same.

This Order disposes of all claims and causes of action asserted against Amy, Anita, the Co-Trustees and/or the Trust by Curtis, and no other claims or causes of action are pending against Amy, Anita, the Co-Trustees and/or the Trust from Curtis.

If and as necessary, the Court, upon motion properly filed, will enter an order of severance.

SIGNED AND ENTERED on this 25 day of February, 2022.

Kathleen D Stow
JUDGE PRESIDING

FILED
3/28/2022 12:00 AM
Teneshia Hudspeth
County Clerk
Harris County - County Probate Court No. 4
Accepted By: KW

CAUSE NO. 412249-401

CANDACE LOUISE CURTIS Plaintiff	§ § §	IN THE STATUTORY PROBATE COURT
VS	§ §	OF HARRIS COUNTY, TEXAS
ANITA K. BRUNSTING AND AMY RUTH BRUNSTING, et al. and Does 1-100, Defendants	§ § § § §	PROBATE COURT NO.4

MOTION TO VACATE OR SET ASIDE FEBRUARY 25, 2022, ORDER

PLAINTIFF / COUNTER-DEFENDANT, CANDACE LOUISE CURTIS, files this MOTION TO VACATE OR SET ASIDE THE FEBRUARY 25, 2022, ORDER, granting summary judgment (1) disposing of all of CURTIS' claims for relief and (2) unlawfully subjecting CURTIS' **vested** 1/5 share of the Survivor's and Decedent's trusts and/or personal asset trust to forfeiture for the payment of DEFENDANTS' attorney's fees. The Order constitutes and abuse of discretion, for the following reasons:

A. *This Court lacks subject matter jurisdiction over the BRUNSTING FAMILY LIVING TRUST by Tex. Est. Code 32.005, 32.006, 32.007, lack of a probate estate or independent executor, Curtis vs. Brunsting, Registration of Foreign Judgment, Void Remand Order and Void Order of Transfer*

B. *Former Judge Kathleen Stone failed to render judgment and lacks authority to sign the Order*

C. *CO-TRUSTEES' Motion and the Court's order were untimely*

D. *CO-TRUSTEES' Motion fails to identify each element of PLAINTIFF'S claims upon which they allege there is no evidence*

E. *There was ample evidence in the record that CO-TRUSTEES violated their fiduciary duties, converted CURTIS' interest to their own use and benefit, and committed fraud.*

F. *The Court violated CURTIS' Constitutional right to due process in failing to declare the August 25, 2010, Qualified Beneficiary Designation and Testamentary Power of Appointment to living trust void and severable from the trust.*

G. *DEFENDANTS have not satisfied their burden of producing evidence to prove that CANDACE CURTIS violated the "no contest" provision of the Restatement*

H. *The Court erred in ruling that Co-trustees' attorneys' fees shall be taken out of CANDACE CURTIS' share, as CANDACE CURTIS' share is not alienable or subject to claims of judgment creditors*

I. *Attorneys' fees may not be granted in Texas absent a contract or statute authorizing attorneys' fees.*

J. *The Orders violated CANDACE CURTIS' Constitutional right to due process—notice and a meaningful opportunity to be heard.*

I. STANDARD OF REVIEW

1. A trial Court's review of an order granting summary judgment[1] is reviewed de novo. *Joe v. Two Thirty-Nine Joint Venture*, 145 S.W.3d 150, 156-57 (Tex. 2004). In reviewing a

[1] Rule 166a (traditional) and Rule 166a(i) states that summary judgment may be granted:

> **(a)For Claimant.** A party seeking to recover upon a claim, counterclaim, or crossclaim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.
>
> **(c)Motion and Proceedings Thereon.** The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) **the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records**, if any, **on file at the time of the hearing**, **or filed thereafter** and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the **issues expressly set out in the motion or in an**

traditional summary judgment, the appellate court considers whether the successful movant at the trial level carried the burden of showing that there is no genuine issue of material fact, and that judgment should be granted as a matter of law. *KPMG Peat Marwick v. Harrison County Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999).

2. No-evidence motions are reviewed under the same standard as a directed verdict. *King Ranch, Inc. v. Chapman, 118 S.W.3d 742, 750-51 (Tex. 2003).* The Appeals Court reviews the evidence in the light most favorable to the nonmovant and disregard all contrary evidence and inferences. Id. A trial court must grant a proper no evidence motion for summary judgment, unless the nonmovant produces more than a scintilla of probative evidence to raise a genuine issue of material fact on the challenged element of the claim. TEX.R. Civ. P. 166a(i). Notably,

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answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal…

(d)Appendices, References and Other Use of Discovery Not Otherwise on File. Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.

(f)Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by

(i)No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

more than a scintilla of evidence exists in the federal record DEFENDANTS have been trying to escape since 2013.

III. FACTS AND PROCEDURAL HISTORY

3. NELVA AND ELMER BRUNSTING established the BRUNSTING FAMILY LIVING TRUST October 10, 1996. The Trust was superseded and amended in its entirety by the Restatement of January 6, 2005. The 1st amendment to the trust occurred in 2007. No valid amendments exist after ELMER BRUNSTING'S June 9, 2008, incapacity, when the trust could no longer be amended or revoked—except by Qualified Beneficiary Designation applicable only to the disposition of the settlor's share of assets. The Controlling Instruments are the Restatement of 2005, 1st Amendment of 2007, and 6/15/10 Qualified Beneficiary Designation. The August 25, 2010, Qualified Beneficiary Designation and Testamentary Power of Appointment is void and severable from the trust.[2] Certificates of Trust executed after June 9, 2008, are likewise, void.

4. While the trust allowed NELVA BRUNSTING to alter the disposition of her share via Qualified Beneficiary Designation, the record reveals that the only valid "QBD" was executed June 10, 2010. *Exhibits C and D, which are documents attached to CO-TRUSTEES' Motion that remain undisputed by the parties.* The August 25, 2010, QBD is disputed because it is void on its face for the lack of two attesting witnesses—aside from other objectionable defects.

5. The surviving settlor, NELVA BRUNSTING, passed away November 11, 2011, with Article X of the Restatement requiring distribution of the trust(s) within a reasonable time after payment of certain expenses listed in the trust.

6. PLAINTIFF CANDACE CURTIS sent two demand letters, requesting an accounting of the trusts in December of 2011 and January 2012. Because these letters were ignored,

[2] Exhibit A, January 6, 2005, Restatement, Exhibit B, 2007 1st Amendment to Restatement, Exhibit C, 6/15/10 QBD and Exhibit D, void 8/25/10 QBD and Testamentary Power of Appointment

CANDACE CURTIS sued AMY BRUNSTING AND ANITA BRUNSTING in federal court under diversity jurisdiction, 28 U.S.C. § 1332.[3]

7. PLAINTIFF'S 2012 federal lawsuit is the **first lawsuit** between the parties, in which California Plaintiff, CANDACE CURTIS' sued acting CO-TRUSTEES, ANITA AND AMY BRUNSTING ("CO-TRUSTEES") in the *Southern District of Texas, Houston Division, Cause No. 4:12-cv-00592*. The suit was brought to compel an accounting and disclosures and for breach of fiduciary duty, constructive trust, intentional infliction of emotional distress, and fraud concerning the BRUNSTING SURVIVOR AND DECEDENT'S FAMILY LIVING TRUSTS.

8. The federal case was properly filed in the Southern District of Texas based upon diversity jurisdiction, 28 U.S.C. §1332, but was[4] dismissed *sua sponte* on March 8, 2012, by the district judge on the basis of the probate exception to federal jurisdiction. The Court erred in dismissing the case under the probate exception, prompting an appeal to the 5th Circuit Court of Appeals by CANDACE CURTIS—which was successful when the panel ruled in CURTIS' favor in 2013. The 5th Circuit held that the probate exception did not apply, and this dispute was proper in the U.S. District Court based upon diversity jurisdiction. *See Curtis vs. Brunsting,* 710 F.3d 406 (5th Cir. 2013).[5]

9. On April 2, 2012, Vacek and Freed filed the will of ELMER BRUNSTING *(Estate of Elmer Brunsting, Cause No. 412248*) and the will of NELVA BRUNSTING *(Estate of Nelva Brunsting, Cause No. 412249*) with the Harris County Probate Court Clerk. Both wills were pour over wills and required only the filing and approval of an inventory to conclude probate. This was

[3] Exhibit E, Original Complaint of *Candace Louise Curtis vs. Anita K. Brunsting, et al. Cause No. 4:12-cv-00592 (S.D. Tex. 2012).*
[4] Aside from this case and subsequent appeal, the only other matter filed by CURTIS was an action for racketeering / organized crime which was dismissed under Federal Rule of Civil Procedure 12b(6), which is not at issue in this case because DEFENDANTS do not seek fees relative to this case.
[5] Exhibit F, Curtis vs. Brunsting 710 F.3d 406 (5th Cir. 2013)

accomplished April 5, 2013, when the Court approved the inventory and closed the case, issuing a drop order. *See Drop Order April 5, 2013.*[6]

10. On April 5, 2012, CO-TRUSTEES submitted a partial accounting prepared by estate planning attorneys, Vacek and Freed. This partial accounting revealed the misapplication of fiduciary assets, unauthorized and unnoticed to the remaining beneficiaries, CANDACE CURTIS, CARL BRUNSTING, AND CAROL BRUNSTING.[7] It remained insufficient to qualify as a proper trust accounting in breach of the trustees' duty to keep accurate books and records.

11. On April 15, 2012, while the federal case was on appeal, Attorney Bobbie Bayless filed an application in Harris County Probate Court No. 4 to probate the will of NELVA BRUNSTING and issue letters testamentary to independent administrator CARL BRUNSTING.

12. On April 25, 2012, the record for CURTIS' 5th Circuit appeal was complete and before the panel for consideration.

13. On April 28, 2012, the Harris County probate court issued letters testamentary, naming CARL BRUNSTING as independent executor of the Estate of Nelva Brunsting.

14. On January 9, 2013, the Fifth Circuit Court of appeals reversed and remanded the matter to the federal district court, holding that the probate exception did not apply to this lawsuit and the parties were completely diverse. Exhibit F, *Curtis vs. Brunsting*, 710 F.3d 406 (5th Cir. 2013).

15. The Fifth Circuit Opinion states as follows:[8]

> *"Plaintiff, the beneficiary of a trust, sued defendant co-trustees of the trust, for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. The United States District Court for the Southern District of Texas dismissed the case for lack of subject matter jurisdiction,*

[6] Exhibit G, Drop Order April 5, 2013.
[7] CO-TRUSTEES AMY AND ANITA BRUNSTING are also beneficiaries of the trusts.
[8] Exhibit F, *Curtis v Brunsting 704 F.3d 406, 412 (Jan 9, 2013)*

concluding that the case fell within the probate exception to federal diversity jurisdiction. The beneficiary appealed."

"The circuit court found that the case was outside the scope of the probate exception under the first step of the inquiry because the trust was not property within the custody of the probate court. Because the assets in a living or inter vivos trust were not property of the estate at the time of decedent's death, having been transferred to the trust years before, the trust was not in the custody of the probate court and as such the probate exception was inapplicable to disputes concerning administration of the trust..."

"...The record also indicated that there would be no probate of the trust's assets upon the death of the surviving spouse. Finding no evidence that the trust was subject to the ongoing probate proceedings, the case fell outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction." Curtis v Brunsting 704 F.3d 406, 412 (Jan 9, 2013).

27. On January 29, 2013, while the federal suit was in transit back to the Southern District of Texas, Attorney Bobbie G. Bayless, filed legal malpractice claims against the Brunsting's estate planning attorneys, Vacek and Freed law firm, in *Harris County Texas Judicial District Court 164, Cause No. 2013-05455*, representing Carl Brunsting as "Executor for the estates of Elmer and Nelva Brunsting".

28. On April 5, 2013, the probate matter, *the Estate of Nelva Brunsting*, *Cause No. 412429,* was closed by the Court's approval of the inventory and issuance of a drop order, closing the case. This prevented any subsequently transferred case from being deemed "ancillary", "incident to" or "related to" an estate matter in this conundrum of cases.

29. After returning to the Southern District of Texas, Candace Curtis reapplied for a preliminary injunction. Hearing was had April 9, 2013, and injunction issued with a Memorandum and Order of Preliminary Injunction issued April 19, 2013.[9]

30. Judge Kenneth Hoyt of the U.S. District Court for the Southern District of Texas found a substantial likelihood that CANDACE CURTIS would prevail on the merits of her claims against

[9] Exhibit H, *Memorandum of preliminary injunction published April 19, 2013.*

CO-TRUSTEES, recognizing numerous breaches of fiduciary duty to the beneficiaries. *Exhibit H.* His Order found evidence on the elements of CURTIS' claims and specifically noted that the only thing left to be accomplished by CO-TRUTEES was to distribute the trust assets. After 11+ years, the trusts have still not been distributed.

31. Also on April 9, 2013, Bobbie Bayless filed CARL BRUNSTING'S PETITION FOR DECLARATORY JUDGMENT, for Accounting, Damages, the Imposition of a constructive trust, injunctive relief and disclosures, naming AMY BRUNSTING, ANITA BRUNSTING, AND CAROL ANN BRUNSTING as defendants, with CANDACE CURTIS a nominal defendant only for purposes of declaratory judgment. This lawsuit essentially mirrored the relief CURTIS had already sought, pending in the *Southern District of Texas, Cause No. 4:12-cv00592.*

32. On April 10, 2013, Defendants' Counsel, George Vie III, in 4:12-cv-592 filed notice of a lawsuit brought in the state probate court.

33. Due to the continued failure of CO-TRUSTEES failure to provide a proper accounting for 2 ½ years, Judge Hoyt found that the appointment of a special master was necessary and in the best interests of all parties[10]. A Special Master was appointed May 9, 2013.

34. The Special Master's Report was filed August 8, 2013, finding that CO-TRUSTEES failed to maintain proper books and records and account to the beneficiaries, noting missing receipts for certain disbursements, and concluding that the Quicken files kept by CO-TRUTEES were "more for use as an electronic checkbook to keep bank balances as opposed to a more fully integrated bookkeeping system.[11]"

35. Due to Judge Hoyt's admonition that CANDACE CURTIS retain counsel to complete discovery, CURTIS retained JASON OSTROM OF OSTROM AND SAIN to complete

[10] Exhibit I, *See Order Appointing Special Master.*
[11] Exhibit J1, Special master's report, page 3.

discovery. JASON OSTROM appeared in federal court for CURTIS, but never filed a NOTICE OF APPEARANCE in probate court No. 4—to give him authority to act on CURTIS' behalf in probate court.

36. On May 9, 2014, JASON OSTROM filed a 1st Amended Complaint, naming CARL BRUNSTING as an involuntary plaintiff to pollute diversity, stating that a declaratory judgment action was necessary because relief could not be had without the addition of necessary, indispensable parties for complete adjudication. Naming CARL BRUNSTING as an involuntary PLAINTIFF was improper. CARL BRUNSTING should have been sued as a nominal DEFENDANT like CAROL BRUNSTING—the remaining beneficiary.

37. On May 9, 2014, OSTROM filed a Motion to Remand in the federal court and on May 28, 2014, OSTROM filed a Motion to Enter Transfer Order[12] in the probate court, when this case had never been removed from any State Court and it could not be "transferred" between federal and probate court. The basis of the "remand"[13] was the probate exception to federal jurisdiction, held inapplicable by the 5th Circuit Court of appeals, but subsequently deemed to apply by OSTROM'S wrongful pollution of diversity—all in an attempt to force CURTIS' federal lawsuit into probate court where the attorneys could raid the trusts free from Judge Hoyt's supervision.

38. On May 15, 2014, Judge Kenneth Hoyt signed the Order granting Plaintiff's motion to remand, admittedly issued in error by Judge Hoyt's September 30, 2020, Order denying Plaintiff Rule 60 Relief based on fraud on the court.[14] On June 3, 2014, probate judge Christine Butts signed the unlawful Order of Transfer of Federal Cause No. 4:12-cv-00592; Candace Louis Curtis vs. Anita Kay Brunsting et al., to probate court No. 4. The remand was signed May 15th,

[12] Exhibit J2, Motion to Enter Transfer Order
[13] Exhibit K1 Motion to Remand
[14] Exhibit X Order denying Plaintiff's Motion for Rule 60 Relief.

2014,[15] with Judge Hoyt unaware that the case was never removed to his court to merit remand. *See Order Granting Plaintiff's Motion to Remand and Court's Report denying CURTIS' Rule 60 Relief dated September 30, 2020, admitting that remand was an improper remedy*, but asserting that the federal court had lost jurisdiction of the case. Though JASON OSTROM never entered an appearance in probate court No. 4 to give him authority to act on CURTIS' behalf, he signed the Transfer Order granted June 3, 2014[16]. The transfer Order was signed to render CANDACE CURTIS' federal claims "ancillary to" or "incident to" an existing estate, when no estate was open since April 5, 2013.

39. CANDACE CURTIS' federal case was allegedly made part of the probate court record on February 9, 2015, designated *ancillary case 412249-402, the Estate of Nelva Brunsting* instead of the appropriate caption, Cause No. 4:12-cv-00592; *Candace Louise Curtis vs. Anita K. Brunsting et al*.

40. On March 16, 2015, an order was signed by Judge Christine Butts of Probate Court No.4, consolidating CARL BRUNSTING'S declaratory judgment action and CANDACE CURTIS' federal claims into *Cause No. 412429-401[17], the second Estate of Nelva Brunsting.* CURTIS' status as the PLAINTIFF suddenly changed to nominal defendant and the caption of the federal matter disappeared, bringing into question the very existence of CURTIS' federal claims, which appeared to vanish into thin air.

41. On or about February 17, 2015, and despite the closed probate and his incapacity, CARL BRUNSTING resigned as Independent Executor of the *Estate of Nelva Brunsting.* Two years after the estate was closed, CARL BRUNSTING attempted to unlawfully substitute his wife, DRINA BRUNSTING, as Independent Executor, when CANDACE CURTIS was named

[15] Exhibit K2, Order to remand
[16] Exhibit L1, Order of Transfer dated June 3, 2014
[17] Exhibit L2, Agreed Consolidation Order

successor Independent Administrator under the applicable will—and there was nothing left to administer in a closed estate. *See Will of Nelva Brunsting filed as Cause No. 412249 in Harris County Probate Court No. 4.*

42. CARL BRUNSTING'S lack of capacity deprived him of the ability to resign, as well as standing to serve, requiring a Court order to appoint a successor independent administrator—something that was not legally possible since the estate was closed on or about April 5, 2013. No independent administrator has been appointed for the closed estate since then.

43. Pursuant to Texas Estates Code Section 32.001[18] f/k/a Tex. Prob. Code Section 5A, the Vacek and Freed malpractice action was transferred to Probate Court No. 4 on April 4, 2019, as an ancillary case to the closed *Estate of Nelva Brunsting and designated* Cause No. 412249-403.

44. Though Cause Numbers 412249-401 (Estate of Nelva Brunsting)[19], 412249-402 (Curtis vs Brunsting designated Estate of Nelva Brunsting and later consolidated with 401), 412249-403 (Legal malpractice action against estate planning attorneys, Vacek and Freed filed by CARL BRUNSTING), 412249-404 (Statutory Bill of Review) and 412249-405 (severed claims of CARL BRUNSTING vs. AMY AND ANITA BRUNSTING from 401 on March 11, 2022) were all deemed ancillary matters to the *Estate of Nelva Brunsting* (originally filed as 412249), the Estate had been closed since April 5, 2013. This left no estate for any of these matters to be deemed ancillary to.

[18] Sec. 32.001. GENERAL PROBATE COURT JURISDICTION; APPEALS. (a) All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

[19] Cause No. 412249-401 allegedly included claims and counterclaims between CARL BRUNSTING (incapacitated since 2015 when he resigned as independent administrator) and CAROL BRUNSTING, claims and counterclaims between CARL BRUNSTING and CO-TRUSTEES, AMY AND ANITA BRUNSTING (similar to the claims asserted against CO-TRUSTEES by CANDACE CURTIS), and the federal lawsuit filed by CANDACE CURTIS against ANITA AND AMY BRUNSTING (CO-TRUSTEES). See Cause No. 412249-401.

45. After consolidating CURTIS' federal claims with Cause No. 412249-401 in 2015, the Court recently severed CURTIS' claims against AMY AND ANITA BRUNSTING[20], along with CO-TRUSTEES' counterclaim for forfeiture of CANDACE CURTIS' vested share of a spendthrift trust, which is not alienable or subject to claims of creditors. *See Response to Candace's Motion for Distribution of Trust Funds and Response to Carl's Motion for Distribution of Trust funds[21], in which Defendants admit:*

1. Distributions to pay legal-fee creditors are not authorized by the trust and therefore, the motions must be denied

2. Distributions to pay legal-fee creditors are prohibited by the trust, and therefore, the motions must be denied.

3. The Court lacks jurisdiction to decide the distributions for legal-fee creditor issue because there are no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.

46. Despite the admissions above, CO-TRUSTEES' seek over $537,000 in attorneys' fees from CURTIS' personal asset spendthrift trust and/or share of the BRUNSTING FAMILY TRUST, which is immune from judgment creditors and not alienable, voluntarily or involuntarily by this Court's Order.

47. On June 12, 2020, CANDACE CURTIS registered the federal lawsuit was a foreign judgment in *Harris County District Court No. 151, Cause No. 2020-35401* [22] , seeking enforcement of the memorandum and order granting Preliminary Injunction, issued by Judge Hoyt April 19, 2013. According to statute, the registration of foreign judgment immediately became an enforceable judgment in Texas, requiring the trustees to distribute the trust in

[20] Exhibit M, Order of Severance dated March 11, 2022.
[21] Exhibit N, *See Response to Candace's Motion for Distribution of Trust Funds and Response to Carl's Motion for Distribution of Trust funds*
[22] Exhibit O, Petition to register foreign judgment

accordance with Article X by creating 5 separate personal asset trusts. The Order is enforceable in Texas and may not be violated regardless of the probate court's attempts to evade it. CURTIS' interest vested on the date of the surviving settlor's death, November 11, 2011. It has at all times been part of spendthrift trusts and is not alienable or subject to judgment creditors' claims.

48. On or about March 11, 2022, the Court granted CO-TRUSTEES' motion for severance of CARL'S lawsuit against the CO-TRUSTEES, designating the severed matter Cause No. 412249-405. The severance was subsequent to the CO-TRUSTEES Rule 11 Agreement with CARL BRUNSTING (void for CARL'S incapacity to sign) to forego CO-TRUSTEES' claim for forfeiture against CARL BRUNSTING only but not CANDACE CURTIS, when CARL'S claims against them were nearly identical to CURTIS' claims. This breached CO-TRUSTEES' duty of loyalty and equal treatment of the beneficiaries to CURTIS.

49. On February 25, 2022, Kathleen Stone appeared in place of Probate Court No. 4 Judge James Horwitz for a pre-trial conference and hearing on COTRUSTEES' Motion for Sanctions and contempt and to exclude evidence against CURTIS. **Without first rendering summary judgment against CURTIS in open court, Stone simply announced that she had talked to Judge Horwitz and was granting CO-TRUSTEES' Motion for summary judgment against CURTIS.**[23] The order was based upon the void August 25, 2010, Qualified Beneficiary Designation and Testamentary Power of Appointment to Living Trust Agreement.

50. The Court failed to consider the multi-part response to summary judgment filed by CURTIS in 2015 and 2021, and failed to consider Judge Hoyt's Memorandum and order of Preliminary Injunction or the Special Master's Report, which proved CO-TRUSTEES breached their fiduciary duties and engaged in self-dealing, granting the untimely Motion against CURTIS. The February 25, 2022, Order purports to unlawfully dispose of all of her claims (including

[23] Exhibit P, Transcript of Oral Hearing February 25, 2022, Exhibit S, February 25, 2022, Order.

declaratory judgment, breach of fiduciary duty, conversion, fraud, intentional infliction of emotional distress) and subject her inalienable 1/5 interest in the spendthrift trusts to the claims of CO-TRUSTEES' attorneys for fees.

51. The August 25, 2010, QBD was not sworn to by CO-TRUSTEES as legitimate, not properly in evidence, and was void on its face by the lack of two witnesses—rendering it severable from the trust. This meant that the only "no contest" provision applicable was the clause in the 2005 Restatement.

52. KATHLEEN STONE abused her discretion in signing the void February 25, 2022, Order, which must be vacated and set aside for the reasons stated herein.

53. CURTIS has objected to KATHLEEN STONE as a former judge without a bond and oath on file, required by the Estates Code, Government Code and Texas Constitution. *See Objection to Former Judge Kathleen Stone for which Stone should have disqualified herself and voided the order.*[24]

IV. THE BRUNSTING FAMILY LIVING TRUST

54. On October 10, 1996, ELMER AND NELVA BRUNSTING established the BRUNSTING FAMILY LIVING TRUST, known as the:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the Successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. ("BRUNSTING FAMILY LIVING TRUST")
>
> And/or

[24] Exhibit R, *See Amended Objection to Former Judge Kathleen Stone.*

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

55. On January 12, 2005, the 1996 BRUNSTING FAMILY LIVING TRUST was amended and superseded in its entirety by the 2005 Restatement to the Brunsting Family Living Trust. ANITA KAY RILEY N/K/A ANITA BRUNSTING was removed as successor trustee by the 2005 Restatement and CARL BRUNSTING AND AMY BRUNSTING were designated successors, with CANDACE CURTIS sole alternate.

56. Article IC of the Restatement states that the trust was created for the use and benefit of ELMER H. BRUNSTING AND NELVA E. BRUNSTING, and to the extent provided by the trust, for other trust beneficiaries listed as:

CANDACE LOUIS CURTIS	Born March 12, 1953,
CAROL ANN BRUNSTING	Born October 16, 1954,
CARL HENRY BRUNSTING	Born July 31, 1957,
AMY RUTH TSCHIRHART	Born October 7, 1961,
ANITA KAY BRUNSTING	August 7, 1963,

57. Article IV was subsequently revoked and amended September 6, 2007, by the 1st Amendment, which superseded the Restatement's Article IV in its entirety.

58. Elmer was declared non compos mentis on June 9, 2008. No changes could be made to the Decedent's trust after that date, including appointment of successor trustees.

59. While a QBD properly executed by the surviving founder could alter the disposition of a Founder's share of trust assets, a QBD did not allow any amendment to change the designation of successor trustees after the death or incapacity of either SETTLOR, which occurred June 9, 2008—when ELMER was declared non compos mentos.

60. On July 1, 2008, an Appointment of Successor Trustee was allegedly executed by Nelva *based on and after Elmer's incompetence*, but this document is void for contradicting the trust as

a prohibited amendment after ELMER was no longer able to make legal decisions.[25] ELMER BRUNSTING did not sign the document. Since ANITA BRUNSTING was removed by the Article IV of the 2005 Restatement and AMY BRUNSTING was removed by the 1st Amendment (replacing Article IV in its entirety) this purported July 1, 2008, Appointment of Successor Trustee is void.

61. NELVA BRUNSTING executed a Qualified Beneficiary Designation on her share June 15, 2010[26], for the purpose of permitting CURTIS to receive an early distribution of her inheritance due to her son's medical needs. This was consistent with NELVA'S authority to alter the disposition of ***her share of the Survivor's trust***. It did not alter the designation of successor trustees in the trust document and could not alter the disposition of ELMER'S share. *Exhibit C, 6/15/10 Qualified Beneficiary Designation.*

62. Clearly recognizing the July 1, 2008, power of appointment to be void, Vacek and Freed drafted a Qualified Beneficiary Designation and Testamentary Power of Appointment, naming ANITA KAY BRUNSTING as Successor Trustee. DEFENDANTS allege that NELVA BRUNSTING signed the document on August 25, 2010 ("8/25/10 QBD"). *See 8/25/10 QBD and Testamentary Power of Appointment.* Given the fact that the 8/25/10 QBD was a testamentary instrument that only became effective, if at all, upon the death of NELVA BRUNSTING, it could only be enforced if it satisfied the statutory prerequisites of a testamentary instrument, as provided for in Article 251.051 of the Texas Estates Code. The 8/25/10 QBD is void on its face for the lack of signatures by two witnesses. Article 251.051 of the Texas Estates Code.

63. CARL BRUNSTING was in a coma July 3, 2010, leaving CANDACE CURTIS the sole

[25] Exhibit S, July 1, 2008, Appointment of Successor Trustee
[26] Exhibit C, 6/15/10 QBD and D, 8/25/10 QBD and Testamentary Power of Appointment.

successor trustee via the 2007 1st Amendment to the Trust. This is a fact the court was required to determine by virtue of CURTIS' declaratory judgment action.

64. ELMER BRUNSTING passed away April 1, 2009, at which time the trust was divided into a Decedent's and Survivor's Trust. The surviving founder, NELVA BRUNSTING passed away November 11, 2011, which is the date CANDACE CURTIS' share of the trusts vested and was required to be distributed to a spendthrift trust for CANDACE'S benefit for life. After payment of certain last expenses, the trusts were required to be distributed within a reasonable period of time, according to Article X of the Restatement.[10]

65. Article X required the TRUSTEE(S) to distribute the remaining trust(s) assets at the time of the SURVIVING SETTLOR'S death (or a reasonable time thereafter) in equal shares of 1/5 to CANDACE LOUISE CURTIS[27], CAROL ANN BRUNSTING, CARL HENRY BRUNSTING, AMY RUTH TSCHIRHART n/k/a AMY BRUNSTING, and ANITA KAY BRUNSTING, subject to any valid QBD altering a settlor's share and the payment of the following expenses: (a) expenses of last illness, funeral and burial expenses of the surviving founder, legally enforceable claims against the surviving founder, (c) expenses of administering the surviving founder's estate, (d) any inheritance, estate or other death taxes payable by reason of the surviving founder's death, together with interest and penalties thereon, and (e) statutory or court ordered allowances for qualifying family members. *Article VIII D, Restatement, Exhibit A.* The same expenses identified above were permitted to be paid from the DECEDENT'S share upon ELMER BRUNSTING'S death.

[27] While the entire trust was inalienable and not subject to claims of the beneficiaries' creditors (including judgment creditors as in this case), CANDACE CURTIS'1/5 share vested 11/11/11 and was to be held in a spendthrift trust, which was not alienable or subject to claims of creditors because she was not the trustee of her personal asset trust required to be created by the TRUSTEE(S), but admittedly not done in breach of their fiduciary duties.

66. Although the BRUNSTING FAMILY LIVING TRUST contains a "no contest clause", it does not prohibit beneficiaries from seeking to compel the trustees to account, distribute, or perform their fiduciary duties and does not prohibit any beneficiary from filing suit on any valid claims unless the beneficiary brought such claim to enlarge their share of the trust at the expense of another beneficiary. The "no contest" clause provides in Article XI C:

> …Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.
>
> Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust…without the trustee's written permission, shall forfeit any amount to which that person, agency, or organization is or may be entitled and the interest of such litigant or contestant shall pass as if he or she had predeceased us, regardless of whether or not such contestant is a named beneficiary. Restatement XI.

66. CANDACE LOUIS CURTIS never filed any claim to enlarge her share of the trust at the expense of another beneficiary, but sought to enforce the trust in accordance with the settlor's intentions at all times. The 2013 federal lawsuit and preliminary injunction proves this. Id.[28]

67. Similarly, CANDACE CURTIS never challenged the "trust" but only the void 8/25/10 QBD which violated the express terms of the trust and is void on its face, rendering severable. CANDACE CURTIS did not assert any cause of action which would "enlarge" her interest in the trust. Based on Article XIV O and Article XII of the Restatement (imposing liability on the Trustees for bad faith, willful misconduct and/or gross negligence), CANDACE CURTIS'

[28] Nor did CURTIS need AMY OR ANITA'S permission to file suit because she is the de jure sole trustee of both trusts by the terms of the instrument itself.

lawsuit against the Co-trustees did not violate the "no contest" clause of the Restatement. The August 25, 2010, QBD is void and severed from this trust under the Article 251.051 of the Texas Estates Code and the terms of the Decedent's and Survivor's Trusts.

68. ANITA AND AMY BRUNSTING are the parties who asserted a theory which, if assumed true, would enlarge their share at CURTIS' expense. CO-TRUSTEES violated the no contest clause of the Restatement Article XI C. This necessarily means that their shares flow to their descendants, *See Exhibit A Restatement XI C and Exhibit D, August 25, 2010, QBD, respectively.*

69. AMY AND ANITA BRUNSTING challenged the trust by the very execution of the void, severable 8/25/10 QBD, contradicting Article XI Section C of the Restatement. According to the irrevocable trust and CURTIS' vested interest in her 1/5 share, even had she violated Article XI Section C, her interest would flow to her descendants per stirpes, not increase the share of any beneficiary or be subject to any judgment creditor, as prohibited by the "no contest" clause of Article XI Article C of the Restatement cited herein.

70. Restatement Article XIV Section O provides:

> If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

71. Restatement Article XI Section C, provides the standard for forfeiture to one's descendants:

> …originating (or causing to be instituted) a judicial proceeding to construe or contest this trust instrument…or alleging any other theory which, ***if assumed as true, would enlarge (or originate) a claimant's interest in this trust…***

72. The unsworn Qualified Beneficiary Designation and Testamentary Power of Appointment dated August 25, 2010, is void ab initio because it violates the trust, does not specifically amend the prior unrevoked Qualified Beneficiary Designation, dated June 15, 2010, and fails for the lack of two witnesses as a testamentary instrument, notwithstanding the fact that it is not in evidence by the failure of DEFENDANTS to include an affidavit attesting to its validity and authenticity.[29]

73. Significantly, the 8/25/10 QBD does not have to be valid for ANITA and AMY BRUNSTING'S shares to be forfeited to their descendants. Article XI Section C assumes the theory to be true, looking at the intent of the beneficiaries in bringing the claim "to enlarge their share." By attempting to unlawfully take CANDACE'S share to pay their attorneys' fees incurred in defending themselves, ANITA AND AMY BRUNSTING attempted to enlarge their share at CURTIS' expense, thereby forfeiting their shares to their descendants.

74. This is without even considering whether the document is digitally forged—of which there is some evidence, but Plaintiff Curtis does not have the burden of bringing forth evidence. Federal Judge Hoyt granted CURTIS injunctive relief, recognizing irregularities in the alleged trust documents produced by Anita Brunsting, which were missing pages, among other problems. The 8/25/10 QBD was produced to CURTIS in three different versions as "duplicate originals".[30] The three QBD's are not reflected in CANDACE FREED'S notary logs or notes.[31] The Case History Notes provided in discovery by Candace Freed have an approximate 2-week gap both before and after August 25, 2010, in notary entries. NELVA BRUNSTING certified by handwritten note that she did not execute the 8/25/10 QBD, re-appointing ANITA BRUNSTING.

75. In a further effort to convert CURTIS' vested interest, ANITA and AMY BRUNSTING'S attorneys filed a traditional and no evidence motion for summary judgment against CANDACE

[29] Exhibits C and D.
[30] Exhibit V, 3 signature pages of 8/25/10 QBD & Testamentary Power of Appointment
[31] Exhibit T and U, Log and Notes of Candace Freed produced with oral deposition.

CURTIS in June of 2015 and November 5, 2021, alleging that she forfeited her share to them by violating the void 8/25/10 QBD—not in evidence. The 2015 Motion for Summary Judgment was answered by CURTIS in multiple parts as well as the November 5, 2021, untimely Motion for summary judgment, but the Court failed to timely rule upon the Motions prior to the expiration of the deadlines set forth in 2021 docket control order.[32]

76. ANITA AND AMY BRUNSTING'S traditional and no evidence motion for summary judgment was untimely filed on November 5, 2021, beyond the October 15, 2021, deadline set by the Court's June 2021 docket control order, without evidence of a valid 8/25/10 QBD and Testamentary Power of Appointment.

77. CURTIS nevertheless filed a further 5-page response to said motion and the court set the matter for consideration by submission on December 14, 2021—the deadline for hearing summary judgment motions. The Court's February 25, 2022, Order has not been rendered upon or signed by the presiding judge, but by a former judge without notice to the parties and admittedly without having reviewed the Motion for Summary Judgement—beyond the deadline for ruling on the Motion.

78. Furthermore, sufficient evidence exists in the record to support CURTIS' claims for conversion, breach of fiduciary duty, fraud, constructive trust, and other claims, via the Federal Court's 2013 Preliminary Injunction granted to CANDACE CURTIS, finding a substantial likelihood that she would prevail on her claims. Likewise, there is evidence of willful misconduct and bad faith on the part of ANITA BRUNSTING, who was found to have engaged in prohibited self-dealing and comingling, with irregularities in the trust documents presented to the federal judge.

[32] Exhibit Y, Docket Control Order June 2021

79. The special master's report proves that ANITA BRUNSTING engaged in fraud on the beneficiaries through the prohibited self-dealing and comingling of more than $150,000 after Nelva resigned as trustee and Anita took over. The Special Master's Report reveals that CO-TRUSTEES wasted $180,000 in taxes paid as a result of failing to distribute the income as the trust required.

80. CO-TRUSTEES' admit breaching their fiduciary duties by failing to account and distribute as required by Article X. *See Federal Preliminary Injunction, memorandum and order, Federal Master's Report, and discovery responses of AMY AND ANITA BRUNSTING, all revealing breaches of fiduciary duties, including but not limited to the duty to account, distribute, fully disclose all relevant information to the beneficiaries, treat all beneficiaries equally, refrain from self-dealing, avoid willful misconduct, bad faith and/or gross negligence.* AMY'S attorney, Neil Spielman, admitted on the record that the trust was not distributed for 11+ years due to CANDACE CURTIS' initiation of litigation to make them distribute the funds. *See Unsworn Declaration of Candice Schwager.*

81. Proof of self-dealing by ANITA is the fact that the trust did not authorize "mommy" to allow ANITA BRUNSTING the right to give monetary gifts to herself of $150,000+ while serving as trustee. While the trust allowed either Settlor to make gifts during their lifetimes via a valid QBD, Article VI A specifically states, **"Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income."** Restatement VIA. This necessarily dictates that ANITA BRUNSTING AND AMY BRUNSTING engaged in fraud on the beneficiaries and prohibited self-dealing of hundreds of thousands of dollars when neither SETTLOR had the power to authorize a TRUSTEE to make such gifts. This is a breach of fiduciary duty, which the Court should not have ignored.

82. CO-TRUSTEES admit breach of fiduciary duty by acknowledging that they have still not distributed the trust into 5 personal asset trusts and/or shares, as required reasonably soon after the death of NELVA BRUNSTING. They ADMIT that they have not distributed the assets TO ANY OF THE BENEFICIARIES, due to CURTIS' initiation of litigation This excuse is not permitted under the law or the trust.

83. CANDACE CURTIS' share vested on November 11, 2011, and was required to be distributed.[33] Notably, her share has not been distributed to her after 11+ years, which is evidence of breach of fiduciary duty via DEFENDANTS' own admissions.

84. A Pre-Trial Conference was set for February 24, 2022, at 10:00 a.m. At the last minute a hearing was noticed for February 25, 2021, at 3:00 p.m. (instead of 2022), to hear the Third Contempt Motion and the Motion to Exclude Testimony/Evidence, and the Pretrial Conference originally set for hearing on February 24, 2022, was rescheduled to February 25, 2022, at 3:00 p.m. with a defective notice stating that hearing would occur February 25, 2021.

85. Without notice that former judge Kathleen Stone would be appearing in place of Probate Court No. 4's Judge James Horwitz and the opportunity to object, and with no bond or oath on file in the Harris County clerk's office, Kathleen Stone appeared February 25, 2022. Without RENDERING judgment in open court on Defendants' motion for summary judgment, she announced she had spoken to Judge Horwitz and would be signing the Order[34]. See Transcript of *February 25, 2022, hearing, inaccurately referring to Stone as the Judge of Probate Court No. 4.*

86. On February 25, 2022, The Pre-Trial Conference did not occur and the two motions to be heard were never heard. Stone admits to not reading the motion and states on the record that she

[33] Article X states that if CANDACE CURTIS shall predecease the settlors or die before the complete distribution of her share, the balance of her share shall be distributed to CANDACE'S then living descendants, per stirpes.

[34] Exhibit P, Transcript of Oral Hearing February 25, 2022

spoke with Judge Horwitz and was signing the Order, disinheriting CURTIS, and purporting to unlawfully distribute her share to CO-TRUSTEES' attorneys. The Order further unlawfully provided that attorneys' fees of CO-TRUSTEES would be paid from CURTIS' share when her share was not subject to claims of judgment creditors or alienable – whether voluntary or involuntary.

87. With evidence to support CURTIS' claims in the record since 2013, JUDGE KATHLEEN STONE signed by February 25, 2022, Order, disposing of CANDACE CURTIS' claims and purporting to subject her 1/5 interest and/or personal asset spendthrift trust to the opposing counsel's attorneys' fees. No statute or contract authorized attorneys' fees from CANDACE CURTIS to Neil Spielman or Stephen Mendel and her share vested November 11, 2011—making it inalienable and not subject to the claims of judgment creditors.

88. Furthermore, JUDGE KATHLEEN STONE abused her discretion in signing the February 25, 2022, Order[35], purporting to alienate her share of the trust for DEFENDANTS' attorneys' fees, when it was not subject to the claims of judgment creditors as a vested interest in a spendthrift trust and no contract or statute authorizes fees against CANDACE CURTIS by DEFENDANTS' attorneys. Stone subsequently signed an Order denying CURTIS' Bill of Review, challenging the court's jurisdiction—to which CURTIS objects.

89. On or about March 23, 2022, CURTIS filed a written objection for former judge serving in this case, based on her lack of oath and bond. This requires that STONE disqualify herself and void the February 25, 2022, Order granting summary Judgment and March 11, 2022, order denying CURTIS' bill of review, challenging the jurisdiction of this court.

[35] Exhibit Q, Order of February 25, 2022.

V. ARGUMENTS AND AUTHORITIES

A. This Court lacks subject matter jurisdiction over the BRUNSTING FAMILY LIVING TRUST by Tex. Est. Code 32.005, 32.006, 32.007, lack of a probate estate or independent executor, Curtis vs. Brunsting, Registration of Foreign Judgment, Void Remand Order and Void Order of Transfer

91. Section 115.001 of the Texas Property Code provides the district court with exclusive jurisdiction over trusts in Texas, except for the authority expressly provided to the statutory probate court. Tex. Prop. Code 115.001 provides:

> Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to:
> (1) construe a trust instrument.
> (2) determine the law applicable to a trust instrument.
> (3) appoint or remove a trustee.
> (4) determine the powers, responsibilities, duties and liability of a trustee.
> (5) ascertain beneficiaries
> (6) make a determination of fact affecting the administration, distribution, or duration of a trust.
> (7) determine a question arising in the administration or distribution of a trust
> (8) relieve a trustee from any or all of the duties, limitations and restrictions otherwise existing under the terms of the trust instrument or of this subtitle.
> (9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and
> (10) surcharge a trustee.
>
> **(a-1)**
> The list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. A district court has exclusive and original jurisdiction over a proceeding by or against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).
> **(b)**
> The district court may exercise the powers of a court of equity in matters pertaining to trusts.
> **(c)**
> The court may intervene in the administration of a trust to the extent that the court's jurisdiction is invoked by an interested person or as otherwise provided by law. A trust is not subject to continuing judicial supervision unless the court orders continuing judicial supervision.

(d)
The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on:
(1)
a statutory probate courts.

92. CANDACE CURTIS filed her suit for accounting, disclosure, breach of fiduciary duty, conversion, fraud, intentional infliction of emotional distress (and ultimately, declaratory judgment) in federal district court for the Southern District of Texas under diversity jurisdiction. The Fifth Circuit held that jurisdiction was proper in the U.S. District Court for the Southern District of Texas, Houston Division. *Curtis vs. Brunsting. Id.* The Fifth Circuit court of appeals held that the probate exception to federal jurisdiction did not apply, reversing and remanding to U.S. District Court Judge Kenneth Hoyt for further proceedings.

93. After oral hearing and consideration of the evidence, Judge Kenneth Hoyt issued a preliminary injunction over the trust in favor of CANDACE CURTIS against CO-TRUSTEES, ANITA K BRUNSTING AND AMY BRUNSTING. Judge Hoyt granted CURTIS' Application for Preliminary Injunction April 13, 2013, and issued a Memorandum and order on the 19th day of April 2013. Judge Hoyt detailed findings of irregularities in purported trust documents and held that CURTIS was substantially likely to prevail on her claims against ANITA AND AMY BRUNSTING. *See Memorandum and Order of Preliminary Injunction issued April 19, 2013.*

94. CURTIS was admonished to retain an attorney for discovery purposes, so she hired attorney JASON OSTROM. Almost immediately after being retained, JASON OSTROM committed attorney misconduct by amending her Complaint to pollute diversity, filing a motion to remand her case to probate court, when it had never been removed from probate court, and filing a motion to enter transfer order in the probate court, when he never officially appeared for CANDACE CURTIS in probate court and lacked authority to do so.

95. A claim for declaratory judgment was added and CARL BRUNSTING was included as an involuntary plaintiff when the proper procedure for declaratory judgment actions was to sue CARL BRUNSTING as a nominal defendant, as was done with CAROL BRUNSTING.

96. Though CURTIS' federal case, *Cause No. 4:12-cv-00592* had never been filed in or removed from Probate court No. 4 of Harris County, Texas, CURTIS' counsel caused the matter to be unlawfully "remanded" to Probate Court No. 4 and caused Judge Christine Butts to sign a void order accepting transfer. *See Order for Remand, Order accepting transfer signed by Judge Christine Butts, and Order denying Rule 60 Motion for Relief of Judge Kenneth Hoyt, in which Judge Hoyt acknowledges that remand was improper.* The only procedure to transfer a case between state and federal courts is removal or remand. Consequently, both orders are void—a fact acknowledged by Judge Hoyt in his order denying CURTIS' Rule 60 Motion to reopen the case.

97. The Transfer Order states that it is pursuant to Tex. Est. Code. 32.005, 32.006, and 32.007, but none of these statutes apply in this scenario because the case was never filed in probate court and original and exclusive jurisdiction is in the district court. Cases may not be transferred from federal to probate court other than removal and remand. No estate was pending for *Curtis vs. Brunsting* to be deemed ancillary to, and the case has already been registered in the district court, with original jurisdiction. The Petition to Register the Foreign Judgment is a final order, which has not been transferred.

98. Sections 32.005, 32.006 and 32.007 provides as follows:

> Sec. 32.005. EXCLUSIVE JURISDICTION OF PROBATE PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT. (a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory probate court is

concurrent with the jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court.

Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which there is a statutory probate court, the statutory probate court has jurisdiction of:
(1) an action by or against a trustee.
(2) an action involving an inter vivos trust, testamentary trust, or charitable trust;
(3) an action by or against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and
(4) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

Sec. 32.007. CONCURRENT JURISDICTION WITH DISTRICT COURT. A statutory probate court has concurrent jurisdiction with the district court in:
(2) an action by or against a trustee;
(3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;
(4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;

99. For a suit to be subject to the jurisdiction provisions of the Texas Estates Code, it must qualify as either a "probate proceeding," or a "matter related to a probate proceeding," as defined by the Estates Code. In re Hannah, 431 S.W.3d 801, 807-08 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (citing TEX. EST. CODE ANN. §§ 21.006, 32.001(a), 33.002, 33.052, 33.101).

100. Finally, a probate court exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy. TEX. EST. CODE ANN. § 32.001(b). Yet for a probate court to have such authority to exercise jurisdiction over matters incident to an estate, it is axiomatic that there must necessarily be a probate proceeding then pending in such court. Frost Nat'l Bank, 315 S.W.3d at 506; Narvaez, 564 S.W.3d at 57." *Mortensen v. Villegas, No. 08-19-00080-CV (Tex. App. Feb. 1, 2021),*

Sabine Gas Transmission Co. v. Winnie Pipeline Co., 15 S.W.3d 199, 200 (Tex. App. 2000).

96. While Section 115.0001 provides a statutory probate court with concurrent jurisdiction with the district court, who have original and exclusive jurisdiction over living trust lawsuits, except for that provided to statutory probate courts, in order to transfer a case from even District Court to probate, an estate must be pending, rather than closed. *Goodman v. Summit at West Rim, Ltd.*, 952 S.W.2d 930, 932 n.1 (Tex. App. 1997).

97. The Estate of NELVA BRUNSTING was closed April 5, 2013, leaving no possibility for any subsequently transferred case to be deemed "ANCILLARY" OR "INCIDENT TO". Tex. Est. Code. 32.005, 32.006, 32.007.

98. CURTIS' federal lawsuit was never lawfully transferred to probate court no. 4 and subject matter jurisdiction cannot be waived or agreed to. CURTIS' lawsuit was assigned as ancillary *Cause No. 412249-402* and renamed *Estate of Nelva Brunsting* before being "consolidated" with *Cause No. 412249-401*, a declaratory judgment / breach of fiduciary duty lawsuit filed by CARL BRUNSTING against the CO-TRUSTEES which was wrongfully designated *Estate of Nelva Brunsting*.

99. Both "ancillary" matters involved solely the BRUNSTING FAMILY LIVING TRUST and were never ancillary to any pending estate because the ESTATE OF NELVA BRUNSTING, Cause No. 412249, was closed April 5, 2013. *See approval of inventory and drop order, signed April 5, 2013.* Without an estate, no lawsuit could lawfully be transferred to the probate court as an ancillary matter.

100. Even had the estate not been closed, the court would have lost jurisdiction over ancillary matters when the inventory was approved and the estate matter closed. In *Goodman v. Summit at West Rim, Ltd*., 952 S.W.2d 930 (Tex.App.-Austin 1997, no pet.), the court held that a probate court abused its discretion in continuing to exercise ancillary jurisdiction over pendent claims

once the estate was dismissed from the probate proceeding. *Goodman v. Summit at West Rim, Ltd*., 952 S.W.2d 930 (Tex.App.-Austin 1997, no pet.) The court of appeals held that "the probate court had no discretion to continue to exercise ancillary jurisdiction after it dismissed the estate from the proceeding." *Id.* at 934. The court explained its holding by noting that a probate court's ancillary jurisdiction arises only over a claim that bears some relationship to the estate. *See id.* at 933. If the estate is dismissed from the probate proceeding, the claim loses its ancillary nature since there is no claim within the court's jurisdiction to which the ancillary or pendent claim relates. *See id.* Because it found the claims against the city to be ancillary or pendent to nothing, the court held the probate court lost jurisdiction.[36] Id. See also *Sabine Gas Transmission Co. v. Winnie Pipeline Co.*, 15 S.W.3d 199, 200-01 (Tex. App. 2000).[14]

102. In Texas, the pendency of a probate proceeding is a requisite for a court's exercise of jurisdiction over matters related to it. *Goodman v. Summit at West Rim, Ltd.*, 952 S.W.2d 930, 933 (Tex. App. 1997). *See also Bailey v. Cherokee County Appraisal District, 862 S.W.2d 581 (Tex. 1993).* This is because "[l]oss of jurisdiction is characteristic of specialized courts." Id. *See In re Estate of Hanau,* 806 S.W.2d 900, 904 (Tex.App. — Corpus Christi 1991, writ denied) (court lost jurisdiction to remove independent executrix after estate was closed). "

103. In *Bailey v. Cherokee County Appraisal District,* 862 S.W.2d 581 (Tex. 1993), the Texas Supreme Court stated that a trial court must have a probate case pending to exercise its jurisdiction over matters "incident to an estate." *See also In re Estate of Hanau,* 806 S.W.2d at

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[36] A court may exercise only the jurisdiction accorded it by the constitution or by statute. *City of Beaumont v. West,*484 S.W.2d 789, 791 (Tex.Civ.App. — Beaumont 1972, writ ref'd n.r.e.). Subject matter jurisdiction may not be enlarged by an agreement between the parties or by a request that the court exceed its powers. *Texas Ass'n of Bus. v. Texas Air Control Bd.,* 852 S.W.2d 440, 445 (Tex. 1993); *Burke v. Satterfield,* 525 S.W.2d 950, 953 (Tex. 1975). A probate court is a specialized court that exists primarily for the limited purpose of administering decedents' estates. *See generally* Tex. Prob. Code §§ 5, 5A (West Supp. 1997). *Goodman v. Summit at West Rim, Ltd.*, 952 S.W.2d 930, 933 (Tex. App. 1997)

904 (court lost jurisdiction to remove independent executrix after estate was closed). The Supreme Court held that the probate court may only exercise "ancillary " or "pendent" jurisdiction over a claim that bears some relationship to the estate. *Bailey v. Cherokee County Appraisal District,* 862 S.W.2d 581 (Tex. 1993)Once the estate settles, the claim is "ancillary " or "pendent" to nothing, and the court is without jurisdiction. Id. If it ever had jurisdiction, which is denied, jurisdiction was lost April 5, 2013. This made the Transfer Order void, even if it were possible to "transfer" a case from federal to state court –other than by removal or remand, which it is not.

104. An analogous situation occurs in cases in which a court loses jurisdiction over an indispensable party. The court in which the proceeding was pending loses subject matter jurisdiction over the cause when an indispensable party is nonsuited. *Travis Heights Improvement Ass'n v. Small,* 662 S.W.2d 406, 413 (Tex.App. — Austin 1983, no writ); *see also Royal Petroleum Corp. v. McCallum,* 135 S.W.2d 958 (1940). The Goodman Court held that the estate is an "indispensable party" to any proceeding in the probate court and the estate's presence is required for the determination of any proceeding that is ancillary or pendent to an estate. *Goodman v. Summit at West Rim, Ltd.*, 952 S.W.2d 930, 933 (Tex. App. 1997). *Smith Inc. vs. Sheffield, No. 0302-00109-CV (Tex. App.—Austin, 2003).*

105. The estate has been closed and a drop order was issued since April 5, 2013. Furthermore, CARL BRUNSTING resigned due to incapacity on February 17, 2015. Therefore, neither the independent administrator nor the estate are parties to this litigation. Due to the fact that both are indispensable parties to any proceeding in the probate court and the fact that probate has been long since closed, there was no estate pending at the time CANDACE CURTIS' federal case was allegedly remanded and/or transferred to Probate Court No. 4. *Smith Inc. vs. Sheffield, No. 0302-*

00109-CV (Tex. App.—Austin, 2003). This deprives the court of jurisdiction over the alleged ancillary lawsuit of CANDACE CURTIS VS. ANITA K. BRUNSTING et al, Cause No. 4:12cv-00592, U.S. District Court for the Southern District of Texas (Houston Division, 2013).

B. ***Former Judge Kathleen Stone failed to render judgment and lacks authority to sign the Order***

C. CANDACE CURTIS filed an objection and amended objection to any former judge presiding over this case aside from the Honorable Judge James Horwitz on the basis that Judge Horwitz is the only judge with an oath and bond on file in Harris County probate court no. 4. This requires JUDGE KATHLEEN STONE to disqualify herself and void the order granting summary judgment and denying CURTIS' bill of review.

D. When a party files a timely objection to an assigned judge under section 74.053 of the Texas Government Code, the assigned judge's disqualification is mandatory. See TEX. GOV'T CODE § 74.053(a)-(c); *Starnes v. Chapman*, 793 S.W.2d 104, 107 (Tex.App. — Dallas 1990, orig.proceeding). *See Mercer v. Driver*, 923 S.W.2d 656, 658 (Tex.App. —Houston [1st Dist.] 1995, orig. proceeding); Starnes, 793 S.W.2d at 107.

E. Subsections 74.053(b) and (d) allow a party to make one objection to an assigned judge, and unlimited objections to an assigned former judge who was not a retired judge. See TEX. GOV'T CODE § 74.053(b) and (d); Garcia v. Employers Ins. of Wausau, 856 S.W.2d 507, 509 (Tex.App. —Houston [1st Dist.] 1993, writ denied). If the assigned judge overrules a timely section 74.053 objection, that judge's subsequent orders are void and the objecting party is entitled to mandamus relief. See Amateur Athletic Found. v. Hoffman, 893 S.W.2d 602, 603 (Tex.App. — Dallas 1994, orig. proceeding); Rubin v. Hoffman, 843 S.W.2d 658, 659 (Tex.App. — Dallas 1992, orig. proceeding).

F. Section 74.053 Subsection (b) provides:

> If a party to a civil case files a timely objection to the assignment, the judge shall not hear the case. Except as provided by Subsection (d), each party to the case is only entitled to one objection under this section for that case.

G. Subsection (d) provides:

> A former judge or justice who was not a retired judge may not sit in a case if either party objects to the judge or justice.

H. Texas Government Code Sec. 25.0017 requires visiting judges to take the oath and provides:

> (a) A person who is a retired or former judge shall, before accepting an assignment as a visiting judge of a statutory county court, take the oath of office required by the constitution and file the oath with the regional presiding judge…
> (c) A retired or former judge may be assigned as a visiting judge of a statutory county court only if the judge has filed with the regional presiding judge an oath of office as required by this section.

I. KATHLEEN STONE does not have an oath or bond on file with the presiding judge of Harris County Probate Court. Due to the statutory mandate that any statutory probate judge presiding over this case have an oath of office and bond on file, PLAINTIFF objects to any former or visiting judge hearing this case that does not have both on file with the Harris County Probate Clerk and Harris County Commissioners, including but not limited to KATHLEEN STONE. PLAINTIFF has confirmed that only the HONORABLE JAMES HORWITZ has an oath of office and bond on file to preside over cases in probate court No. 4. Therefore, CURTIS objects to any other assigned judge other than the Honorable Judge James HORWITZ. Accordingly, JUDGE STONE must disqualify herself and void the orders signed.

J. Section 25.0017 (a) requires any visiting judge to take the oath of office required by the Texas Constitution before accepting an assignment as a visiting judge of a statutory probate court and file the oath with the regional. Presiding judge. Tex. Govt. Code. Sec. 25.0017. The Statute requires the regional presiding judge

(b) shall maintain a file containing the oaths of office filed with the judge under Subsection (a).

(c) A retired or former judge may be assigned as a visiting judge of a statutory county court only if the judge has filed with the regional presiding judge an oath of office as required by this section.

112. Section 25.0021 provides:

(b) A person who is a retired or former judge shall, before accepting an assignment as a visiting judge of a statutory probate court, take the oath of office required by the constitution and file the oath with the presiding judge of the statutory probate courts.

(c) The presiding judge shall maintain a file containing the oaths of office filed with the judge under Subsection (b).

(d) A retired or former judge may be assigned as a visiting judge of a statutory probate court only if the judge has filed with the presiding judge an oath of office as required by this section.

(e) When a retired or former judge is appointed as a visiting judge, the clerk shall enter in the administrative file as a part of the proceedings in the cause a record that gives the visiting judge's name and shows that:

(1) the judge of the court was disqualified, absent, or disabled to try the cause;

(2) the visiting judge was appointed; and

(3) the oath of office prescribed by law for a retired or former judge who is appointed as a visiting judge was duly administered to the visiting judge and filed with the presiding judge.

(f) "Administrative file" means a file kept by the court clerk for the court's administrative orders and assigned a cause number. Tex. Govt. Code. Sec. 25.00221.

113. Judge Stone has failed to satisfy the requirements of Section 25.0017 or Section 25.00221 of the Texas Government Code, violating the Texas Constitutional mandate that an oath be on file and statutory requirement for STONE to have a bond on file with the presiding judge of the Harris County probate court.

C. ***CO-TRUSTEES' Motion and the Court's order were untimely***

114. The Court issued a docket control order in June of 2021, setting the deadline for motions for summary judgment to be filed by October 15, 2021. The November 5, 2021, motion for summary judgment was untimely beyond the October 15, 2021, deadline set forth in the June 2021 court's docket control order. Additionally, the court's February 25, 2022, Order granting summary judgment was untimely, beyond the December 31, 2021, deadline for hearing dispositive motions or pleas subject to interlocutory appeal and February 7, 2022, deadline for hearing dispositive motions not subject to interlocutory appeal. Therefore, the February "unnoticed" hearing on Defendants' summary judgment motion was untimely as a matter of law, rendering the February 25, 2022, order voidable and/or void.

115. ANITA AND AMY BRUNSTING'S repeat traditional and no evidence motion for summary judgment was untimely field beyond the deadline set by the Court's June 2021 docket control order. CURTIS nevertheless filed a further 5-page response to said motion and the court set the matter for consideration by submission on December 14, 2021—the deadline for hearing summary judgment motions. The Court's February 25, 2022, Order has still not been rendered upon or signed by the presiding judge, but by a former judge with no authority to rule, render or sign the Order.

D. ***CO-TRUSTEES' Motion fails to identify each element of PLAINTIFF'S claims upon which they allege there is no evidence***

116. The Court unlawfully granted CO-TRUSTEES' "no evidence" motion for summary judgment on PLAINTIFFS' claims ***without pointing to any essential element of PLAINTIFFS' claims upon which they claim there was no evidence***. PLAINTIFF asserted claims for breach of fiduciary duty, conversion, intentional infliction of emotional distress, fraud, declaratory judgment, constructive trust, as well as suing for an accounting and disclosures. *See Plaintiff's*

Complaint in Cause No. 4:12-cv-00592, U.S. District Court for the Southern District of Texas (Houston Division, 2012) and 2nd Amended Petition filed in this case.

117. Texas Rule of Civil Procedure 166a(i) permits a party to obtain a "no evidence" motion for summary judgment after adequate time for discovery, but **requires the movant to "state the elements as to which there is no evidence." Tex. R. Civ. P. 166a(i). Each element of PLAINTIFF'S claims, upon which DEFENDANTS allege there is no evidence, must be specifically identified. Defendants' Motion failed to do this.**

118. **Defendants pointed to no element of any cause of action upon which Defendants contend there is no evidence, but pointed merely to a list of allegations pled. Plaintiff objects to the failure of DEFENDANTS to identify each essential element of PLAINTIFF'S claims upon which they contend there is no evidence**.

119. Only once the movant satisfies this burden does the nonmovant bear the burden of "'raising a genuine issue of material fact'" for each challenged element . *Johnson v. Brewer & Pritchard*, *P.C.*, 73 S.W.3d 193, 206 (Tex. 2002) (quoting Tex. R. Civ. P. 166a(i)). A nonevidence challenge will be sustained when "'(a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact.'" *King Ranch*, *Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003) (quoting *Merrell Dow Pharms.*, *Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)).

120. The record reveals substantial evidence to support PLAINTIFFS' claims for breach of fiduciary duty, conversion, fraud, constructive trust, intentional infliction of emotional distress, and declaratory judgment via the federal court's findings in its Memorandum and Order granting

PLAINTIFF extraordinary injunctive relief. *See April 19, 2013, Memorandum and Order and Preliminary Injunction, certified copies attached hereto and incorporated by reference, Special Master's Report.* Based upon PLAINTIFF'S allegations, upon which more than a scintilla of evidence exists in the record, summary judgment was an abuse of discretion.

121. Were this not so, the federal court would not have granted CURTIS a preliminary injunction against CO-TRUSTEES, finding a substantial likelihood that she would prevail on her claims. *See Certified Copies of Preliminary Injunction, Memorandum and Order, Special Master's report, Affidavit of Candace Curtis.* Likewise, there is evidence of willful misconduct and bad faith on the part of AMY AND ANITA BRUNSTING, who were found to have engaged in prohibited self-dealing with irregularities in the trust documents presented to the federal judge. Id.

122. The record already contains more than sufficient evidence that CO-TRUSTEES breached their fiduciary duties (to account, fully disclose, treat all beneficiaries impartially and equally, good faith and fair dealing, not commingle or self-deal), intentionally inflicted emotional distress upon PLAINTIFF (by setting out to disinherit her with a void testamentary Qualified Beneficiary Designation dated 8/25/10), converted her share of the BRUNSTING FAMILY Survivor's and Decedent's Trusts to their own use and benefit, and committed fraud via the use of a fraudulently procured document. PLAINTIFF was also entitled to declaratory judgment of the rights and liabilities of the parties, and she was denied the Constitutional right to due process via jury trial by the Court's February 25, 2022, Order, granting summary judgment on all of her claims.

4. Clearly, the Court also failed to consider CURTIS' multi-part response to DEFENDANTS' 2015 and amended 2021 motions for summary judgment*, July 13, 2015,*

Response to June 26, 2015, no evidence motion for partial summary judgment[37]*, Response to Co-trustees' untimely November 5, 2022, Motion*[38]*, Memorandum of Law on QBD*[39]*, and Addendum to motion for summary judgment*[40]*, attached hereto and incorporated by reference.*

5. The Court failed to consider the April 19th Memorandum and Order granting Preliminary Injunction of Judge Hoyt, finding a substantial likelihood that PLAINTIFF would prevail on her claims against CO-TRUSTEES, listing their numerous breaches of fiduciary duty and noting irregularities in the trust documents DEFENDANTS produced. *See Certified Memorandum and Order of Preliminary Injunction granted to CURTIS April 19th, 2013.* The Court failed to consider the Special Master's Report, which proves breach of fiduciary duty.

6. The record already contained more than sufficient evidence that CO-TRUSTEES breached their fiduciary duties (duty to account, fully disclose, duty of loyalty, duty to treat all beneficiaries impartially and equally, duty of good faith and fair dealing, duty not to commingle or self-deal), intentionally inflicted emotional distress upon PLAINTIFF, converted her share of the BRUNSTING FAMILY Survivor's and Decedent's Trusts to their own use and benefit—to pay their attorneys' fees, and committed fraud via the use of a Qualified Beneficiary Designation and Testamentary Power of Appointment that is void on its face, notwithstanding evidence of digital forgery.

13. PLAINTIFF had no burden to produce evidence where sufficient evidence was already in the record and the court could decide summary judgment as a matter of law in CANDACE CURTIS' favor. *See Defendant's exhibits listed above, Federal Affidavit of Candace Curtis*[41]*, swearing that all evidence in this case was uniquely in the possession of the defendants,*

[37] Exhibit Z
[38] Exhibit AA
[39] Exhibit BB
[40] Exhibit CC
[41] Exhibit DD.

Preliminary Injunction, Memorandum and order of U.S. District for the Southern District of Texas, Judge Kenneth Hoyt, *Special Master's Report, and Registration of Foreign Judgment,* citing more than a preponderance of evidence justifying extraordinary injunctive relief and holding that CANDACE CURTIS was likely to win based on the evidence produced. These documents are all part of the record.

E. ***The Court violated CURTIS' Constitutional right to due process in failing to declare the August 25, 2010, Qualified Beneficiary Designation and Testamentary Power of Appointment to living trust void and severable from the trust.***

123. The Court violated CANDACE CURTIS' Constitutional right to due process of law and a jury trial by granting summary judgment on all of her claims and not issuing a declaratory judgment as to the validity of the 8/25/10 QBD at issue in this case. PLAINTIFF pled for declaratory judgment and was entitled to findings of fact, as well as a declaration by the court as to which documents constituted "the BRUNSTING FAMILY LIVING TRUSTS", necessarily mandating that the Court find that the 8/25/10 QBD is void and severable by the terms of the trust and failure to comply with the statutory prerequisites for a testamentary power of appointment.

124. Without the Court declaring which documents constitute "the trust", it could not determine the rights and liabilities of the parties or grant summary judgment based upon a purported legitimate document that continues to be in dispute.

125. The only document produced by DEFENDANTS to satisfy their burden of proof on their forfeiture counterclaim was the 8/25/10 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement, which is void on its face for the lack of attesting witnesses as required by the Code and because it contradicts the terms of the trust, rendering it severable. All testamentary instruments such as the 8/25/10 QBD which purported to take effect upon the death of NELVA BRUNSTING must be properly witnessed and notarized by

two disinterested witnesses. *See 8/25/10 QBD and* Article 251.051 of the Texas Estates Code. Since the document is void, it is severable from the trust.

126. Article XIII (3) states:

Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged **in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence**. Since the 8/25/10 QBD did not take effect until NELVA BRUNSTING' death, the document was testamentary. **Without satisfying Article 251.051 of the Texas Estates Code, the document is void and severable from the trust.**

127. Article 251.051 of the Texas Estates Code sets forth the requirements for testamentary instruments and requires that any such instrument be signed, notarized and witnessed by two witnesses. "Texas Estates Code section 251.051 requires, inter alia, a last will and testament be (1) in writing, (2) signed by the testator, and (3) attested to by two or more credible witnesses. *See* Tex. Est. Code Ann. § 251.051 (West 2014). " *Lemus v. Aguilar*, 491 S.W.3d 51, 56 (Tex. App. 2016)

128. The 8/25/10 was not witnessed and in fact, AMY, ANITA, and CAROL BRUNSTING admit that none of them witnessed NELVA BRUNSTING'S signature on this 8/25/10 QBD. Because the 8/25/10 QBD and testamentary power of appointment fails to satisfy *See* Tex. Est. Code Ann. § 251.051 (West 2014) and violates the trust, it is void and severable to the extent it was ever actually part of the trust.

129. Article VIV Section O states:

> If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining

provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

130. Due process requires the Court to declare the rights and liabilities of the parties pursuant to CANDACE CURTIS' Application for Declaratory Judgment. CURTIS was denied this Constitutionally protected right. See U.S. Constit. Amend XIV, Texas Constit, Art. I Sec. 8

G. ***DEFENDANTS have not satisfied their burden of producing evidence to prove that CANDACE CURTIS violated the "no contest" provision of the Restatement***

131. In a traditional summary-judgment motion[42], the movant has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *See*

[42] Rule 166a (traditional) and Rule 166a(i) states that summary judgment may be granted:

> **(a)For Claimant.** A party seeking to recover upon a claim, counterclaim, or crossclaim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.
>
> **(c)Motion and Proceedings Thereon.** The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) **the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records**, if any, **on file at the time of the hearing**, **or filed thereafter** and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the **issues expressly set out in the motion or in an answer or any other response.** Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal…
>
> **(d)Appendices, References and Other Use of Discovery Not Otherwise on File.** Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment;

Tex. R. Civ. P. 166a(c); *Browning v. Prostok*, 165 S.W.3d 336, 344 (Tex. 2005). We take as true evidence favorable to the nonmovant and resolve all doubts in its favor. *Little v. Texas Dep't of Criminal Justice*, 148 S.W.3d 374, 381 (Tex. 2004); *Harwell v. State Farm Mut. Auto. Ins. Co.*, 896 S.W.2d 170, 173 (Tex. 1995).

132. To be entitled to a traditional summary judgment under Tex. R. Civ. P. 166(a), a defendant must conclusively negate at least **one essential element of each of the plaintiffs causes of action or conclusively establish each element of an affirmative defense**. *Science Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997). The movant is entitled to summary judgment if the evidence disproves, as a matter of law, **at least one element of each of the plaintiff's causes of action or conclusively establishes each element of an affirmative defense**. *Friendswood Dev. Co. v. McDade & Co.*, 926 S.W.2d 280, 282 (Tex. 1996); *see Ryland Grp., Inc. v. Hood*, 924 S.W.2d 120, 121 (Tex. 1996). *Martin-De-Nicolas v. AAA Tex. Cnty. Mut. Ins. Co.*, No. 03-17-00054-CV, at *5-6 (Tex. App. Apr. 19, 2018). If the movant's motion and summary judgment evidence facially establish its right to judgment as a matter of law, the burden shifts to the nonmovant to raise a genuine, material fact issue sufficient to defeat summary judgment. *M.D. Anderson Hosp. Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000).

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or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.

(f)Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by

(i)No-Evidence Motion. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

133. Significantly, DEFENDANT CO-TRUSTEES obtained traditional summary judgment on a counterclaim, forfeiture, ***without satisfying their burden to produce evidence showing that no genuine issue of material fact occurred*** because the unsworn declaration that they attached to their motion for summary judgment did not authenticate any of the exhibits included.

134. AMY AND ANITA BRUNSTING'S lawyers filed a traditional motion for summary judgment against CANDACE CURTIS, alleging that she forfeited her share to them by violating the void 8/25/10 QBD on June 26, 2015, and November 5, 2021. CURTIS responded to their motions July 13, 2015, and November 17, 2021, including a Memorandum of Law on the August 25, 2010, Qualified Beneficiary Designation and Testamentary power of appointment dated September 28, 2020, (attaching three signature pages of the document-which appears to be digitally altered, notary logs and notes of CANDACE FREED showing no entries for 8/25/10 to reflect the three anomalous documents) and an Addendum dated October 15, 2021.

135. ANITA AND AMY BRUNSTING produced the following unsworn documents with their traditional and no evidence motion for summary judgment:

> Exhibit A The Restatement of The Brunsting Family Living Trust.
> Exhibit B Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement executed on or about June 15, 2010.
> Exhibit C Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement executed on or about on August 25, 2010.
> Exhibit D Excerpts from Deposition of Candace Kunz-Freed (March 29, 2019).
> Exhibit E Excerpts from Deposition of Candace Kunz-Freed (June 27, 2019).
> Exhibit F Order Appointing Temporary Administrator Pending Contest Pursuant to Texas Estates Code §452.051 (signed July 23, 2015).
> Exhibit G Report of Temporary Administrator Pending Contest.
> Exhibit H Unsworn Declaration of Anita K. Brunsting.
> Exhibit I Resignation of Original Trustee executed on or about December 21, 2010.
> Exhibit J Memorandum and Order Preliminary Injunction (signed April 19, 2013).

Exhibit K Order (signed September 23, 2020).
Exhibit L Unsworn Declaration of Neal E. Spielman

136. It was DEFENDANTS' burden to produce sworn testimony concerning the authenticity of the purported 8/25/10 QBD, not Plaintiff's. Plaintiff demanded Defendants produce the original 8/25/10 QBD on July 13, 2015 and they have not because they cannot. No one witnessed the document as the law requires of testamentary evidence. Therefore, even if it were in evidence sworn by affidavit, whether it was digitally altered to add Nelva's signature or not, it is void on its face for failure to comport with statute. Notably, the Court could not decide DEFENDANTS' Rule 166a traditional motion for summary judgment without considering evidence. But this is precisely what it did in GRANTING DEFENDANTS' Motion for Summary judgment on their counterclaim of forfeiture. While the 8/25/10 QBD was attached as an exhibit to their motion, it was not sworn to and was not evidence. PLAINTIFF has disputed the validity of this document from the outset AS NOT PART OF THE TRUST and the document is void on its face for failing to have two disinterested witnesses attest to it. PLAINTIFF objects to the court granting summary judgment on DEFENDANTS' counterclaim with no evidence to justify it—DEFENDANTS' own the burden of burden of proof AND of bringing forth the evidence to be disputed.

137. ***Without attaching a sworn affidavit attesting to the authenticity and validity of the August 25, 2010, QBD and Testamentary Power of Appointment to Living Trust, witnessed by two disinterested persons, there is no evidence in the record from which the Court could rule that CANDACE CURTIS forfeited her share.***

138. DEFENDANTS' have produced no evidence to satisfy their burden of proof that CURTIS ***violated the "no contest" clause by asserting any claim which would enlarge her share of the trust,*** as set forth in the Article 11 Section C of the 2005 Restatement of the BRUNSTING FAMILY LIVING TRUST.

139. CANDACE LOUIS CURTIS never filed any claim **to enlarge her share of the trust** at the expense of another beneficiary, but sought to enforce the trust in accordance with the settlor's intentions at all times. The 2013 federal lawsuit and preliminary injunction proves this. Id.[43]

140. CANDACE CURTIS never challenged the "trust" but only the void 8/25/10 QBD which violated the express terms of the trust, rendering it void and severable. Based on Article XIV Section O and Article XII Section F of the Restatement (imposing liability on the Trustees for bad faith, willful misconduct and/or gross negligence), CANDACE CURTIS' lawsuit against the acting Co-Trustees did not violate the "no contest" clause of the Restatement and the August 25, 2010, QBD is void and severed from this trust under the terms of the trust and Texas Estates Code f/k/a Texas Probate Code.

128. The Trust Code expressly provides beneficiaries with the right to compel a fiduciary to perform the fiduciary's duties; seeking redress against a fiduciary for a breach of the fiduciary's duties; or seeking a judicial construction of a will or trust (§ 112.038), and the foregoing cannot be construed to trigger a forfeiture provision; Texas Trust Code § 111.0035(b)(6) which is exactly what the Court has done.

129. "The right to challenge a fiduciary's actions is inherent in the fiduciary / beneficiary relationship." *McLendon, 862 S.W.2d at 678." Lesikar v. Moon, 237 S.W.3d 361, 370 (Tex. App. 2007) Texas Property Code § 111.0035(b)(6)* (The terms of a trust will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties; from seeking redress against a fiduciary for a breach of the fiduciary's duties; or seeking a judicial construction of a will or trust. (§ 112.038)

[43] Nor did CURTIS need AMY OR ANITA'S permission to file suit because she is the de jure sole trustee of both trusts by the terms of the instrument itself.

H. ***The Court erred in ruling that Co-trustees' attorneys' fees shall be taken out of CANDACE CURTIS' share, as CANDACE CURTIS' share is not alienable or subject to claims of judgment creditors***

130. Article XI Section A of the Restatement provides:

> No beneficiary will have the power to anticipate, encumber, or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities, or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

131. The foregoing language indicates that the BRUNSTING FAMILY LIVING TRUST was created as a spendthrift trust, which is immune from creditors by its very terms. See Article XI Section A-C. Article XI Section C specifically states that the Founders "do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact..." This necessarily voids the order granting Neil Spielman and Stephen Mendel attorneys' fees out of CANDACE CURTIS' share, which is held in a spendthrift trust.

132. Texas Probate Code Sec. 122.206 governs Spendthrift Trusts and provides:

> An assignment of property or interest that would defeat a spendthrift provision imposed in a trust may not be made under this subchapter.

133. Texas Property Code Sec. 112.035 governs spendthrift trusts and provides:

> (a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.
>
> (b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.
>
> (c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.
>
> (f) A beneficiary of the trust may not be considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have

the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary, in any capacity, holds or exercises:
(1) a presently exercisable power to:
(A) consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:
(i) exercisable only on consent of another person holding an interest adverse to the beneficiary's interest; or
(ii) limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary; or
(B) appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;
(2) a testamentary power of appointment; or
(3) a presently exercisable right described by Subsection (e)(2).

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 2, eff. September 1, 2017.

134. Upon the April 2009 death of ELMER BRUNSTING, two trusts were created: with the property being divided into two shares: The Survivor's and Decedent's trusts, Restatement Article VII, Section B.

135. Article VIII Section D provides that the Survivor's trust SHALL terminate at the Surviving Founder's death and

136. Article IX governs administration of the Decedent's trust and permits the surviving founder to pay/apply for the survivor's benefit all of the net income and up to $5000 in principal per year. Article IX Section A. The surviving founder continued to have fiduciary duties to the remainder beneficiaries with respect to the Decedent's trust.

137. Article IX Section D provides that the Decedent's trust SHALL terminate at the Surviving Founder's death.

138. Upon the surviving founder's death, November 11, 2011, both trusts terminated and were required to be distributed in accordance with Article X, dividing all trust property by five and distributing 1/5 of the total assets to each beneficiary: CANDACE LOUISE CURTIS, CAROL

ANN BRUNSTING, CARL HENRY BRUNSTING, AMY RUTH TSCHIRHART N/K/A AMY RUTH BRUNSTING, ANITA KAY RILEY N/K/A ANITA K. BRUNSTING.

139. Article X Section B governs the distribution of CANDACE LOUISE CURTIS' share and states that it shall be held in trust with the trustee distributing as much of the net income and principal of CURTIS' personal asset trust which the trustee deems necessary for her health, education, maintenance and support—for her lifetime. CANDACE CURTIS' right to the net income and principal of the trust is not alienable, voluntarily or involuntarily other than the execution of a testamentary power of appointment, valid living trust, or last will and testament—which is not at issue in this case.

140. Clearly the settlors made the BRUNSTING FAMILY LIVING TRUST and specifically, CANDACE CURTIS' share—unalienable and not subject to creditors, including judgment creditors NEIL SPIELMAN AND/OR STEPHEN MENDEL,

I. Attorneys' fees may not be granted in Texas absent a contract or statute authorizing attorneys' fees.

130. "Texas follows "the American Rule" prohibiting recovery of attorney's fees unless provided by contract or statute." *Intercontinental Group Partnership v. KB Home Lone Star L.P.*, 295 S.W.3d 650, 663 (Tex. 2009). CO-TRUSTEES point to no legal authority which would permit them to recover their attorneys' fees incurred in defending themselves rendering the February 25, 2022, Order purporting to pay CO-TRUSTEES' legal fees out of CANDACE CURTIS' vested share of the BRUNSTING FAMILY LIVING TRUST.

131. CANDACE CURTIS has no contract for services with CO-TRUSTEES' attorneys, Neil Spielman and/or Stephen Mendel. CO-TRUSTEES point to no legal authority which would permit them to recover attorneys' fees from CURTIS, contractual or statutory. Furthermore, the BRUNSTING FAMILY LIVING TRUST makes clear that no portion of the spendthrift trust was

to be used for litigation costs. For this reason, the February 25, 2022, Order purporting to award NEIL SPIELMAN AND STEPHEN MENDEL attorneys' fees from CANDACE CURTIS' vested share of the spendthrift trust is void.

J. <u>The Order violated CANDACE CURTIS' Constitutional right to due process—notice and a meaningful opportunity to be heard.</u>

132. The Court had a duty to determine the validity of the documents attached and issue a declaratory judgment on the rights and liabilities of the parties and failed to do so. CANDACE CURTIS plead for and paid for a jury trial to determine the issues of fact in this case which remain unresolved and was deprived of this Constitutional right by the Court's February 25, 2022, Order, purporting to dispose of all of her claims and ruling against CURTIS on CO-TRUSTEES counterclaim of forfeiture without any evidence to justify this ruling. This was a complete deprivation of the Constitutional right to due process of law under the U.S. and Texas Constitutions. U.S. CONSTIT. AMEND. XIV, TEXAS CONSTIT. ART. I, SEC. 8. For this reason, the FEBRUARY 25, 2022, ORDER granting summary judgment against PLAINTIFF constitutes an abuse of discretion and must be vacated and/or set aside.[44]

133. A proper reading of the trust instrument 92005 restatement as amended in2007) reveals that the lawful trustees for the family trust are CARL BRUNGING and CANDACE CURTIS.

134. A list of the affirmative fiduciary duties performed by the DEFENDANT CO-TRUSTEES reads "*this page intentionally left blank*" and a passive trust results in merger and the trust collapses, *Property Code § 112.032.*

[44] DEFENDANTS attached the BRUNSTING FAMILY LIVING TRUST, 2005 RESTATEMENT, 1st Amendment, 6/15/10 Qualified Beneficiary Designation, and 8/25/20 Qualified Beneficiary Designation and Testamentary Power of Appointment to Living Trust, to their motion with unsworn declarations and the court had a duty to determine which documents constitute the trust, given PLAINTIFF'S allegations of fraud and the 8/25/10 QBD's invalidity on its face.

135. When merger occurs the trustee's only authority is to transfer the assets to or as directed by the beneficiary. It is true that "[a] spendthrift trust must be based on an active trust. If it is merely passive or inactive, there can be no spendthrift trust." Long v. Long , 252 S.W.2d 235, 247 (Tex. Civ. App.—Texarkana 1952, writ ref'd n.r.e.). Likewise, "[a] trustee who has no duty except to make payments as they become due is the trustee of a 'passive' or 'dry' trust." Daniels v. Pecan Valley Ranch, Inc. , 831 S.W.2d 372, 379 (Tex. App.—San Antonio 1992, writ denied). Moreover, "[i]f a trustee is not given affirmative powers and duties, the trust is 'passive' or 'dry,' and legal title is vested in the beneficiaries , not the named trustee." Nolana Dev. Ass'n v. Corsi , 682 S.W.2d 246, 249 (Tex. 1984). Consequently, "[A] merely passive trust cannot constitute a valid spendthrift trust because the beneficiary is considered the real owner of the property." Daniels , 831 S.W.2d at 379. In re Estate of Lee, 551 S.W.3d 802, 814 (Tex. App. 2018)

VI. CONCLUSION AND PRAYER

136. For the reasons stated herein, PLAINTIFF respectfully prays that the Court vacate and set aside the February 25, 2022, Order, granting summary judgment against her and permit this matter to proceed to trial.

Respectfully Submitted,

Candice Schwager

Candice Schwager
Schwager Law Firm
16807 Pinemoor Way
Houston, Texas 77058
832.857.7173
candiceschwager@outlook.com
ATTORNEY FOR CANDACE CURTIS

CERTIFICATE OF SERVICE

I Candice Schwager hereby certify that the foregoing document was served on all counsel of record on the 27th day of March 2022.

Candice Schwager

Candice Schwager

EXHIBIT A

THE RESTATEMENT OF

THE BRUNSTING FAMILY

LIVING TRUST

Prepared By

Albert E. Vacek, Jr.

The Vacek Law Firm, PLLC

11511 Katy Freeway Suite 520
Houston, Texas 77079

Telephone: (281) 531-5800

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THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

Article I

Our Family Living Trust

Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

Article III

Our Right to Amend or Revoke This Trust

Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and ~~AMY RUTH TSCHIRHART~~

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

1. Minimum Distribution

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

2. Distribution Restrictions

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

3. Exclusion of Older Adopted "Descendants"

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

4. Payment of Estate Taxes of Plan Participant

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

5. Delivery of Trust to Plan Administrator

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

6. Distribution to the Beneficiaries

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

7. Distribution of More Than the Minimum Distribution

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Section D. Residence Homestead

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

1. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

2. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

3. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

c. Taxes and Returns

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount..

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

Beneficiary	Share %
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Section E. Application to Founders

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman

Notary Public, State of Texas

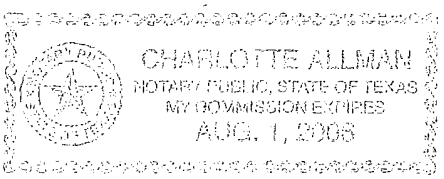


EXHIBIT B

FIRST AMENDMENT TO THE RESTATEMENT TO
THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

Elmer H Brunsting
ELMER H. BRUNSTING,
Founder and Trustee

Nelva E Brunsting
NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Candace L Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

P444

EXHIBIT "A"

Article IV

Our Trustees

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

EXHIBIT C

QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT

I. I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST not previously distributed, as follows:

Section A. Advance on Trust Share for a Beneficiary

Upon the death of NELVA E. BRUNSTING, any funds advanced during her lifetime after June 1, 2010, and further evidenced in a writing signed by her stating that such funds are an advance on the said beneficiary's inheritance, shall be treated by her successor Trustee as an advance on the trust share of the beneficiary receiving such advance or their descendants, as the case may be, and shall be deducted from said beneficiary's trust share. Such sums withheld shall be distributed equally among all remaining beneficiaries, as set forth in Article X, Section A of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

II. I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Decedent's Trust") the full legal name of which is as follows:

NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, my Trustee shall distribute the balance of the principal and net, undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST not previously distributed, as set forth in Roman Numeral I, Section A of this document.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on June 15, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on June 15, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on June 15, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

SUMMER PEOPLES
Notary Public, State of Texas
My Commission Expires
April 04, 2014

Notary Public, State of Texas

EXHIBIT D

QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT

Section 1. Exercise of General Power of Appointment and Qualified Beneficiary Designation

I, NELVA E. BRUNSTING, the surviving Founder (herein also referred to as "Trustor" and "Founder") of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B.4 of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to administer and distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST as set forth in Section 3 of this document.

The BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, is incorporated herein by reference for all purposes (herein sometimes referred to as "the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996," and the "Trust Agreement").

Section 2. Exercise of Limited Power of Appointment and Qualified Beneficiary Designation

I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named

the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, I direct my Trustee to administer and distribute the balance of the principal and undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST, except for any portion which has been disclaimed by me, as set forth in Section 3 of this document.

Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust

DISTRIBUTION OF TRUST ASSETS

A. **Beneficiaries**

The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:

Beneficiaries	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
CARL HENRY BRUNSTING	1/5
ANITA KAY BRUNSTING	1/5

B. Division into Separate Shares

My Trustee shall distribute the share for each of my beneficiaries in a separate Personal Asset Trust for the benefit of each beneficiary as provided in this Section 3. If a named beneficiary fails to survive me, then that share shall be distributed as set forth below as if it had been an original part thereof. The decisions of the Trustee as to the assets to constitute each such share shall be conclusive, subject to the requirement that said shares shall be of the respective values specified.

1. Share for CANDACE LOUISE CURTIS

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CANDACE LOUISE CURTIS, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CANDACE LOUISE CURTIS fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CANDACE LOUISE CURTIS, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

2. Share for CAROL ANN BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CAROL ANN BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CAROL ANN BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CAROL ANN BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

3. Share for AMY RUTH TSCHIRHART

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of AMY RUTH TSCHIRHART, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If AMY

RUTH TSCHIRHART fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of AMY RUTH TSCHIRHART, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

4. Share for CARL HENRY BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CARL HENRY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CARL HENRY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CARL HENRY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

5. Share for ANITA KAY BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of ANITA KAY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If ANITA KAY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of ANITA KAY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

PERSONAL ASSET TRUST PROVISIONS

A. Establishment of the Personal Asset Trust:

A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified

to be made to said beneficiary's Personal Asset Trust first occurs. The Personal Asset Trust shall be held, administered and distributed as set forth under this Agreement. After a beneficiary's Personal Asset Trust is established, any further distribution specified to be made to said beneficiary's Personal Asset Trust under any other provisions of this Agreement shall be added to and become a part of said existing Personal Asset Trust, to be held, administered and distributed as if it had been an original part thereof. The Personal Asset Trust may be referred to by either using the name of the beneficiary for whom such trust is created or such other name as is designated by the Trustee. Notwithstanding the foregoing, if the Trustee exercises his or her right to create a separate and distinct Personal Asset Trust for said beneficiary (pursuant to the paragraph of this Agreement entitled "Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners"), any further distributions specified to be made to said beneficiary's Personal Asset Trust may, in the Trustee's sole and absolute discretion, instead be partly or entirely made to such newly created Personal Asset Trust.

B. Trustor's Intent in Establishing Personal Asset Trusts: The Trustor's intended purposes in creating a Personal Asset Trust for a beneficiary are as follows:

1. To protect and conserve trust principal;

2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary;

3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

4. To protect trust assets and income from claims of and interference from third parties;

5. To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

7. To give the beneficiary the ability to direct the distribution of wealth (during life or at death) to other individuals or charitable organizations (subject to any limitation provided elsewhere herein);

8. To allow for the prudent management of property if the beneficiary is incapacitated or otherwise unable to handle his or her own financial affairs because of alcohol or drug abuse or other reasons;

9. To protect the beneficiary from the unreasonable or negative influence of others, divorce claims, paternity or maternity suits or claims, and other lawsuits; and

10. To protect the beneficiary against claims of third parties.

C. Duty to Inform Beneficiary of Trust Benefits and Protections: Immediately prior to a Personal Asset Trust being established for a beneficiary hereunder, the then acting Trustee of the Trust shall, if at all practicable, have a private meeting or telephone call with such beneficiary to explain the above stated long-term purposes and benefits of the Personal Asset Trust and to advise such beneficiary how he or she may maintain the benefits and protections that such trust provides. The Trustee is directed to have an attorney assist the Trustee in conducting this meeting or call and the Trustor hereby authorizes the Trustee to employ the services of VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, for such purpose and waive any potential conflict that may otherwise deter them from acting; however, the Trustee is free to hire any other attorney, provided such attorney is an experienced estate planning specialist.

D. Designation of Trustee: Except for the Personal Asset Trusts created for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS, each beneficiary for whom a Personal Asset Trust is created shall act as sole Trustee of said trust. ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall act as Co-Trustees for the Personal Asset Trusts for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS. If either ANITA KAY BRUNSTING or AMY RUTH TSCHIRHART cannot serve for any reason, the remaining Co-Trustee shall serve alone. Both ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall have the right to appoint their own successor Trustee in writing. Notwithstanding the foregoing, each beneficiary who is acting as his or her own Trustee of his or her said trust shall have the right, at such time as said beneficiary is acting as sole Trustee and in said beneficiary's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said beneficiary as Co-Trustee of said trust. Said beneficiary shall also have the right, at any time and in said beneficiary's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said beneficiary appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said beneficiary shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a

successor Trustee or Co-Trustee(s) in said beneficiary's place, as the case may be, in the event of said beneficiary's death, incompetency, inability or unwillingness to act; but, if said beneficiary is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c) and said beneficiary shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said beneficiary fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said beneficiary to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

E. Designation of Trustee for Primary Beneficiary's Issue: Notwithstanding the foregoing, upon attaining age thirty five (35) each of the descendants of a Primary Beneficiary (hereinafter sometimes referred to as "issue") shall act as sole Trustee of the Personal Asset Trust created for such issue. Said issue shall have the right, at such time as said issue is acting as sole Trustee and in said issue's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said issue as Co-Trustee of said trust. Said issue shall also have the right, at any time and in said issue's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said issue appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said issue shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a successor Trustee or Co-Trustee(s) in said issue's place, as the case may be, in the event of said issue's death, incompetency, inability or unwillingness to act; but, if said issue is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c)) and said issue shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said issue fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said issue to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

F. Administration of Personal Asset Trust: The Personal Asset Trust shall be held, administered and distributed by the Trustee appointed under this Section of the Trust Agreement as follows:

1. Discretionary Distributions of Income and/or Principal: The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for

the benefit of the beneficiary for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as such Trustee shall deem appropriate for such distributees' health, support, maintenance and education. Any income not distributed shall be accumulated and added to principal. In exercising the discretions conferred in this paragraph, the Trustee may pay more to or apply more for some beneficiaries to the exclusion of others, if such Trustee deems this necessary or appropriate in light of the circumstances, the size of the Trust Estate and the probable future needs of the beneficiaries. The Trustee shall, before making any such distributions, consider the Trustor's intent in creating the trust, as set forth above in paragraph B.

2. Additional Guidelines for Distributions: In addition to the provisions set forth above for making discretionary distributions of income and/or principal, the Trustee shall be further guided as follows in making such distributions. Any such distributions shall be made in the sole and absolute discretion of the Trustee and shall be binding on all persons howsoever interested now or in the future in this trust.

   a. Primary Beneficiary's Needs Considered First; Broad Interpretation of "Health, Education, Maintenance and Support": In exercising the discretionary powers to provide benefits under this trust, the Trustee shall take into consideration that the primary purpose in establishing this trust is to provide for the present and future welfare of the primary beneficiary, and secondly, the present and future welfare of the primary beneficiary's issue. Furthermore, the Trustee may take into account any beneficiary's character and habits and his or her willingness and action to support himself or herself in light of his or her particular abilities and disabilities, and the needs of other beneficiaries, if any, of the same trust. Finally, the Trustor requests that the Trustee be liberal in determining the needs of a beneficiary for health, support, maintenance and education and in conferring benefits hereunder. The term "health" need not take into account any private or governmental medical insurance or other medical payments to which a beneficiary may be entitled, and the Trustee may pay for the expense of providing health and medical insurance coverage for the beneficiary. The term "education" may include but is not limited to, all expenses incurred in connection with or by reason of a beneficiary's attendance at public or private elementary or high school, college, university or vocational, technical or other educational institution or specialized training programs (whether or not any such institution or program provider shall be a fully accredited educational institution), graduate or post-graduate education expenses, and all expenses incurred in providing such beneficiary with an education in a non-institutional setting; including,

but not limited to, the expense of travel and charges for tutoring, tuition, room and board (whether or not charged by an educational institution at which such beneficiary shall be a student), laboratory fees, classroom fees, clothing, books, supplies, laboratory or other equipment or tools (including computer hardware and software) or other material or activities that the Trustee shall determine to be of educational benefit or value to such beneficiary. In determining the need for funds for education, the Trustee shall consider all direct and indirect expenses, including living expenses of the beneficiary and those persons who may be dependent upon said beneficiary. The terms "support" and "maintenance" may include but are not limited to investment in a family business, purchase of a primary residence, entry into a business, vocation or profession commensurate with a beneficiary's abilities and interests; recreational or educational travel; expenses incident to marriage or childbirth; and for the reasonably comfortable (but not luxurious) support of the beneficiaries. When exercising the powers to make discretionary distributions from the trust, the Trustee shall maintain records detailing the amount of each distribution made to any beneficiary from trust income and/or principal and the reasons for such distribution. The distributions made to a beneficiary shall not be allocated to or charged against the ultimate distributable share of that beneficiary (unless so provided in the primary beneficiary's exercise of his or her limited power of appointment).

b. Consider the Situation of the Beneficiary: In determining whether or not it is in the best interest of a beneficiary for any payment to be made to that beneficiary, the Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary: (i) is suffering from any physical, mental, emotional or other condition that might adversely affect the beneficiary's ability to properly manage, invest and conserve property of the value that would be distributed to said beneficiary; (ii) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect the beneficiary's ability to manage, invest and conserve property of such a value; (iii) has demonstrated financial instability and/or inability to manage, invest and conserve the beneficiary's property; or (iv) is going through a period of emotional, marital or other stress that might affect the beneficiary's ability to manage, invest and conserve such property.

c. Consider Any Written Letter of Instructions from the Trustor: The Trustor may from time to time by written letter or other instrument, not constituting a holographic will or codicil or amendment to any trust, set forth instructions to the Trustee as to how the Trustor wishes the

Trustee's discretion to be exercised. The Trustor recognizes and intends that such instructions shall only be directive in nature and not binding on the Trustee or any beneficiary hereunder; however, the Trustor requests, to the extent possible, that the Trustee be mindful of these instructions when administering the trust.

d. Loans, Use of Trust Property and Joint Purchases Preferred Over Distributions: The Trustee is directed, prior to making any distributions directly to or for the benefit of a beneficiary, to consider the alternatives of making a loan to the beneficiary, allowing the beneficiary the use of property of the Trust Estate (or such property to be acquired) and/or making a joint purchase of property with the beneficiary, pursuant to the paragraph below entitled "Special Trustee Powers."

e. Restrictions on Distributions That Discharge Legal Obligations of a Beneficiary: The primary beneficiary is expressly prohibited from making any distributions from the trust, either as Trustee or under any limited power of appointment, either directly or indirectly, in favor of anyone to whom the primary beneficiary owes a legal obligation, to satisfy, in whole or in part, such legal obligation. Any such distributions may only be made by the Trust Protector.

G. Primary Beneficiary's Limited Power of Appointment: The primary beneficiary shall have the following Limited Powers of Appointment. During the lifetime of the primary beneficiary, said beneficiary may appoint and distribute the accumulated income and/or principal to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions, and in such amounts or proportions as said beneficiary wishes. Upon the death of the primary beneficiary, the Trustee shall distribute any remaining balance, including accumulated income and principal, to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions and in such amounts or proportions as said beneficiary shall appoint by said beneficiary's last unrevoked Will, codicil or other written instrument executed prior to said beneficiary's death and specifically referring to this power of appointment. In the event there should be a failure of disposition of all or any portion of said income or principal, either in connection with the exercise or as a result of the nonexercise of the above testamentary limited power of appointment, all of said income and principal not disposed of shall be administered and distributed as set forth below in the paragraph entitled "Final Disposition of Trust." The terms of this paragraph may be limited by the Section of this Trust Agreement entitled "Trust Protector Provisions."

H. Final Disposition of Trust: If the primary beneficiary for whom the Personal Asset Trust has been created should die before complete distribution of said trust, and the beneficiary's above powers of appointment have not been fully exercised, said trust shall terminate and the remaining principal (including accumulated income added

thereto) in said trust shall be held, administered and distributed for the benefit of the succeeding or contingent beneficiaries named, if any, pursuant to the respective paragraph set forth in Section 3.B. of this Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment establishing said beneficiary's share as if such beneficiary had been an original part thereof. Any share or portion thereof of any trust administered hereunder which is not disposed of under any of the foregoing provisions (or the provisions of the Article entitled "Trust Protector Provisions") shall be distributed pursuant to the paragraph of the Trust Agreement entitled "Ultimate Distribution."

I. Special Trustee Powers: With respect to each Personal Asset Trust created under this Section, and in addition to or in lieu of the powers and authority granted to the Trustee under any other provisions of the Trust Agreement, during the existence of the Personal Asset Trust and until such time of its termination the Trustee, in his or her sole and absolute discretion, shall have the powers and authority to do the following.

1. Permit Beneficiaries to Use Trust Assets: The Trustor desires that the beneficiaries of the trust be given the liberal use and enjoyment of trust property. To the extent deemed practical or advisable in the sole and absolute discretion of the Trustee, the primary beneficiary (or other beneficiaries) of each trust hereunder may have the right to the use, possession and enjoyment of (a) all of the tangible personal property at any time held by such trust, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, and (b) all real property that may at any time constitute an asset of such trust. Such use, possession and enjoyment may be without rent or other financial obligation. To the extent of the trust assets and unless the Trustee is relieved of such obligation by such beneficiary (or beneficiaries), which the Trustee may agree to do, the Trustee shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding and other charges related to the preservation and maintenance of each and every such property. The Trustor requests, but do not require, that any such use, possession or enjoyment by a beneficiary other than the primary beneficiary be subject to veto at any time by the primary beneficiary.

   a. Hold and Maintain a Residence for the Use of Beneficiaries: The Trustee is specifically authorized to hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of any beneficiary of any trust. If the Trustee, in the Trustee's sole and absolute discretion, determines that it would be in the best interests of any beneficiary of any trust to maintain a residence for their use, but that the residence owned by the Trustee should not be used for such purpose, the Trustee is authorized to sell said residence and to apply the net proceeds of the sale to the purchase of such other residence or to make such other arrangements as the Trustee, in such Trustee's sole and absolute discretion, deems suitable

for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above shall be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof. The Trustee is authorized to pay all carrying charges of such residence, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of any beneficiary of the trust; the Trustee may alternatively provide, by agreement with the beneficiary, that such charges and expenses, or a portion of them, are to be paid by the beneficiary. Having in mind the extent to which funds will be available for future expenditure for the benefit of the beneficiaries, the Trustee is authorized under this paragraph to expend such amounts as such Trustee shall, in his or her sole and absolute discretion, determine to maintain the current lifestyle of the beneficiaries and their personal care and comfort; the Trustor does not, however, desire that the Trustee assist the beneficiaries in maintaining a luxurious lifestyle.

2. Special Investment Authority: Notwithstanding any investment limitations placed on the Trustee under the Trust Agreement or the provisions of any state law governing this trust which may contain limitations such as the prudent investor rule, the Trustee is authorized to make the following types of investments of trust assets:

   a. Closely Held Businesses: To continue to hold and operate, to acquire, to make investments in, to form, to sell, or to liquidate, at the risk of the Trust Estate, any closely held partnership, corporation or other business that a beneficiary is involved in as an owner, partner, employee, officer or director, as long as the Trustee deems it advisable. The Trustee shall not be liable in any manner for any loss, should such loss occur, resulting from the retention or investment in such business. In the absence of actual notice to the contrary, the Trustee may accept as correct and rely on financial or other statements rendered by any accountant for any such business. Any such business shall be regarded as an entity separate from the trust and no accounting by the Trustee as to the operation of such business shall be required to be made. The Trustee shall have these powers with respect to the retention and purchase of such business, notwithstanding any rule or law requiring diversification of assets. Additionally, the foregoing shall not be limited by the fact that the Trustee or related parties, or any of them, shall be owners, partners, employees, officers or directors of the business. This paragraph, however, shall not be deemed to be a limitation upon the right of the Trustee to sell the investment in any

business if in the Trustee's sole and absolute discretion such sale is deemed advisable.

b. Tangible Personal Property: To acquire and/or continue to hold as an asset of the trust such items of tangible personal property as an investment or for the use of a beneficiary, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, home furniture and furnishings.

3. Permit Self-Dealing: Financial transactions, both direct and indirect, between any trust and any beneficiary and/or Trustee who is also a beneficiary of that trust (including, for example, the sole or joint purchase, sale or leasing of property, investments in mortgages, acquisitions of life insurance policies, employment in any capacity, lending, etc.), whether or not specifically described in the Trust Agreement as permitted between such parties, except to the extent expressly prohibited hereunder, are expressly authorized, notwithstanding any rule of law relating to self-dealing, provided only that the Trustee, in thus acting either on behalf of or with or for such trust, shall act in good faith to assure such trust receives in such transaction adequate and full consideration in money or money's worth. Furthermore, the Trustee shall have the power to employ professionals or other individuals to assist such Trustee in the administration of any trust as may be deemed advisable (and as more particularly described in the paragraph of the Trust Agreement entitled "Trustee Powers"), notwithstanding such person or entity may be, or is affiliated in business with, any Trustee or beneficiary hereunder. The compensation to which a Trustee who is also a beneficiary is entitled under the Trust Agreement shall not be reduced or offset by any employment compensation paid to such Trustee for services rendered outside the scope of such Trustee's ordinary fiduciary duties and responsibilities, or for reason of receiving sales or other fees or commissions on property sold to the trust by such Trustee (directly or indirectly), which sales are hereby authorized.

4. Make Loans: Loan money to any beneficiary, or to any estate, trust or company in which such person or any trust hereunder has an interest, or had an interest while living, for any purpose whatsoever (including but not limited to purchasing, improving, repairing and remodeling a principal residence or entering into, purchasing or engaging in a trade or business or professional career), with or without security and at such rate of interest as the Trustee shall determine in the exercise of reasonable fiduciary discretion, and, with respect to such loans and/or security interests, to renew, extend, modify and grant waivers. Notwithstanding the foregoing, and without limiting the ability of the Trustee to act in such Trustee's discretion under this paragraph, the Trustor hereby expresses his preference that, whenever economically feasible, any and all loans made pursuant to the provisions of this paragraph be adequately secured and bear interest at least at the higher of the "applicable federal rate"

as set forth by the Internal Revenue Service for loans with similar payment terms and length or a fair market rate for such loans.

5. Take Actions With Respect to Properties and Companies Owned in Common With a Beneficiary or Others: The Trustee is specifically authorized, with or without the joinder of other owners of the property or securities that may be held in trust (and notwithstanding that one or more such other owners may be, directly or indirectly, a beneficiary or a fiduciary hereunder), to enter upon and carry out any plan (a) for the foreclosure, lease or sale of any trust property, (b) for the consolidation or merger, dissolution or liquidation, incorporation or reincorporation, recapitalization, reorganization, or readjustment of the capital or financial structure of any corporation, company or association, the securities of which, whether closely held or publicly traded, may form a part of such trust, or (c) for the creation of one or more holding companies to hold any such securities and/or properties (even if it leaves, following the termination of such trust, a trust beneficiary as a minority shareholder in such holding company), all as such Trustee may deem expedient or advisable for the furtherance of the interests of such trust and the carrying out of the Trustor's original intent as to such trust, its beneficiaries and as to those properties and/or securities. In carrying out such plan, such Trustee may deposit any such securities or properties, pay any assessments, expenses and sums of money, give investment letters and other assurances, receive and retain as investments of such trust any new properties or securities transferred or issued as a result thereof, and generally do any act with reference to such holdings as might be done by any person owning similar securities or properties in his own right, including the exercise of conversion, subscription, purchase or other rights or options, the entrance into voting trusts, etc., all without obtaining authority therefor from any court.

6. Right to Distribute to Entities: Any distribution from the trust, including a distribution upon trust termination (whether made by the Trustee or Trust Protector) may be made directly to an entity, such as a trust, "S" corporation, limited liability company or limited partnership, whether existing or newly created, rather than directly to the beneficiary (and if it is a newly created entity or one in which the Trust Estate holds an interest, the interest in the entity may be distributed to such beneficiary).

7. Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners: Without in any manner limiting any other power or right conferred upon the Trustee hereunder, the Trustee may divide a trust into separate trusts, and if a trust is held as, or divided into, separate trusts, the Trustee may, at any time prior to combining such trusts, treat the trusts in substantially different manners, including, without limitation, the right to: (a) make different tax elections (including the disproportionate allocation of the generation skipping tax exemption) with respect to each separate trust; (b)

make disproportionate principal distributions; (c) exercise differently any other discretionary powers with respect to such separate trusts; (d) invest the property of such separate trusts in different investments, having different returns, growth potentials, or bases for income tax purposes; and (e) take any and all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to any trust so divided may exercise such power differently with respect to the separate trusts created by the division of a trust.

TRUST PROTECTOR PROVISIONS

A. Purpose of Trust Protector: The Trustor has established the position of Trust Protector for the reasons and purposes set forth below, which are intended as general guidelines only and in no way shall limit any other provisions relating to the Trust Protector.

1. Insulate the Trustee from Negative Influences: To protect the Trustee from the negative, or potentially negative, influences of third parties and to protect the Trust Estate and its beneficiaries from damaging, or potentially damaging, conduct by the Trustee.

2. Carry Out the Purposes of the Trust: To help ensure that the Trustor's purpose in establishing the Trust Agreement, as defined elsewhere herein, will be properly carried out.

3. Adapt to Changing Laws and Conditions: To adapt the provisions of the Trust Agreement to law changes, changes in interpretation of the law or other changing conditions that threaten to harm the Trust or its beneficiaries, keeping in mind the dispositive wishes of the Trustor and the Trustor's desires as expressed in the Trust Agreement.

B. Designation of Trust Protector: In addition to the Trustee and Special Co-Trustee provided in the Trust Agreement, there shall, from time to time, be a Trust Protector whose limited powers and duties are defined below. The order of succession of Trust Protector shall be as follows:

1. Initial Trust Protector: The Special Co-Trustee, at any time and in his sole and absolute discretion, may appoint a Trust Protector of the entire Trust or of any separate trust established hereunder (hereinafter the trust for whom a Trust Protector is appointed shall be referred to as "the affected trust") by a writing delivered to the Trustee of the affected trust. The Trustor requests that the Special Co-Trustee, prior to making the appointment, meet (in person or by telephone) with VACEK & FREED, PLLC, formerly the Vacek Law Firm,

PLLC of Houston, Texas, to help ensure the appropriate selection of the initial Trust Protector.

2. Successor Trust Protector: Upon the removal, death, incompetency, inability or unwillingness to act of the initial Trust Protector (including a written resignation delivered to the Trustee of the affected trust), the next succeeding Trust Protector shall be appointed either by the Special Co-Trustee or by the initial Trust Protector (except as limited by paragraph 4 below) in writing delivered to the Trustee of the affected trust (the first such writing delivered to the Trustee shall control). All further successor Trust Protectors shall be appointed in the same manner, except that where the word "initial" is used in the foregoing sentence there shall be substituted the words "last appointed."

3. Qualifications to Act as Trust Protector: A Trust Protector may act once he has accepted, in writing, his appointment and, other than the case of the initial Trust Protector, has delivered a copy of his appointment and acceptance to the last appointed Trust Protector. Notwithstanding the foregoing, at no time may a Trust Protector be appointed or otherwise act if such person or entity is a currently acting Trustee or Special Co-Trustee or is a current beneficiary of the affected trust or is related to any such beneficiary in any of the following ways: as spouse, ancestor or issue, brother, sister, employee of such beneficiary or of any corporation, firm or partnership in which such beneficiary is an executive or has stock or other holdings which are significant from the viewpoint of control, or is otherwise "related or subordinate to" such beneficiary under IRC Sections 674(a) and (c) and the Regulations thereunder or any similar succeeding Sections or Regulations.

4. Removal of Trust Protector: The primary beneficiaries of the affected trust may by majority vote, and at any time and for any reason, remove the current Trust Protector by delivering to said Trust Protector and to the Special Co-Trustee a signed instrument setting forth the intended effective time and date of such removal. The Special Co-Trustee shall then appoint a successor Trust Protector in accordance with paragraph 2 above (the Trust Protector removed shall no longer have the power under paragraph 2 to appoint his successor). The powers of removal under this paragraph may be limited by the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective."

5. Temporarily Filling a Trust Protector Vacancy: If at any time a vacancy in the office of Trust Protector has not yet been filled as otherwise provided above (including the time before the initial Trust Protector is appointed), such office may be filled promptly, on a temporary basis, by a bank or trust company experienced in trust administration or an attorney (or law firm) who is an experienced tax and/or estate planning specialist provided they meet the qualifications set forth in paragraph 3 above. The Trustor requests, but do not

require, that VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or its successors or assigns, act as such temporary Trust Protector and the Trustor hereby waives any conflict of interest that may arise if VACEK & FREED, PLLC, or its successors or assigns, is also representing the Trustee of the affected trust and/or the Trustor. Any Trust Protector acting under this paragraph shall first notify the Trustee of the affected trust and only serve as Trust Protector until such time as a successor Trust Protector is appointed by the Special Co-Trustee in accordance with paragraph 2 above and there is delivered to the Trust Protector acting under this paragraph a written acceptance of such appointment signed by the successor Trust Protector.

C. Limited Powers of the Trust Protector: The Trust Protector shall not have all the broad powers of a Trustee; rather, the powers of the Trust Protector shall be limited to the powers set forth below. The Trustor directs the Trust Protector, prior to exercising any power, to consult with VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or another law firm or attorney specializing in estate planning and/or asset protection planning in order to be fully informed of the consequences of exercising such power.

1. Give Advance Notice to Affected Beneficiaries: Within a reasonable time prior to the exercise of any power under this paragraph C, the Trust Protector shall provide to the Trustee and the primary beneficiary or beneficiaries of the affected trust a written notice, setting forth the power intended to be exercised, the intended date of exercise and the reasons for exercise. The Trust Protector shall, in his sole and absolute discretion, determine what is "a reasonable time," as the Trustor recognizes that emergency situations may arise which may permit little or no time for advance notice or, as a practical matter, it may be too difficult to notify the beneficiary; the Trustor specifically waives this advance notice requirement when the particular beneficiary is "incapacitated" as defined below. Once notice is given, the Trust Protector shall not exercise the power prior to the date specified in the notice, unless the Trust Protector in his sole and absolute discretion determines that an emergency so warrants.

   A person shall be deemed "incapacitated" if in the Trustee's sole and absolute discretion, it is impracticable for said person to give prompt, rational and prudent consideration to financial matters, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause.

   A person shall be conclusively deemed "incapacitated" if a guardian of the person or his or her estate, or both, has been appointed by a court having jurisdiction over such matters or two (2) licensed physicians who are not related by blood or marriage to such person have examined said person and stated in writing that such incapacity exists; the Trust Protector may, but shall not be under any duty to, institute any inquiry into a person's possible

incapacity (such as, but not limited to, by drug testing) or to obtain physician statements; and if he does, then the expense may be paid from the Trust Estate of said person's trust.

2. Postpone Distributions: Notwithstanding any other provisions of the Trust Agreement, except the paragraph herein entitled "Rule Against Perpetuities," the Trust Protector shall have the power to postpone any distribution of income and/or principal otherwise required to be made from the affected trust to any one or more of its beneficiaries (including as the result of exercise of a power of appointment or withdrawal right) and to postpone the termination of such trust which might otherwise be required if the Trust Protector, in his or her sole and absolute discretion, determines, after taking into consideration the Trustor's overall intent as expressed in the Trust Agreement, that there is a compelling reason to do so.

A "compelling reason" may include but is not limited to: the beneficiary requesting in writing that distributions be retained by the trust; the beneficiary being "incapacitated" as defined in paragraph 1 immediately above; the beneficiary contemplating, or in the process of filing for or has a pending bankruptcy; a pending or threatened divorce, paternity or maternity claim or other lawsuit; a creditor claim (including for unpaid taxes or reimbursement of government benefits); an existing judgment or lien; the fact the beneficiary is receiving (or may in the near future receive) government or other benefits that may be jeopardized; the beneficiary having demonstrated financial instability and/or inability to manage, invest or conserve the beneficiary's own property; the beneficiary being under the negative influence of third parties, such that the beneficiary's good judgement may be impaired; a serious tax disadvantage in making such distribution; or any other substantially similar reasons.

Any such postponement of distribution or termination may be continued by the Trust Protector, in whole or in part and from time to time, up to and including the entire lifetime of the beneficiary. While such postponement continues, all of the other provisions previously applicable to such trust shall continue in effect, except (a) any power of appointment or withdrawal shall be exercisable only with the approval of the Trust Protector and (b) distributions of income and/or principal shall only be made to or for the benefit of the beneficiary from time to time and in such amounts as the Trust Protector, in his or her sole and absolute discretion, deems appropriate for the best interests of the beneficiary; provided, however, the Trust Protector may, in his or her sole and absolute discretion, determine that the beneficiary's situation is extreme enough to warrant the establishment of a special needs trust pursuant to other provisions of this Section of the Trust Agreement.

The Trust Protector may also, from time to time, make certain distributions which cannot be made by the primary beneficiary because of limits imposed in this Section entitled "Restrictions on Distributions That Discharge Legal Obligations of the Beneficiary."

3. Terminate a Trust Due to Unforeseen Conditions: The Trustor recognizes that some or all of the following conditions may arise in the future, although they cannot be foreseen at the time of creation of this Trust: (a) a radical, substantial and negative change in the political, economic or social order in the United States of America; (b) legislation or IRS or court decisions highly detrimental to a trust or beneficiary hereunder (including, for example, if the federal estate tax or IRA required minimum distribution rules are modified, repealed or no longer applicable and the non-tax reasons for the trust no longer justify the trust's existence); (c) a beneficiary's capability to prudently manage his own financial affairs or a radical, positive change in his situation regarding possible third party claims; (d) a beneficiary no longer has a need for (or the availability of) government benefits; and (e) other events that may greatly impair the carrying out of the intent and purposes of the Trust Agreement.

   If any of the foregoing conditions occur, the Trust Protector may, in addition to the other powers granted him or her, in his sole and absolute discretion, and keeping in mind the Trustor's wishes and dispositive provisions of the Trust Agreement, terminate the affected trust, or a portion thereof, and distribute same to or for the benefit of the primary beneficiary thereof (notwithstanding any other provisions of the Trust Agreement), or to a newly created or existing Personal Asset Trust for that beneficiary.

4. Revise or Terminate a Trust So It Can Qualify as a "Designated Beneficiary" of an IRA or Retirement Plan: In the event that the affected trust does not qualify as a "designated beneficiary" of an IRA or other retirement plan as that term is used in IRC Section 401(a)(9), the Regulations thereunder and any successor Section and Regulations, the Trust Protector may, keeping in mind the Trustor's wishes and the dispositive provisions of the Trust Agreement: (a) revise or reform the terms of the Trust Agreement in any manner so that the affected trust will qualify as a "designated beneficiary" (any such revision or reformation may by its terms apply retroactively to the inception of the Trust Agreement or creation of any separate trust established hereunder); or (b) deem it to have been dissolved in part or in whole as of September 30 of the year following the year of the Trustor's death, with fee simple interest vesting outright in the primary beneficiary and the rights of all other persons who might otherwise have an interest as succeeding life income beneficiaries or as remaindermen shall cease.

   If the beneficiary is still a minor, the Trustee may designate a custodian and transfer the principal and accrued income of the beneficiary's trust to the

custodian for the benefit of the minor under the Texas Uniform Transfers to Minors Act until such beneficiary attains age 21. A receipt from the custodian shall be a complete discharge of the Trustee as to the amount so paid.

Notwithstanding any provisions of the Trust Agreement to the contrary, after the Trustor's death this Trust or any separate trust established hereunder shall not terminate and be distributed in full prior to September 30 of the year following the year of the Trustor's death pursuant to this paragraph if this will result in this Trust or any separate trust established hereunder not qualifying as a "designated beneficiary."

5. Modify Certain Other Trust Provisions: The Trust Protector shall have the power, in his or her sole and absolute discretion, at any time and from time to time, to delete, alter, modify, amend, change, add to or subtract from all or any part of the various paragraphs and provisions of the Trust Agreement and any trust created thereunder, effective (even retroactively) as of the date determined by the Trust Protector, for the following purposes.

   a. Change Income Tax Treatment of the Trust: The Trust Protector may, at any time, and from time to time, create, terminate and/or reinstate a power granted to a beneficiary, either prospectively or retroactively, enabling trust income to be income taxable to a beneficiary, even as income accumulates in the trust, if the Trust Protector deems this to be in the best interests of the affected trust and its beneficiaries.

   b. Protect a Disabled Beneficiary's Government Benefit by Establishing a Special Needs Trust: The Trust Protector may take any such actions he or she deems appropriate or necessary in connection with a beneficiary's qualification for, receipt of and/or possible future liability to reimburse government benefits (whether income, medical, disability or otherwise) from any agency (state, federal or otherwise), such as but not limited to Social Security, Medicaid, Medicare, SSI and state supplemental programs. In particular, but not by way of limitation, the Trust Protector may add new trust provisions to govern administration and distribution of assets for the benefit of the beneficiary (such as would create a "special needs trust").

   c. Protect a Beneficiary from Himself or from Creditors by Establishing a Spendthrift Trust or Eliminating Any General Power of Appointment: In the event there is a compelling reason to postpone distributions to a beneficiary pursuant to the paragraph of this Section entitled "Postpone Distributions," the Trust Protector may alternatively, in his or her sole discretion, add new trust provisions to govern administration and distribution of assets for the benefit of said beneficiary (such as would create a "spendthrift trust" in the form recognized by the laws of the

state(s) in which trust assets are located). Furthermore, the Trust Protector may, in his or her sole discretion, in order to protect the beneficiaries of a Trust beneficiary, terminate and/or reinstate said Trust beneficiary's testamentary general power of appointment, if any, under the Section of this Trust Agreement entitled "Generation Skipping Tax Provisions."

6. Change Legal Jurisdiction of the Trust: The Trust Protector may change the situs of the affected trust to another jurisdiction by any such means deemed appropriate by the Trust Protector. This paragraph shall in no way limit the Trustee's power and authority to change the situs of this Trust or any separate trust established hereunder.

7. Remove and Reinstate a Trustee: The Trust Protector shall have the power at any time to remove the acting Trustee of the affected trust (but not the Special Co-Trustee) for any reason which he believes to be in the best interests of the beneficiaries. Such removal shall be stated in writing and delivered to the Trustee. The successor Trustee shall then be determined and appointed in accordance with the Section of the Trust Agreement entitled "Successor Trustees." At any time after the Trust Protector removes a Trustee, the Trust Protector may reinstate the previously removed Trustee and the order of successor Trustees shall be thereafter determined as if such reinstated Trustee was never removed.

8. Eliminate Own Powers: The Trust Protector shall have the power, on his own behalf and/or on behalf of all successor Trust Protectors, to release, renounce, suspend, reduce, limit and/or eliminate any or all of his enumerated powers and to make the effective date any date he wishes, including ab initio to the date of establishment of a trust hereunder or retroactively to the date of death of the Trustor, by a writing delivered to the Trustee of the affected trust.

9. Limitations on Above Powers: The Trust Protector may not exercise any power if he is compelled by a court or other governmental authority or agency to do so or is otherwise acting under the duress or undue influence of an outside force; if the Trust Protector is so compelled, or under such duress or influence, his powers shall become void prior to exercise; these limitations are in addition to those contained in the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective." The Trust Protector is directed not to exercise any of the foregoing powers if such exercise will result in any substantial, direct or indirect financial benefit to anyone who at the time of exercise is not an ancestor, spouse or issue of a primary beneficiary or is not already a present or contingent beneficiary of this Trust. The Trust Protector shall not exercise any power that may be construed as a general power of appointment to himself, his creditors, his estate or the creditors of his estate under IRC Sections 2041 and 2514, or that would otherwise cause the

inclusion of any of the Trust Estate in the Trust Protector's taxable estate for estate, inheritance, succession or other death tax purposes.

D. Limited Liability of the Trust Protector: The Trust Protector shall not be held to the fiduciary duties of a Trustee. The Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, merely by reason of his appointment as Trust Protector and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Trust Protector to act. Furthermore, the Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Trust Protector a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care. In the event a lawsuit against the Trust Protector fails to result in a judgment against him, the Trust Protector shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

E. Compensation: The Trust Protector shall not be entitled to compensation merely as the result of his appointment. The Trust Protector shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Trust Protector shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

F. Waiver of Bond: No bond shall be required of any individual or entity acting as Trust Protector.

MISCELLANEOUS PROVISIONS

A. Prohibition Against Contest: If any devisee, legatee or beneficiary under the Trust Agreement or any amendment to it, no matter how remote or contingent such beneficiary's interest appears, or any legal heir of the Trustor, or either of them, or any legal heir of any prior or future spouse of the Trustor (whether or not married to the Trustor at the time of the Trustor's death), or any person claiming under any of them, directly or indirectly does any of the following, then in that event the Trustor specifically disinherits each such person, and all such legacies, bequests, devises and interests given to that person under the Trust Agreement or any amendment to it shall be forfeited and shall be distributed as provided elsewhere herein as though he or she had predeceased the Trustor without issue:

1. unsuccessfully challenges the appointment of any person named as a Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, or unsuccessfully seeks the removal of any person acting as a Trustee, Special Co-Trustee or Trust Protector;

2. objects in any manner to any action taken or proposed to be taken in good faith by the Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, whether the Trustee, Special Co-Trustee or Trust Protector is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

3. objects to any construction or interpretation of the Trust Agreement or any amendment to it, or the provisions of either, that is adopted or proposed in good faith by the Trustee, Special Co-Trustee or Trust Protector, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

4. claims entitlement to (or an interest in) any asset alleged by the Trustee to belong to the Trustor's estates (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), whether such claim is based upon a community or separate property right, right to support or allowance, a contract or promise to leave something by will or trust (whether written or oral and even if in exchange for personal or other services to the Trustor), "quantum meruit," constructive trust, or any other property right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

5. files a creditor's claim against the assets of the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

6. anyone other than the Trustor attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on the Trustor's life or any designation of beneficiaries for any bank or brokerage account, pension plan, Keogh, SEP or IRA account, employee benefit plan, deferred compensation plan, retirement plan, annuity or other Will substitute of the Trustor;

7. in any other manner contests this Trust or any amendment to it executed by the Trustor (including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence, or otherwise), or in any other manner,

attacks or seeks to impair or invalidate this Trust, any such amendment or any of their provisions;

8. conspires with or voluntarily assists anyone attempting to do any of the above acts;

9. refuses a request of the Trustee to assist in the legal defense against any of the above actions.

Expenses to legally defend against or otherwise resist any above contest or attack of any nature shall be paid from the Trust Estate as expenses of administration. If, however, a person taking any of the above actions is or becomes entitled to receive any property or property interests included in the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), then all such expenses shall be charged dollar-for-dollar against and paid from the property or property interests that said person would be entitled to receive under the Trust Agreement or the Trustor's Will, whether or not the Trustee (or Executor under the Trustor's Will) was successful in the defense against such person's actions.

The Trustor cautions the Trustee against settling any contest or attack or any attempt to obtain an adjudication that would interfere with the Trustor's estate plan and direct that, prior to the settlement of any such action short of a trial court judgment or jury verdict, the Trustee seek approval of any such settlement from the appropriate court having jurisdiction over this Trust by way of declaratory judgment or any other appropriate proceeding under applicable Texas law. In ruling on any such petition for settlement, the Trustor requests the Court to take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the Trust Estate or from the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) under any theory and, therefore, no settlement should be approved by the Court unless it is proved by clear and convincing evidence that such settlement is in the best interest of the Trust Estate and the Trustor's estate plan.

In the event that any provision of this Section is held to be invalid, void or illegal, the same shall be deemed severable from the remainder of the provisions in this paragraph and shall in no way affect, impair or invalidate any other provision in this paragraph. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this paragraph shall not apply to any disclaimer (or renunciation) by any person of any benefit (or right or power) under the Trust Agreement or any amendment to it.

B. Compelled Exercise of Powers Not Effective: It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, notwithstanding any other provisions of the Trust Agreement, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will. An individual's agent may not exercise a power given to such individual under the Trust Agreement if such purported exercise is in response to or by reason of any such order or direction unless the order or direction was obtained by the agent in a proceeding in which the agent was the moving party or voluntarily acquiesced. Notwithstanding the above, if a Trustee's failure to exercise a power or to acquiesce in a beneficiary's exercise of a power may result in exposing a Trustee to serious personal liability (such as contempt of court or other sanctions), a Trustee may: (a) withdraw and permit the Special Co-Trustee to act instead in relation to such purported exercise of a power; (b) if the Special Co-Trustee would also be exposed to such liability, then the Trustee may notify the Trust Protector who may, in his discretion, act if permitted under the Trust Agreement; or (c) if neither the Special Co-Trustee nor the Trust Protector acts, then the Trustee may exercise or acquiesce in a beneficiary's exercise of a power.

C. Creditor's Rights – Spendthrift Provisions: Subject to the express grant herein of certain rights to withdraw or substitute assets and/or powers of appointment, if any, no beneficiary under the trusts created herein shall assign, transfer, alienate or convey, anticipate, pledge, hypothecate or otherwise encumber his or her interest in principal or income hereunder prior to actual receipt. To the fullest extent permitted by law:

(1) neither the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary, any beneficiary's spouse, ex-spouse or others, or be subject to any bankruptcy proceedings or claims of creditors of said persons (including said persons' spouses or ex-spouses), or be subject to any attachment, garnishment, execution, lien, judgment or other process of law; (2) no interest of any beneficiary shall be subject to claims of alimony, maternity, paternity, maintenance or support; and (3) no power of appointment or withdrawal or substitution shall be subject to involuntary exercise. Should the Trustee so desire, the Trustee may as a condition precedent, withhold payments of principal or interest under this Trust until personal order for payment is given or personal receipt furnished by each such beneficiary as to his or her share. The Trustee may, alternatively in the Trustee's sole and absolute discretion, deposit in any bank designated in writing by a beneficiary to his or her credit, income or principal payable to such beneficiary. The

Trustee may, alternatively in the Trustee's sole and absolute discretion, hold and accumulate any income and/or principal so long as it may be subject to the claims, control or interference of third parties, up to and until the beneficiary's death, at which time it shall be distributed in accordance with the beneficiary's exercise of his or her power of appointment, if any, and/or pay to or for the benefit of the beneficiary only such sums as the Trustee deems necessary for said beneficiary's reasonable health, support, maintenance and education.

D. Trustee Power to Determine Principal and Income: The Trustee shall determine what is principal or income of the Trust Estate, and apportion and allocate any and all receipts and expenses between these accounts, in any manner the Trustee determines, regardless of any applicable state law to the contrary including any Principal and Income Act of Texas, or similar laws then in effect. In particular (but not by way of limitation), the Trustee shall have sole and absolute discretion to apportion and allocate all receipts and expenses between principal and income in whole or in part, including the right to: allocate capital gains; elect whether or not to set aside a reserve for depreciation, amortization or depletion, or for repairs, improvement or upkeep of any real or personal property, or for repayments of debts of the Trust Estate; and charge Trustee's fees, attorney's fees, accounting fees, custodian fees and other expenses incurred in the collection, care, management, administration, and protection of the Trust Estate against income or principal, or both. The exercise of such discretion shall be conclusive on all persons interested in the Trust Estate. The powers herein conferred upon the Trustee shall not in any event be so construed as allowing an individual to exercise the Trustee's sole and absolute discretion except in a fiduciary capacity.

E. Broad Trustee Power to Invest: It is the Trustor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Estate without being restricted to forms and investments that the Trustee may otherwise be permitted to make by law. The Trustee is empowered to invest and reinvest all or any part of the Trust Estate in such property as the Trustee in his discretion may select including but not limited to bank accounts, money market funds, certificates of deposit, government bonds, annuity contracts, common or preferred stocks, closely held businesses, shares of investment trusts and investment companies, corporate bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate, put and call options, commodities, commodities futures contracts and currency trading. When selecting investments, the Trustee may take into consideration the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the Trust Estate and its beneficiaries, the amount and nature of all assets available to beneficiaries from sources outside the Trust and the beneficiaries' economic circumstances as a whole, and shall exercise the judgment that a reasonable person would if serving in a like capacity under the same circumstances and having the same objectives. In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would

be forbidden by the "prudent person" (or "prudent investor") rule. In making investments, the Trustee may disregard any or all of the following factors: (i) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (ii) whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty of impartiality as to the different beneficiaries (the Trustor intends no such duty shall exist); (iii) whether the trust is diversified (the Trustor intends that no duty to diversify shall exist); and (iv) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the Trustor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy). The Trustor's purpose in granting the foregoing broad authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature, class or type of the investment or the degree of risk presented by the investment, but shall be liable if the Trustee fails to meet the "reasonable person" standard set forth above or if the Trustee's procedures in selecting and monitoring the particular investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

F. Special Co-Trustee Provisions: Notwithstanding anything in the Trust Agreement to the contrary, the powers, duties or discretionary authority granted hereunder to any Trustee shall be limited as follows:

1. Prohibited and Void Trustee Powers: Except where a beneficiary shall act as sole Trustee of his or her share, or unless limited by an ascertainable standard as defined in Code Section 2041 , no Trustee shall participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created hereunder, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any person to whom distributions could then be made. Any other power, duty or discretionary authority granted to a Trustee shall be absolutely void to the extent that either the right to exercise such power, duty or discretionary authority or the exercise thereof shall in any way result in a benefit to or for such Trustee which would cause such Trustee to be treated as the owner of all or any portion of any of the trusts created herein for purposes of federal or state income tax, gift, estate or inheritance tax laws, or cause any disclaimer of an interest or benefit hereunder to be disqualified under Code Section 2518. Notwithstanding the foregoing, a beneficiary serving as Trustee may have and exercise a power, duty or discretionary authority that causes any Personal Asset Trust created hereunder to be a grantor trust with said beneficiary being treated as the owner for income tax purposes.

Notwithstanding the foregoing, this paragraph shall not apply during the lifetime of the Trustor, nor shall it apply when the exercise of any power, duty, or discretionary authority relates to any provisions herein directed towards preserving the trust estate for beneficiaries named in the Trust Agreement in the event the Trustor should require long-term health care and/or nursing home care. Should a Trustee be prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, as a result of the foregoing, then such power, duty or discretionary authority may be exercised in accordance with the following paragraphs.

2. Exercise of Power by an Existing Independent Co-Trustee: In the event that the right to exercise or the exercise of any power, duty or discretionary authority is prohibited or void as provided above, or is prohibited elsewhere in this Trust Agreement with respect to "incidents of ownership" of life insurance, or the Special Co-Trustee is given any other powers or authority under this paragraph "Special Co-Trustee Provisions," the remaining Co-Trustee, if any, shall have the right to exercise and may exercise said power, duty or discretionary authority, provided the Co-Trustee is independent within the meaning set forth in Section 674(c) of the Code, or any successor statute or regulations thereunder.

3. Exercise of Power if No Existing Independent Co-Trustee: In the event there is no independent Co-Trustee capable of exercising any power, duty or discretionary authority which is prohibited or void as provided above, or which is given to the Special Co-Trustee elsewhere herein, then the following procedure shall apply:

   a. Appointment of Special Co-Trustee: The next succeeding, Trustee or Co-Trustees, as the case may be, of the Trust (or, if only a particular, separate trust created under this Trust Agreement is affected by the exercise of such power, duty or authority, then the next succeeding Trustee or Co-Trustees of said separate trust) who is not disqualified under paragraph "2" above, shall serve as Special Co-Trustee of the Trust herein created.

4. Protect the Trust Estate by Appointment and Removal of an Independent Co-Trustee: In addition to any other powers granted to the Special Co-Trustee under the Trust Agreement, in the event that the Special Co-Trustee named above, in his sole and absolute discretion, determines that it is necessary in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries of any trust established under the Trust Agreement from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may appoint a Co-Trustee (to immediately act with the then existing Trustee) who is independent from the party to be protected within

the meaning set forth in IRC Section 674(c). The Special Co-Trustee may appoint himself to act as such Co-Trustee if he is independent within the meaning of IRC Section 674(c). In addition, if the Special Co-Trustee, in his sole and absolute discretion, determines that it is no longer necessary for an independent Co-Trustee to act in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may remove any independent Co-Trustee whom was either appointed by another acting Trustee of the Trust pursuant to other provisions of the Trust Agreement (if any) or appointed by the Special Co-Trustee, and shall not be required to replace such removed independent Co-Trustee with another.

5. Limited Responsibilities of Special Co-Trustee: The responsibilities of the Special Co-Trustee shall be limited to the exercise of the Trustee power, duty or discretionary authority prohibited or void as provided in the Trust Agreement, and the Special Co-Trustee powers regarding the appointment and removal of an independent Co-Trustee as permitted above, and appointment of a Trust Protector as permitted in the Section of the Trust Agreement entitled "Trust Protector Provisions," and said Special Co-Trustee shall not be concerned with, nor shall have, any power, duty or authority with respect to any other aspects of administration of the Trust Estate.

6. Limited Liability of the Special Co-Trustee: The Special Co-Trustee shall not be held to the fiduciary duties of a Trustee. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, merely by reason of his appointment as Special Co-Trustee and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Special Co-Trustee to act. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust either now or in the future, for failing to properly or timely appoint a Trust Protector or to properly or timely advise a Trust Protector of any circumstances or facts that might impact a Trust Protector's decisions. Furthermore, the Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Special Co-Trustee a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care and in good faith. In the event a lawsuit against the Special Co-Trustee fails to result in a judgment against him, the Special Co-Trustee shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

7. Compensation: The Special Co-Trustee shall not be entitled to compensation merely as the result of his appointment. The Special Co-Trustee shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Special Co-Trustee shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

8. Waiver of Bond: No bond shall be required of any individual or entity acting as Special Co-Trustee.

GENERATION SKIPPING TAX PROVISIONS

Article XIV, Section R of the said Trust entitled "Generation Skipping Transfers" is hereby amended so that from henceforth Article XIV, Section R is replaced in its entirety with the provisions which follow.

A. Explanation of this Section: The purpose of this Section of the Trust Agreement and the desire of the Trustor is to eliminate or reduce the burden on the Trustor's family and issue resulting from the application of the federal generation skipping transfer tax under Chapter 13 of the Code, including any future amendments thereto (hereinafter referred to as the "GST Tax"). The Trustor directs the Trustee and any court of competent jurisdiction to interpret the provisions of this Section in accordance with the Trustor's desires stated above, since the Trustor, when creating this Trust, is aware that the provisions of said GST Tax are very complex and as yet there are few court rulings to aid in their interpretation. The Trustor requests that, before the Trustee or any beneficiary acts in accordance with the provisions of this Section, they seek professional advice from an attorney who specializes in estate planning, in order that they may avoid any unintentional triggering of negative GST Tax consequences.

B. Allocation of Trustor's GST Tax Exemptions: The Trustee (or such other person or persons whom Code provisions, Treasury Regulations or court rulings authorize to make elections or allocations with regard to the Trustor's GST Tax exemptions) is instructed to allocate such exemptions in good faith, without a requirement that such allocation be proportionate, equal or in any particular manner equitably impact any or all of the various transferees or beneficiaries of property subject to or affected by such allocations. When allocating such exemptions, the Trustee may include or exclude any property of which the Trustor is the transferor for GST Tax purposes, including property transferred before the Trustor's death, and may take into account prior transfers, gift tax returns and other relevant information known to the Trustee. It is recommended that, to the extent possible, any such trust allocated an inclusion ratio of zero shall contain any and all Roth IRAs. The Trustee is also directed, when allocating Trustor's GST Tax exemptions, to coordinate with the Executor of Trustor's estate and/or the Trustee of Trustor's revocable Living Trusts regarding the

most appropriate use of said exemption; however, the Trustee's final determination shall be made in his or her sole and absolute discretion and shall be binding upon all parties howsoever interested in this Trust.

1. Trustee's Power to Combine and Divide Trusts: If a trust hereunder would be partially exempt from GST Tax by reason of an allocation of GST Tax exemption to it, before the allocation the Trustee in his discretion may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from GST Tax. The Trustee of any trust shall have authority, in the Trustee's sole discretion, to combine that trust with any other trust or trusts having the same exempt or nonexempt character, including trusts established (during life or at death) by the Trustor or any of his issue; and the Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts being combined do not have identical terms or if separate shares are otherwise deemed desirable by the Trustee. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority the Trustee may take account of efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and beneficiaries (including determination of life expectancy to be used for Retirement Assets required minimum distribution purposes), the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions. Prior to exercising any power to combine trusts under this paragraph, the Trustee shall take into consideration that, where possible and appropriate (keeping in mind the dispositive provisions of the Trust Agreement and the situation of the beneficiary), separate trusts should be maintained so that the trust beneficiaries may enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies; in particular, the Trustee shall not merge trusts when one provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets, net of trust expenses, and another provides for the accumulation of income (including IRA and Retirement Asset withdrawals).

2. Same Terms and Provisions for Divided Trusts: Except as expressly provided in the Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into exempt and non-exempt trusts or otherwise into separate trusts, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

3. Exempt (and Non-Exempt) Character of Property to be Preserved: On termination, partial termination, subdivision or distribution of any of the

separate trusts created by the Trust Agreement, or when it is provided that separate trusts are to be combined, the exempt (zero inclusion ratio) or the non-exempt (inclusion ratio of one) generation-skipping character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or trusts, or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions, unless the Trustee believes that economic efficiency or other compelling considerations justify sacrificing their separate generation-skipping characteristics.

4. Trustee's Investment Power; Distributions: Without limiting the foregoing, the Trustor specifically authorizes (but do not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on whether they are funded by Roth IRAs or other assets and on their generation-skipping ratios, and to prefer making distributions from Retirement Assets other than Roth IRAs and from non-exempt trusts to beneficiaries who are non-skip persons for generation-skipping purposes and from exempt trusts to those who are skip persons. Upon division or distribution of an exempt trust and a nonexempt trust hereunder, the Trustee may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur. It is further recommended that to the extent that distributions would be made for the benefit of skip persons and such distributions would be exempt from GST Tax because such distributions are for the payment of medical expenses exempt under IRC Section 2503(e)(2)(B) or for the payment of tuition or educational expenses exempt under IRC Section 2503 (e)(2)(A), such payments to the extent possible be first made from a trust which has an inclusion ratio of one.

5. Trustee's Exoneration: The Trustor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

C. Beneficiary's General Power of Appointment: Should a beneficiary die prior to the creation of his or her separate share of the Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of the Trust Estate would be subject to GST Tax but for the provisions of this paragraph, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) or other writing delivered to the Trustee prior to his or her death and specifically referring to the Trust Agreement, provide for such share to pass to the creditors of that beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to

the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. This general power of appointment may be subject to termination and reinstatement by the Trust Protector. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of the Trust Agreement.

TRUSTEES ENVIRONMENTAL POWERS

A. Trustee Authorized to Inspect Property Prior to Acceptance:

1. Actions at Expense of Trust Estate: Prior to acceptance of this Trust by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of the Trust Estate:

   a. Enter Property: To enter and inspect any existing or proposed asset of the Trust (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

   b. Review Records: To review records of the currently acting Trustee or of the Trustor (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

2. Rights Equivalent to Partner, Member or Shareholder: The right of the proposed or designated Trustee to enter and inspect assets and records of a partnership, limited liability company or corporation under this provision is equivalent to the right under state law of a partner, member or shareholder to inspect assets and records under similar circumstances.

3. Right to Still Refuse Acceptance of Trusteeship: Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of the Trust.

4. Right to Accept Trusteeship Over Other Assets Only: If an asset of the Trust is discovered upon environmental audit by the acting Trustee or any proposed or designated Trustee to be contaminated with hazardous waste or otherwise

not in compliance with environmental law or regulation, the Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the Trust. The Trustee, in his discretion, may petition a court to appoint a receiver or special Trustee to hold and manage the rejected asset, pending its final disposition.

5. Right to Reject Asset: Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to the Trustee.

B. Termination, Bifurcation or Modification of The Trust Due to Environmental Liability:

1. Trustee's Powers over Hazardous Waste Property: If the Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of any federal, state or local environmental law or regulation, the Trustee may take one or more of the following actions, if the Trustee, in the Trustee's sole and binding discretion, determines that such action is in the best interests of the Trust and its beneficiaries:

   a. Modify Trust: Modification of trust provisions, upon court approval, granting the Trustee such additional powers as are required to protect the Trust and its beneficiaries from liability or damage relating to actual or threatened violation of any federal, state or local environmental law or regulations, with it being the Trustors' desire that the Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in this Trust Agreement and that the Trustee consider and weigh any potentially negative federal and state income, gift, estate or inheritance tax consequences to the Trustee, Trust and its beneficiaries;

   b. Bifurcate Trust: Bifurcation of the Trust to separate said asset from other assets of the Trust Estate;

   c. Appoint a Special Trustee: Appointment of a special Trustee to administer said asset; and/or

   d. Abandon Property: Abandonment of such asset.

2. Terminate Trust or Distribute Other Assets: With court approval, the Trustee may terminate the Trust or partially or totally distribute the Trust Estate to beneficiaries.

3. Broad Discretion: It is the intent of the Trustors that the Trustee shall have the widest discretion in identification of and response to administration problems connected to potential environmental law liability to the Trust Estate and the

Trustee, in order to protect the interests of the Trust, the Trustee and the beneficiaries of the Trust.

C. Trustee's Powers Relating to Environmental Laws: The Trustee shall have the power to take, on behalf of the Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. §9601 (25), or any successor statute, relating to any asset, which is or has been held by the Trustee as part of the Trust Estate.

D. Indemnification of Trustee from Trust Assets for Environmental Expenses:

1. Indemnification and Reimbursement for Good Faith Actions: The Trustee shall be indemnified and reimbursed from the Trust Estate for any liabilities, loss, damages, penalties, costs or expenses arising out of or relating to federal, state or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from the Trustee's intentional wrongdoing, bad faith or reckless disregard of his fiduciary obligation.

   a. Environmental Expenses Defined: Environmental expenses shall include, but not be limited to:

      (i) Costs of investigation, removal, remediation, response, or other cleanup costs of contamination by hazardous substances, as defined under any environmental law or regulation;

      (ii) Legal fees and costs arising from any judicial, investigative or administrative proceeding relating to any environmental law or regulation;

      (iii) Civil or criminal fees, fines or penalties incurred under any environmental law or regulation; and

      (iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

   b. Properties and Businesses Covered: This right to indemnification or reimbursement shall extend to environmental expenses relating to:

      (i) Any real property or business enterprise, which is or has been at any time owned or operated by the Trustee as part of the Trust Estate; and

(ii) Any real property or business enterprise, which is or has been at any time owned or operated by a corporation, limited liability company or partnership, in which the Trustee holds or has held at any time an ownership or management interest as part of the Trust Estate.

2. Right to Pay Expenses Directly from Trust: The Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of the Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

3. Right to Lien Trust Assets: The Trustee shall have a primary lien against assets of the Trust for reimbursement of environmental expenses, which are not paid directly from Trust assets.

E. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law: The Trustee shall not be liable to any beneficiary of the Trust or to any other party for any good faith action or inaction, relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however that the Trustee shall be liable for any such action, inaction or payment which is a breach of Trust and is committed in bad faith, or with reckless or intentional disregard of his fiduciary obligations.

F. Allocation of Environmental Expenses and Receipts Between Principal and Income: The Trustee may, in the Trustee's discretion, allocate between income and principal of the Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, the Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. The Trustee may, in the Trustee's discretion, create a reserve for payment of anticipated environmental expenses.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII and Article IX. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

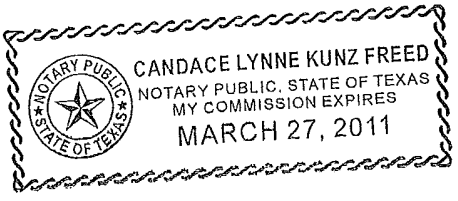
ACCEPTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.



Candace Lynne Kunz Freed

Notary Public, State of Texas

EXHIBIT E

United States Courts
Southern District of Texas
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

United States District Court

for the

Southern District of Texas

CANDACE LOUISE CURTIS, Plaintiff,	§	
VS.	§	Civil Action No._____
ANITA KAY BRUNSTING, and AMY RUTH BRUNSTING And Does 1-100 Defendants	§	Jury Trial Demanded

PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION.

I.
Parties

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California. Defendant Anita Kay Brunsting, is a citizen of the State of Texas and Defendant Amy Ruth Brunsting a citizen of the State of Texas.

II.
Jurisdiction and Venue

2. This Court has federal subject matter and diversity jurisdiction of the state law claims alleged herein pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2) in that this action is between parties who

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are citizens of different states and the amount in controversy exceeds the sum or value of $75,000, exclusive of interests and costs.

3. The Res in this matter is the Brunsting Family Living Trust (the Trust). Known real property of the Trust is located in Texas and Iowa. No known actions have been previously filed with any court involving the Trust or the trust Res and neither the Will nor the Pour Over Will of either Settlor has been filed with any court for probate.

4. Defendant Anita Brunsting resides in the county of Victoria and Defendant Amy Brunsting resides in the county of Comal. The United States District Court for the Southern District of Texas is the proper venue under 28 USC §1391(a)(1).

III.

Nature of Action

5. This is a diversity action alleging breach of fiduciary duty, extrinsic and constructive fraud and intentional infliction of emotional distress. The nature of action in breach is focused upon failures to disclose and failures to give notice. Plaintiff reserves the right to amend this complaint to add additional causes at any time prior to judgment.

IV.

CAUSES OF ACTION COUNT ONE

Breach of Fiduciary Obligation

Breach of Trust

It is settled law that no more than affidavits are necessary to make a prima facie case, U.S. V. Kis, 658 F. 2d 536 (CA7, 1981 Cert den, 50 U.S.L.W. 2169 (1982)

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6. Attached Declaration of Candace Louise Curtis is incorporated herein by reference as if fully restated.

7. Plaintiff alleges that Defendant(s) Anita Brunsting and Amy Brunsting have accepted the appointment and are acting jointly as co-trustees for the Brunsting Family Living Trust (the Trust) of which I am a beneficiary and named successor beneficiary.

8. Defendant(s) Anita Brunsting and Amy Brunsting acting as co-trustees for the Trust owe a fiduciary duty to plaintiff, under the common law and under the property statutes of Texas, to provide all beneficiaries and successor beneficiaries of the Trust with information concerning trust administration, copies of trust documents, and semi-annual accounting. As co-trustees for the Trust both defendants owe a fiduciary duty to provide notice to all beneficiaries prior to any changes to the trust that would affect their beneficial interest.

9. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have exercised all of the powers of trustees while refusing or otherwise failing to meet their first obligation under that power, to provide full, accurate, complete and timely accounting to the beneficiaries, to provide copies of material documents or other information relating to administration of the Trust, and to provide notice to all beneficiaries and successor beneficiaries of proposed changes to the trust that may tend to affect their beneficial interests.

10. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s)

individually and severally benefited through their breach of fiduciary obligations to Plaintiff.

11. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages, both general and special, caused by the breach of fiduciary duties owed to Plaintiff by Defendants.

12. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

COUNT TWO

Extrinsic Fraud

13. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

14. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have refused or otherwise failed to meet their obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents or notification of material facts relating to trust administration, the concealing of which constitutes extrinsic fraud.

15. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s) individually and severally benefited through their breach of fiduciary obligations.

16. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages caused by the breach of fiduciary duties owed to Plaintiffs through their fraudulent concealment.

17. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

COUNT THREE

Constructive Fraud

18. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

19. Plaintiff alleges the existence of conflicts of interest in that both Defendant(s), acting individually and severally as co-trustees for the Trust, were at all times complained of herein, beneficiaries or successor beneficiaries of the Trust.

20. Plaintiff further alleges the existence of conflicts of interest in that Anita Brunsting, while being a successor beneficiary to the Trust, held a general Power of Attorney for Settlor Nelva Brunsting, an original trustee who at some point resigned making Defendant Anita Brunsting her successor trustee.

21. Defendant Anita Brunsting acting as a successor trustee for the Trust has transgressed the limitation placed upon her authority by the Trust and by the rule of law and has refused or otherwise failed to meet her obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents and facts relating to trust administration, the concealing of which, coupled with multiple conflicts of interest constitute manifest acts of constructive fraud.

22. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s) individually and severally benefited through their breach of fiduciary obligations.

23. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages caused by the breach of fiduciary duties owed to Plaintiff through their fraudulent concealment.

24. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

COUNT FOUR

Intentional Infliction of Emotional Distress

25. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

26. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have refused or otherwise failed to meet their obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents and facts relating to trust administration.

27. Since the death of Nelva Brunsting, plaintiff has attempted verbally, via email, and by certified mail to obtain information from Defendant(s) regarding the Trust and the Trust's administration. Defendant co-trustee Amy Brunsting has remained totally silent and her part in the perceived fraud may be limited. Defendant co-trustee Anita Brunsting has been disingenuous and manipulative while avoiding answer and disseminating limited numbers of documents in piecemeal fashion. Defendant co-trustee Anita Brunsting is the principal defendant in this action.

28. As detailed in the attached Declaration of Candace Louise Curtis, Defendant(s) acted intentionally or recklessly and the conduct was both extreme and outrageous. The acts of Defendant(s) caused and continue to cause Plaintiff to suffer severe emotional distress.

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29. Defendant(s) Anita Brunsting and Amy Brunsting are liable to plaintiff for damages caused by their reprehensible and egregious acts of intentionally inflicting emotional distress and suffering upon Plaintiff.

V.
MEMORANDUM OF POINTS AND AUTHORITIES

For present purposes little more is needed than Restatement of the Law of Trusts 2nd

DISCLOSURE BY A FIDUCIARY/TRUSTEE OUTSIDE FORMAL DISCOVERY: NON-TRADITIONAL RULES AND ALTERNATIVE METHODS

1. INTRODUCTION

This paper contains an analysis of a trustee's duty to disclose information to trust beneficiaries. While it is outside the scope of this paper, many of these duties apply to other fiduciaries such as executors and administrators. The duty of a trustee to disclose information is an **equitable duty**. Enforcement of this duty should therefore be through an **equitable remedy** rather than by the formal legal remedies that are set forth in the Texas Rules of Civil Procedure and apply to legal causes of action. Many Texas courts, however, have trouble recognizing this distinction.

2. AN OVERVIEW OF THE TRUSTEE'S DUTY TO DISCLOSE

The Commentators

American Law Institute, *Restatement Of The Law, Trusts 2d,* §173 states that:

"The trustee is under a duty to the beneficiary to give him upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property, and to permit him, or a person duly authorized by him, to inspect the subject matter of the trust and the accounts and vouchers and other documents relating to the trust."

William E. Fratcher, *Scott On Trusts,* §173 (Fourth Edition) states that:

"The trustee is under a duty to the beneficiaries to give them on their request at reasonable times complete and accurate information as to the administration of the trust. The beneficiaries are entitled to know what the trust property is and how the trustee has dealt with it. They are entitled to examine the trust property and the accounts and vouchers and other documents relating to the trust and its administration. Where a trust is created for several beneficiaries, each of them is entitled to information as to the trust. Where the trust is created in favor of successive beneficiaries, a beneficiary who has a future interest under the trust, as well as a beneficiary who is presently entitled to receive income, is entitled to such information, whether his interest is vested or contingent."

George Gleason Bogert and George Taylor Bogert,

The Law of Trusts and Trustees, § 961(Revised Second Edition) explain this duty in the following manner:
"The beneficiary is the equitable owner of the trust property, in whole or in part. The trustee is the mere representative whose function is to attend to the safety of the trust property and to obtain its avails for the beneficiary in the manner provided by the trust instrument. That the settlor has created a trust and thus required that the beneficiary enjoy his property interest indirectly does not imply that the beneficiary is to be kept in ignorance of the trust, the nature of the trust property and the details of its administration. **If the beneficiary is to be able to hold the trustee to proper standards of care and honesty and to obtain the benefits to which the trust instrument and doctrines or equity entitle him, he must know what the trust property consists and how it is being managed.** (emphasis supplied)

From these considerations it follows that the trustee has the duty to inform the beneficiary of important matters concerning the trust and that the beneficiary is entitled to demand of the trustee all information about the trust and its execution for which he has any reasonable use. It further follows that the trustee is under a duty to notify the beneficiary of the existence of the trust so that he may exercise his rights to secure information about trust matters and to compel an accounting from the trustee. **For the reason that only the beneficiary has the right and power to enforce the trust and to require the trustee to carry out the trust for the sole benefit of the beneficiary, the trustee's denial of the beneficiary's right to information consists of a breach of trust.** (emphasis supplied)

If the beneficiary asks for relevant information about the terms of the trust, its present status, past acts of management, the intent of the trustee as to future administration, or other incidents of the administration of the trust, and these requests are made at a reasonable time and place and not merely vexatiously, it is the duty of the trustee to give the beneficiary the information which he is asked. Furthermore, the trustee must permit the beneficiary to examine the account books of the trust, trust documents and papers, and trust property, when a demand is made at a reasonable time and place and such inspection would be of benefit to the beneficiary."

2. The Cases
In examining Texas cases involving this duty it is important to distinguish between cases that relate to transactions where a trustee has some personal dealing with a beneficiary (which impose very harsh disclosure requirements) from those cases that relate to disclosure in general. The following cases relate to the general disclosure rules.

In *Shannon v. Frost National Bank,* 533 S.W.2d 389 (Tex. App. - San Antonio, 1975, writ ref'd n.r.e), the court stated that: "However, it is well settled that a trustee owes a duty to give to the beneficiary upon request complete and accurate information as to the administration of the trust. 2 Scott, Trusts §173 (3rd. ed. 1967)."

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In *Montgomery v. Kennedy,* 669 S.W.2d 309 (Tex. 1984) the Texas Supreme Court held that: "As trustees of a trust and executors of an estate with Virginia Lou as a beneficiary, Jack Jr. and his mother owed Virginia Lou a fiduciary duty of full disclosure of all material facts known to them that might affect Virginia Lou's rights....The existence of strained relations between the parties did not lessen the fiduciary's duty of full and complete disclosure..... The concealment of a material fact by a fiduciary charged with the duty of full disclosure is extrinsic fraud."

30. FURTHER, the Texas legislature has codified the common law duty a trustee owes to a beneficiary in the Texas Property Code.

§ 113.060. INFORMING BENEFICIARIES. The trustee shall keep the beneficiaries of the trust reasonably informed concerning:

(1) the administration of the trust; and

(2) the material facts necessary for the beneficiaries

to protect the beneficiaries' interests.

Added by Acts 2005, 79th Leg., ch. 148, § 15, eff. Jan. 1, 2006.

§ 113.151. DEMAND FOR ACCOUNTING. (a) A beneficiary by written demand may request the trustee to deliver to each beneficiary of the trust a written statement of accounts covering all transactions since the last accounting or since the creation of the trust, whichever is later. If the trustee fails or refuses to deliver the statement on or before the 90th day after the date the trustee receives the demand or after a longer period ordered by a court, any beneficiary of the trust may file suit to compel the trustee to deliver the statement to all beneficiaries of the trust.

The court may require the trustee to deliver a written statement of account to all beneficiaries on finding that the nature of the beneficiary's interest in the trust or the effect of the administration of the trust on the beneficiary's interest is sufficient to require an accounting by the trustee. However, the trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every 12 months unless a more frequent accounting is required by the court. If a beneficiary is successful in the suit to compel a statement under this section, the court may, in its discretion, award all or part of the costs of court and all of the suing beneficiary's reasonable and necessary attorney's fees and costs against the trustee in the trustee's individual capacity or in the trustee's capacity as trustee.

(b) An interested person may file suit to compel the trustee to account to the interested person. The court may require the trustee to deliver a written statement of account to the interested person on finding that the nature of the interest in the trust of, the claim against the trust by, or the effect of the administration of the trust on the interested person is sufficient to require an accounting by the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 550, § 3, eff. Sept. 1, 2003.

(b) Notwithstanding Subsection (a)(9), a person other than a beneficiary who, without knowledge that a trustee is exceeding or improperly exercising the trustee's powers, in good faith assists a trustee or in good faith and for value deals with a trustee is protected from liability as if the trustee had or properly exercised the power exercised by the trustee.

Added by Acts 2005, 79th Leg., ch. 148, § 21, eff. Jan. 1, 2006.

VI
PRAYERS FOR RELIEF

32. **WHEREFORE**, Plaintiff prays for judgment and relief as follows, where applicable, including but not limited to the following:

33. Awarding compensatory damages in favor of Plaintiff against Defendant(s) for the damages sustained as a result of the wrongful conduct alleged as will be established through discovery or at trial, together with interest thereon, in an amount in excess of $75,000 from each Defendant for each offense found,

34. Awarding punitive damages to Plaintiff against the Defendant(s) for the egregiously wrongful conduct alleged herein,

35. Granting declaratory and/or injunctive relief as appropriate,

36. Awarding legal fees and costs to plaintiff and,

37 Such other and further relief as the Court may deem equitable and proper.

REQUEST FOR EX-PARTE TEMPORARY RESTRAINING ORDER

38. Further, Plaintiff seeks an emergency order for injunctive relief and herein alleges irreparable harm will occur unless the court prevents the trustees from wasting the estate, and compels the trustees to produce a full, true and complete accounting of all assets.

Financial Misconduct and Need for Accounting

39. A cursory review of the preliminary accounting spreadsheet of the Trust assets provided the Plaintiff reveals possibly significant discrepancies in the value of some trust assets, while other previously known trust assets are unaccounted for.

As trustees for the survivor's trust, created under the Brunsting Family Living Trust after the death of the first Settlor, Anita Brunsting and Amy Brunsting are responsible for maintaining accurate books and records for the survivor's trust created under the Brunsting Family Living Trust. Under the terms of the Trust trustees are to provide an accounting to the beneficiaries every 6 months. Even under Texas law an accounting to the beneficiaries is required annually. No proper accounting has ever been received.

40. Further, Anita Brunsting, holding Power of Attorney for Nelva Brunsting, and serving as successor trustee for the Nelva E. Brunsting Survivor's Trust, had an ongoing duty to account and, as a successor beneficiary of the Trust and its sub trusts, had an even greater level of loyalty and fidelity owed to the other four successor beneficiaries. Anita Brunsting had an ongoing obligation to report and account to the other successor beneficiaries, and to seek their approval before accepting gifts from Nelva Brunsting or the Trust.

41. By the acts alleged herein, Anita Brunsting and Amy Brunsting have breached fiduciary duties of loyalty, care and good faith owed directly to Plaintiff as co-trustees for the BFLT by acting in bad faith and for the purpose of benefiting themselves and harming Plaintiff; by misappropriating trust

property; and by failing to keep and maintain accurate and reliable books and accounting records; and by failing to report on the administration of the Trust; and by failing to notice Plaintiff of actions adversely affecting Plaintiff's rights and beneficial interest in the Trust Res.

42. Due to the lack of proper inventory, accounting and disclosure it is imperative that this court act quickly to protect the Trust property and assets, and to ascertain the reasons for the trustees' refusal to answer and to account.

Tuesday, February 21, 2012

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

AFFIDAVIT OF CANDACE LOUISE CURTIS

I, Candace Louise Curtis (Affiant), am a competent witness over the age of 18 years of age, have personal knowledge of the information stated herein, and do solemnly declare and state to be true as follows:

I am an heir to the estate of the late Elmer H. Brunsting and Nelva E. Brunsting of Houston, Texas, and I am a beneficiary of the BRUNSTING FAMILY LIVING TRUST initially dated October 10, 1996 and amended January 12, 2005 ("BFLT").

My Father, Elmer Brunsting, died on April 1, 2009 and my Mother, Nelva Brunsting died on November 11, 2011. Both of them ultimately required round-the-clock, in home, care. When Dad could no longer manage the affairs of their finances and estate, Mother took over and carried on, until it became too much for her in late 2010. At that point she turned some of these duties over to my sister Anita. Exactly what occurred before or after that is unclear, as my efforts to obtain even the most basic information about the trust, or the trust assets, have been frustrated. The documents I have received over the years are inadequate, incomplete, and contain redactions and strikeouts, but would indicate that changes have been made to the BFLT that affect my beneficial interest. These changes were made without any notice to me. Additionally, there appear to be some discrepancies in a recent preliminary asset list, and some of the previously known assets are unaccounted for. This list is the only accounting I have ever received.

My husband, our two sons and I, moved to California in September of 1995, after having lived in Houston for 30 years. In Houston we lived only a couple of miles from my parents and the boys had a very close relationship with their grandparents while they were growing up. After we moved to California my parents came to visit us several times and we enjoyed the occasions immensely.

Although I lived 1,700 miles away, as his eldest daughter Dad talked to me throughout the process, about his intentions and goals in forming the Brunsting Family Living Trust. He told me the primary reason was to make sure they could die at home, if they so chose, and have the financial means to do so. Secondly, anything left over would be divided 5 ways among us (Carole, Carl, Amy, Anita and myself) and he wanted no misunderstandings when it came time to divvy up the assets or family heirlooms. He explained how the trust was set up, and that my brother Carl was executor of the estate. Dad handed me the first trust documents personally at a family gathering. I knew what the documents said, so I stuck them in my suitcase. They ended up in a drawer after I got home.

At approximately the same time that the BFLT was formed, a separate trust, The Brunsting Family Irrevocable Trust, was created for a last-to-die life insurance policy, of which the five of us were beneficiaries, naming Anita as original and sole trustee. My Father said that this was done so that if their estate was exhausted during their lifetimes, we would at least have something after they both passed away. He said that the trustee job would be easy, because all one had to do was send out a notice to the beneficiaries

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each year and keep the signed copies in the trust file. He asked me if I would serve as trustee, and I agreed to, but ultimately he chose Anita, because she was the youngest.

I do not recall exactly when, but I think I first became aware that our Father was exhibiting signs of dementia sometime in 2006. I was visiting my parents at the time and some of my sisters were there. To see my Father's behavior and subsequent treatment by his own daughters was heartbreaking. I was dumbfounded to witness this ignorant cruelty and impatience in my sisters. One afternoon it was just he and I. In a fleeting moment of lucidity my Father asked me if his net worth was still such and such. Since he had kept me well informed over the years, I knew that it was and confirmed it. He smiled. He was always so proud of what he had created for his family. I gave him a hug and a kiss. He nodded off. That was the last time I saw him. He died in his OWN HOME, because Mother honored his wishes. Years later, when I started to realize something was "**going on**" with the trust, and began to question things, my sister Carole told me something like – Candy, if it makes you feel any better, Daddy asked for you by name the Sunday before he died.

In July of 2007, Mother asked me if I would be willing to replace Amy as successor co-trustee of the BFLT with Carl (attached as Plaintiff Exhibit P-1). She wrote that she did not think Amy was stable enough and that she thought I had a better relationship with my siblings than she. I said sure, and that is the last I heard of it until March of 2008, when I received an email from Mother asking if I minded if she made Anita successor co-trustee with Carl (P-2). She said she realized now that

> "Anita has a handle on everything from the insurance policy and the trust better than anybody."

At the time I had no reason to care one way or the other and I never gave it another thought.

Our Father passed away April 1, 2009. The cause of death was "dementia, likely vascular type". My sons were pallbearers for their grandpa. They loved their grandpa very much and were heartbroken and distraught when he passed away. They were very worried about their grandma being alone and volunteered to stay with her and take care of her if she wanted them to. After the funeral we returned home and it never crossed my mind that I might expect paperwork in connection with the settlement of the estate. I had no idea what, if anything, should happen. I knew that when Dad died, the terms of the trust became irrevocable. I also knew that I would not receive any inheritance until Mother was gone.

It began to occur to me in March of 2010 that something was amiss, but I could not quite put my finger on it. Anita emailed Amy and I (P-3) requesting that we print out and sign five undated "Notification of Demand Right" letters (P-4) (for the life insurance trust) and get them to her in the next couple of weeks. I asked her to send me a copy of the trust document and a current statement of account, because I do not like signing these

undated forms. I also thought that, as a beneficiary, I might actually be entitled to a copy of the trust. Her reply,

> "For now could you please send me a signed waiver dated 3/19/09, for last year's files?" (P-3)

It appeared that Anita was falling down on the easy trustee job.

On about July 2, 2010 Carl, our only brother, was stricken with encephalitis. When Carole called to tell me, she was crying and said that our brother might die. I could barely understand her she was sobbing so hard. They did not have a diagnosis at the time. I was so scared for him and his family. The next day I wanted to find out how he was doing, but could not reach Carole, so I called Anita. I started to ask about Carl, but before I could say anything she began to criticize Drina, Carl's wife of 36 years. I was somewhat dismayed at what I was being told, but Drina and I are the same age, have many of the same interests, and have always gotten along very well, so I figured I would react the same way in her situation. My main concern at the time was Carl, as was Drina's. I was unaware until just recently, that a few days later Amy drove in from New Braunfels and found it necessary to harangue Drina about their finances, at Carl's bedside. Carl is a self-employed architect. I was sure Drina was very worried about how she would be able to care for him financially with no income, but I doubt that was the most important thing on her mind at the time. Within days Amy and Anita started conjuring up totally unfounded scenarios of such things as Drina running off with Carl's money, divorcing him, killing him, and all kinds of other machinations having to do with Carl's future inheritance.

Mother was at the hospital visiting one day and offered to help Carl and Drina financially if they needed it. When they subsequently took her up on the offer, all of a sudden the entire situation blew up into a massive, unfounded character assassination of Drina, which I now know Anita started several years prior. Anita began to badger Mother and kept stopping her from acting on her promise to help. According to Carole, Anita was bullying and badgering Mother to the point that she was afraid to spend her own money to help her own son. In reviewing email communications, it was discovered that Anita had criticized our Father for his investments, expressed how Mother is finally "listening to reason", and regularly degraded one thing or another about each of us. Apparently Anita has sat in judgment of everyone except herself.

I continued to argue for help for Carl and Drina, even going so far as offering up any of my inheritance if they needed it to survive this and become whole again. Money means little to me in the face of family crisis and Carl is my only brother. I almost lost him once. I was not going to lose him for lack of money and care.

The character assassination continued in earnest. Amy and Anita were very aggressive in their attempts to prevent what they were convinced was happening. They kept coming up with ideas to keep Drina from touching Carl's money, even if it went directly for his care and well being. They were all consumed with this and never spoke about how his

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recovery was progressing. I did not know that he almost died again, or that he lapsed into a coma and had to be put on a ventilator in ICU, before he started to mend ever so slowly.

Carl had a setback and Mother got pneumonia and was hospitalized. I attribute this to the stress my sisters were causing in both of them. At the same time I became concerned as to what this was doing to Drina's health and state of mind.

In October 2010 there was a flurry of activity regarding changes to the trust and Mother's competency, starting with an email (P-5) from Carole asking if I was okay with Anita taking over as Power of Attorney for Mother? She wrote "The paperwork is being drawn up today." She later said she was concerned that the trustee had more authority than we realize. I told her I needed a copy of the trust documents to figure out just what can and cannot be done.

On October 13, 2010 Anita, Carole, Amy, and I received an email (P-6, 4 pgs.) from Summer Peoples on behalf of attorney Candace Freed saying that Candace would like to have a conference call with "you and your Mother", reserving some times for "next week". Carl did not receive this email. Carole wrote back and asked Summer what the meeting was in reference to. Carole did not know if she could make the meeting and wanted to know if that would be a problem. Summer replied:

> "Ms. Brunsting: To answer your questions – This teleconference meeting is to discuss changes to your Mother's trust. If you are unable to attend, it simply means that you will have no say in what changes will be made. It will not be a problem if you cannot attend. However, Ms. Freed wants to extend the invitation to all Mrs. Brunsting's children."

I did not understand why Carl was not included, since he was executor of our parents' wills and a successor co-trustee of the Brunsting Family Living Trust, as well as one of "Mrs. Brunsting's children".

I wrote Anita that same day and reminded her that she had mentioned that she had a copy of the trust document. I asked if she would scan it and send it to me in the next day or two. I wanted to read it before the conference call. I still had not received anything by October 20, 2010 and was not planning on participating in the conference call without seeing the trust we would be discussing changes to. On October 23, 2010 Anita sent twelve documents in four separate emails (P-7, 5 pgs.). I could not believe my eyes when I started to read what she sent. Apparently the changes to which this conference call was in reference to, which by the way no one would clarify, had to do with changes THAT HAD ALREADY BEEN MADE - WITHOUT NOTICE.

The conference call was held on or about October 25, 2010. Neither Mother nor Carl participated. Anita began by asking how much power she had by virtue of the power of attorney. I wanted to know why someone thought it necessary to convert Carl's and my personal asset trusts, giving Anita and Amy control. Attorney Candace jumped in and said I was not entitled to those document copies, as Mother was the only beneficiary, and

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that Anita should not have sent them in the first place. Amy jumped in and kept screeching that Drina needed to get a job, Carole kept asking her who is going to take care of Carl with Drina working. Finally Amy said I don't care and Carole hung up. The discussion then segued into having Mother declared incompetent. I wanted to know why, and no one would answer. At that point I hung up because the changes had already been made and it appeared there was nothing I could do about it. I am still not sure what the purpose of the call was, other than an attempt to lend some form of legitimacy to the changes that had apparently already occurred.

As I look at the email (P-7, supra) I received regarding this call, neither Carl nor Mother was copied on that communication.

The day after the call I spoke with Mother. She affirmed that she DID NOT know the full implications of what she signed. She said she should have been included on the call. She said that she would not have given Anita the authority to manage Carl's and my money. I told her it seems as though Amy and Anita were conspiring with Attorney Candace to have her declared incompetent so they can take control. She said Anita was driving her crazy. After talking to her for over 30 minutes I realized that she was NOT incompetent, simply left in the dark. I passed this information on to Carole in an email, (P-8, 4 pgs.) to which she replied,

> "Anita is going to be the one responsible for keeping Mother sick because she is such a control freak and will not LET IT GO!! Let Mother decide what she wants to do. It is Mother's money, not ANITA'S and not AMY's."

On or about 11/21/2010, after Anita had taken control of Mother's finances under the power of attorney, Amy apparently received a "gift", allegedly from Mother, of $13,000, and Anita's son Luke apparently received an unknown sum of money for a truck, also allegedly from Mother.

Much later, in March of 2011, I received a phone call from Carole regarding a meeting with Candace at Vacek and Freed. Carole had been asked by Anita to take Mother to sign some papers. During the meeting apparently Candace asked Mother if she REALLY understood what she was being asked to sign. She asked her if she REALLY wanted to disinherit her granddaughter Marta (Carl's daughter) and Mother said emphatically – NO.

On March 8, 2011, Anita emailed (P-9) Amy, Carol and I and wrote

> "I spoke w/mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to 'just say No' to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts – she seems fine w/everything, and expressed no desire to put Carl

back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naïve regarding the lengths to which Drina may go through to get Carl's inheritance."

It is difficult from this remote location and from listening to all of the "rumors" to really place validity on any particular claim. But this communication is **very** telling and gives great weight to Carole's concerns about Anita bullying Mother.

On January 8, 2011 I received an email (P-10) from Amy asking for my husband's phone number. She wanted to ask him a question about private investigators. I supplied the number.

In March of 2011 the character assassination of Drina and the rest of us resumed with a vengeance. I am so ashamed that I was a party to any of it, if only to listen to their lies and misplaced judgment. They were so aggressive with their assertions that at times I was convinced that what they were saying was true. They alleged having taped, in-person, conversations between Mother and others, taped telephone conversations between Mother and others, and video of the behavior and actions of others in Mother's house. I was told a private investigator had been hired to follow Drina around. Apparently, a GPS unit was affixed to her vehicle. They would not share this alleged "evidence" in its physical form, they only told me what was said and done. After telling me that my own character was assassinated by Carl in one of the videos, I almost lost my faith and hope that Carl would get his life back and that our brother/sister relationship could someday be renewed. What they were telling me was totally unbelievable and left me feeling devastated and in shock.

At this point Mother's health began to decline rather rapidly. I spoke to her at least once a week on the telephone. Several times neither she nor her caregiver answered the phone when I called. I would then call Carole, Amy, Anita, and the caregivers until I reached someone, only to find out that Mother was in the hospital, AGAIN. I had to drag the phone number to Mother's room out of someone each time, usually getting it from Tino or Robert (my Mother's caregivers), rather than one of my sisters. This happened for the last time on November 8, 2011,(P-11) just three days before Mother passed away. I had been urging them to get her home before it was too late. It now appears that both Carl and I were being purposely prevented from seeing or talking to our Mother in the last days of her life. WHY? On November 11, 2011 Carole called Carl, apparently much to the dismay of Anita, and told him to get to the hospital right away. He arrived just in time to say goodbye to Mother, who he loved very much. I was on my way to Houston, having not been told of the seriousness of her condition until that day, and not having had any opportunity to know where she was or to even have contact with her until it was too late. She died when I was on my way to the airport. Had they been forthcoming and honest with me I would have been there.

Also around March of 2011, Anita called and said she had "found" some Exxon Mobil stock that was not in the trust. She said Attorney Candace was going to figure out what had to be done to get one half in Dad's side and the other half in Mother's side. Anita said she planned to give us each "gifts" from Mother's share. I did not know the total value of the stock, but I did receive 160 shares on June 15, 2011 (p-12). Apparently Carole also received a "gift", but I do not know how much it was, or what happened to the remainder of the stock. I do know that Carl did not receive any stock, and knew nothing about the "finding" of it until I told him last month.

I recently received copies of two asset schedules from Carl, one dated 2005 (P-13) and one dated 1/27/10. (P-14, 7 pgs.) In 2005 there were 3,522.42 shares of Exxon-Mobil listed. In 2010 there was no Exxon-Mobil listed.

Later, Anita supplied us all, via email, (P-15, 2 pgs.) with a "preliminary tally" of assets as of 1/20/12, with 1,259 shares of Exxon-Mobil listed. I wonder what happened to 2,264 shares between then and now?

I saw Carl and Drina for the first time since our Father's death, at our Mother's funeral. I did not know what to expect. Carl was talking to someone when Drina and I saw each other. In the blink of an eye we were hugging each other and crying. The deep wounds created by what had transpired over the last 16 months immediately began to heal. The bond between Carl, Drina and I was rekindled over the next few days. The difficulty for all of us was coming to grips with the notion that, apparently, behind our backs, Anita had made a concentrated effort to take control of the entire trust, and our individual inheritances, in such a manner that if Carl and I complain about it, she gets to keep it, all the while asserting to others that our Mother made this decision ON HER OWN. I know she did not, because she said so to me on the phone. She took my concern to heart and subsequently sent me a handwritten note saying, again, that it was not true.(P-16, 2 pgs.)

I returned home to California a few days after the funeral. The unexpected time off had disrupted my workflow and I spent the following weeks catching up on things, putting my concerns about the trust and my inheritance aside. I was so happy that Carl was quickly returning to good health and that we were in touch again. All of a sudden the holidays were upon us. I started to miss Mother, a lot. I wondered what was happening with the trust, the house, the life insurance, the farm, the settlement process and so on. I had heard nothing whatsoever for over a month.

I could not sit by and wonder, so I wrote a "Formal Demand for Full and Complete Disclosure and Accounting" letter, dated December 19, 2011, (P-17, 2 pgs) and sent it certified mail to both Amy and Anita, with copies to Carole, Carl, and Candace Freed. Anita signed for hers on December 31, 2011, and Amy signed for hers on January 5, 2012.

The first "trust update" I received was an email from Anita (P-18) on December 20, 2011, prior to her receipt of my demand letter. She advised that the life insurance

paperwork was being processed. She also said the beneficiaries are entitled to a copy of the trust which we would receive shortly.

On or about December 21, 2011 I received an envelope from Anita containing a copy of the Restatement of The Brunsting Family Living Trust, dated January 12, 2005, and a copy of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, dated August 25, 2010.
December 28, 2011, Anita emailed me, (P-19) with a cc to Amy, re mom's house, wherein she stated that a realtor had been contacted and they hoped to

> "…get it on the market next week"… "After we get the house sold, we'll figure out the farm and the remaining liquid assets. Just double-checking, you still want to hold onto your portion of the farm right? If so, are you interested in "trading" some of the liquid assets (like your portion of the remaining stock/mutual funds or cash from the sale of the house) for more farmland? I'm just trying to get an idea of what everyone wants."… "We're still working w/ the lawyer to get a final tally of the worth of all the assets, when that's complete, you will get a spreadsheet that lists them."

I am not really sure how I was expected to make a major decision like this without knowing exactly what my assets are.

Being virtually in the dark about everything, I began to have a renewed sense of grave concern about the safety of the trust assets and was compelled to send a "Statutory Demand for Full and Complete Disclosure and Accounting" letter, dated January 3, 2012, (P-20, 4 pgs.) sent certified mail to Anita, with copies going to Amy, Carole, Carl and Mom's trust attorney Candace Freed. Anita's letter was signed for on January 9, 2012. Within that letter I asked her to

> "Please confirm to me in writing, within ten (10) days of your receipt of this demand, that you intend to furnish all of the information requested in this demand on or before the dates specified." "…inform me of the identities and contact information for the Trust Protector and the Special Co-Trustee, in writing, immediately, upon receipt of this demand."

The deadline for confirmation was January 19, 2012. To date I have not received a confirmation.

January 22, 2012, Anita emailed me, with cc's to Attorney Candace and Amy, writing "Attached please find the appointment of successor trustees dated 12/21/10 and Mother's will."

It seems to me I should have received some type of notice, as well as a copy of the appointment document more than a year previous. I was already angered by her blatant disregard of her legal obligations to the beneficiaries thus far and was compelled once

again to write and demand that she carry out the legal obligations of her position as trustee. On January 23, 2012, via email, (P-21, 2 pgs.) I explained that,

> "You received a written demand for disclosure of the identity of the trust protector or the special co-trustee(s) if any. Your lack of disclosure of this basic information, or any expression of good faith, leaves me with concerns that there is something you fear or want to conceal…"

On January 25, 2012 Anita replied, via email, (P-21, supra) with cc's to Attorney Candace and Amy, stating

> "Provisions for the Trust Protector and Special Co-Trustee can be found in the Qualified Beneficiary Designation on pages 15 and 28 respectively."

Directly following this email was a second email from Anita to Carl, Amy, Carole and myself, cc to Attorney Candace, regarding the life insurance money having been received on 1/17/12, eight days prior.

On or about January 23, 2012 I received a certified mail envelope with a cover letter that stated, "Per your request, enclosed please find the trust document regarding the life insurance policy mom and Dad had, as well as their death certificates."

It should be noted that I had requested a copy of this particular document back in March of 2010, almost two years earlier, when I was asked by Anita, the trustee, to sign blank, undated Notification of Demand Right forms.

On January 24, 2012 Anita sent an email (P-22) to Carl, Carol and myself, cc to Attorney Candace, writing

> "Attached please find a preliminary tally of trust assets and expenses (with a list of future liabilities). We are still working with Candace to complete the formal list."

As stated earlier in this affidavit, there appears to be a discrepancy in the amount of some ExxonMobil stock that was "found" not to be in the trust. It had been accounted for in 2005, was not included in an accounting from 2010, and was listed on the "tally" attached (P-15, supra). In 2005 there were 3,522.42 shares listed. The "tally" listed 1,258.91. It seems the beneficiaries have a right to know what happened to the difference. It will be difficult to determine without any accounting records.

I have received no other response to my recent demands for information, no notice, no other copies of trust documents and no expression of good faith.

The law is clear. Trustees have obligations and beneficiaries have rights. I can think of no legitimate purpose for the trustees' breach of their duty to disclose. To date I am in possession of the following documents, some of which were obtained from another

beneficiary and not from the trustees, who still refuse to fully answer, and the bulk of which were obtained from Anita in October 2010.

Ordered by Document Date

AKB denotes documents received via email from Anita on 10/23/10
CHB denotes documents received from Carl in January 2012
All other documents were received from Anita pursuant to my demand letters, and received on the date noted

AKB Quit Claim Deed, State of Iowa, signed by EHB and NEB 10/29/96 and recorded in Sioux County Iowa 11/18/96 (P-23, 7 pgs.), which contained 3 asset schedules, A, B, C, all blank

The Brunsting Family Irrevocable Trust dated February 12, 1997 (life insurance trust) received from Anita on or about 1/26/2011, Anita Kay Riley trustee. (P-24, 53 pgs.)

AKB Affidavit of Trust made 1/12/2005 (only first page) (P-25)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees. (P-26, 2 pgs.)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees UNSIGNED WITH AMY RUTH TSCHIRHART CROSSED OUT (P-27, 2 pgs.)

AKB Affidavit of Trust made 1/12/05, with selected provisions attached, Article IV Our Trustees, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-28, 32 pgs.)

AKB The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-29 102 pgs.)

The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed), received from Anita Kay Brunsting on or about 12/21/11 (duplication of P-29, printed front and back – copy omitted)

AKB Transfer To Grantor Trust Subject To Withdrawal Contribution Agreement, UNSIGNED, dated 01/12/05 (P-30, 2 pgs.)

AKB Last Will of Elmer H. Brunsting (Pour-Over Will), UNSIGNED, WITH ARTICLE III (Appointment of Personal Representative) redacted, dated 01/12/2005 (P-31, 14 pgs.)

AKB Last Will of Nelva E. Brunsting (Pour-Over Will), UNSIGNED, Elmer H. Brunsting personal representative, Carl Henry Brunsting first alternate, Amy Ruth Brunsting second alternate, Candace Louise Curtis third alternate, dated 01/12/05 (P-32, 11 pgs.)

AKB Living Will also known as the "Physician's Directive" signed by NEB, dated 01/12/05 (P-33, 5 pgs.)

Last Will of Nelva E. Brunsting, signed 01/12/05, EHB personal representative, Carl Henry Brunsting first successor, Amy Ruth Tschirhart second successor, Candace Louise Curtis third successor, received 1/22/12 via email from Anita (P-34, 11 pgs.)

CHB First Amendment to the Restatement to the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, Article IV, Section B amended and attached as Exhibit "A", dated 09/06/07, Carl Henry Brunsting and Candace Louise Curtis successor co-trustees. ***CHB and CLC "shall each have the authority to appoint his or her own successor Trustee by appointment in writing."***, THE FROST NATIONAL BANK alternate (P-35, 2 pgs.)

AKB General Durable Power of Attorney of Nelva E. Brunsting, marked copy, unsigned, and only dated 2010, Anita Kay Brunsting initial agent, Carol Ann Brunsting first successor, Amy Ruth Tschirhart second successor (P-36, 27 pgs.)

CHB Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, executed 6/15/10, in connection with advances against our inheritances AFTER JUNE 1, 2010 (P-37, 3 pgs.)

AKB Information Concerning The Medical Power of Attorney signed by NEB, dated 08/25/10 (P-38, 5 pgs.)

AKB Medical Power of Attorney Designation of Health Care Agent signed by NEB, dated 08/25/10, Carol A. Brunsting appointed, Anita Kay Brunsting first alternate, Amy Ruth Tschirhart second alternate (P-39, 5 pgs.)

AKB Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, signed by Nelva E. Brunsting as Trustee, and Founder and Beneficiary on August 25, 2010. (P-40, 37 pgs.)

Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, signed by Nelva E. Brunsting as Trustee, and Founder and Beneficiary on August 25, 2010, received from Anita Kay Brunsting on or about 12/21/11 (duplication of P-40, printed front and back – copy omitted)

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AKB Appointment of Successor Trustees, signed by Nelva E. Brunsting as Founder and Original Trustee, dated 08/25/10, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, FROST NATIONAL BANK alternate. (P-41, 5 pgs.)

Hand written note from Nelva Brunsting to Candy Brunsting, dated Sunday, referencing trick or treaters' that evening, postmark illegible except for 2010. (P-16, supra)

Appointment of Successor Trustees, marked law firm copy, signed 12/21/10, if NEB resigns as Trustee, Anita Kay Brunsting first successor, Amy Ruth Brunsting second successor, THE FROST NATIONAL BANK third successor; if NEB fails or ceases to serve, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, THE FROST NATIONAL BANK successor trustee, emailed to me by Anita on 01/22/12 (P-42, 6 pgs.)

CHB Appointment of Successor Trustees, marked law firm copy, signed 12/21/10, if NEB resigns as Trustee, Anita Kay Brunsting first successor, Amy Ruth Brunsting second successor, THE FROST NATIONAL BANK third successor; if NEB fails or ceases to serve, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, THE FROST NATIONAL BANK successor trustee (duplicate of P-42, copy omitted)

CHB Resignation of Original Trustee, Nelva E. Brunsting, signed 12/21/10, appointing Anita Kay Brunsting as trustee of BFLT dated October 10, 1996, as amended, as well as the subtrusts known as the NEB Survivor's Trust and the EHB Decedent's Trust. (P-43)

CHB Acceptance by Successor Trustee, Anita Kay Brunsting, signed 12/21/10 (P-44)

Certified Death Certificate EHB issued 3/10/2011 received from Anita on or about 1/26/2011, State file number 142-09-043-770

Certified Death Certificate NEB issued 11/18/2011 received from Anita on or about 1/26/2011, State file number 142-11-142-463

I, Candace Louise Curtis, declare under penalty of perjury pursuant to the laws of the United States, that the above declaration of facts is true and correct and based upon personal knowledge, except for those things averred upon information and belief, and as to those things, I believe them to be true as well.

2/20/2012

Candace Louise Curtis, Plaintiff

ACKNOWLEDGMENT

THE STATE OF CALIFORNIA §
§
COUNTY OF §

This instrument was acknowledged before me on this _____ day of February 2012, by Candace Louise Curtis.

Kenny C. Lim, Notary Public

_____
Notary Public – State of California

See Attached California Jurat

CALIFORNIA JURAT WITH AFFIANT STATEMENT

☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–5 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of NAPA

Subscribed and sworn to (or affirmed) before me on this

20th (Date) day of FEB (Month), 2012 (Year), by

(1) CANDACE LOUISE CURTIS (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and

(2) _____ (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature _____ (Signature of Notary Public)

KENNY C. LIM
Commission # 1926091
Notary Public - California
Napa County
My Comm. Expires Feb 19, 2015

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: AFFIDAVIT OF CANDACE L. CURTIS

Document Date: 2/20/12 Number of Pages: (13)

Signer(s) Other Than Named Above: NONE

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Candace Louise Curtis

(b) County of Residence of First Listed Plaintiff Contra Costa
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Pro se

DEFENDANTS

Anita Brunsting & Amy Brunsting

County of Residence of First Listed Defendant Victoria
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☒ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332 (a) (1) - 28 USC 1332 (b) - 28 USC 1332 (c) (2)

Brief description of cause:
Breach of fiduciary, extrinsic fraud, failure to disclose, failure to notice

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 600,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 02/21/2012

SIGNATURE OF ATTORNEY OF RECORD

Plaintiff Pro Se

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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EXHIBIT F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
January 9, 2013
Lyle W. Cayce
Clerk

No. 12-20164

CANDACE LOUISE CURTIS,

Plaintiff-Appellant

v.

ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas

Before HIGGINBOTHAM, SMITH, and ELROD, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal concerns the scope of the probate exception to federal subject-matter jurisdiction in the wake of the Supreme Court's decision in *Marshall v. Marshall*.[1] The Plaintiff contends that, under *Marshall*, her claims for breach of fiduciary duty against the co-trustees of an inter vivos trust do not implicate the probate exception. We agree.

[1] 547 U.S. 293 (2006).

I.

In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.[2] Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.

Candace Curtis, Anita Brunsting, and Amy Brunsting are siblings. In February 2012, Candace Curtis ("Curtis") filed a complaint in federal district court against Anita Brunsting and Amy Brunsting (collectively "the Defendants") based on diversity jurisdiction. In that complaint, she alleged that Anita and Amy, acting as co-trustees of the Trust, had breached their fiduciary duties to Curtis, a beneficiary of the Trust. Specifically, she alleged that Anita and Amy had misappropriated Trust property, failed to provide her documents related to administration of the Trust, and failed to provide an accurate and timely accounting. The complaint alleged claims for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. Curtis sought compensatory damages, punitive damages, a temporary restraining order against "wasting the estate," and an injunction compelling both an accounting of Trust property and assets as well as production of documents and accounting records.

On March 1, 2012, the district court denied Curtis's application for a temporary restraining order and injunction because the Defendants had not

[2] The signed copies of the Brunstings' Wills are not included in the record, but Curtis provided unsigned copies, which we assume match the signed versions that have been admitted to probate.

been served with process. In the order, the district court judged noted that it "appears that the court lacks subject matter jurisdiction over the claim(s) asserted." On March 6, 2012, in response to the lis pendens Curtis had filed related to property in Texas and Iowa, Anita and Amy filed an emergency motion to remove the lis pendens. The motion noted that it was subject to the Defendants' contention that the federal district court lacked subject matter jurisdiction under the probate exception to federal court jurisdiction, an issue that the Defendants said would be raised in a separate Rule 12(b) motion to dismiss. On March 8, 2012, following a telephone conference with the parties, the district court judge entered a *sua sponte* order dismissing the case for lack of subject matter jurisdiction. In doing so, he concluded that the case falls within the probate exception to federal diversity jurisdiction. This appeal followed.

II.

This Court reviews *de novo* a district court's dismissal for lack of subject-matter jurisdiction.[3]

III.

Although a federal court "has no jurisdiction to probate a will or administer an estate,"[4] in *Markham v. Allen*, the Supreme Court recognized that the probate exception does not bar a federal court from exercising jurisdiction over all claims related to such a proceeding:

> [F]ederal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heris' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume

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[3] *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 170 (5th Cir. 2009).

[4] *Markham v. Allen*, 326 U.S. 490, 494 (1946).

> general jurisdiction over the probate or control of the property in the custody of the state court.
>
> Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.[5]

Sixty years later, in *Marshall v. Marshall*, the Supreme Court expressed concern with lower courts' interpretation of *Markham*, noting that "[l]ower federal courts have puzzled over the meaning of the words 'to interfere with the probate proceedings,' and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate."[6] Thus, the Supreme Court clarified the "distinctly limited scope" of the probate exception,[7] explaining:

> [W]e comprehend the 'interference' language in *Markham* as essentially a reiteration of the guiding principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.[8]

The *Marshall* Court concluded that the federal district court had subject-matter jurisdiction, and the probate exception did not apply, reasoning: "[The claimant]

---

[5] *Id.* (internal citations omitted).

[6] 547 U.S. at 311.

[7] *Id.* at 310.

[8] *Id.* at 311–12.

seeks an *in personam* judgment against [the Defendant], not the probate or annulment of a will. Nor does she seek to reach a *res* in custody of a state court."[9] After *Marshall*, the probate exception only bars a federal district court from (1) probating or annulling a will or (2) "seek[ing] to reach a *res* in custody of a state court" by "endeavoring to dispose of [such] property."[10]

As we see it, to determine whether the probate exception deprives a federal court of jurisdiction, *Marshall* requires a two-step inquiry into (1) whether the property in dispute is estate property within the custody of the probate court and (2) whether the plaintiff's claims would require the federal court to assume *in rem* jurisdiction over that property. If the answer to both inquiries is yes, then the probate exception precludes the federal district court from exercising diversity jurisdiction. Here, we find the case outside the scope of the probate exception under the first step of the inquiry because the Trust is not property within the custody of the probate court.

As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise *in rem* jurisdiction over a *res* in the custody of another court. Both of the Brunstings' Wills were admitted to probate after the district court dismissed the case, and probate proceedings are ongoing.[11] However, nothing suggests that the Texas probate court currently has custody or *in rem* jurisdiction over the Trust. It likely does not. Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and

---

[9] *Id.* at 312 (internal citations omitted).

[10] *Id.* at 312–13.

[11] At the time the district court dismissed the case, no probate proceedings had been initiated. As such, there was no possibility that the case fell within the probate exception. Nevertheless, we must consider whether, upon remand, the federal district court would have subject-matter jurisdiction now that probate proceedings are ongoing.

therefore are not part of the decedent's estate.[12] In other words, because the assets in a living or inter vivos trust are not property of the estate at the time of the decedent's death, having been transferred to the trust years before, the trust is not in the custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust. The record also indicates that there would be no probate of this Trust's assets upon the death of the surviving spouse.[13] Finding no evidence that this Trust is subject to the ongoing probate proceedings, we conclude that the case falls outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

IV.

For the reasons set forth above, we REVERSE the district court's dismissal of the case and REMAND for further proceedings. REVERSED AND REMANDED.

---

[12] *See* 3 TEX. PRAC. GUIDE WILLS, TRUSTS, AND EST. PLAN. § 10:83 ("Any property held in a revocable living trust is not considered a probate asset . . . ."); 2 EST. TAX & PERS. FIN. PLAN. § 19:15 ("Avoidance of probate perhaps is the most publicized advantage of the revocable living trust.'"); 18 EST. PLAN. 98 ("Assets in a living trust are not subject to probate administration . . . .").

[13] Any assets "poured over" from the decedents' estates into the Trust would have to go through probate, but that does not change the fact that the Trust property over which the Defendants have been acting as Trustees would not be subject to probate, having been transferred to the Trust prior to the parents' deaths.

EXHIBIT G

DROP

NO. 412249 PROBATE COURT 4

IN THE ESTATE OF Nelva E. Brunsting	§	IN THE PROBATE COURT
	§	NUMBER FOUR OF
DECEASED	§	HARRIS COUNTY, TEXAS

DROP ORDER

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

IT IS THEREFORE ORDERED that the Clerk drop said estate from the Court's active docket.

IT IS FURTHER ORDERED that any costs incident to this order are hereby waived.

SIGNED this 4 day of April, 2013.

Christine Butts
JUDGE CHRISTINE BUTTS
PROBATE COURT NO. FOUR

FILED
2013 APR -5 AM 10:01
STAN STANART
COUNTY CLERK
HARRIS COUNTY, TEXAS

04052013 322 4915

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Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|9736056

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

EXHIBIT H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, *et al*,	§	
	§	
Defendants.	§	

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

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NATHAN OCHSNER, Clerk of Court
By _____
Deputy Clerk

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway,* 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

5 / 5

EXHIBIT I

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS **Individually and as Co-Trustee** **Plaintiff,** **VS.** **ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, CAROLE ANN BRUNSTING, CANDACE L. KUNZ-FREED, ALBERT E. VACEK, JR., VACEK & FREED, PLLC, THE VACEK LAW FIRM, BERNARD LILSE MATHEWS III, AND DOES 1 - 94** **Defendants.**	§ § § § § § § § § § § § § § §	**CIVIL ACTION NO. 4:12-CV-00592**

ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 53, APPOINTING WILLIAM G. WEST AS MASTER TO PERFORM AN ACCOUNTING

(Relates to Docket No. 47)

For the reasons set forth in the Court's Order entered on April 29, 2013 and appearing as Docket Entry No. 47 in the above-styled case, the Court finds that the issues in dispute require an accounting, that such an accounting will be helpful to the Court's consideration of the issues in dispute and the resolution of the case, that the appointment of a master to prepare such an accounting is necessary and in the best interests of all parties, and that the parties failed to timely designate a party to prepare such an accounting as expressly instructed by the Court. The Court further finds that as evidenced by the Affidavit of William G. West, that there are no grounds under 28 U.S.C. § 455 that would disqualify William G. West from serving as a master in this case. It is therefore Ordered as follows:

1. William G. West ("West") is hereby appointed as master pursuant to Rule 53 of the Federal Rules of Civil Procedure, and is to proceed with all reasonable diligence.

TRUE COPY I CERTIFY ATTEST:
NATHAN OCHSNER, Clerk of Court
By _____
Deputy Clerk

2. The parties shall have ten (10) days from the entry of this order in which to file any objections to the appointment of West. Any such objection(s) may include a request for a hearing.

3. West's duties are to undertake an analysis of the Brunsting Trust, including, but not limited to, its books and records and thereafter create an accounting of the income and expenses of the trust since December 21, 2010. In order to aid in West's performance of said duties, the parties shall comply with all of West's reasonable requests for information and/or assistance.

4. West shall be authorized to communicate *ex parte* with the Court or any of the parties.

5. West shall complete his investigation and submit his report(s) directly to the Court by July 31, 2013 or on such other date(s) as the permitted by the Court. West will provide copies of the report(s) to other parties only as directed by the Court. The report shall contain a summary of the activities undertaken by West, the detailed accounting information described in paragraph 3 above, and an invoice for all of West's compensation, expenses, and attorneys' fees. West shall retain all files related to his investigation for a period of 3 years after the submission of his final report(s).

6. West shall be compensated at an hourly rate of $260.00 and any staff working directly under his supervision will be charged at their regular rates (staff rates are currently $95.00-$230.00 per hour). West shall also be entitled to recover all expenses and attorneys' fees incurred and related to his appointment by the Court. The parties shall bear the cost of West's compensation, expenses, and attorneys' fees. The Court shall have the right to allocate all such compensation, expenses, and attorneys' fees as appropriate, and regardless of any such allocation West shall be entitled to recover all of his compensation, expenses, and attorneys' fees from the Brunsting Trust, and shall be entitled to payment of all such compensation, expenses, and attorneys' fees directly from the Brunsting Trust immediately upon the completion of his work.

7. West shall be granted all of the powers and authority proscribed in Rule 53(c) of the Federal Rules of Civil Procedure.

8. West has been appointed to prepare his report(s) for the Court and not for any of the parties. Therefore, West is accountable only to the Court. As such, West is entitled to and hereby granted the same judicial immunity as this Court itself, and West shall not be responsible to any party provided his report is made in good faith. Further, in the event that any claims are asserted against West related to his appointment, investigation, and/or preparation of his report(s), West shall be entitled to a defense and indemnity, to be allocated and funded in the same manner as his compensation described in paragraph 5 above.

SIGNED on this 9th day of May, 2013.

THE HONORABLE KENNETH M. HOYT,
UNITED STATES DISTRICT JUDGE

EXHIBIT J2

FILED
5/28/2014 5:40:39 PM
Stan Stanart
County Clerk
Harris County

Data Entry
Pick Up This Date

06052014:0750:P0097

CAUSE NO. 412,249401 **PROBATE COURT 4**

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

MOTION TO ENTER TRANSFER ORDER

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candace Louis Curtis and files this Motion to Enter Transfer Order, and in support thereof would respectfully show as follows:

I. BACKGROUND

Plaintiff filed an Original Petition in the Federal Court for the Southern District of Texas against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. She subsequently sought and was granted leave to amend her pleading to include necessary parties Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting. Although necessary, the addition of these two new parties destroyed federal diversity jurisdiction. Because similar issues of fact and law are currently pending before this Court, the Federal Court entered an order remanding Plaintiff's Federal Case to this Court. *See* Ex. A, Order of Remand.

II. TRANSFER

Pursuant to Texas Estates Code Sections 32.005, 32.006 and 32.007, this Court has jurisdiction over the parties and the claims alleged in Plaintiff's First Amended Petition. Accordingly, Plaintiff requests that this Court enter an order accepting the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 7/29/2019
Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

06052014:0758:P0098

III. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) accept the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: _____
JASON B. OSTROM
(TBA #24027710)
jason@ostromsain.com
NICOLE K. SAIN THORNTON
(TBA #24043901)
nicole@ostromsain.com
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

Confidential information may have been redacted from the document in compliance with the Public Information Act.

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Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

06052014:0750:P0099

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 28 day of May, 2014:

Ms. Bobbie Bayless
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Mr. George W. Vie III
1021 Main, Suite 1950
Houston, Texas 77002
713.225.0547
713.225.0844 (Facsimile)

Jason B. Ostrom

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Attest: 7/29/2019
Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

06052014:0759:P0100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

Exhibit A

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Attest: 7/29/2019
Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

06052014:0759:201010250

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

Confidential information may have been redacted from the document in compliance with the Public Information Act.

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Attest: 7/29/2019
Diane Trautman, County Clerk
Harris County, Texas

Deputy
Sterling G. Senechal III

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

06052014:0759:P0102

CAUSE NO. 412,249-401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249.-401.

SIGNED on this 3 day of June, 2014.

Christine Butts
JUDGE PRESIDING

Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2014 JUN -4 AM 8:35

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Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

06052014:0759:P0105

APPROVED AS TO FORM:

OSTROM/Sain
A limited Liability Partnership

BY: _____

JASON B. OSTROM
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 7/29/2019
Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

EXHIBIT K1

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS, PLAINTIFF	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-00592 JUDGE KENNETH M. HOYT
ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, AND DOES 1-100, DEFENDANTS	§	JURY TRIAL DEMANDED

MOTION TO REMAND

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion to Remand pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

I. INTRODUCTION

1. Plaintiff filed her Original Petition bringing causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. Diversity jurisdiction existed between Plaintiff and Defendants.

2. Contemporaneously with this Motion, Plaintiff is filing her Motion for Leave to File First Amended Petition, which will add necessary parties to this case in order to have complete adjudication of all matters and to avoid inconsistent judgments. Necessary parties include Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting.

3. Plaintiff believes that the filing of the First Amended Petition and addition of necessary parties will destroy the diversity jurisdiction that is required by 28 U.S.C. § 1332(a).

4. Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased, is currently a party to

TRUE COPY I CERTIFY ATTEST:
NATHAN OCHSNER, Clerk of Court
By _____
Deputy Clerk

an action pending in Harris County Probate Court Number Four involving the same parties. Similar issues of fact and law are pending in that court.

II. ARGUMENTS AND AUTHORITIES

5. Here, the interests of justice and comity with State courts counsel in favor of this Court abstaining from exercising further jurisdiction over this Action and remanding it to Harris County Probate Court Number Four.

6. The First Amended Petition seeks a declaration as to certain Trust documents, and complete relief as to this issue cannot be granted without the addition of necessary parties, which will destroy diversity jurisdiction.

7. If this Court retains this case despite the lack of diversity, it is possible that inconsistent judgments may be reached as between this Court and Harris County Probate Court Number Four where the Estate of Nelva Brunsting, Deceased is pending and where similar issues of fact and law are currently pending.

8. Because diversity jurisdiction will be destroyed via the First Amended Petition and because similar issues of fact and law are pending before Harris County Probate Court Number Four, equity mandates that this cause be remanded to Harris County Probate Court Number Four and consoldiated with the cause pending under Cause Number 412,249.

9. Counsel for Defendants Anita Brunsting and Amy Brunsting has been consulted and is not opposed to the remand.

IV. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) remand this cause of action to Harris County Probate Court Number Four to be consolidated into Cause Number 412,249 and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with opposing counsel and they are unopposed to this motion to remand.

/s/ Jason B. Ostrom
Jason B. Ostrom

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom
Jason B. Ostrom

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS, PLAINTIFF	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-00592 JUDGE KENNETH M. HOYT
ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, AND DOES 1-100, DEFENDANTS	§	JURY TRIAL DEMANDED

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be granted.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are

opposed to this remand and that no parties have filed any objection thereto. It is, therefore,

ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429. It is further,

ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

_____

JUDGE PRESIDING

EXHIBIT K2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

1 / 2

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

EXHIBIT L1

06052014:0759:P0102

CAUSE NO. 412,249-401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249.-401.

SIGNED on this 3 day of June, 2014.

Christine Butts
JUDGE PRESIDING

Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2014 JUN -4 AM 8:35

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 7/29/2019
Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

06052014:0759:P0105

APPROVED AS TO FORM:

OSTROM/Sain
A limited Liability Partnership

BY: _____

JASON B. OSTROM
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy
Attest: 7/29/2019
Diane Trautman, County Clerk
Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|10191039

PROBATE COURT NO.4 OF HARRIS COUNTY, TEXAS

EXHIBIT L2

FILED
3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

DATA ENTRY
PICK UP THIS DATE

03092015 0815 P0002

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

****

CAUSE NO. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Christine Butts
JUDGE PRESIDING

03092015:0815:P0003

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: _____

JASON B. OSTROM
(TBA #24027710)
jason@ostrommorris.com
R. KEITH MORRIS, III
(TBA #24032879)
keith@ostrommorris.com
6363 Woodway, Suite 300
Houston, Texas 77057
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Candace Curtis

BY: _____

BOBBIE BAYLESS
(TBA #01940600)
bayless@baylessstokes.com
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Attorney for Drina Brunsting, Attorney in Fact
for Carl Brunsting

BY: _____

DARLENE PAYNE SMITH
(TBA #18643525)
dsmith@craincaton.com
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Attorney for Carole Brunsting

03092015:0815:P0004

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: _____

JASON B. OSTROM
(TBA #24027710)
jason@ostrommorris.com
R. KEITH MORRIS, III
(TBA #24032879)
keith@ostrommorris.com
6363 Woodway, Suite 300
Houston, Texas 77057
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Candace Curtis

BY: _____

BOBBIE BAYLESS
(TBA #01940600)
bayless@baylessstokes.com
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Attorney for Drina Brunsting, Attorney in Fact
for Carl Brunsting

BY: _____

DARLENE PAYNE SMITH
(TBA #18643525)
dsmith@craincaton.com
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Attorney for Carole Brunsting

03092015:0815:P0005

BY: _____
BRADLEY FEATHERSTON
(TBA #24038892)
brad@mendellawfirm.com
1155 Dairy Ashford Street, Suite 104
Houston, Texas 77079
281.759.3213
281.759.3214 (Facsimile)

Attorney for Anita Brunsting

BY: _____
NEAL SPIELMAN
(TBA #00794678)
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124
281.870.1647 (Facsimile)

Attorney for Amy Brunsting

CAUSE NO. 412249-401

CANDACE LOUISE CURTIS Plaintiff	§ § §	IN THE STATUTORY PROBATE COURT
VS	§ §	OF HARRIS COUNTY, TEXAS
ANITA K. BRUNSTING AND AMY RUTH BRUNSTING, et al. and Does 1-100, Defendants	§ § § § §	PROBATE COURT NO.4

UNSWORN DECLARATION OF CANDICE SCHWAGER

STATE OF TEXAS §

COUNTY OF HARRIS §

1. I, Candice Schwager, hereby file this unsworn declaration, certifying that all exhibits attached to my Motion to Vacate and/or Set Aside are true and correct copies of what they purport to be, including exhibits A-DD.

2. I am over the age of 21, have never been convicted of a felony or crime involving moral turpitude and am in all ways competent to execute this unsworn declaration.

3. The following exhibits to CANDACE CURTIS' MOTION TO VACATE AND/OR SET ASIDE FEBRUARY 25, 2022 ORDER are certified, documents produced in response to written discovery in this case, and/or true and correct copies of documents in the official file of ancillary matters to Cause No. 412429.

4. These exhibits include:

Exhibit A Restatement of Brunsting Family Living Trust

Exhibit B 1st Amendment to the Restatement of the Brunsting Family Living Trust

Exhibit C Qualified Beneficiary Designation dated 6/15/10

Exhibit D Duplicate copy of Qualified Beneficiary Designation and Testamentary Power of Appointment dated 8/25/10

Exhibit E, Original Complaint of Candace Louise Curtis vs. Anita K. Brunsting, et al. Cause No. 4:12-cv-00592 (S.D. Tex. 2012).

Exhibit F, Curtis v Brunsting 704 F.3d 406, 412 (Jan 9, 2013)

Exhibit G, Drop Order April 5, 2013.

Exhibit H, Certified Memorandum and Order of Preliminary Injunction by Judge Kenneth Hoyt, Southern District of Texas

Exhibit I, Certified Order appointing special master

Exhibit J1 Certified Special Master's Report

Exhibit J2 Motion to Enter Transfer Order in probate court no. 4

Exhibit K1 Motion to Remand

Exhibit K2 Order to Remand

Exhibit L1 Order of Transfer dated June 3, 2014

Exhibit L2 Agreed Consolidation Order

Exhibit M, Order of Severance of Carl Brunsting's claims from Candace Curtis' claims against co-trustees and for declaratory judgment

Exhibit N, Response to Candace's Motion for Disbursement of Trust Funds and Carl's Motion for Disbursement of Trust funds

Exhibit O, Petition to register foreign judgment

Exhibit P, Transcript of Oral Hearing February 25, 2022

Exhibit Q, February 25, 2022 Order granting partial summary judgment against Candace Curtis

Exhibit R, Amended Objection to Former Judge Kathleen Stone

Exhibit S, July 1, 2008 Appointment of Successor Trustee

Exhibit T, Notary Log of Candace Freed produced in discovery

Exhibit U, Candace Freed Notes produced in discovery

Exhibit V, 3 different signature pages of 8/25/10 Qualified Beneficiary Designation and Testamentary Power of Appointment

Exhibit X, Order denying Plaintiff's Motion for Rule 60 Relief, noting remand was improper

Exhibit Y, Docket control Order dated June 2021

Exhibit Z, July 2015 Response to co-trustees' motion for partial summary judgment

Exhibit AA, 11/17/21 Response to co-trustees' motion for partial summary judgment

Exhibit BB, Qualified Beneficiary Designation Memorandum of Law supplementing response to partial summary judgment

Exhibit CC, Addendum to response to partial summary judgment

Exhibit DD, Affidavit of Candace Louise Curtis

Candice Schwager
Candice L. Schwager

STATE OF TEXAS §

COUNTY OF HARRIS §

My name is Candice Schwager. I am over the age of 21, born February 4, 1971. My business address is 16807 Pinemoor Way, Houston, Texas 77058. My phone number and email are candiceschwager@outlook.com and 832-857-7173. I declare under penalty of perjury that the foregoing is true, correct, and based upon my personal knowledge after a thorough examination of the record.

Executed in Harris County, Texas on this 27th day of March, 2022.

Candice Schwager
Candice L. Schwager

FILED
5/28/2014 5:40:59 PM
Stan Stanart
County Clerk
Harris County

Data Entry
Pick Up This Date

PROBATE COURT 4

CAUSE NO. 412,249-401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

20140527009 :: Page 1 of 5

MOTION TO ENTER TRANSFER ORDER

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candace Louis Curtis and files this Motion to Enter Transfer Order, and in support thereof would respectfully show as follows:

I. BACKGROUND

Plaintiff filed an Original Petition in the Federal Court for the Southern District of Texas against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. She subsequently sought and was granted leave to amend her pleading to include necessary parties Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting. Although necessary, the addition of these two new parties destroyed federal diversity jurisdiction. Because similar issues of fact and law are currently pending before this Court, the Federal Court entered an order remanding Plaintiff's Federal Case to this Court. *See* Ex. A, Order of Remand.

II. TRANSFER

Pursuant to Texas Estates Code Sections 32.005, 32.006 and 32.007, this Court has jurisdiction over the parties and the claims alleged in Plaintiff's First Amended Petition. Accordingly, Plaintiff requests that this Court enter an order accepting the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*

06052014 07:59:00 PM 059

III. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) accept the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: _____
JASON B. OSTROM
(TBA #24027710)
jason@ostromsain.com
NICOLE K. SAIN THORNTON
(TBA #24043901)
nicole@ostromsain.com
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

06052014 07:59:04 P009

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 28 day of May, 2014:

Ms. Bobbie Bayless
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Mr. George W. Vie III
1021 Main, Suite 1950
Houston, Texas 77002
713.225.0547
713.225.0844 (Facsimile)

Jason B. Ostrom

05/15/2014:07:59:PD100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

1 / 2

Exhibit A

06052014:0750:P0101

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

20140605021 Pg 2 of 4

CAUSE NO. 412,249-401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249.-401.

SIGNED on this 3 day of June, 2014.

Christine Butts
JUDGE PRESIDING

FILED
2014 JUN -4 AM 10:35
COUNTY CLERK
HARRIS COUNTY, TEXAS

20150407-0550 : Pages

APPROVED AS TO FORM:

OSTROM/Sain
A limited Liability Partnership

BY: _____

JASON B. OSTROM
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

FILED
11/4/2019 3:16 PM
Diane Trautman
County Clerk
Harris County - County Probate Court No. 4
Accepted By: AJ

NO. 412,249-**401**

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
	§	
	§	
CARL HENRY BRUNSTING, et al	§	
	§	
v.	§	
	§	
ANITA KAY BRUNSTING, et al	§	

AMY BRUNSTING'S & ANITA BRUNSTING'S ORIGINAL COUNTERCLAIM

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY BRUNSTING ("Amy") and ANITA BRUNSTING ("Anita") (collectively "Co-Trustees") have been sued individually and in various capacities by their sister, Candace Louise Curtis ("Curtis") and their brother, Carl Henry Brunsting ("Carl"), each of whom has amended and/or supplemented their petitions on numerous prior occasions.

In light of the numerous amended and/or supplemental petitions filed by Curtis and Carl, Co-Trustees file these Original Counterclaims, individually and in various identified capacities, including without limitation, as Co-Trustees of The Restatement of The Brunsting Family Living Trust (the "Brunsting Family Living Trust").

Each allegation, assertion, claim or cause of action made by Amy and/or Anita in this Original Counterclaim is in addition to and/or in the alternative to any other allegation, assertion, claim or cause of action made by them in this Original Counterclaim.

I. BACKGROUND FACTS

The Brunsting Family Living Trust was created by Elmer Henry Brunsting and Nelva Erleen Brunsting (together, "Founders" or "Trustors" and each a "Founder" or "Trustor"), on or about October 10, 1996. Over time, additional documents pertaining to The Brunsting Family Living Trust were executed by one or both of the Founders, including without limitation, a Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement executed by Nelva E. Brunsting on or about June 15, 2010 (the "June 2010 QBD"), and another Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement executed by Nelva E. Brunsting on or about on August 25, 2010 (the "August 2010 QBD"). Elmer Henry Brunsting was not a party to either document, as he died on April 1, 2009.

Through the Brunsting Family Living Trust and the August 2010 QBD, the Founders set out a number of different terms, conditions and instructions to be implemented and followed by the trustees and beneficiaries. Included among these terms, conditions and instructions were rules intended for the "protection of beneficial interests", including without limitation rules dictating that the Founders' instructions were not to be contested.

This "no-contest" language appears in both the Brunsting Family Living Trust **and** the August 2010 QBD, and was included because the Founders did not want to burden the trust with the costs of a litigated proceeding to resolve questions of law or fact, unless originated by a trustee or with a trustee's written permission. The penalty for those who violated the no-contest provision was the forfeiture of any amounts the violator is or may have been entitled to receive. In such an event, a violator's interest would pass as if the violator(s) had predeceased the Founders.

The Founders identified certain specific acts which, if taken, would trigger a forfeiture. Prohibited acts include but are not limited to originating (or causing to be instituted) a judicial proceeding:

- To construe or contest the trust(s);
- To resolve any claim or controversy in the nature of reimbursement;
- Seeking to impress a constructive or resulting trust;
- Alleging any theory, which if assumed as true, would enlarge (or originate) a claimant's interest in the trust or the Founder's Estates;
- Unsuccessfully challenging the appointment of any person named as a Trustee or unsuccessfully seeking the removal of any person acting as a Trustee;
- Objecting to any action taken or proposed to be taken in good faith by the Trustee, if such action is determined to have been taken in good faith;
- Objecting to any construction or interpretation of the trust, or any amendment to it, and such objection is later adjudicated to be an invalid objection; and/or
- In any other manner contesting the trust or any amendment to it, including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence or otherwise, or in any other manner attacking or seeking to impair or invalidate the trust or any amendment, or any of their provisions.

The Founders further expressed their intentions regarding application and enforcement of these prohibited acts by including other instructions and conditions in the Brunsting Family Living Trust and/or the August 2010 QBD. These other instructions and conditions include but are not limited to:

- Application of the forfeiture penalty even if it is determined that the judicial proceeding was initiated in good faith, with probable cause;
- Application of the forfeiture penalty even if is determined that the judicial proceeding was initiated to do nothing more than construe the application of the no-contest provision;
- Cautioning a trustee against settling any contest, attack or attempt to interfere with the Founders' estate plan; and

- Requesting that the Court take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the estate.

Against the backdrop of these forfeiture provisions, Curtis and Carl each elected to proceed with the origination of their respective judicial proceedings. By way of summary, but not limitation, Carl and Curtis' respective claims have included/currently include:

Carl's Claims	**Curtis's Claims**
(1) Construction of Trust and Suit for Declaratory Judgment; (2) Demand for Trust Accounting; (3) Breach of Fiduciary Duties; (4) Conversion; (5) Negligence; (6) Tortious Interference with Inheritance; (7) Constructive Trust; (8) Civil Conspiracy; (9) Fraudulent Concealment; (10) Liability of Beneficiaries; (11) Removal of Trustees; (12) Receivership Over Trust; (13) Self-Dealing; (14) Criminal Wiretap Claim; (15) Civil Wiretap Act; (16) Invasion of Privacy and Intrusion on Seclusion; and (17) Request for Injunctive Relief.	(1) Breach of Fiduciary Obligation; (2) Extrinsic Fraud; (3) Constructive Fraud; (4) Intentional Infliction of Emotional Distress; (5) Breach of Fiduciary Duty; (6) Fraud; (7) Money Had and Received; (8) Conversion; (9) Tortious Interference with Inheritance Rights; (10) Declaratory Judgment Action; (11) Demand for Accounting; (12) Unjust Enrichment; and (13) Conspiracy.
Declarations Sought by Carl: • 8/25/10 QBD *in terrorem* clause void. • Construe validity, terms, responsibilities and obligations of documents signed by Elmer and Nelva. • That Carl's actions do not violate *in terrorem* clause (if valid). • That Carl's actions are done in good faith, so *in terrorem* not triggered.	Declarations Sought by Curtis: • "Modification Documents" (June 2010 QBD, August 2010 QBD and Exercise of Testamentary Power of Appointment) are not valid. • *In terrorem* clause not capable of enforcement.

II. CLAIMS AND CAUSES OF ACTION

Beginning with the filing of their respective original petitions/complaints, both Curtis and Carl have asserted (and/or continue to assert) claims and causes of action, or otherwise taken action through the filing of various motions, objections and/or responses/replies which violate the Founders' restrictions and trigger the forfeiture provisions. Once triggered, a prior or subsequent amendment of their pleadings does not and cannot "untrigger" the forfeiture. Consistent with the Founders' wishes and cautions, the Co-Trustees assert that:

- one or more of the causes of action asserted and/or declarations sought by Carl trigger the forfeiture provisions;
- one or more of the causes of action asserted and/or declarations sought by Curtis trigger the forfeiture provisions;
- one or more of the motions, responses, and/or replies filed by Carl trigger the forfeiture provisions;
- one or more of the motions, responses, and/or replies filed by Curtis trigger the forfeiture provisions;
- Carl did not have just cause to bring the action, and it was not brought in good faith;
- Curtis did not have just cause to bring the action, and it was not brought in good faith;
- Carl has forfeited his interest, and thus his interest passes as if he has predeceased the Founders;
- Curtis has forfeited her interest, and thus her interest passes as if she has predeceased the Founders;
- If Carl has not forfeited his interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's expenses in defending against Carl's claims are to be charged against his interest dollar-for-dollar;
- If Curtis has not forfeited her interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's expenses in defending against Curtis' claims are to be charged against her interest dollar-for-dollar;

and/or

- All expenses incurred by Amy and Anita to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

As a more specific example, but not by way of limitation, in his First Amended Petition for Declaratory Judgment, Carl "*seeks declaratory relief construing the...terms...[of the] Family Trust.*" The Brunsting Family Living Trust specifically prohibits an action to construe or contest the trust. Carl also seeks to impose a constructive trust, another claim that is specifically prohibited by Brunsting Family Living Trust.

Likewise, as a non-exclusive/non-limiting example, Curtis also seeks a declaration by the Court construing the terms of the Brunsting Family Living Trust, including, in particular, a finding that the QBDs affecting the terms of the Brunsting Family Living Trust are invalid. Curtis' requests violate the Brunsting Family Living Trust's terms.

Consistent with the Founders' wishes and cautions, the Co-Trustees request that the Court enter one or more declarations setting forth and confirming all or any of the Co-Trustees' assertions above. The Co-Trustees further seek a recovery/reimbursement of all attorney's fees, expenses and court costs associated with this matter, whether in accordance with the terms of the Brunsting Family Living Trust; in accordance with the Declaratory Judgment Act; as a sanctions/penalty for actions taken in bad faith, in equity, or otherwise.

III. PRAYER

Co-Trustees, Amy Brunsting and Anita Brunsting, pray that the Court declare:

A. Carl and Curtis have taken actions that trigger the forfeiture provisions;

B. Carl and Curtis' actions in triggering the forfeiture provisions were without just cause and were not in good faith;

C. The forfeiture provisions are enforceable and applicable in this case;

D. By their actions, Carl and Curtis have forfeited their interests in the trust as though they had predeceased the Founders;

E. All expenses, including attorney's fees, incurred to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

F. Co-Trustees be reimbursed their reasonable attorneys' fees and court costs;

G. Co-Trustees recover prejudgment and post-judgment interest as allowed by law.

H. Co-Trustees receive such other and further relief, general and special, legal and equitable, to which they may be entitled.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: _____

NEAL E. SPIELMAN
Texas State Bar No. 00794678
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124 - Phone
281.870.1647 - Facsimile

ATTORNEYS FOR AMY BRUNSTING

THE MENDEL LAW FIRM, L.P.

BY: Stephen A. Mendel /by permission

STEPHEN A. MENDEL
Texas State Bar No. 13930650
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
O: 281-759-3213
F: 281-759-3214
E: steve@mendellawfirm.com

ATTORNEYS FOR ANITA BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 4th day of November 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

Attorneys for Candace Kunz-Freed:

Zandra Foley/Cory S. Reed
Thompson, Coe, Cousins & Irons, L.L.P.
One Riverway, Suite 1400
Houston, Texas 77056
Via E-Mail: zfoley@thompsoncoe.com
Via E-Mail: creed@thompsoncoe.com

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
Via E-Mail: occurtis@sbcglobal.net

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
Via E-Mail: bayless@baylessstokes.com

Carole Ann Brunsting – Pro Se:

Carole Ann Brunsting
Via E-Mail: cbrunsting@sbcglobal.net

Attorneys for Anita Kay Brunsting:

Steve Mendel/Tim Jadloski
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
Via E-Mail: steve@mendellawfirm.com
info@mendellawfirm.com

NEAL E. SPIELMAN

FILED
06/11/2021 1:31:44 PM
Teneshia Hudspeth
County Clerk
Harris County, Texas
jguzman

Cause No. 412249-401

IN THE ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

DOCKET CONTROL ORDER

The following docket control order shall apply to this case unless modified by the Court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. N/A — **JOINDER**. All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THE SCHEDULING ORDER AT THE TIME OF SERVICE

2._____ — **EXPERT WITNESS DESIGNATION**. Expert witness designations are required and must be filed and served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6:

(a) 11/5/2021 — Experts for parties seeking affirmative relief.
(b) 11/19/2021 — All other experts.

3._____ — **DISCOVERY LIMITATIONS**. The discovery limitations of Rule 190.2, if applicable, or otherwise, of Rule 190.3, apply, unless changed below:

(a)_____ — Total hours per side for oral depositions.
(b)_____ — Number of interrogatories that may be served by each party on any other party.

4.___N/A per AJ____ — **ALTERNATIVE DISPUTE RESOLUTION**. ADR conducted pursuant to the agreement of the parties must be completed by this date. **If the parties do not agree on a date and/or facilitator for ADR, the Court may sign an order compelling ADR and appointing a mediator for same**.

5. 02/14/2022 — **DISCOVERY PERIOD ENDS**. All discovery must be completed before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.

[REMAINDER OF PAGE LEFT BLANK]

6. _____ **DISPOSITIVE MOTIONS AND PLEAS**. Must be heard as follows:

(a) 12/31/2021 Dispositive motions or pleas subject to an interlocutory appeal must be heard by this date.

(b) 02/07/2022 Summary Judgment motions not subject to an interlocutory appeal must be heard by this date.

(c) 08/06/2021 Rule 166a(i) motions may not be filed before this date.

7. 01/14/2022 **CHALLENGES TO EXPERT TESTIMONY**. All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.

8. 10/15/2021 **PLEADINGS**. All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleading

9. 02/21/2022, by Noon **JOINT PRE-TRIAL ORDER. Parties shall provide to the Court, by fax, email, or delivery to our offices, a copy of the signed Agreed Joint Pretrial Order by this date**. Parties shall bring the original Agreed Joint Pretrial Order to the Pretrial Conference.

10. 02/24/2022, at 10 a.m. **PRETRIAL CONFERENCE. Parties shall be prepared to discuss all aspects of trial with the Court at this time. Parties shall file and exchange (if jury trial) proposed jury charge questions, instructions and definitions at this conference. Parties should be prepared to mark exhibits. Failure to appear will be grounds for dismissal for want of prosecution.**

11. 04/04/2022 at 9:00 a.m. **TRIAL**.

Signed this _____ day of June 2021.

Signed on: 06/10/2021
3:08:04 PM

_____
Judge Presiding

cc

FILED
12/6/2021 12:00 AM
Teneshia Hudspeth
County Clerk
Harris County - County Probate Court No. 4
Accepted By: OG

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, Et Al	§	
	§	
V.	§	
	§	
ANITA KAY BRUNSTING, Et Al	§	

Rule 11 Agreement of Plaintiff Carl Brunsting, Defendant & Co-Trustee Anita Brunsting, & Defendant & Co-Trustee Amy Brunsting

The parties to this Rule 11 Agreement are:

A. Plaintiff Carl Brunsting.
B. Defendant & Co-Trustee Anita Brunsting.
C. Defendant & Co-Trustee Amy Brunsting.

The Parties, as identified above, appearing through their respective counsel, reached the following agreements:

1. Plaintiff Carl Brunsting requests that the Court ***not*** rule on the portion of his July 9, 2015 motion for partial summary judgment, which relates to the issue of:

> Carl also seeks a determination, as a matter of law, that disbursements in 2011 of Exxon Mobil stock and Chevron stock were improper distributions for which Anita, as the trustee making the disbursements is liable, and for which the beneficiaries who received benefits from those distributions are also liable pursuant to TEX. PROP. CODE §114.031, including through an offset of the applicable beneficiary's liability against that beneficiary's remaining interest in the trust estate.

2. Defendant & Co-Trustee Anita Brunsting and Defendant & Co-Trustee Amy Brunsting request that the Court ***not*** rule on any portion of the Co-Trustees Motion for Summary Judgment, filed on November 5, 2021, to the extent that the motion relates in whole or in part to

Plaintiff Carl Brunsting. Rather, the Court should construe the motion for summary judgment as filed solely against Candace Louise Curtis.

3. Notwithstanding any other provision of this Rule 11 Agreement to the contrary, this Rule 11 Agreement does not and shall not be construed as an intent to delay any ruling by the Court on the Co-Trustees Motion for Summary Judgment, filed on November 5, 2021, with regard to the Plaintiff Candace Louise Curtis.

4. More specifically, Co-Trustees continue to seek a summary judgment as to Candace Louise Curtis on the following issues:

A. By pursuing her claims, Candace Louise Curtis triggered the Trust's forfeiture provisions (or other similar provisions in other trust documents);

B. No unauthorized distributions were made by Anita Brunsting;

C. During their tenure, the Co-Trustees have not materially breached any duties; and

D. Attorneys' fees and expenses incurred by the Co-Trustees are the obligation of the Trust and/or Candace Louise Curtis.

5. Plaintiff Carl Brunsting, Defendant & Co-Trustee Anita Brunsting, and Defendant & Co-Trustee Amy Brunsting each reserve the right, in their sole and absolute discretion, to reset for oral hearing or written submission, the summary judgment issues set forth in sections 1 and 2 of the Rule 11 Agreement; provided that the resubmission or resetting of those issues meets the twenty-one (21) day notice requirements of a motion for summary judgment, or such other requirements as required by law or the Court.

Respectfully submitted,

// s // Bobbie G. Bayless

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224
F: 713-522-2218
E: bayless@baylessstokes.com

Attorney for Drina Brunsting,
Attorney-in-Fact for Carl Brunsting

Respectfully submitted,

// s // Stephen A. Mendel

Stephen A. Mendel (13930650)
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079
O: 281-759-3213
F: 281-759-3214
E: info@mendellawfirm.com

Attorneys for Anita Brunsting

&

Respectfully submitted,

// s // Neal Spielman

Neal Spielman (00794678)
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124
F: 281-870-1647
E: nspielman@grifmatlaw.com

Attorney for Amy Brunsting

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Zandra Foley/Cory S. Reed
Thompson, Coe, Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056
O: 713-403-8210
E: creed@thompsoncoe.com

Attorneys for Candace Kunz-Freed & Vacek & Freed, P.L.L.C.

Neal Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124
F: 281-870-1647
E: nspielman@grifmatlaw.com

Attorney for Co-Trustee, Amy Brunsting

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224
F: 713-522-2218
E: bayless@baylessstokes.com

Attorney for Drina Brunsting,
Alleged Attorney in Fact for Carl Brunsting

Candace L. Schwager (24005603)
Schwager Law Firm
2210 Village Dale Ave.
Houston, TX 77059
O: 832-857-7173
E: candiceschwager@icloud.com

Attorney for Candace Louise Curtis

Carole Ann Brunsting
5822 Jason St.
Houston, Texas 77074
E: cbrunsting@sbcglobal.net

Pro Se

via eService, email, telefax, or first class mail, on this December 5, 2021.

// s // Stephen A. Mendel

_____

Stephen A. Mendel

FILED
1/6/2022 12:22 PM
Teneshia Hudspeth
County Clerk
Harris County - County Probate Court No. 4
Accepted By: AA

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, Et Al	§	
	§	
V.	§	
	§	
ANITA KAY BRUNSTING, Et Al	§	

Plaintiff Carl Brunsting's & Defendant/Co-Trustees' Motion to Sever

Plaintiff, Carl Brunsting, and Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting (collectively the "Severing Parties"), file this motion to sever their respective claims against each other from the above-entitled and numbered cause (the "401 Case"), and would respectfully show the Court as follows:

1. Given the totality of the litigious nature of Candace Curtis, the Severing Parties see no prospect of settlement regarding their respective claims against each other without a severance from the 401 Case.

2. A severance would promote judicial economy. More specifically, this case is set for a two-week trial starting April 4, 2022. The Severing Parties believe the 401 Case could probably be tried in one week, especially given the fact that Curtis has no evidence to refute the Defendant/Co-Trustees pending motion for summary judgment against Curtis.

3. In the event the Severing Parties are unable to settle their respective claims against each other, then Severing Parties will seek an agreed docket control order for the severed case.

The Severing Parties request that the Court sever the claims of Plaintiff, Carl Brunsting, against Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting, and those of the Defendant/Co-Trustees against Plaintiff, Carl Brunsting, into a separate cause number, and grant the Severing Parties such other and further relief to which they may be entitled.

Respectfully submitted,

// s // Stephen A. Mendel

Stephen A. Mendel (13930650)
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079
O: 281-759-3213
F: 281-759-3214
E: info@mendellawfirm.com

Attorneys for Anita Brunsting

&

Respectfully submitted,

// s // Neal Spielman

Neal Spielman (00794678)
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124
F: 281-870-1647
E: nspielman@grifmatlaw.com

Attorney for Amy Brunsting

Certificate of Conference

Notice of intent to file this motion was provided on December 21, 2021, to Candace L. Curtis and Carole Brunsting. Plaintiff Carl Brunsting agrees with the filing of this motion and the relief sought. Candace L. Curtis and Carole Brunsting are presumed to oppose the relief sought, since they did not join in the filing of this motion.

// s // Stephen A. Mendel

Stephen A. Mendel

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Zandra Foley/Cory S. Reed
Thompson, Coe, Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056
O: 713-403-8210
E: creed@thompsoncoe.com

Attorneys for Candace Kunz-Freed & Vacek & Freed, P.L.L.C.

Neal Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124
F: 281-870-1647
E: nspielman@grifmatlaw.com

Attorney for Co-Trustee, Amy Brunsting

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224
F: 713-522-2218
E: bayless@baylessstokes.com

Attorney for Drina Brunsting,
Alleged Attorney in Fact for Carl Brunsting

Candace L. Schwager (24005603)
Schwager Law Firm
2210 Village Dale Ave.
Houston, TX 77059
O: 832-857-7173
E: candiceschwager@icloud.com

Attorney for Candace Louise Curtis

Carole Ann Brunsting
5822 Jason St.
Houston, Texas 77074
E: cbrunsting@sbcglobal.net

Pro Se

via eService, email, telefax, or first-class mail, on this January 6, 2022.

// s // Stephen A. Mendel

Stephen A. Mendel

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, Et Al	§	
	§	
V.	§	
	§	
ANITA KAY BRUNSTING, Et Al	§	

Order Granting Motion to Sever

On this day, the Court considered the motion to sever filed by Plaintiff, Carl which was heard on February 11, 2022 \
Brunsting, and Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting. After considering the motion, responses, and the arguments of counsel and/or the parties, if any, it is, therefore:

ORDERED that the Court severs the claims of Plaintiff, Carl Brunsting, against Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting, and those of the Defendant/Co-Trustees against Plaintiff, Carl Brunsting, into a separate cause number to be known as C.A. 412,249-405; *Carl Henry Brunsting v. Anita Kay Brunsting, Et Al*; In Probate Court No. 4, Harris County, Texas.

It is further ORDERED that the Clerk's Office shall transfer copies of the following instruments from C.A. No. 412,249-401 to the new cause number as referenced in the preceding paragraph:

05/13/2013 Defendant/Co-Trustee Amy R. Brunsting's Original Answer & Request for Disclosures (5 Pages).

05/13/2013 Defendant/Co-Trustee Anita K. Brunsting's Original Answer & Request for Disclosures (5 Pages).

05/31/2013 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's 1ST Amended Answer (6 Pages).

06/07/2013 Plaintiff Carl Henry Brunsting's 1ST Amended Petition for Declaratory Judgment (18 Pages).

12/01/2014 Plaintiff Carl Henry Brunsting's Designation of Expert Witnesses (10 Pages)

12/05/2014 Defendant/Co-Trustee Anita K. Brunsting's Response to Plaintiff's Motion to Remove Trustee (3 Pages).

12/08/2014 Defendant/Co-Trustee Amy R. Brunsting's Response to Plaintiff Carl Henry Brunsting's Motion to Remove Trustee (4 Pages).

03/20/2015 Plaintiff Carl Henry Brunsting's 1ST Supplement to 1ST Amended Petition & Request for Injunctive Relief (4 Pages).

03/23/2015 Plaintiff Carl Henry Brunsting's Response to Anita Brunsting's Motion to Compel Carl Brunsting's Response to Anita Brunsting's Request for Disclosures with Exhibits 1-5 (43 Pages).

07/01/2015 Defendants/Co-Trustee Anita K. Brunsting's Expert Witness Designations (3 Pages)

07/10/2015 Plaintiff Carl Henry Brunsting's 2ND Supplement to Plaintiff Carl Henry Brunsting's 1ST Amended Petition & Request for Injunctive Relief / Film Code No. PBT-2015-225377 (3 Pages).

08/03/2015 Plaintiff Carl Henry Brunsting's 3RD Supplement to Plaintiff 1ST Amended Petition & Request for Injunctive Relief / Film Code No. PBT-2015-250703 (6 Pages).

08/29/2018 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's Joint Response to Plaintiff's Motion for Partial Summary Judgment with Exhibit A (20 Pages).

11/04/2019 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's 2ND Amended Answer (6 Pages).

11/04/2019 Defendants/Co-Trustees Amy R. Brunsting's & Anita K. Brunsting's Original Counterclaim (8 Pages).

07/30/2020 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's Response to C. Brunsting's Partial MSJ with Exhibits A-E (225 Pages).

08/04/2020 Plaintiff Carl Henry Brunsting's Reply to Defendants' Response to Carl's Motion for Partial Summary Judgment (10 Pages)

08/13/2020 Order on Briefing as to Plaintiff Carl Henry Brunsting's Motion for Partial Summary Judgment (2 Pages).

09/10/2020 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's Joint Amended Response to Carl Brunsting's Motion for Partial Summary Judgment with Stephen A. Mendel's Declaration Regarding Exhibits A-J & Exhibits A-J (456 Pages).

09/17/2020 Defendants/Co-Trustees Anita K. Brunsting & Amy R. Brunsting's 1ST Supplemental Answer (3 Pages).

09/25/2020 Plaintiff Carl Henry Brunsting's Reply to Defendants Amy R. Brunsting & Anita K. Brunsting's Amended Response to Carl's Motion for Partial Summary Judgment (14 Pages).

10/15/2021 Plaintiff Carl Henry Brunsting's Original Answer to Amy R. Brunsting's & Anita K. Brunsting's Original Counterclaim (4 Pages).

10/15/2021 Plaintiff Carl H. Brunsting's 4TH Supplement to First Amended Petition & Request for Injunctive Relief (3 Pages).

11/04/2021 Plaintiff Carl Henry Brunsting's 2ND Amended Expert Witness Designation & Further Supplement to Carl's Responses to All Requests for Disclosures (13 Pages).

11/05/2021 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting Motion for Summary Judgment & Exhibits A-L (265 Pages).

11/12/2021 Order Denying Part of Plaintiff Carl Henry Brunsting's Motion for Partial Summary Judgment.

12/06/2021 2021-12-05 Rule 11 Agreement – Plaintiff Carl Henry Brunsting & Defendants/Co-Trustees Anita K. Brunsting & Amy R. Brunsting (4 Pages).

01/08/2022 Plaintiff Carl H. Brunsting & Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's Agreed Motion to Sever (3 Pages).

SIGNED on this _____, 2022.

_____
Presiding Judge

cc

APPROVED AS TO FORM:

Bobbie G. Bayless (01940600)
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224
F: 713-522-2218
E: bayless@baylessstokes.com

Counsel for Plaintiff/Counter-Defendant/Co-Trustee
Anita Brunsting

&

Stephen A. Mendel (13930650)
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079
O: 281-759-3213
F: 281-759-3214
E: info@mendellawfirm.com

Counsel for Defendant/Co-Trustee
Anita Brunsting

&

Neal Spielman (00794678)
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124
F: 281-870-1647
E: nspielman@grifmatlaw.com

Counsel for Defendant/Co-Trustee
Amy R. Brunsting

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stephen Mendel
Bar No. 13930650
info@mendellawfirm.com
Envelope ID: 62429808
Status as of 3/9/2022 3:46 PM CST

Associated Case Party: CAROLEANNBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Carole AnnBrusnting		cbrunsting@sbcglobal.net	3/9/2022 8:37:14 AM	SENT

Associated Case Party: ANITAKAYBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Stephen A.Mendel		info@mendellawfirm.com	3/9/2022 8:37:14 AM	SENT

Associated Case Party: CANDACE LOUISECURTIS

Name	BarNumber	Email	TimestampSubmitted	Status
Candice Schwager		candiceschwager@icloud.com	3/9/2022 8:37:14 AM	SENT

Associated Case Party: CANDACELKUNZ-FREED

Name	BarNumber	Email	TimestampSubmitted	Status
Cory SReed		creed@thompsoncoe.com	3/9/2022 8:37:14 AM	SENT

Associated Case Party: NealESpielman

Name	BarNumber	Email	TimestampSubmitted	Status
Neal ESpielman		nspielman@grifmatlaw.com	3/9/2022 8:37:14 AM	SENT

Associated Case Party: CARLHENRYBRUNSTIING

Name	BarNumber	Email	TimestampSubmitted	Status
Bobbie G.Bayless		bayless@baylessstokes.com	3/9/2022 8:37:14 AM	SENT

Automated Certificate of eService

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Stephen Mendel
Bar No. 13930650
info@mendellawfirm.com
Envelope ID: 62429808
Status as of 3/9/2022 3:46 PM CST

Associated Case Party: AMYRUTHBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Neal Spielman		nspielman@grifmatlaw.com	3/9/2022 8:37:14 AM	SENT

FILED
3/18/2022 12:24 PM
Teneshia Hudspeth
County Clerk
Harris County - County Probate Court No. 4
Accepted By: AG

NO. 412.249-401

ESTATE OF	§	**IN PROBATE COURT**
	§	
NELVA E. BRUNSTING,	§	**NUMBER FOUR (4) OF**
	§	
DECEASED	§	**HARRIS COUNTY, T E X A S**

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	**IN PROBATE COURT**
vs.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	**NUMBER FOUR (4) OF**
	§	**HARRIS COUNTY, T E X A S**

PLAINTIFF'S NOTICE OF NON-SUIT WITHOUT PREJUDICE

Plaintiff, Drina Brunsting, as attorney-in-fact for Carl Henry Brunsting, individually ("Carl"), notifies the Court and all parties that she hereby non-suits, without prejudice, Carl's action against Candace Louise Curtis, as a nominal defendant, to be effective immediately upon the filing of this Notice.

Dated this 18th day of March, 2022.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

Bobbie G. Bayless
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Drina Brunsting as attorney-in-fact for Carl Henry Brunsting, Individually

CERTIFICATE OF SERVICE

Pursuant to the Texas Rules of Civil Procedure, I hereby certify that on March 18, 2022, a true and correct copy of this document was delivered to all counsel of record, and all other interested parties, via certified mail, return receipt requested, e-mail, facsimile, e-file service, hand delivery, and/or by other accepted method.

Stephen A. Mendel
The Mendel Law Firm, LP
1155 Dairy Ashford, Suite 104
Houston, Texas 77079

Candice L. Schwager
Attorney at Law
16807 Pinemoor Way
Houston, Texas 77058

Neal Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

John Bruster "Bruse" Loyd
Jones, Gillaspia & Loyd, LLP
4400 Post Oak Pkwy, Suite 2360
Houston, Texas 77027

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

OFFICE OF TENESHIA HUDSPETH, COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

Address all Correspondence to:
P. O. Box 1525
Houston, Texas 77251-1525

BILL OF COST
IN
PROBATE COURT NO. County Probate Court No. 4
FOR
DOCKET No. 412249-401

In the Estate of: Nelva E Brunsting, Deceased

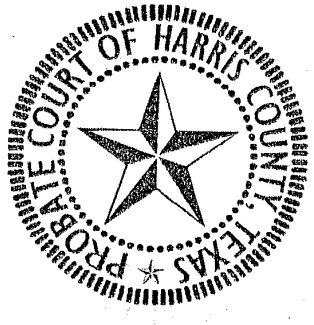
CARL HENRY BRUNSTIING	VS.	**ANITA KAY BRUNSTING, AMY BRUNSTING, CAROLE ANN BRUNSTING & CANDACE LOUISE CURTIS**

FEES PAID BY:	**FILING:**	**DEPOS:**	**TOTAL**
ATTORNEY FOR APPELLANT: Candice L. Schwager	$261.00	$0.00	$261.00
Neal E. Spielman	$206.00	$0.00	$206.00
Stephen A. Mendel	$39.00	$0.00	$39.00
John Bruster Loyd	$136.00	$0.00	$136.00
ATTORNEY FOR APPELLEE: Bobbie G. Bayless	$298.00	$0.00	$298.00

Transcript Fee $341.12 paid by Appellant Candice Curtis

THE COUNTY CLERK'S FEE FOR PREPARING THE TRANSCRIPT HAS BEEN PAID.

A true and correct bill of cost in the above cause as shown by fee account ledgers, to which I hereby certify on this the 2nd day of June, 2023.



Teneshia Hudspeth, County Clerk
County Probate Court No. 4
Harris County, Texas

_/S/Evony Simon
Evony Simon, Deputy County Clerk

COUNTY PROBATE COURT NO. 4

CASE SUMMARY

CASE NO. 412249-401

In the Estate of: NELVA E BRUNSTING, Deceased	§ Location:	**County Probate Court No. 4**
	§ Judicial Officer:	**Horwitz, James**
	§ Filed on:	**04/09/2013**
	§ Case Number History:	
	§ Appellate Case Number:	**01-22-00378-CV**
	§	**01-23-00362-CV**

CASE INFORMATION

Related Cases
412249 (Companion Case)
412249-402 (Companion Case)
412249-403 (Ancillary Matter)
412249-404 (Ancillary Matter)
412249-405 (Companion Case)

Case Type: **Ancillary (Independent Administration)**
Subtype: **Lawsuit for Declaratory Judgment (indep.)**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	412249-401
Court	County Probate Court No. 4
Date Assigned	01/01/2019
Judicial Officer	Horwitz, James

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**BRUNSTIING, CARL HENRY**	**BAYLESS, BOBBIE G.** *Retained* 713-522-2224(W)
Defendant	**BRUNSTING, AMY RUTH**	**Spielman, Neal E** *Retained* 281-870-1124(W)
	BRUNSTING, ANITA KAY	**MENDEL , STEPHEN A.** *Retained* 281-759-3213(W)
	BRUNSTING, CAROLE ANN	**LOYD, JOHN BRUSTER** *Retained* 713-225-9000(W)
	CURTIS, CANDACE LOUISE	**SCHWAGER, CANDICE LEONARD** *Retained* 832-857-7173(W)
Deceased	**BRUNSTING, NELVA E**	

DATE — EVENTS & ORDERS OF THE COURT — INDEX

DATE	EVENTS & ORDERS OF THE COURT	INDEX
04/09/2013	Case Initiated Application (OCA) Party: Deceased BRUNSTING, NELVA E	
04/09/2013	Folder Created	
04/09/2013	Case Related	
04/09/2013	Party Added : Plaintiff BRUNSTIING, CARL HENRY	

04/09/2013	Party Added : Defendant BRUNSTING, ANITA KAY	
04/09/2013	Party Added : Defendant BRUNSTING, AMY RUTH	
04/09/2013	Party Added : Defendant BRUNSTING, CAROLE ANN	
04/09/2013	Party Added : Defendant CURTIS, CANDACE LOUISE	
04/09/2013	Declaratory Judgment (Indep.) Party: Plaintiff BRUNSTIING, CARL HENRY *PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES* *1 PERS IN* *-CAROLE ANN BRUNSTING* *Film code number PBT-2013-115617*	*Vol./Book PBT-2013-115617 20 pages*
04/09/2013	Citation Issued Party: Plaintiff BRUNSTIING, CARL HENRY *1 PERS IN* *-CAROLE ANN BRUNSTING*	
04/09/2013	Civil Case Information Sheet	*Vol./Book PBT-2013-115629 1 pages*
04/09/2013	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
04/10/2013	Lawsuit Personal - Out / Private *CAROLE ANN BRUNSTING, 1333 W LOOP S., STE. 1700, HOU., TX 77027* *Film code number PBT-2013-116956*	*Vol./Book PBT-2013-116956 2 pages*
04/11/2013	Folder Check In/Out Event	
04/16/2013	Citation Returned Party: Defendant BRUNSTING, CAROLE ANN *SERVED PERSONAL CITATION TO CAROLE ANN BRUNSTING ON 4/15/13* *Film code number PBT-2013-124419*	*Vol./Book PBT-2013-124419 2 pages*
04/16/2013	Folder Check In/Out Event	
04/16/2013	Citation Issued Party: Plaintiff BRUNSTIING, CARL HENRY *1 PERS BY P/P* *ANITA KAY BRUNSTING F/K/A/* *ANITA KAY RILEY* *203 BLOOMINGDALE CIRCLE* *VICTORIA, VICTORIA COUNTY, TX 77904*	
04/16/2013	Citation Issued Party: Plaintiff BRUNSTIING, CARL HENRY	

	1 PER BY P/P *AMY RUTH BRUNSTING F/K/A* *AMY RUTH TSCHIRHART* *2582 COUNTRY LEDGE* *NEW BRAUNFELS, COMAL COUNTY, TX 78132*	
04/16/2013	RECEIVABLE VOIDED : Plaintiff BRUNSTIING, CARL HENRY	
04/16/2013	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
04/17/2013	Lawsuit Personal - Out / Private *ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, 203 BLOOMINGDALE CIRCLE, VICTORIA, VICTORIA COUNTY, TEXAS 77904* *Film code number PBT-2013-124969*	*Vol./Book PBT-2013-124969 1 pages*
04/17/2013	Lawsuit Personal - Out / Private *AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 2582 COUNTRY LEDGE, NEW BRAUNFELS, COMAL COUNTY, TEXAS 78132* *Film code number PBT-2013-125034*	*Vol./Book PBT-2013-125034 1 pages*
04/22/2013	Waiver *CANDACE LOUISE CURTIS* *Film code number PBT-2013-130579*	*Vol./Book PBT-2013-130579 3 pages*
05/03/2013	CounterClaim to Declaratory Judgment (Indep.) Party: Defendant BRUNSTING, CAROLE ANN *CAROLE ANN BRUNSTING'S SPECIAL EXCEPTIONS AND SUBJECT THERETO ORIGINAL ANSWER AND COUNTERCLAIM* *Film code number PBT-2013-146160*	*Vol./Book PBT-2013-146160 16 pages*
05/06/2013	Receipt Voided : Defendant BRUNSTING, CAROLE ANN	
05/06/2013	RECEIPT Party: Defendant BRUNSTING, CAROLE ANN	
05/06/2013	RECEIPT Party: Defendant BRUNSTING, CAROLE ANN	
05/08/2013	Folder Check In/Out Event	
05/08/2013	Affidavit *PETER DOWDLE* *Film code number PBT-2013-151607*	*Vol./Book PBT-2013-151607 1 pages*
05/08/2013	Affidavit *JOHN KASPAR* *Film code number PBT-2013-151609*	*Vol./Book PBT-2013-151609 1 pages*

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05/10/2013	Folder Check In/Out Event	
05/13/2013	Answer *AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES* *Film code number PBT-2013-154977*	*Vol./Book PBT-2013-154977 5 pages*
05/13/2013	Answer *ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES* *Film code number PBT-2013-154981*	*Vol./Book PBT-2013-154981 5 pages*
05/14/2013	Folder Check In/Out Event	
05/15/2013	Folder Check In/Out Event	
05/16/2013	Folder Check In/Out Event	
05/29/2013	Certificate *CERTIFICATE OF WRITTEN DISCOVERY* *Film code number PBT-2013-174241*	*Vol./Book PBT-2013-174241 3 pages*
05/30/2013	Folder Check In/Out Event	
05/31/2013	Amended *AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHARD, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE* *Film code number PBT-2013-176474*	*Vol./Book PBT-2013-176474 6 pages*
05/31/2013	Amended *ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY, AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AS A SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THENELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET*	*Vol./Book PBT-2013-176480 6 pages*

	TRUST, AND THE ANITA KAY BRUNSTING PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE *Film code number PBT-2013-176480*	
06/04/2013	Folder Check In/Out Event	
06/04/2013	Folder Check In/Out Event	
06/06/2013	Folder Check In/Out Event	
06/07/2013	Amended *FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, AND FOR IMPOSITION OF A CONSTRUCTIVE TRUST* *Film code number PBT-2013-185898*	*Vol./Book PBT-2013-185898 18 pages*
06/10/2013	Folder Check In/Out Event	
06/12/2013	Folder Check In/Out Event	
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06/26/2013	Certificate *OF WRITTEN DISCOVERY* *Film code number PBT-2013-207728*	*Vol./Book PBT-2013-207728 3 pages*
11/11/2013	Docket Control Order	
11/27/2013	Certificate *OF WRITTEN DISCOVERY* *FILE AS IS PER ATTY* *Film code number PBT-2013-385311*	*Vol./Book PBT-2013-385311 3 pages*
05/01/2014	Docket Control Order *Amended*	
05/02/2014	Docket Control Order	
05/28/2014	Application of Miscellaneous kind Party: Defendant CURTIS, CANDACE LOUISE *MOTION TO ENTER TRANSFER ORDER* *Film code number PBT-2014-176707*	*Vol./Book PBT-2014-176707 7 pages*
05/28/2014	Electronic Filing Fee Party: Defendant CURTIS, CANDACE LOUISE	
05/29/2014	RECEIPT Party: Defendant CURTIS, CANDACE LOUISE	

05/30/2014	Folder Check In/Out Event	
06/04/2014	Miscellaneous Order Party: Deceased BRUNSTING, NELVA E *ORDER OF TRANSFER, SIGNED JUNE 3, 2014* *Film code number PBT-2014-184792*	*Vol./Book PBT-2014-184792 7 pages*
06/04/2014	Folder Check In/Out Event	
07/02/2014	Agreed Order Party: Deceased BRUNSTING, NELVA E *DOCKET CONTROL* *ORDER NOT ENTERED* *Film code number PBT-2014-218797*	*Vol./Book PBT-2014-218797 3 pages*
07/02/2014	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
07/03/2014	Party Added : Attorney BAYLESS, BOBBIE G.	
07/03/2014	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
07/07/2014	Folder Check In/Out Event	
07/09/2014	Agreed Order Party: Deceased BRUNSTING, NELVA E *DOCKET CONTROL ORDER SIGNED 7/8/14* *Film code number PBT-2014-225383*	*Vol./Book PBT-2014-225383 3 pages*
07/09/2014	Folder Check In/Out Event	
07/30/2014	Application of Miscellaneous kind Party: Plaintiff BRUNSTIING, CARL HENRY *AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H BRUNSTING DECEDENT TRUST AND THE NELVA F BRUNSTING SURVIVOR TRUST TO PAY MEDIATOR FEE* *Film code number PBT-2014-250085*	*Vol./Book PBT-2014-250085 7 pages*
07/30/2014	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
07/31/2014	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
08/04/2014	Folder Check In/Out Event	
08/05/2014	Folder Check In/Out Event	
08/05/2014	Legacy Event	*Vol./Book PBT-2014-256006 7 pages*

Party: Deceased BRUNSTING, NELVA E
ORDER APPROVING AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY MEDIATOR'S FEE
IT IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY ANDREWS KURTH LLP MEDIATION FEE OF $6,500.00, AND ANY ADDITIONAL FEES AGREED TO IN WRITING, ONE HALF OF FEES SHALL BE PAID OUT OF THE DECEDENT'S TRUST AND ONE HALF OUT OF THE SURVIVOR'S TRUST SIGNED AUGUST 4, 2014
Film code number PBT-2014-256006

08/26/2014	Electronic Filing Fee Party: Attorney MCCUTCHEN, MAUREEN K.	
08/27/2014	Notice of Hearing *ORAL HEARING* *SEPTEMBER 4, 2014* *AT 10:30 AM* *Film code number PBT-2014-280737*	*Vol./Book PBT-2014-280737 2 pages*
08/27/2014	Party Added : Attorney MCCUTCHEN, MAUREEN K.	
08/27/2014	RECEIPT Party: Attorney MCCUTCHEN, MAUREEN K.	
08/27/2014	Application of Miscellaneous kind Party: Defendant BRUNSTING, ANITA KAY *MOTION TO DISTRINUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SUTVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FES* *Film code number PBT-2014-281213*	*Vol./Book PBT-2014-281213 8 pages*
08/27/2014	Miscellaneous Order Party: Defendant BRUNSTING, ANITA KAY *ORDER APPROVING MOTION TO DISTRIBUTE FUNDS - ORDER NOT ENTERED* *Film code number PBT-2014-281217*	*Vol./Book PBT-2014-281217 2 pages*
08/27/2014	Electronic Filing Fee Party: Defendant BRUNSTING, ANITA KAY	
08/27/2014	Attorney Assigned : Attorney MCCUTCHEN, MAUREEN K.	
08/27/2014	RECEIVABLE VOIDED : Defendant BRUNSTING, ANITA KAY	
08/27/2014	RECEIPT Party: Defendant BRUNSTING, ANITA KAY	
09/04/2014	Miscellaneous Order Party: Deceased BRUNSTING, NELVA E *ORDER APPROVING MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING SURVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FEES*	*Vol./Book PBT-2014-288833 2 pages*

	*IT IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY, AND SHALL HAVE AUTHORITY TO PAY WITHOUT FURTHER ORDER OF THIS COURT AND THAT ALL PAYMENTS REGARDING THE ELMER H. BRUNSTING DECEDENT'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3536* *AND THAT ALL PAYMENTS REGARDING THE NELVA F. BRUNSTING SURVIVOR'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3523* *SIGNED SEPTEMBER 4, 2014* *Film code number PBT-2014-288833*	
09/09/2014	Notice of Hearing	*Vol./Book PBT-2014-293662 3 pages*
09/09/2014	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
09/09/2014	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
09/09/2014	Legacy Event Party: Attorney MCCUTCHEN, MAUREEN K.	*Vol./Book PBT-2014-294428 7 pages*
09/09/2014	Electronic Filing Fee Party: Attorney MCCUTCHEN, MAUREEN K.	
09/09/2014	RECEIPT Party: Attorney MCCUTCHEN, MAUREEN K.	
09/17/2014	Affidavit of Notice	*Vol./Book PBT-2014-303915 8 pages*
09/17/2014	Electronic Filing Fee Party: Defendant BRUNSTING, ANITA KAY	
09/17/2014	RECEIPT Party: Defendant BRUNSTING, ANITA KAY	
09/18/2014	Order to Withdraw as Attorney of Record Party: Attorney MCCUTCHEN, MAUREEN K. *ORDER GRANTING MOTION FOR WITHDRAWAL OF COUNSEL FOR ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY AND AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART* *IT IS ORDERED THAT MAUREEN*	*Vol./Book PBT-2014-305816 2 pages*
10/27/2014	Folder Check In/Out Event	
11/04/2014	Folder Check In/Out Event	
11/07/2014	Response *PLAINTIFFS RESPONSE TO CANDACE LOUISE CURTIS MOTION FOR DISTRIBUTION OF TRUST FUNDS* *Film code number PBT-2014-363907*	*Vol./Book PBT-2014-363907 3 pages*
11/07/2014	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	

11/07/2014	Application of Miscellaneous kind Party: Plaintiff BRUNSTIING, CARL HENRY	*Vol./Book PBT-2014-363911 6 pages*
11/07/2014	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
11/07/2014	Application of Miscellaneous kind Party: Attorney BAYLESS, BOBBIE G. *CARL BRUNSTING MOTION TO MODIFY PRELIMINARY INJUNCATION* *Film code number PBT-2014-363923*	*Vol./Book PBT-2014-363923 16 pages*
11/07/2014	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
11/07/2014	Notice of Hearing *NOVEMBER 17, 2014 AT 2:00 PM* *Film code number PBT-2014-363941*	*Vol./Book PBT-2014-363941 2 pages*
11/07/2014	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
11/07/2014	Notice of Hearing *OF ORAL* *ON 11/17/2014 AT 2:00 PM* *Film code number PBT-2014-363948*	*Vol./Book PBT-2014-363948 2 pages*
11/07/2014	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
11/10/2014	RECEIVABLE VOIDED : Attorney BAYLESS, BOBBIE G.	
11/10/2014	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
11/10/2014	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
11/10/2014	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
11/10/2014	Receipt Voided : Attorney BAYLESS, BOBBIE G.	
11/10/2014	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
11/10/2014	RECEIVABLE VOIDED : Attorney BAYLESS, BOBBIE G.	
11/12/2014	Folder Check In/Out Event	
11/13/2014	Attorney Assigned	

	: Attorney Walsh, Lori A.	
11/13/2014	Objection Party: Attorney Walsh, Lori A. *OBJECTION TO PLAINTIFFS MOTION FOR DISTRIBUTION OF TRUST FUNDS* *Film code number PBT-2014-369853*	*Vol./Book PBT-2014-369853 7 pages*
11/13/2014	Demand for a Jury Party: Attorney Walsh, Lori A.	*Vol./Book PBT-2014-369857 3 pages*
11/13/2014	Electronic Filing Fee Party: Attorney Walsh, Lori A.	
11/13/2014	RECEIPT Party: Attorney Walsh, Lori A.	
11/14/2014	Designation Party: Other FEATHERSTON, BRAD *NOTICE OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL* *Film code number PBT-2014-371437*	*Vol./Book PBT-2014-371437 3 pages*
11/14/2014	Electronic Filing Fee Party: Other FEATHERSTON, BRAD	
11/17/2014	Party Added : Other FEATHERSTON, BRAD	
11/17/2014	RECEIPT Party: Other FEATHERSTON, BRAD	
11/17/2014	Notice of Hearing *AMENDED NOTICE OF ORAL HEARING* *Film code number PBT-2014-373927*	*Vol./Book PBT-2014-373927 2 pages*
11/17/2014	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
11/17/2014	Amended *AMENDED NOTICE OF ORAL HEARING* *DECEMBER 09, 2014 AT 3:00 P.M.* *Film code number PBT-2014-373944*	*Vol./Book PBT-2014-373944 2 pages*
11/17/2014	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
11/18/2014	Folder Check In/Out Event	
11/18/2014	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
11/18/2014	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	

11/19/2014	Folder Check In/Out Event	
11/20/2014	Folder Check In/Out Event	
12/01/2014	Declination to Serve *CARL HENRY BRUNSTING'S EXPERT WITNESS DESIGNATION* *Film code number PBT-2014-387708*	*Vol./Book PBT-2014-387708 10 pages*
12/01/2014	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
12/01/2014	Designation Party: Defendant BRUNSTING, CAROLE ANN *OF EXPERT WITNESSES* *Film code number PBT-2014-385649*	*Vol./Book PBT-2014-385649 15 pages*
12/01/2014	Electronic Filing Fee Party: Defendant BRUNSTING, CAROLE ANN	
12/01/2014	Witness List Party: Attorney SAIN THORNTON, NICOLE K. *PLAINTIFFS DESIGNATION OF EXPERT WITNESS* *Film code number PBT-2014-387901*	*Vol./Book PBT-2014-387901 9 pages*
12/01/2014	Electronic Filing Fee Party: Attorney SAIN THORNTON, NICOLE K.	
12/01/2014	RECEIPT Party: Defendant BRUNSTING, CAROLE ANN	
12/02/2014	Attorney Assigned : Attorney SAIN THORNTON, NICOLE K.	
12/02/2014	RECEIPT Party: Attorney SAIN THORNTON, NICOLE K.	
12/02/2014	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
12/02/2014	Folder Check In/Out Event	
12/05/2014	Response *TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS* *Film code number PBT-2014-393808*	*Vol./Book PBT-2014-393808 156 pages*
12/05/2014	Instrument Over 25 Pages Party: Other FEATHERSTON, BRAD	
12/05/2014	Electronic Filing Fee Party: Other FEATHERSTON, BRAD	

12/05/2014	Response *TO CARL'S MOTION TO REMOVE TRUSTEES* *Film code number PBT-2014-393812*	*Vol./Book PBT-2014-393812 3 pages*
12/05/2014	Electronic Filing Fee Party: Other FEATHERSTON, BRAD	
12/08/2014	APPEARANCE *OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL FOR AMY RUTH BRUNSTING* *Film code number PBT-2014-395795*	*Vol./Book PBT-2014-395795 3 pages*
12/08/2014	Electronic Filing Fee Party: Attorney Spielman, Neal E	
12/08/2014	Response *AMY RUTH BRUNSTING'S REPONSE TO CARL HENRY BRUNSTING'S MOTION TO REMOVE TRUSTEE* *Film code number PBT-2014-395809*	*Vol./Book PBT-2014-395809 4 pages*
12/08/2014	Electronic Filing Fee Party: Attorney Spielman, Neal E	
12/08/2014	RECEIPT Party: Other FEATHERSTON, BRAD	
12/09/2014	Objection Party: Defendant BRUNSTING, CAROLE ANN *TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS* *Film code number PBT-2014-396928*	*Vol./Book PBT-2014-396928 7 pages*
12/09/2014	Miscellaneous Order Party: Defendant CURTIS, CANDACE LOUISE *ORDER DENYING CANDACE CURTIS' MOTION FOR DISTRIBUTION OF TRUST FUNDS AND CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS; SIGNED 12/9/14* *Film code number PBT-2014-396930*	*Vol./Book PBT-2014-396930 1 pages*
12/09/2014	Party Added : Attorney Spielman, Neal E	
12/09/2014	RECEIPT Party: Attorney Spielman, Neal E	
12/09/2014	Objection Party: Defendant BRUNSTING, CAROLE ANN *OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS* *Film code number PBT-2014-396326*	*Vol./Book PBT-2014-396326 7 pages*
12/09/2014	Electronic Filing Fee Party: Defendant BRUNSTING, CAROLE ANN	

12/09/2014	RECEIPT Party: Defendant BRUNSTING, CAROLE ANN	
12/10/2014	Folder Check In/Out Event	
12/11/2014	Folder Check In/Out Event	
12/18/2014	Folder Check In/Out Event	
02/11/2015	Subpoena Returned Party: Plaintiff BRUNSTIING, CARL HENRY	*Vol./Book PBT-2015-65011 1 pages*
02/12/2015	Certificate *OF WRITTEN DISCOVERY* *Film code number PBT-2015-49926*	*Vol./Book PBT-2015-49926 2 pages*
02/12/2015	Electronic Filing Fee Party: Defendant BRUNSTING, CAROLE ANN	
02/13/2015	RECEIPT Party: Defendant BRUNSTING, CAROLE ANN	
02/17/2015	Misc. Notice *NOTICE OF SUBSTITUTION OF PARTY* *Film code number PBT-2015-56642*	*Vol./Book PBT-2015-56642 2 pages*
02/17/2015	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
02/18/2015	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
02/19/2015	Miscellaneous Order Party: Defendant CURTIS, CANDACE LOUISE *ORDER DENYING PLANTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION; SIGNED 2/18/15* *Film code number PBT-2015-58239*	*Vol./Book PBT-2015-58239 2 pages*
02/19/2015	Folder Check In/Out Event	
02/20/2015	Agreed Order Party: Deceased BRUNSTING, NELVA E *AGREED DOCKET CONTROL ORDER; SIGNED 2/19/15* *Film code number PBT-2015-59154*	*Vol./Book PBT-2015-59154 2 pages*
02/23/2015	Folder Check In/Out Event	
03/05/2015	Order to Consolidate Party: Defendant BRUNSTING, CAROLE ANN	*Vol./Book PBT-2015-76288 4 pages*

	ORDER NOT ENTERED *Film code number PBT-2015-76288*	
03/05/2015	Electronic Filing Fee Party: Defendant BRUNSTING, CAROLE ANN	
03/05/2015	Conform Copies Party: Defendant BRUNSTING, CAROLE ANN	
03/06/2015	RECEIPT Party: Defendant BRUNSTING, CAROLE ANN	
03/09/2015	Folder Check In/Out Event	
03/10/2015	Objection Party: Defendant BRUNSTING, ANITA KAY *OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE* *Film code number PBT-2015-79533*	*Vol./Book PBT-2015-79533 16 pages*
03/10/2015	Electronic Filing Fee Party: Defendant BRUNSTING, ANITA KAY	
03/10/2015	RECEIPT Party: Defendant BRUNSTING, ANITA KAY	
03/11/2015	Application to Compel (Indep.) Party: Other FEATHERSTON, BRAD *CARL & CANDACE TO RESPOND TO DISCLOSURES* *Film code number PBT-2015-81853*	*Vol./Book PBT-2015-81853 31 pages*
03/11/2015	Electronic Filing Fee Party: Other FEATHERSTON, BRAD	
03/11/2015	RECEIVABLE VOIDED : Other FEATHERSTON, BRAD	
03/11/2015	RECEIPT Party: Other FEATHERSTON, BRAD	
03/16/2015	Order to Consolidate *ordered that all pleadings filed under or assigned to Cuase Number 412249-402 be moved into Cuase Number 412249-401 per order signed March 16, 2015.*	
03/20/2015	Amended *FIRST SUPPLEMENT TO PLAINTIFF'S FIRST AMENDED PETITION* *Film code number PBT-2015-94015*	*Vol./Book PBT-2015-94015 4 pages*
03/20/2015	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
03/23/2015	Order to Compel (Dep.) Party: Defendant BRUNSTING, ANITA KAY	*Vol./Book PBT-2015-95392 2 pages*

	CARL AND CANDACE TO REPOND TO DISCLOSURES; SIGNED 3/23/15 *Film code number PBT-2015-95392*	
03/23/2015	Objection Party: Defendant BRUNSTING, AMY RUTH *OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR* *Film code number PBT-2015-95444*	*Vol./Book PBT-2015-95444 4 pages*
03/23/2015	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
03/23/2015	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
03/24/2015	Response *RESPONSE TO ANITA BRUNSTING'S MOTION TO COMPEL CARL BRUNSTING TO RESPOND TO DISCLOSURES* *Film code number PBT-2015-97461*	*Vol./Book PBT-2015-97461 43 pages*
03/24/2015	Instrument Over 25 Pages Party: Plaintiff BRUNSTIING, CARL HENRY	
03/24/2015	Electronic Filing Fee Party: Plaintiff BRUNSTIING, CARL HENRY	
03/24/2015	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
03/25/2015	RECEIPT Party: Plaintiff BRUNSTIING, CARL HENRY	
03/31/2015	Order to Compel (Dep.) Party: Deceased BRUNSTING, NELVA E *THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE* *Film code number PBT-2015-105354*	*Vol./Book PBT-2015-105354 43 pages*
04/10/2015	Application of Miscellaneous kind Party: Defendant CURTIS, CANDACE LOUISE *LAW MOTION TO SHOW AUTHORITY TRCP 12* *MOTION TO DISMISS FOR WANT OF JURISDICTION* *Film code number PBT-2015-117405*	*Vol./Book PBT-2015-117405 7 pages*
04/10/2015	RECEIPT Party: Defendant CURTIS, CANDACE LOUISE	
06/18/2015	Rule 11 Agreement Party: Attorney BAYLESS, BOBBIE G. *STIPULATION AND RULE 11 AGREEMENT CONCERNING MOTION TO SHOW AUTHORITY* *Film code number PBT-2015-198889*	*Vol./Book PBT-2015-198889 17 pages*

06/18/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
06/18/2015	Judge Signature Fee Party: Attorney BAYLESS, BOBBIE G.	
06/19/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
06/26/2015	Application for Summary Judgment Party: Defendant BRUNSTING, ANITA KAY *ANITA AND AMY BRUNSTING'S JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT* *Film code number PBT-2015-208305*	*Vol./Book PBT-2015-208305 9 pages*
06/26/2015	Electronic Filing Fee Party: Defendant BRUNSTING, ANITA KAY	
06/26/2015	RECEIPT Party: Defendant BRUNSTING, ANITA KAY	
07/01/2015	No Fee - Other Party: Attorney Spielman, Neal E *AMY RUTH BRUNSTING DESIGNATION OF EXPERTS* *Film code number PBT-2015-214532*	*Vol./Book PBT-2015-214532 4 pages*
07/01/2015	Electronic Filing Fee Party: Attorney Spielman, Neal E	
07/01/2015	No Fee - Other Party: Other FEATHERSTON, BRAD *ANITA KAY BRUNSTING EXPERT DESIGNATION* *Film code number PBT-2015-213684*	*Vol./Book PBT-2015-213684 6 pages*
07/01/2015	Electronic Filing Fee Party: Other FEATHERSTON, BRAD	
07/01/2015	Amended *CARL HENRY BRUNSTING FIRST AMENDED EXPERT WITNESS DESIGNATION AND FURTHER SUPPLEMENT TO CAROL RESPONSES TO ALL REQUESTS FOR DISCLOSURES* *Film code number PBT-2015-213764*	*Vol./Book PBT-2015-213764 3 pages*
07/01/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
07/01/2015	RECEIPT Party: Other FEATHERSTON, BRAD	
07/01/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
07/02/2015	Miscellaneous Order	*Vol./Book PBT-2015-*

		216035 17 pages
	Party: Deceased BRUNSTING, NELVA E *ORDER DENYING LAW-MOTION-TO-SHOW-AUTHORITY-TRCP-12; THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE* *Film code number PBT-2015-216035*	
07/02/2015	RECEIPT Party: Attorney Spielman, Neal E	
07/07/2015	Notice of Intention to Take Written Deposition Party: Other FEATHERSTON, BRAD *NO POST REQUESTED* *Film code number PBT-2015-220731*	*Vol./Book PBT-2015-220731 5 pages*
07/07/2015	Electronic Filing Fee Party: Other FEATHERSTON, BRAD	
07/08/2015	RECEIPT Party: Other FEATHERSTON, BRAD	
07/09/2015	Application for Summary Judgment Party: Attorney BAYLESS, BOBBIE G. *CARL HENRY BRUNSTING MOTION FOR PARTIAL SUMMARY JUDGMENT* *Film code number PBT-2015-225037*	*Vol./Book PBT-2015-225037 260 pages*
07/09/2015	Instrument Over 25 Pages Party: Attorney BAYLESS, BOBBIE G.	
07/09/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
07/10/2015	Amended *SECOND SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION* *Film code number PBT-2015-225377*	*Vol./Book PBT-2015-225377 3 pages*
07/10/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
07/10/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
07/13/2015	Notice of Hearing *AUGUST 3, 2015 AT 11:00 AM* *Film code number PBT-2015-227302*	*Vol./Book PBT-2015-227302 2 pages*
07/13/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
07/13/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
07/13/2015	Response	*Vol./Book PBT-2015-227757 47 pages*

	PLAINTIFF CURTIS RESPONE TO DEFENDANTS NO EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE EVIDENCE *Film code number PBT-2015-227757*	
07/13/2015	Instrument Over 25 Pages Party: Defendant CURTIS, CANDACE LOUISE	
07/13/2015	Electronic Filing Fee Party: Defendant CURTIS, CANDACE LOUISE	
07/13/2015	Legacy Event	
07/13/2015	Notice of Hearing *AUGUST 3, 2015 AT 11:00 AM* *Film code number PBT-2015-226432*	*Vol./Book PBT-2015-226432 2 pages*
07/13/2015	Electronic Filing Fee Party: Other FEATHERSTON, BRAD	
07/13/2015	RECEIPT Party: Other FEATHERSTON, BRAD	
07/14/2015	Application to Transfer Docket (Indep.) Party: Attorney BAYLESS, BOBBIE G. *RELATED DISTRICT COURT CASE TO PROBATE COURT 4* *Film code number PBT-2015-228888*	*Vol./Book PBT-2015-228888 6 pages*
07/14/2015	Notice of Hearing *ON 7/21/2015 AT 2:00 PM* *Film code number PBT-2015-228889*	*Vol./Book PBT-2015-228889 3 pages*
07/14/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
07/14/2015	RECEIPT Party: Defendant CURTIS, CANDACE LOUISE	
07/14/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
07/15/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
07/15/2015	Legacy Event	
07/17/2015	Response *NON-PARTY'S CANDACE L KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC'S RESPONSE TO CARL HENRY BRUNSTING'S MOTION TO TRANSFER RELATED DISTRICT COURT CASE TO PROBATE COURT 4* *Film code number PBT-2015-234080*	*Vol./Book PBT-2015-234080 96 pages*
07/17/2015	Instrument Over 25 Pages Party: Respondent KUNZ-FREED, CANDACE L	

07/17/2015	Electronic Filing Fee Party: Respondent KUNZ-FREED, CANDACE L	
07/20/2015	Motion For Protective Order Party: Attorney BAYLESS, BOBBIE G. *CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER* *CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER* *NO SERVICE REQUESTED* *Film code number PBT-2015-235874*	*Vol./Book PBT-2015-235874 51 pages*
07/20/2015	Instrument Over 25 Pages Party: Attorney BAYLESS, BOBBIE G.	
07/20/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
07/20/2015	Party Added : Respondent KUNZ-FREED, CANDACE L	
07/20/2015	Attorney Assigned : Attorney REED, CORY S	
07/20/2015	RECEIPT Party: Respondent KUNZ-FREED, CANDACE L	
07/20/2015	Conform Copies Party: Attorney BAYLESS, BOBBIE G. *CONF COPY*	
07/21/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
07/23/2015	Folder Check In/Out Event	
07/23/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
07/23/2015	Notice of Hearing *HEARING- 08-03-15 @ 11:00 AM* *Film code number PBT-2015-240340*	*Vol./Book PBT-2015-240340 2 pages*
07/24/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
07/27/2015	Folder Check In/Out Event	
07/31/2015	Response *DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER* *Film code number PBT-2015-250083*	*Vol./Book PBT-2015-250083 6 pages*
07/31/2015	Electronic Filing Fee Party: Defendant BRUNSTING, AMY RUTH	

08/03/2015	RECEIPT Party: Defendant BRUNSTING, AMY RUTH	
08/03/2015	Amended *THIRD SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION AND REQUEST FOR INJUNCTIVE RELIEF* *Film code number PBT-2015-250703*	*Vol./Book PBT-2015-250703 6 pages*
08/03/2015	Electronic Filing Fee Party: Attorney BAYLESS, BOBBIE G.	
08/03/2015	RECEIPT Party: Attorney BAYLESS, BOBBIE G.	
08/10/2015	Response *RESPONSE TO DEFENDANT RESPONSE TO CARL HENTRY BRYNSTING MOTION FOR PROTECTIVE ORDER* *Film code number PBT-2015-258999*	*Vol./Book PBT-2015-258999 49 pages*
08/10/2015	Instrument Over 25 Pages Party: Defendant CURTIS, CANDACE LOUISE	
08/10/2015	Electronic Filing Fee Party: Defendant CURTIS, CANDACE LOUISE	
08/10/2015	RECEIPT Party: Defendant CURTIS, CANDACE LOUISE	
08/13/2015	Folder Created	
08/13/2015	Folder Created	
08/13/2015	Folder Check In/Out Event	
08/13/2015	Folder Check In/Out Event	
08/13/2015	Folder Check In/Out Event	
09/11/2015	Folder Check In/Out Event	
10/01/2015	Order for Continuance *Agreed; on 06-30-2016*	
01/25/2016	Application for Summary Judgment Party: Defendant CURTIS, CANDACE LOUISE *CANDACE LOUISE CURTIS VERIFIED MOTION FOR ARTIAL SUMMARY JUDGMENT WITH CONCURRENT PETITIONS FOR DECLARATORY JUDGMENT* *Film code number PBT-2016-26242*	*Vol./Book PBT-2016-26242 703 pages*
01/25/2016	Electronic Filing Fee Party: Defendant CURTIS, CANDACE LOUISE	
01/25/2016	Instrument Over 25 Pages Party: Defendant CURTIS, CANDACE LOUISE	

01/26/2016	RECEIPT Party: Defendant CURTIS, CANDACE LOUISE	
01/27/2016	Folder Check In/Out Event	
03/07/2016	Legacy Event Party: Defendant BRUNSTING, CAROLE ANN	*Vol./Book PBT-2016-74995 5 pages*
03/07/2016	Electronic Filing Fee Party: Defendant BRUNSTING, CAROLE ANN	
03/07/2016	RECEIPT Party: Defendant BRUNSTING, CAROLE ANN	
03/08/2016	Misc. Notice *DEFENDANT ANITA KAY BRUNSTING NOTICE OF DESIGNATION OF ATTORNEY IN CHARGE* *Film code number PBT-2016-77711*	*Vol./Book PBT-2016-77711 2 pages*
03/08/2016	Electronic Filing Fee Party: Defendant BRUNSTING, ANITA KAY	
03/09/2016	RECEIPT Party: Defendant BRUNSTING, ANITA KAY	
03/14/2016	Letter *CAROLE BRUNSTING* *Film code number PBT-2016-83130*	*Vol./Book PBT-2016-83130 2 pages*
03/14/2016	Legacy Event Party: Deceased BRUNSTING, NELVA E *ORDERED DARLNE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016* *Film code number PBT-2016-83225*	*Vol./Book PBT-2016-83225 5 pages*
04/07/2016	Legacy Event Party: Deceased BRUNSTING, NELVA E *ORDERED DARLENE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016* *Film code number PBT-2016-112549*	*Vol./Book PBT-2016-112549 2 pages*
10/12/2016	Application to Dismiss Party: Attorney MENDEL , STEPHEN A.	
10/12/2016	Certificate	
07/31/2018	Notice of Hearing	
08/17/2018	Plea in Abatement *CARL BRUNSTING VS ANITA BRUNSTING ET AL*	

08/28/2018	Motion for Summary Judgment *Defendants' Joint Motion for Continuance Regarding Carl Brunsting's Motion for Partial Summary Judgment*
08/28/2018	Proposed Order *Granting Continuance on Carl Brunsting's Motion for Partial Summary Judgment*
08/28/2018	Notice of Hearing *Notice of Hearing on Defendants' Joint Motion for Continuance Regarding Carl Brunsting s Motion for Partial Summary Judgment*
08/29/2018	Response *Defendants' Joint Response to Plaintiff's Motion for Partial Summary Judgment*
08/30/2018	Proposed Order *Order Denying Plaintiff's Motion for Partial Summary Judgment*
09/04/2018	Addendum of Misc. Types *Addendum to Plea in Abatement*
09/04/2018	Answer *Response to Defendants' Joint Motion for Continuance Regarding Carl Brunsting's Motion for Partial Summary Judgment*
09/04/2018	Objection *Objection to Attachment of Exhibit A to Defendants' Joint Response to Plaintiff's Motion for Partial Summary Judgment*
09/04/2018	Answer *Response to Candace Louise Curtis' Plea in Abatement*
09/05/2018	**Motion for Summary Judgment** (10:00 AM) (Judicial Officer: Comstock, Clarinda) *MSJ filed by Carl Brunsting 7-9-2015*
09/05/2018	**Motion for Continuance** (10:00 AM) (Judicial Officer: Butts, Christine) *Anita Brunsting's Motion for Continuance of MSJ*
09/05/2018	Order for Continuance *Ordered motion is granted.*
10/19/2018	Application to Dismiss Party: Defendant CURTIS, CANDACE LOUISE *Plea to the Jurisdiction and Motion to Dismiss*
11/27/2018	Misc. Notice *Defendant Anita Brunsting's Notice of the Oral &/or Video Deposition of Candace Kunz-Freed*
11/30/2018	Application to Quash *Non-Party Witness Candace Kunz-Freed's Motion to Quash and Motion for Protection*
12/11/2018	Subpoena Returned *Subpoena to Appear for Oral &/or Video Deposition to Candace Kunz-Freed on 12/05/2018 at*

	3:30 pm
12/18/2018	Application to Compel (Indep.) Party: Defendant BRUNSTING, ANITA KAY *Anita Brunsting's Motion to Compel the Deposition of Candace Kunz-Freed*
12/18/2018	No Fee - Other *Anita Brunsting's Motion to Compel the Deposition of Candace Kunz-Freed*
12/20/2018	Subpoena Returned *SUBPOENA AND AFFIDAVIT OF SERVICE*
12/26/2018	Subpoena Duces Tecum Return *Subpoena Returned Served*
12/28/2018	Notice of Hearing *January 24, 2019 at 10:00 am*
01/16/2019	Response *Anita Brunsting s Response to Candace Kunz-Freed s Motions to Quash and for Protection*
01/22/2019	Answer *Non-Party Witness Candace Kunz-Freed's Response tom Anita Brunsting's Motion to Compel*
01/23/2019	Response *Amy Brunsting's Reply to Kunz-Freed's Response to Anita Brunsting's Motion to Compel*
01/24/2019	**Motion to Compel** (10:00 AM) (Judicial Officer: Horwitz, James)
01/24/2019	Order to Compel (Dep.) *Deposition of Non-Party Witness Candace Kunz-Freed*
01/25/2019	Motion Pertaining to Lawsuits Only (Dep.) Party: Defendant CURTIS, CANDACE LOUISE
01/28/2019	No Fee - Other *Defendant Co-Trustee Anita Brunsting s Motion to Obtain an Appraisal(s)*
01/28/2019	Proposed Order *Order Granting Appraisal*
01/29/2019	Application of Miscellaneous kind Party: Attorney MENDEL , STEPHEN A. *Anita Brunsting s Motion to Join Amy Brunsting s Motion for Clarification and/or Motion to Dismiss*
01/29/2019	Notice of Hearing *Notice of Hearing on Amy Brunsting's Motion for Clarification and/or Motion to Dismiss*
01/29/2019	No Fee - Other *Amy Brunsting's Motion for Clarification and/or Motion to Dismiss*

02/04/2019	Answer *Non-Party Witness Candace Kunz-Freed's Response to Amy Brunsting's Motion for Clarification*
02/04/2019	Answer *Response to Amy Brunsting's Motion for Clarification and/or Motion to Dismiss*
02/05/2019	Answer *Candace Curtis Special Exceptions Motion in Limine Memorandum*
02/05/2019	Response *Amy Brunsting's Reply to Curtis' Response*
02/07/2019	**Ad Hoc Hearing** (10:00 AM) (Judicial Officer: Horwitz, James) *Motion for Clarification*
02/08/2019	Misc. Notice *Notice of Hearing re Motion for Appraisal(s)*
02/14/2019	Order to Transfer Docket *District Court Proceedings to Probate Court No. 4*
02/14/2019	Miscellaneous Order *Denying Pleas and Motion Filed by Candace Curtis*
02/25/2019	Misc. Notice *Notice of Deposition momo on Texas Rule of Evidence 503 (d)*
02/25/2019	Objection *Objection to Farm Appraisal Demand for Accounting*
03/01/2019	Brief *Anita and Amy Brunsting's Joint Brief regarding Texas Rule of Evidence 503*
03/01/2019	Brief *Carl Brunsting's Brief Concerning Attorney-Client Privilege Issues With Regard to the Deposition of Candace Freed*
03/01/2019	Brief *Candace Kunz-Freed's Brief on Privilege*
03/05/2019	Misc. Notice *Notice of Filing Privilege Log*
03/07/2019	**Ad Hoc Hearing** (9:00 AM) (Judicial Officer: Horwitz, James) *Mtn for Appraisal*
03/07/2019	Miscellaneous Order *Granting Appraisal*
03/20/2019	**Ad Hoc Hearing** (9:00 AM) (Judicial Officer: Horwitz, James) *Deposition of Candace Kunz Freed, in Conference Room*

04/04/2019	Order to Transfer Docket *to Harris County Probate Court 4 from Harris County 164th Judicial District*
04/06/2019	Order to Reset *Trial to 10-05-2015*
05/15/2019	Application for Sanction Party: Defendant BRUNSTING, AMY RUTH *Amy Brunsting's Motion for Sanctions and/or Contempt*
05/17/2019	Misc. Notice *Notice of Intention to Continue Deposition*
05/21/2019	Notice of Hearing *on A. Brunsting's Motion for Sanctions and/or Contempt, June 28, 2019 at 3:00pm*
06/12/2019	Response *Response to the Fiduciary's Application for the Beneficiary to be Held in Contempt with Petition for Partial Summary or Declaratory Judgment*
06/28/2019	**Ad Hoc Hearing** (3:00 PM) (Judicial Officer: Horwitz, James) *Amy Brunsting's Motion for Sanctions and/or Contempt*
06/28/2019	**Ad Hoc Hearing** (3:00 PM) (Judicial Officer: Horwitz, James) *Amy Brunsting's Motion for Sanctions and/or Contempt*
07/08/2019	Findings of Fact, Etc.
07/08/2019	Memorandum *Plaintiff Memorandum on Appointment of Administrator*
07/23/2019	Order for Sanction *and/or Contempt*
07/29/2019	CC & Non-CC Order Party: Deceased BRUNSTING, NELVA E *Tag # 458969---MAILED 07/31/19*
08/22/2019	CC & Non-CC Order Party: Deceased BRUNSTING, NELVA E *tag# 471457----MAILED 08/22/19*
10/16/2019	No Fee - Other *Kunz-Greed's Motion to Appoint Personal Representative or Administrator*
10/18/2019	Notice of Hearing *Wednesday, November 6, 2019 @ 2:30pm*
10/18/2019	Notice of Hearing *Wednesday, November 6, 2019 @ 2:30 P.M.*
10/22/2019	Certificate *Reporter's Certificate Oral Deposition of Candace Kunz-Freed*
11/04/2019	

	Response *Co-Trustees' Response to Motion to Appoint Personal Representative or Administrator*
11/04/2019	Amended *Amy & Anita's Second Amended Answer*
11/04/2019	CounterClaim to Lawsuit Motions (Indep.) *Amy Brunsting's and Anita Brunsting's Original Counterclaim*
11/05/2019	Application for Contempt Party: Attorney Spielman, Neal E
11/07/2019	Amended *Notice of Hearing*
11/18/2019	Notice of Hearing *Notice of Hearing on Amy Brunstinig's Motion for Second Contempt and Additional Sanctions*
11/19/2019	APPEARANCE *of Candice L. Swager*
12/11/2019	Notice of Hearing *First Amended Notice of Hearing, January 10, 2020 at 2:00 pm*
12/12/2019	Order of Contempt *Ordered Candace Curtis fined the sum of $500.00*
12/12/2019	*CANCELED* **Ad Hoc Hearing** (2:00 PM) (Judicial Officer: Horwitz, James) *Rescheduled* *Motion to Appoint PR*
12/12/2019	**Ad Hoc Hearing** (3:00 PM) (Judicial Officer: Horwitz, James) *Amy Brunsting's Mtn for 2nd Contempt and Additional Sanctions*
12/12/2019	Answer *Answer/Response*
01/10/2020	**Ad Hoc Hearing** (2:00 PM) (Judicial Officer: Horwitz, James) *Mtn to Appoint PR*
01/10/2020	Amended *Co-Trustees Anita Brunsting and Amy Brunsting's 1st Supplemental Petition*
01/16/2020	Answer *Plaintiff Candace Louise Curtis' Answer to Defendant Amy Brunsting's and Defendant Anita Brunstings Original Counterclaim*
01/16/2020	No Fee - Other *Plaintiff Curtis' Objection to Defendant Amy Brunsting and Defendant Anita Brunsting's 1st Supplemental Petition*
02/20/2020	No Fee - Other *Co-Trustees Motion for Order to Mediate*

02/21/2020	Miscellaneous Order *Mediation Order*
02/27/2020	Miscellaneous Order *Clarifying & Amending Prior Mediation Order*
07/02/2020	Notice of Hearing *Notice of Hearing Kunz-Freed's Mtn to Appoint Personal Rep or Admin on July 22, 2020 at 11am*
07/08/2020	Notice of Hearing *Notice of Hearing via Zoom July 22, 2020 at 10am Motion to Appoint Personal Rep or Admin*
07/14/2020	Amended *Notice of Hearing via ZOOM on Thursday, 8/6/2020 at 1:00 pm*
07/16/2020	Misc. Notice *Amended Notice of Oral Hearing Via Zoom*
07/20/2020	Notice of Intention to Take Oral Deposition Party: Attorney MENDEL , STEPHEN A. *Candace L. Curtis No Service Requested*
07/23/2020	Objection *to Time and Place of Oral Deposition and Motion for Protective Order*
07/30/2020	Answer *Response to C. Brunsting's Partial MSJ*
08/03/2020	No Fee - Other *Defendant & Co-Trustee Anita Brunsting's Motion to Compel the Deposition of Candace Curtis*
08/03/2020	Answer *Response to Candace Kunz-Freed's Motion to Appoint Personal Representative or Administrator*
08/03/2020	Misc. Notice *Notice hearing protective order*
08/04/2020	Misc. Notice *Notice of Hearing re Motion to Compel*
08/04/2020	No Fee - Other *Co-Trustees' Motion to Transfer and/or Motion to Vacate*
08/04/2020	Answer *Carl Henry Brunsting's Reply to Defendants' Response to Carl's Motion for Partial Summary Judgment*
08/05/2020	Answer

Response to motion to transfer foreign

08/06/2020 **Motion for Summary Judgment** (1:00 PM) (Judicial Officer: Horwitz, James)
Mtn for Partial Summary Judgment, Mtn to Appoint PR and Mtn to Order Mediation

08/06/2020 Request
Amy Brunsting's Status Report and Request for Additional Relief

08/13/2020 Miscellaneous Order
Regarding Deposition of C. Curtis

08/13/2020 Order for Summary Judgment
Partial

08/17/2020 Notice Letter-306-Judgment

08/20/2020 Misc. Notice
Notice of Submission on Co-Trustees' Motion to Transfer and/or Motion to Vacate

08/28/2020 Response
to Motion to Transfer and/or Motion to Vacate

08/31/2020 **Motion to Transfer** (10:30 AM) (Judicial Officer: Horwitz, James)

08/31/2020 Misc. Notice
Notice of Intention to Take the Deposition of Candance L. Curtis

09/10/2020 Answer
Candace Kunz-Freed's Response to Carl Henry Brunsting's MSJ

09/10/2020 Answer
Defendants & Co-Trustees Joint Amended Response to Carl Brunsting s Motion for Partial Summary Judgment

09/17/2020 Answer
Defendants/Co-Trustees Anita Brunsting & Amy Brunsting 1st Supplemental Answer

09/25/2020 Answer
Carl Henry Brunsting's Reply to Candace Kunz-Freed's Response to Carl's Motion for Summary Judgment

09/25/2020 Answer
Carl Henry Brunsting's Reply to Defendants' Amended Response to Carl's Motion for Partial Summary Judgment

09/25/2020 Answer

09/28/2020 **Ad Hoc Hearing** (1:30 PM) (Judicial Officer: Horwitz, James)
Emergency Hearing re Depo of Candace Curtis

09/28/2020 No Fee - Other
Motion to Quash or Stay

09/28/2020	Answer *Reply to 1st Supp Response to MSJ*
09/28/2020	Memorandum *Memo of law on QBD*
09/28/2020	Answer *Defendant Co-Trustees Anita Brunsting & Amy Brunsting s Objection to Candace Curtis Brief on the QBD Trusts & Candace Curtis Reply to Defendant Co-Trustees Anita Brunsting & Amy Brunsting s 1ST Supplemental Answer of September 17, 2020*
09/29/2020	Answer *Defendant Co-Trustees Objections to the Affidavit of Carole Brunsting Regarding the Defendant Co-Trustees Joint Amended Response to Plaintiff Carl Brunsting s Motion for Partial Summary Judgment*
09/30/2020	No Fee - Other *Co-Trustee's First Supplement to Motion to Transfer and/or Motion to Vacate*
05/24/2021	**Scheduling Conference** (2:30 PM) (Judicial Officer: Horwitz, James)
06/10/2021	Docket Control Order
10/15/2021	Answer *Carl Henry Brunsting's Original Answer to Carole Ann Brunsting's Counterclaim*
10/15/2021	Answer *Carl Henry Brunsting's Original Answer to Amy Brunsting's & Anita Brunsting's Original Counterclaim*
10/15/2021	Answer
10/15/2021	Amended *Fourth Supplement to Plaintiff's First Amended Petition and Request for Injunctive Relief*
11/04/2021	**Status Conference** (9:00 AM) (Judicial Officer: Horwitz, James) Events: 01/25/2016 Application for Summary Judgment 06/26/2015 Application for Summary Judgment 07/09/2015 Application for Summary Judgment 07/30/2020 Answer 08/04/2020 Answer 08/13/2020 Order for Summary Judgment 08/29/2018 Response 08/30/2018 Proposed Order 09/04/2018 Answer 09/04/2018 Objection 09/10/2020 Answer 09/10/2020 Answer 09/25/2020 Answer 09/25/2020 Answer 09/28/2020 Answer 09/28/2020 Memorandum 09/29/2020 Answer
11/04/2021	Amended *Carl Henry Brunsting's Second Amended Expert Witness Designation and Further Supplement to Carl's Responses to All Requests for Disclosures*

11/05/2021	Application for Summary Judgment Party: Attorney Spielman, Neal E
11/05/2021	Witness List *Curtis designation experts*
11/09/2021	Notice of Hearing *December 14, 2021 @ 3:00 pm*
11/12/2021	Order for Summary Judgment
11/17/2021	Answer *Answer/Response and Motion to Strike*
12/06/2021	Rule 11 Agreement *2021-12-05 Rule 11 Agreement - Carl Brunsting & Defs Anita & Amy Brunsting*
12/13/2021	Response *Co-Trustees' Reply to Candace Louise Curtis' Answer to Co-Trustees' Motion for Summary Judgment and Motion to Strike*
12/14/2021	**Motion for Summary Judgment** (3:00 PM) (Judicial Officer: Horwitz, James) Events: 11/05/2021 Application for Summary Judgment 11/12/2021 Order for Summary Judgment 12/06/2021 Rule 11 Agreement
12/17/2021	Letter *Carole Brunsting*
12/30/2021	No Fee - Other *Beneficiary Carole Brunstings emergency motion for trust distribution*
01/04/2022	Notice of Hearing
01/06/2022	Order for Distribution
01/06/2022	**Ancillary** (1:00 PM) (Judicial Officer: Horwitz, James) Events: 12/17/2021 Letter 12/30/2021 No Fee - Other
01/06/2022	Application to Sever (Indep.) Party: Attorney MENDEL , STEPHEN A. *CARL BRUNSTING AND DEFENDANTS/COTRUSTEES' MOTION TO SEVER*
01/07/2022	Notice of Hearing *NOTICE OF HEARING OVER CARL BRUNSTING'S AND DEFANDENTS/CO-TRUSTEES' MOTION TO SEVER*
02/04/2022	No Fee - Other *Motion for Authority to Execute Easement & Settlement Agreement*
02/04/2022	Notice of Hearing

	Notice of Hearing
02/07/2022	Answer *Response to Motion to Sever*
02/11/2022	**Motion to Sever** (10:00 AM) (Judicial Officer: Horwitz, James) *Mtn to Sever and Status Conference regarding MSJ*
02/11/2022	**Ancillary** (10:00 AM) (Judicial Officer: Horwitz, James) *Mtn to Execute Easement and Settlement*
02/14/2022	Order on Settlement Agreement
02/21/2022	No Fee - Other *Co-Trustees' Motion to Exclude Testimony/Evidence, for Sanctions and/or For Third Contempt as to Candace Louise Curtis*
02/22/2022	Notice of Hearing *Notice of Hearing February 25, 2021 at 3:00 pm*
02/23/2022	No Fee - Other
02/23/2022	Answer *RESPONSE TO MOTION TO EXCLUDE EVIDENCE, SANCTIONS AND/ORCONTEMPT WITH MOTION TO SET ASIDE ORDERS FOR WANT OFJURISDICTION AND FAILURE TO RESOLVE BILL OF REVIEW FIRST*
02/24/2022	Response *Co-Trustees' Reply to Curtis's Response to Motion to Exclude*
02/25/2022	**Status Conference** (3:00 PM) (Judicial Officer: Comstock, Clarinda)
02/25/2022	**Ancillary** (3:00 PM) (Judicial Officer: Comstock, Clarinda) *Mtn to Exclude Testimony/ Sanctions*
02/25/2022	Order for Summary Judgment *Order Granting Co-Trustees' Motion for Summary Judgment as to Candace Louise Curtis Only*
02/25/2022	Answer
02/25/2022	Answer *Co-Trustees' Response to Curtis's Sur-Reply*
03/04/2022	Jury Charge *DEFENDANT CO-TRUSTEES' DEMAND FOR JURY TRIAL*
03/04/2022	Misc. Notice *Notice of Filing of Proposed Order Granting Transfer*
03/11/2022	Order to Transfer Docket *CO-TRUSTEES' MOTION TO TRANSFER AND/OR MOTION TO VACATE*
03/11/2022	

	Order to Sever (Incap.)
03/11/2022	APPEARANCE *of John Loyd*
03/14/2022	Application to Dismiss Party: Attorney BAYLESS, BOBBIE G. *Carl Brunsting and Carole Brunsting's Joint Motion to Dismiss Certain Claims with Prejudice*
03/16/2022	Order to Dismiss *with prejudice*
03/18/2022	Misc. Notice *Plaintiff's Notice of Non-Suit Without Prejudice*
03/21/2022	Objection *to assignment of Any Former Judge*
03/21/2022	Misc. Notice *to Attorney General; Re; Charitable Trust*
03/21/2022	Amended *amended objection to former judge*
03/28/2022	Application to Set Aside Previous Order *Motion to vacate and/or set aside order*
03/28/2022	Amended *Supplement to motion to vacate or set aside*
03/28/2022	Notice of Hearing *Notice of oral hearing 22-3-31*
03/31/2022	**Pre-Trial Hearing** (1:30 PM) (Judicial Officer: Horwitz, James) Events: 02/21/2022 No Fee - Other 02/23/2022 No Fee - Other 02/23/2022 Answer 02/24/2022 Response 02/25/2022 Order for Summary Judgment 02/25/2022 Answer 03/21/2022 Misc. Notice 03/21/2022 Amended 03/28/2022 Application to Set Aside Previous Order 03/28/2022 Amended *To be reconvened from 2/25/22*
03/31/2022	Application of Miscellaneous kind *Co-Trustees' First Supplement to Motion to Exclude*
04/04/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Settled*
04/05/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Pass*

04/06/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Pass*
04/07/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Pass*
04/07/2022	APPEARANCE *Attorney General's Notify Letter*
04/08/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Pass*
04/08/2022	Misc. Notice *Notice of Removal*
04/08/2022	Answer *Co-Trustees' Response to Curtis's Motion to Vacate or Set Aside Feb. 25, 2022 Order*
04/11/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Pass*
04/11/2022	*CANCELED* **Ad Hoc Hearing** (1:30 PM) (Judicial Officer: Horwitz, James) *Pass* *Curtis' Motion to Vacate/Set Aside & Co-TTEE's Mtn to Exclude*
04/11/2022	Answer *Co-Trustees' Objections to Curtis's Notice of Removal*
04/12/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Pass*
04/13/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Pass*
04/14/2022	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Horwitz, James) *Pass*
04/14/2022	**Ad Hoc Hearing** (2:30 PM) (Judicial Officer: Horwitz, James) *Curtis' Mtn to Vacate/Set Aside & Co-TTEE's Mtn to Exclude/Sanctions*
04/19/2022	Miscellaneous Order *MOTION TO VACATE OR SET ASIDE FEBRUARY 25, 2022 ORDER*
05/02/2022	Waiver *Attorney General's of Intervention*
05/02/2022	Assignment *MINUTE ORDER RE ASSIGNMENT OF KATHLEEN STONE*
05/18/2022	Notice of Appeal *Notice of Appeal*
05/18/2022	Designation *Designation of Clerk's Record*

05/19/2022	Notice of Assignment
05/23/2022	Court Letters *First Court of Appeals; Christopher A Prine*
06/13/2022	Misc. Notice *NOTICE OF FEDERAL COURT REMAND TO PROBATE COURT 4*
06/17/2022	Application to Appoint Appraiser Party: Attorney MENDEL , STEPHEN A. *Agreed Motion for Authority to Obtain Real Estate Appraisal*
06/21/2022	Designation Request - 1st Request - Notice Letter
07/01/2022	Letter *Court of Appeals First District* *01-22-00378-CV*
07/01/2022	Letter *Court of Appeals First District* *01-22-00378-CV*
07/21/2022	Miscellaneous Agreement *Motion for Authority to Obtain Real Estate Survey*
07/21/2022	Miscellaneous Agreement *Motion for Authority to Retain Iowa Counsel*
08/03/2022	Letter *Court Of Appeals First District* *01-22-00378-CV*
08/04/2022	Findings of Fact, Etc. *MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW*
08/23/2022	Miscellaneous Order *on motion for findings of fact and conclusion of law*
08/26/2022	Notice Letter-306-Judgment *ORDER ON MOTION FOR FINDSINGS OF FACT AND CONCLUSIONS OF LAW*
09/08/2022	Letter *Court of Appeals* *#01-22-00514-CV*
09/08/2022	Letter *Court of Appeal* *01-22-00514-CV*
09/09/2022	Miscellaneous Order *granting authority to obtain real estate appraisal*

12/02/2022	No Fee - Other *Agreed Emergency Motion for Authority for the Co-Trustees to Pay the Tenant Farmer & Consolidate & Distribute Certain Assets*
12/13/2022	Miscellaneous Order *granting Farm payment, Asset Liquidation/ Consolidation & Partial Distribution from the Trust*
02/14/2023	Letter *Court of Appeals First District* *01-22-00378-CV*
02/14/2023	Letter *Court of Appeals First District 01-22-00378-CV*
02/14/2023	Letter *Court of Appeals First District of Texas* *01-22-00378-CV*
04/26/2023	Letter *Court of Appeals First District; 01-22-00378-CV*
04/26/2023	Bill of Cost Party: Plaintiff BRUNSTIING, CARL HENRY *No. 01-22-00378-CV*
04/26/2023	Letter *Court of Appeals First District of Texas; No. 01-22-00378-CV*
04/26/2023	Notice of Appeal *Notice of appeal*
04/27/2023	Notice of Assignment
05/15/2023	Designation Request - 1st Request - Notice Letter
05/16/2023	Court Letters *01-23-00362-CV*
05/18/2023	Letter *Court of Appeals First District* *01-23-00362-CV*
05/23/2023	Amended *Notice of designation of clerk records*
05/24/2023	Payment Req. Notice of Appeal - CMRRR- 1st Ntc - Ntc Letter
05/26/2023	Letter *Court of Appeals First District; 01-23-00362-CV*
06/02/2023	Appeal Bill Of Cost

06/02/2023	Clerks Seal	
06/02/2023	Appeal Term	
06/02/2023	Appeal Cover Page	

DATE	FINANCIAL INFORMATION	
	Attorney BAYLESS, BOBBIE G.	
	Total Charges	86.00
	Total Payments and Credits	86.00
	Balance Due as of 06/02/2023	**0.00**
	Attorney MCCUTCHEN, MAUREEN K.	
	Total Charges	4.00
	Total Payments and Credits	4.00
	Balance Due as of 06/02/2023	**0.00**
	Attorney MENDEL , STEPHEN A.	
	Total Charges	0.00
	Total Payments and Credits	0.00
	Balance Due as of 06/02/2023	**0.00**
	Attorney SAIN THORNTON, NICOLE K.	
	Total Charges	2.00
	Total Payments and Credits	2.00
	Balance Due as of 06/02/2023	**0.00**
	Attorney Spielman, Neal E	
	Total Charges	8.00
	Total Payments and Credits	8.00
	Balance Due as of 06/02/2023	**0.00**
	Attorney Walsh, Lori A.	
	Total Charges	24.00
	Total Payments and Credits	24.00
	Balance Due as of 06/02/2023	**0.00**
	Deceased BRUNSTING, NELVA E	
	Total Charges	295.36
	Total Payments and Credits	295.36
	Balance Due as of 06/02/2023	**0.00**
	Defendant BRUNSTING, AMY RUTH	
	Total Charges	194.00
	Total Payments and Credits	194.00
	Balance Due as of 06/02/2023	**0.00**
	Defendant BRUNSTING, ANITA KAY	
	Total Charges	126.00
	Total Payments and Credits	126.00
	Balance Due as of 06/02/2023	**0.00**
	Defendant BRUNSTING, CAROLE ANN	
	Total Charges	136.00
	Total Payments and Credits	136.00
	Balance Due as of 06/02/2023	**0.00**
	Defendant CURTIS, CANDACE LOUISE	
	Total Charges	600.12
	Total Payments and Credits	600.12

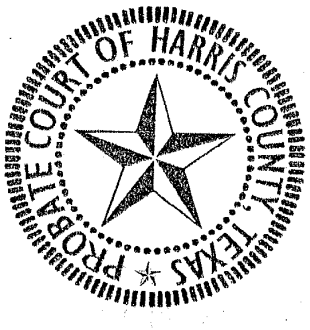
Balance Due as of 06/02/2023	**0.00**
Other FEATHERSTON, BRAD	
Total Charges	39.00
Total Payments and Credits	39.00
Balance Due as of 06/02/2023	**0.00**
Plaintiff BRUNSTIING, CARL HENRY	
Total Charges	212.00
Total Payments and Credits	212.00
Balance Due as of 06/02/2023	**0.00**
Respondent KUNZ-FREED, CANDACE L	
Total Charges	39.00
Total Payments and Credits	39.00
Balance Due as of 06/02/2023	**0.00**

CLERK'S CERTIFICATION

The State of Texas)
County of Harris)

I, Evony Simon, Clerk of the County Probate Court No. 4 of Harris County, Texas do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

GIVEN UNDER MY HAND AND SEAL at my office in Harris, County, Texas this on this the 2nd day of June, 2023.



Teneshia Hudspeth, County Clerk
County Probate Court No. 4
Harris County, Texas

_/S/ Evony Simon
Evony Simon, Deputy County Clerk