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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

THE HONORABLE JENNIFER B. MCCOY
Circuit Court Judge

Case No.: 2019-CP-10-01932

Appellate Case No. 2019-002124

IN RE: ESTATE OF STEPHEN DAY WARD, JR.

MARY K. WARD A/K/A MARY KIMBERLY WARD .....Respondent,

vs.

STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives ..... Appellants.

RECORD ON APPEAL
VOLUME I

BURR & FORMAN LLP

s/Amanda A. Bailey
Amanda A. Bailey, SC Bar No. 71085
George Morrison, SC Bar No. 71622
E-mail:abailey@burr.com
George Morrison
E-mail:gmorrison@burr.com
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Appellants

OTHER COUNSEL OF RECORD:

Jane A. McFaddin, Esq.
665 St. Andrews Boulevard
Charleston, SC 29407
Attorney for Respondent

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ORDERS

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CERTIFICATE OF APPOINTMENT
	)	
IN THE MATTER OF:	)	
	)	
STEPHEN DAY WARD, JR. a/k/a STEPHEN D. WARD	)	CASE NUMBER: 2016ES10-01631

This is to certify that

STEPHANIE WARD CIBINIC AND
DAVID D. WARD AND
BRIAN C.WARD

is/are the duly qualified

__X__ PERSONAL REPRESENTATIVE(S)
____ SUCCESSOR PERSONAL REPRESENTATIVE
____ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the 30TH Day of September, 2016, is in full force and effect.

Restrictions:

None

Executed this 30TH day of September, 2016.

Irvin G. Condon, Probate Court Judge
By Estate Clerk

Do not accept a copy of this certificate without the raised seal of the Probate Court.

FORM #141ES (1/2014)
62-1-305, 62-3-103

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: CHARLESTON)

COPY

IN THE MATTER OF:)
STEPHEN DAY WARD, JR.) CASE NUMBER: 2016-ES-10-_____
(Decedent))

***COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

* Petitioner(s)

vs.

* Respondent(s)

APPLICATION FOR INFORMAL (check any that apply) ***PETITION FOR FORMAL**

☒ PROBATE OF WILL ☐ TESTACY

☒ APPOINTMENT ☐ APPOINTMENT

If this is a formal filing, please explain on page 3 or attach pleadings pursuant to *SC Rules of Civil Procedure*.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN addition TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Applicant/Petitioner(s): Please see attached sheet.
   Address: _____
   Telephone (Work): _____
   (Home): _____
   (Cell): _____
   Email: _____
   Relationship to Decedent: _____

2. Decedent Information:

Full Legal Name (including all known names): Stephen Day Ward, Jr., Stephen D. Ward
Date of Birth: September 11, 1944
Date of Death: September 16, 2016
Age at Date of Death: 72

3. Venue for this proceeding is proper in this County because:

☒ Decedent was domiciled in this County at date of death:
Address: 2412 HIGH HAMMOCK ROAD County: CHARLESTON State: South Carolina.

☐ Decedent was **not** domiciled in **South Carolina**, but property of Decedent was located in this County at date of death at:
Address: County: State: South Carolina

☐ Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address of the Decedent prior to entering a facility:

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Stephanie Ward Cibinic	7/29/68	246 N. Barton Street, Arlington, VA 22201	Daughter
David D. Ward	9/17/70	12 Highview Drive, Ridgeville, CT 06877	Son
Brian C. Ward	5/29/74	573 North Bridgestone Ave., St. Johns, FL 32259	Son
Elizabeth A. Diemer Wiersum	5/2/65	6639 34th Street, Berwyn, IL 60402	Step-Daughter

☒ See attached for additional devisees (check if applicable).

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Stephen A. Ward	1/14/90	306 McGowen St., Apt. 1112, Houston, TX 77006	Son
Jeremy W. Ward	1/14/90	1505 NW 60th Street, Apt. 2, Seattle, WA 98107	Son
Mary Kimberly Ward	1/7/25	1220 Creek Watch Trace, Seabrook Island, SC 29455	Wife

☐ See attached for additional intestate heirs (check if applicable).

4(c). Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☐ NO ☒ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11(a). Did the Decedent own probate real estate?

☐ NO ☒ YES If yes, an approximate value of $TBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b). Did the Decedent own probate personal property?

☐ NO ☒ YES If yes, an approximate value of $TBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s)?

☒ NO ☐ YES If yes, then proceed to Section II.
If No, then proceed to Section III.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

☒ The original is attached.
☐ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☐ The original of the Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: April 21, 2005
Codicil(s): _____

3. Is there a memorandum that disposes of tangible personal property?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

☒ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

The decedent's wife at the time of the making of the will, Nancy Ward, predeceased the decedent, and the decedent subsequently married Mary Ward.

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

   _____

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

   - ☐ named as Primary Personal Representative in Will
   - ☒ named as Alternate Personal Representative in Will
   - ☐ nominee of Primary Personal Representative in Will
   - ☐ nominee of Alternate Personal Representative in Will
   - ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
   - ☐ other devisee of Decedent (describe): _____or nominee of said devisee
   - ☐ surviving spouse of Decedent or nominee of said spouse
   - ☐ other heir of Decedent (describe): _____ or nominee of said heir
   - ☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
   - ☐ other (describe):_____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

   _____

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

Signature of Applicant/Petitioner: _____

SWORN to before me this 23rd day of September, 20 16

_____

Notary Public for South Carolina
My Commission Expires: 5/20/25

Signature of Co-Applicant/Co-Petitioner: _____

SWORN to before me this 23rd day of Sept 20 16

_____

Notary Public for South Carolina
My Commission Expires: 5/20/25

ORDER OF INFORMAL PROBATE

April 21, 2005

IT IS HEREBY ORDERED that the above application for probate of a Will executed N/A and
☐ Codicil executed N/A and
☐ Memorandum N/A

be informally ☑ GRANTED ☐ DENIED.

~~Executed~~ this 30th day of Sept, 2016.

, Probate Court Judge

☐ For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

Bond
☐ Fiduciary Bond in the amount of $_____
☑ Bond not required for Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other:_____

Notice to Creditors
☑ Required
☐ Not Required

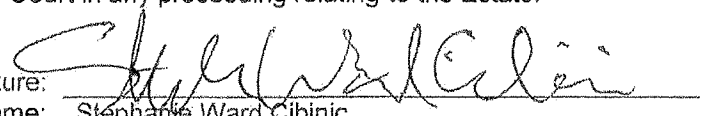
~~Executed~~ this 30th day of Sept, 2016.

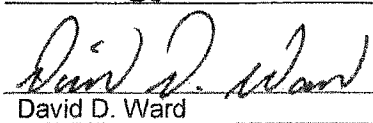
, Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed _____.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: 
Print Name: Stephanie Ward Cibinic
Address: 246 N. Barton Street
Arlington, VA 22201
Telephone (Work):
(Home): 202-486-8297
(Cell):
Email: swardleo@gmail.com

Signature: 
Print Name: David D. Ward
Address: 12 Highview Drive
Ridgeville, CT 06877
Telephone (Work):
(Home): 203-803-3423
(Cell):
Email:

*Attorney: George E. Morrison
Address: McNair Law Firm, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401
Telephone: 843-723-7831
Email: gmorrison@mcnair.net

1309016v1

***By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.**

ATTACHMENT TO PETITION FOR PROBATE OF WILL OF STEPHEN D. WARD

1. Applicant/Petitioner: Stephanie Ward Cibinic
Address: 246 N. Barton Street, Arlington, VA 22201
Telephone: 202-486-8297
Email: swardleo@gmail.com
Relationship to Decedent: Daughter

Applicant/Petitioner: David D. Ward
Address: 12 Highview Drive, Ridgeville, CT 06877
Telephone: 203-803-3423
Relationship to Decedent: Son

Applicant/Petitioner: Brian C. Ward
Address: 573 North Bridgestone Avenue, St. Johns, FL 32259
Telephone: 904-228-8010
Relationship to Decedent: Son

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Garett C. Diemer	3/23/71 ~~Unknown~~	72 Kingsport Dr., South, Elgin, IL 60177 ~~Unknown~~	Step-Son

---

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

Signature of
Applicant/Petitioner: _____
Brian C. Ward

SWORN to before me this 23rd day of September, 2016.

_____
Notary Public for South Carolina
My Commission Expires: 5/20/25

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: _____
Print Name: Brian C. Ward
Address: 573 North Bridgestone Avenue
St. Johns, FL 32259
Telephone: 904-228-8010

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NUMBER: 2016-ES-10-01631
	)	
IN THE MATTER OF: Stephen Day Ward, Jr. (Decedent)	)	
	)	
Mary K. Ward, a/k/a Mary Kimberly Ward, Petitioner	)	**ORDER DENYING SUMMARY JUDGMENT**
v.	)	
	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives	)	
	)	
Respondents.	)	
	)	

Hearing Date:	October 25, 2017
Presiding Judge:	Honorable Irvin G. Condon
Petitioner:	Mary K. Ward, a/k/a Mary Kimberly Ward
Petitioner's Attorney:	Jane A. McFaddin, Esq.
Respondents:	Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward
Respondents' Attorney:	George E. Morrison, Esq. Amanda A. Bailey, Esq.
Court Reporter:	Anne Bouley Meyer

This matter comes on for hearing on a Motion for Summary Judgment filed by Respondents as Co-Personal Representatives of the Estate of Stephen Day Ward, Jr., to the Petition of Petitioner pursuant to the Omitted Spouse statute, S.C. Code 1976 as amended Sect. 62-2-301. Petitioner appeared at the hearing by her court-appointed Conservator, Ann-Noble Kiley. All other appearances of parties and counsel were as referenced above.

The Respondents have argued that the April 21, 2005 Last Will and Testament of the decedent, now admitted to probate ("2005 Will"), incorporates by reference an "Agreement for Mutual Wills and Trusts, "2005 Agreement", also dated April 21, 2005, and apparently executed

by decedent and his then-wife, Nancy L. Ward. (Respondents filed said Agreement as Exhibit A to their Motion for Summary Judgment). Nancy L. Ward died on June 4, 2011, leaving decedent as her surviving spouse. Decedent thereafter married Mary K. Ward, Petitioner herein, on September 7, 2013. Stephen Day Ward, Jr. died on September 16, 2016, leaving Petitioner Mary K. Ward as his surviving spouse.

Decedent's "2005 Will" was admitted to informal probate in this Court on September 30, 2016, and Respondents were appointed as Co-Personal Representatives pursuant to its terms. No further testamentary documents have been presented by Respondents.

The "2005 Will" makes no mention of, or provision for, Petitioner Mary K. Ward, decedent's surviving spouse at his death in 2016. Petitioner then filed an action, pursuant to S.C. Code 1976 Sect. 62-2-301, as amended, claiming her statutory share of decedent's estate.

The "Omitted Spouse statute", as currently amended, replaces an earlier statutory version which declared a will, executed by one spouse prior to a marriage, was presumptively revoked by a subsequent marriage. (former S.C. Code Sect. 21-7-220, SC Code 1962 Sect. 19-222). The current statutory provision, amended in 1986, provides two specific exceptions to the presumption of revocation. Sect. 62-2-301(a)(1) excepts the instance where "it appears from the will that the omission was intentional" emphasis added, and (2) allows an exception if the decedent "provided for the spouse by transfer outside the Will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence."

Respondents have presented no evidence, nor made any allegation, that Stephen D. Ward, Jr. "provided" for his spouse, Mary K. Ward, outside his 2005 Will or in lieu of any testamentary provision.

Their sole argument is that certain language in the "2005 Agreement", admittedly made with his then-wife, Nancy Ward, would apply to the "2005 Will" so as to allow an "appearance" in the Will that the omission of Mary K. Ward, as surviving spouse, was "intentional".

Clearly, by all reasonable laws of construction, a 2005 Will, executed during the decedent's marriage to Nancy L. Ward, could not "intentionally" omit provision for Mary K. Ward, as a surviving spouse, as Mary K. Ward did not and could not, by any legal or actual, factual construction, have the status of "spouse" to Stephen D. Ward in 2005. Petitioner states the parties did not even know one another until 2012. "A spouse has not been "provided for" under Sect. 62-2-301(a) (the omitted spouse statute) in the absence of specific language in a will or sufficient extrinsic evidence that a bequest was made in contemplation of marriage."(emphasis added) Miles v. Miles (S.C. 1994) 312 S.C. 408, 440 S.E. 2d 882, rehearing denied.

Further, as a matter of public policy, non-specific "blanket" language in an Agreement between two parties, even if married to each other at the time and held to be applicable to their testamentary wishes during their lifetime together, could not be construed to apply as a limitation on the rights of a third-party, "innocent", subsequent spouse of one of the parties to the former agreement. S.C. law has long been promulgated to limit and restrict the otherwise expansive right of an individual to direct the disposition of his or her estate, after his death, by valid Will, regardless of the otherwise reasonableness, in third party eyes, of the distribution. But this individual right, long protected and largely unfettered, is clearly held, by S.C. public policy and statute, to be overridden by the paramount responsibility for a surviving spouse to be reasonably "provided for" after the death of a spouse. Even if the purported language in the "2005 Agreement" is considered to become a governing part of the "2005 Will", which is doubtful, it

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would not override long-standing S.C. statutory provisions and public policy. Weeks v. New York Life Ins. Co., Supreme Court of South Carolina, April 15, 1924.

This Court finds that S.C. Code 1976 Sect. 62-2-301, as amended ("Omitted Spouse Statute") applies to the instant estate and the "2005 Will" of Stephen Day Ward, Jr., and that neither of the two clearly specified, statutory exceptions have been shown to be present or applicable.

IT IS THEREFORE ORDERED that Respondents' Motion for Summary Judgment is hereby denied and dismissed, with prejudice.

AND IT IS SO ORDERED.

10th day of November, 2017
Charleston, South Carolina

Irvin G. Condon
Judge
Charleston County Probate Court

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NUMBER: 2016-ES-10-01631
	)	
IN THE MATTER OF: Stephen Day Ward, Jr. (Decedent)	)	
Mary K. Ward, a/k/a Mary Kimberly Ward, Petitioner	)	**ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER DENYING SUMMARY JUDGMENT**
v.	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives	)	
Respondents.	)	

Hearing Date:	October 25, 2017
Presiding Judge:	Irvin G. Condon
Petitioner:	Mary K. Ward, a/k/a Mary Kimberly Ward
Petitioner's Attorney:	Jane A. McFaddin, Esq.
Respondents:	Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward
Respondents' Attorney:	George E. Morrison, Esq. Amanda A. Bailey, Esq.
Court Reporter:	Anne Bouley Meyer

THIS MATTER comes before the Court upon a Motion for Reconsideration of Order Denying Summary Judgment by the Respondents' attorney George E. Morrison, Esq. filed on November 27, 2017. Pursuant to SCRCP 59(e), the Motion was properly considered and it fails to reach the standard required to grant Summary Judgment. The Motion for Reconsideration is **DENIED**.

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JK 1603

Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Grimsley v. S.C. Law Enf't Div., 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015). "Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.'" Id. (quoting Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Bennett v. Inv'rs Title Ins. Co., 370 S.C. 578, 588–89, 635 S.E.2d 649, 654 (Ct. App. 2006). If the moving party is successful, the nonmoving party must then come forward with specific facts showing there is a genuine issue for trial. Id.

Previously in this matter, this Court held a hearing on October 25, 2017. At that hearing, both sides presented facts and arguments. After that hearing it is very clear that there are some genuine issues of material fact that need to be addressed. Those issues require a hearing on the merits and a judgment will be made after all of the evidence has been presented.

Additionally, in reaching its decision this Court relied on S.C. Code Ann. § 62-1-102(b)(2) and S.C. Code Ann. § 62-1-102(a). Section 62-1-102(b)(2) provides that an underlying purpose and policy of the South Carolina Probate Code is "to discover and make effective the intent of a decedent in the distribution of his property." S.C. Code Ann. § 62-1-102(b)(2). Section

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62-1-102(a) provides that the South Carolina Probate Code shall be liberally construed and applied to promote this purpose and policy. S.C. Code Ann. § 62-1-102(a).

Similarly, summary judgment is a drastic remedy and "should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. BPS, Inc. v. Worthy, 262 S.C. 319, 236, 608 S.E.2d 155, 159 (Ct. App. 2005). Furthermore, "[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Id. at 325, 155. This Court finds that further inquiry into the facts of the case is desirable to clarify the application of the law and thus, summary judgment is not appropriate.

Therefore, the Motion for Reconsideration of Order Denying Summary Judgment is hereby **DENIED.**

AND IT SO ORDERED!

IRVIN G. CONDON
Judge of Probate
Charleston County

This 9th Day of February, 2018
Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NUMBER: 2016-ES-10-01631
	)	
IN THE MATTER OF: Stephen Day Ward, Jr. (Decedent)	)	
	)	
Mary K. Ward, a/k/a Mary Kimberly Ward,	)	**ORDER**
	)	
Petitioner,	)	
v.	)	
	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives,	)	
	)	
Respondents.	)	
	)	

Hearing Date: April 18, 2018
Presiding Judge: Honorable Irvin G. Condon
Petitioner: Mary K. Ward, a/k/a Mary Kimberly Ward
Petitioner's Attorney: Jane A. McFaddin, Esq.
Respondents: Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward
Respondents' Attorney: George E. Morrison, Esq.
Amanda A. Bailey, Esq.
Court Reporter: Samantha Flinn

This matter comes on for hearing on a Summons and Petition for Omitted Spouse share filed by Petitioner pursuant to the Omitted Spouse statute, S.C. Code 1976 as amended Sect. 62-2-301. Petitioner appeared at the hearing by her court-appointed Conservator, Ann Noble-Kiley. All other appearances of parties and counsel were as referenced above.

Petitioner's Petition includes the License and Certificate of Marriage between Stephen Day Ward, Jr. and Mary Kimberly Walker certifying that the named parties were married on September 7, 2013 at Seabrook Island, Charleston County, S.C. Signing as officiant for the ceremony was Jack Guedalia, former Associate Judge of Probate of the Charleston County Probate Court.

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Additionally, Petitioner's daughter, Ann Noble-Kiley, testified she attended and witnessed the wedding of her mother and Stephen Day Ward, Jr. in 2013. Ms. Noble-Kiley further testified her mother was married to Mr. Ward at his death on September 16, 2016, and continues to survive him as his widow at the present date.

At the death of Stephen Day Ward, Jr., Respondents, children of the decedent, entered for probate his Last Will and Testament dated April 21, 2005 ("2005 Will"). Their Application for Informal Probate of Will filed September 29, 2016, lists "Mary Kimberly Ward – wife "as an intestate heir. The Application further affirms that they are unaware of any subsequent unrevoked Will or Codicil and that the April 21, 2005 Will is the Decedent's validly executed last Will.

This "2005 Will" makes no mention of Petitioner, the surviving spouse of Stephen Day Ward, Jr., as it specifically states that, at the time of execution, Stephen Day Ward, Jr. was married to Nancy L. Ward.

This Court finds that this estate falls squarely within the provisions of S.C. Code 1976 as amended Sect. 62-2-301 ("Omitted Spouse Statute"), and that Petitioner has fulfilled all her procedural obligations to present a rightful claim pursuant to said statute.

The Respondents argue that the "2005 Last Will" admitted to probate, incorporates by reference an "Agreement for Mutual Wills and Trusts ("2005 Agreement"), also dated April 21, 2005, and apparently executed by decedent and his then-wife, Nancy L. Ward. Nancy L. Ward died on June 4, 2011, and decedent thereafter married Mary K. Ward.

Decedent's "2005 Will" was admitted to informal probate in this Court on September 30, 2016, and Respondents were appointed as Co-Personal Representatives pursuant to its terms.

The "Omitted Spouse statute", as currently amended, replaces an earlier statutory version which declared a will, executed by one spouse prior to a marriage, was presumptively revoked by

a subsequent marriage. (former S.C. Code Sect. 21-7-220, SC Code 1962 Sect. 19-222). The current statutory provision, amended in 1986, provides two specific and limited exceptions to the presumption of revocation. Sect. 62-2-301(a)(1) allows an exception where "it appears from the will that the omission was intentional" emphasis added, Sect. (a)(2) allows an alternate exception if the decedent "provided for the spouse by transfer outside the Will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence."

Respondents argue that the "2005 Agreement", (Respondents' Exhibit 6), operates to make Stephen D. Ward, Jr.'s "2005 Will" irrevocable upon Nancy L. Ward's death. ("2005 Agreement", Article 3.2). They argue that the language in the "2005 Agreement", as read in combination with the "2005 Will", satisfies the statutory requirement of the Omitted Spouse statute to constitute an exception if "it appears from the will that the omission was intentional".

However, nothing in the 2005 "Last Will" or "Agreement" makes any specific mention of Mary K. Ward. Clearly, by all reasonable laws of construction, the "2005 Will", executed during the decedent's marriage to Nancy L. Ward, could not "intentionally" omit provision for Mary K. Ward, as a surviving spouse, as Mary K. Ward did not, and could not, by any legal or actual, factual construction, have the status of "spouse" to Stephen D. Ward in 2005. Ms. Noble-Kiley testified that the parties did not even know one another until 2012.

Further, as a matter of public policy, non-specific "blanket" language in an Agreement between two parties, even if married to each other at the time and held to be applicable to their testamentary wishes during their lifetime together, could not be construed to apply as a limitation on the rights of a third-party, "innocent", subsequent spouse of one of the parties to the former agreement. S.C. law has long been construed to support the right of an individual to direct the

disposition of his or her estate after his death by valid Will, regardless of the otherwise unreasonableness, in third party eyes, of the distribution. But this individual right, long protected and largely unfettered, is clearly held, by S.C. public policy and current statute, to be overridden by the paramount responsibility for a surviving spouse to be reasonably "provided for" after the death of a spouse. Even if the purported language in the "2005 Agreement" is considered to become a governing part of the "2005 Will", it would not override long-standing S.C. statutory provisions and public policy. Weeks v. New York Life Ins. Co., Supreme Court of South Carolina, April 15, 1924.

However, the same "2005 Agreement" relied upon by Respondents to exclude Mary K. Ward also specifically requires that the survivor of Stephen L. Ward, Jr. and Nancy L. Ward will take all "necessary" or "required" measures "to maintain his or her Will and Trust in full force until his or her death" (Article 4.1). Additionally should a survivor of the two of them subsequently remarry, the remarried Survivor shall "Thereafter ratify his or her Will and Trust in the form and with the provisions contained in his or her Will and Trust annexed hereto (emphasis added); and As a condition of such remarriage, require any person he or she remarries to legally and unconditionally waive his or her right to an Elective share..." (Articles 4.2.1 and 4.2.2).

The "2005 Agreement" relied upon by Respondents clearly acknowledges and anticipates the controlling provisions of the S.C. Probate Code, reflecting the public policy of this State, that a surviving spouse be reasonably provided for from a deceased spouse' estate.

Indeed, as witness Brett Bluestein, an attorney previously in practice at Respondent's counsel firm, and the drafter of Mr. Ward's "2005 Will" and the "2005 Agreement", testified, all provisions of all relevant estate planning documents were intended to be governed by, and construed according to the laws of the State of South Carolina ("2005 Agreement" – Article VII).

Respondents have presented no document of Mr. Ward's ratifying his "2005 Will" after his 2013 marriage to Petitioner, and indeed their Application for Probate states there is no testamentary ıent subsequent to the "2005 Will". Likewise, Respondents present no document of ner waiving any of her statutory rights of inheritance as a surviving spouse.

Petitioner's counsel objected to the testimony sought by Respondent's counsel from several witnesses as to conversations with decedent about the effect of his marriage to Mary Ward on his 2005 Will, as prohibited by the Dead Man's Statute.

The S.C. Dead Man's Statute, S.C. Code Ann. Sect. 19-11-20 (S.C. 1976) prohibits admission of testimony from a "party to an action or proceeding" or "person who has a legal or equitable interest which may be affected by the event of the action or proceeding," regarding "any transaction or communication between such person and a person at the time of the examination deceased...against a party then prosecuting or defending the action...when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness...". As held in Brooks v. Brooks, 530 S.E. 2d 120 (S.C. 2000) and Hanahan v. Simpson, 326 S.C. 140, 485 S.E. 2d 903 (1991), this rule prohibits any "interested persons" from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest in the proceeding.

In this case, the rule clearly excludes any testimony from the three Respondents, beneficiaries under the 2005 Will, as to conversations with their late father that might bear on Petitioner's claim of spousal inheritance and thereby reduce their own beneficial interest. The objection to the proffered testimony of Respondents is sustained, and such testimony is not admitted or continued by this Court.

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As to the objection to Ms. Einstrom's testimony, the Seabrook Island realtor and former social friend of the decedent and his former wife, Nancy, the Court finds that even though she has a current listing contract with Respondents for the marketing and sale of decedent's residence, her financial interest in the future sale of such property is not sufficiently affected by the outcome of this proceeding to exclude her testimony. Petitioner's objection was therefore overruled.

Secondly, Respondents argue in their Response to Petition that Stephen Day Ward, Jr. provided for Petitioner outside the 2005 Will, as provided in S.C. Code 1976 amended Sect. 62-2-301(a)(2). This "transfer outside-the-will" provision must be intentionally in lieu of a testamentary provision as shown by either the statements of the testator or the amount of the transfer.

In considering the limited exceptions to the statutory protection of a surviving spouse not named in a pre-marriage Will, S.C. Law has held that even when an earlier Will specifically includes the person who later marries the decedent, by name and with a specific bequest, unless the bequest also states the bequest is made in contemplation of marriage, the bequest does not satisfy a provision for the survivor in their capacity as a spouse. [A spouse has not been "provided for" under Sect. 62-2-301(a) (the omitted spouse statute) in the absence of specific language in a will or sufficient extrinsic evidence that a bequest was made in contemplation of marriage. (emphasis added) Miles v. Miles (S.C. 1994) 312 S.C. 408, 440 S.E. 2d 882, rehearing denied.] (emphasis added) Miles v. Miles, 312 S.C. 408, 440 S.E. 2d 882 (S.C. 1994), Green ex rel. Estate of Cottrell v. Cottrell ex rel. Estate of Cottrell, 346 S.C. 53 (2001).

Here, the "2005 Will" makes no mention of Mary K. Ward by name, and makes no provision for her in any capacity, much less any bequest in anticipation or contemplation of marriage to her, as decedent was happily, presumably, married to Nancy K. Ward in 2005.

Similarly, a pre-marriage Will which omits provision for a surviving spouse may be valid if the decedent alternatively provides for the surviving spouse outside the Will, and the testator specifically states that the transfer of assets is in lieu of a testamentary provision. Green ex re. Estate of Cottrell v. Cottrell ex rel. Estate of Cottrell, 346 S.C. 53 (2001)(testator specifically provided for spouse before marriage in Will, as well as QTIP Trust to take effect after marriage.) Or, if specific statements of the testator's intent are not evident, the amount of the non-testamentary transfer ("sheer magnitude") can be inference of intent to substitute provision outside the Will. In re Timmerman, 331 S.C. 455, 502 S.E. 2d 920 (S.C. App. 1998) (Testator's transfer to surviving spouse outside Will totaled $1,191,000.00).

In the instant case, Respondents present no statements or documents of decedent regarding any intent to provide for Mary K. Ward outside his Will. Further, there is no evidence of any transfers of assets from decedent to Petitioner during their marriage, or established by decedent to take effect at his death that would bear any reasonable proportion to the size of his estate as a substitute spousal provision outside his Will.

Respondents attempted to introduce testimony of general statements made to them by their father, the decedent, but the objections of Petitioner's counsel were sustained by this Court. Even were such proffered testimony considered by this Court, none of the three Respondents presented any statement from their father of his intent to specifically transfer assets to Petitioner in lieu of testamentary provision.

Further, Respondents fail to show any intent of the decedent for spousal provision outside his Will, by virtue of the amount of any transfer. Respondents' only evidence, gleaned from a review of decedent's financial records after his death, is that the couple maintained a joint bank account after their marriage for marital household expenses, to which decedent's income was the

primary, if not sole, contributor. Respondents also testified that the decedent, at some 20 years his wife's junior, reported income at an estimated four times greater than his wife. His Estate Inventory, as amended by testimony of Respondent Brian Ward, reflects a net value of more than $999,000.00.

Respondents also point to a payment of $1600.00 for property taxes on a Seabrook Island property owned by Petitioner prior to the marriage, and an estimated payment of $7500.00 for medical and healthcare in–home assistance for Petitioner following a broken leg. Both payments appear to have been made from the couple's joint account. Neither of these fall beyond the realm of reasonable family support arrangements, given Stephen and Mary Ward's relative ages, incomes and assets.

Accordingly, this Court finds that Petitioner has clearly proved her claim to a spousal share of the Estate of her late husband, Stephen Day Ward, Jr., as provided by S.C. Code 1976 Sect. 62-2-301, which share shall be equal to one-half of the probate estate of the decedent.

AND IT IS SO ORDERED.

9th day of August, 2018
Charleston, South Carolina

Irvin G. Condon
Judge
Charleston County Probate Court

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO: 2016-ES-10-01631
	)	
IN RE: ESTATE OF Stephen Day Ward, Jr. (Decedent)	)	
	)	
Mary K. Ward, a/k/a Mary Kimberly Ward,	)	
	)	**ORDER TO ALTER OR AMEND JUDGMENT**
Petitioner,	)	
	)	
v.	)	
	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Co-Personal Representatives,	)	
	)	
Respondents.	)	

Presiding Judge:	Irvin G. Condon
Hearing Date:	April 18, 2018
Petitioner:	Mary K. Ward
Attorney for Petitioner:	Jane McFaddin, Esq.
Respondents:	Stephanie W. Cibinic, David D. Ward, and Brian C. Ward
Attorneys for Respondents:	Amanda K. Bailey, Esq. and George E. Morrison, Esq.
Court Reporter:	Samantha Flinn

THIS MATTER comes before the Court upon a Motion for Reconsideration filed by the Respondents in this case. Respondents filed the present to Motion for Reconsideration on August 20, 2018 in response to this Court's Order dated August 9, 2018. Respondents argue that the August 9, 2018 Order should be altered or amended pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure due to several errors in the findings of fact and conclusions of law.

Therefore, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Order of this Court dated August 9, 2018 is hereby amended to read as follows:

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THIS MATTER comes before the Court on Mary K. Ward's (hereinafter "Petitioner") Petition for Omitted Spouse Share filed on January 19, 2017. Present at the hearing were Ann Noble-Kiley, daughter and conservator for Petitioner, along with Jane McFaddin, Esquire, attorney for Petitioner, and Amanda K. Bailey, Esquire and George Morrison, Esquire, along with their clients Stephanie Cibinic, David Ward, and Brian Ward (hereinafter "Respondents").

FACTUAL BACKGROUND

Stephen Day Ward (hereinafter "Decedent") and Nancy L. Ward, Decedent's third wife, were married on May 23, 1998. Decedent and Nancy Ward executed an "Agreement for Mutual Wills and Trusts" on April 21, 2005. Nancy L. Ward passed away on June 4, 2011, leaving Decedent as her surviving spouse. Thereafter, on September 7, 2013, Decedent and Petitioner were married on Seabrook Island, Charleston County. Decedent passed away on September 16, 2016, a resident of Charleston County, leaving Petitioner as his surviving spouse.

On September 29, 2016, Respondents filed a Petition for Informal Probate of Will and Appointment, along with the 2005 Last Will and Testament of the Decedent, pursuant to which they were appointed as Co-Personal Representatives of the Estate of Stephen Day Ward on September 30, 2016. On the Application, Respondents listed Mary K. Ward as an intestate heir of the Decedent. On January 28, 2017, Petitioner filed a Petition for Omitted Spouse Share. On April 11, 2017, Respondents filed a Response to Petition for Omitted Spouse Share denying Petitioner's claim for omitted spouse share.

On June 30, 2017, Respondents filed a Motion for Summary Judgment. On October 23, 2017, Petitioner filed a Reply to Motion for Summary Judgment. This Court issued an Order Denying Summary Judgment on October 25, 2017. Respondents filed a Motion for

Reconsideration of Order Denying Summary Judgment on November 27, 2017. This Court issued an Order Denying Respondents' Motion for Reconsideration on February 9, 2018.

This Court issued a Notice of Hearing on March 2, 2018. In lieu of closing statements and with the parties' consent, the Court accepted proposed orders from attorneys for Petitioner and Respondents at the conclusion of the hearing.

Based upon a review of the record in this matter, evidence and testimony presented, and proposed orders submitted, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Decedent died testate on September 16, 2016, a resident of Charleston County, South Carolina.
2. The Court has jurisdiction over this matter and venue is proper pursuant to S.C. Code of Laws Ann. §§ 62-1-302 and 62-3-201 (a) (1).
3. The Court finds that proper notice was given to all parties in this matter pursuant to S.C. Code Ann. § 62-1-401.
4. Petitioner called Ann Noble-Kiley as her only witness. Noble-Kiley testified that she is the daughter and court-appointed conservator for the Petitioner. She further testified that she attended the wedding of the Decedent and Petitioner on September 7, 2013 on Seabrook Island, and that at the time of Decedent's passing, he was still married to Petitioner.
5. Following the testimony of Ms. Noble-Kiley, Respondents moved for involuntary non-suit, which the Court denied on the record.
6. Respondents called Brett Bluestein as their first witness. Mr. Bluestein testified that he is currently a wealth strategist, but prior to that, he was a practicing attorney with the South Carolina Bar.

7. Prior to answering questions relevant to the case at bar, Respondents waived any attorney-client privilege that the Decedent may have had with Mr. Bluestein.
8. While in private practice, Bluestein provided legal services to Stephen Ward and his then-wife, Nancy Ward, in 2005, including the preparation the Agreement for Mutual Wills and Trusts for the Decedent.
9. Bluestein testified that an Agreement for Mutual Wills and Trusts is a document used in very limited circumstances involving couples with children from prior marriages, in order to ensure the distribution of assets is made according to the estate plan even in the event one spouse predeceased the other and the other spouse remarried.
10. Bluestein stated that he would not have suggested or offered up an agreement for mutual wills as part of the Decedent's estate plan unless the Decedent intended for his will and trust agreement to be enforced in the event Nancy Ward predeceased him and he subsequently remarried. Bluestein "would not have offered this agreement to mutual clients unless that was exactly what they wanted to do. Protecting against distribution of their assets after the death of the first spouse."
11. Bluestein clarified that he would not have suggested this document nor offered it up to Nancy Ward or Stephen Ward if it were not crystal clear that their intent in drafting the Agreement for Mutual Wills, their Last Wills and Testaments, and their Trusts Agreement, was to omit any subsequent spouse from inheriting from the surviving spouse's estate.
12. Bluestein testified that he was not aware of any amendments, modifications, or alterations to any of the estate planning documents, nor did Nancy Ward or Stephen Ward reach out to him to do so.

13. The April 21, 2005 Last Will and Testament of Stephen D. Ward ("Will") is the valid Last Will and Testament of Decedent.

14. At the time of execution of the 2005 Will, Decedent was married to his third wife, Nancy Ward.

15. Nancy Ward predeceased the Decedent in 2011.

16. Decedent and Petitioner were married in September 2013 on Seabrook Island, Charleston County, South Carolina.

17. At the time of their marriage, Petitioner owned a home at 1220 Creek Watch Trace on Seabrook Island and Decedent owned a home at 2412 High Hammock Road on Seabrook Island. Resp.'s Ex. 7.

18. Item XIII of the 2005 Will incorporates by reference The Agreement for Mutual Wills and Trusts between Stephen D. Ward ("Husband") and Nancy L. Ward ("Wife"), dated April 21, 2005 ("Agreement for Mutual Wills and Trusts).

19. Sections 2.5 and 7.1 of the Agreement for Mutual Wills and Trusts expressly incorporates by reference the following exhibits:

    1. Trust Agreement of Stephen D. Ward, April 21, 2005;
    2. Last Will and Testament of Stephen D. Ward, April 21, 2005;
    3. Nancy Diemer Trust, April 28, 1998;
    4. First Amendment and Restatement of Trust Agreement of Nancy L. Ward, April 21, 2005; and
    5. Last Will and Testament of Nancy L. Ward, April 21, 2005.

20. In addition, the Trust Agreement for Stephen D. Ward, the Last Will and Testament of Stephen D. Ward, the First Amendment and Restatement of Trust Agreement of Nancy L.

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Ward, and the Last Will and Testament of Nancy L. Ward each contain express provisions incorporating by reference the Agreement for Mutual Wills and Trust.

21. Respondents called Trisha Ernstrom as a witness. Ernstrom was friends with the Decedent and Nancy Ward during their lifetimes.

22. Erstrom testified that after the execution of the 2005 Agreement for Mutual Wills, but prior to Nancy Ward's death in 2011, Ernstrom discussed with the Decedent his and Nancy's estate plan on many occasions. Ernstrom testified that the Decedent stated that he and Nancy had arranged through an attorney and intended to provide for their respective children to inherit the house and all their assets.

23. Ernstrom testified that after Nancy Ward passed away, Ernstrom remained friends with the Decedent and discussed his relationship and subsequent marriage to his fourth wife, Petitioner.

24. Ernstrom testified that prior to their marriage, the Decedent and Petitioner each had a home on Seabrook Island. Ernstrom testified that she had concerns about the Decedent's decision to marry Petitioner and the marriage's impact on the Decedent and Nancy Ward's estate plan, and discussed those concerns with him.

25. Ernstrom testified that when Ernstrom and Decedent discussed his marriage with Petitioner, on at least three occasions, Decedent insisted that the marriage to Petitioner was not going to effect the estate plan he and Nancy Ward had planned, that nothing would change, and that "everything was going to stay as he and Nancy had planned."

26. After the Decedent and Petitioner were married in 2013, Petitioner continued to own her own home at 1220 Creek Watch Trace on Seabrook Island, but moved in with the Decedent at 2412 High Hammock Road on Seabrook Island.

27. Respondent Brian Ward is one of the Decedent's children. Brian Ward testified that the Decedent had property on Seabrook Island since the 1970s that Brian Ward and his siblings would visit during the summers for more than twenty (20) years.

28. Brian Ward testified that in 2005 or 2006, Decedent provided Brian Ward with a bound copy of Decedent's estate planning documents, which included the Agreement for Mutual Wills and its exhibits, which was admitted into evidence without objection as Exhibit 8.

29. Brian Ward testified that he discussed these estate planning documents with the Decedent at the time he delivered them in 2005 or 2006, and then again in 2013, prior to the Decedent's marriage to the Petitioner.

30. Petitioner's attorney objected to testimony on discussions with the Decedent pursuant to the Dead Man's Statute, which the Court sustained. Respondents proffered the testimony of Brian Ward's discussions with the Decedent.

31. Brian Ward testified that at no time did he observe the Decedent unable to make his own decisions, care for himself, communicate freely, or maintain his finances.

32. Brian Ward testified that after Decedent passed away, Brian Ward, as Co-Personal Representative of the estate, reviewed the Decedent's finances and located assets.

33. Brian Ward testified that a joint BB&T account was held between the Decedent and Petitioner, funded entirely by pension and Social Security income of the Decedent, and was used to pay the living expenses of both Decedent and Petitioner during Decedent's lifetime, tax expenses of Petitioner's property on Seabrook Island in the amount of $1,600.00, and Petitioner's health care expenses of at least $7,500.00.

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34. Brian Ward testified that the BB&T account was a joint account with rights of survivorship and transferred to Mary Ward outside of the Estate, with a balance of approximately $4,000.00 upon Decedent's death.

35. Brian Ward testified that the Decedent owned, with rights of survivorship to Petitioner, a time-share in Las Vegas with an unknown value, a Toyota Camry lease with an unknown value, and a Seabrook Island Club membership valued at $17,000, all of which transferred to Petitioner outside of the estate.

36. Brian Ward testified that in his role as Co-Personal Representative, he was able to identify Social Security and other investment income of the Decedent, but that the Petitioner's income was not used to pay Petitioner and Decedent's living expenses and was not deposited into the BB&T joint account.

37. Brian Ward testified that he has not received any documentation that the Decedent amended, revoked, or modified any of the estate planning documents in Exhibit 8.

38. Respondent David Ward, also one of Decedent's children, testified similarly that in 2006, Decedent provided him a bound copy of his estate planning documents, Exhibit 8, and that to his knowledge, at no time thereafter, was Exhibit 8 amended, ratified, modified, or revoked.

39. David Ward testified that he discussed these estate planning documents with the Decedent in 2011 and then again in 2013, prior to his marriage to Mary Ward.

40. Petitioner's attorney objected to testimony on discussions with the Decedent pursuant to the Dead Man's Statute, which the Court sustained. Respondents proffered the testimony of David Ward's discussions with the Decedent.

41. Respondent Stephanie Cibinic, Decedent's daughter, also testified similarly that in late 2005 or 2006, Decedent provided her a with bound copy of his estate planning documents, Exhibit 8, and that to her knowledge, at no time thereafter, was Exhibit 8 amended, ratified, modified, or revoked.

42. Cibinic testified, without objection, that Decedent called her in August 2013, prior to his marriage to the Petitioner, and told her he was going to get married and said, "This does not impact the Will."

CONCLUSIONS OF LAW

43. An action under the omitted spouse statute is an action at law. Green ex rel. Estate of Cottrell v. Cottrell ex rel. Estate of Cottrell, 346 S.C. 53, 60, 550 S.E.2d 324, 328 (Ct. App. 2001).

44. The Omitted Spouse Statute, S.C. Code Ann. § Section 62–2–301, provides in relevant part:

> (a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse, upon compliance with the provisions of subsection (c), shall receive the same share of the estate he would have received if the decedent left no will unless:
>
> (1) it appears from the will that the omission was intentional; or
>
> (2) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

45. In Green ex rel. Estate of Cottrell, the Court noted that the legislative purpose behind the Probate Code was "(2) to discover and make effective the intent of a decedent in the distribution of his property." Id. (emphasis supplied).

46. A surviving spouse who wishes to qualify as an omitted spouse must demonstrate:

> (1) the decedent spouse executed the Will in question prior to the marriage;
> (2) the Will does not provide for her as the surviving spouse;
> (3) the omission was unintentional; and
> (4) the decedent did not provide for the spouse with transfers outside of the Will.

Id. at 60–62, 550 S.E.2d 324, 328–29.

47. The reporter's comments to the Omitted Spouse Statute specifically contemplates evidence of the Decedent's intentions from the face of the Will, from the Decedent's statements, or other evidence.

48. The Omitted Spouse Statute, as currently amended, replaces an earlier statutory version, which declared a will, executed by one spouse prior to a marriage, was presumptively revoked by a subsequent marriage. Former S.C. Code § 21-7-220, S.C. Code 1962 § 19-222. The current statutory provision, amended in 1986, provides two specific and limited exceptions to the presumption of revocation. S.C. Code Ann. § 62-2-301 (a) (1) allows an exception where "it appears from the will that the omission was intentional." S.C. Code Ann. § 62-2-301(a)(2) allows an alternate exception if the decedent "provided for the spouse by transfer outside the Will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence."

49. In the present case, it is undisputed that the Petitioner meets the first two elements to qualify as an omitted spouse, as the Decedent executed the 2005 Will prior to his marriage to Petitioner and the 2005 Will does not provide for the Petitioner.

50. Respondents argue that the omission was intentional, as evidenced by the language of the Will and the documents incorporated by reference therein.

51. South Carolina law permits an expressed testamentary compact for joint wills, which becomes irrevocable when one party predeceases. S.C. Code Ann. § 62-2-701.

52. Additionally, South Carolina law provides for documents to be incorporated into a will by reference. S.C. Code Ann. § 62-2-509.

53. Section IV 4.2 states that if the surviving spouse remarries, he or she will "Thereafter ratify his or her Will and Trust in the form and with the provisions contained in his or her Will and Trust...and as a condition of such re-marriage, require any person he or she remarries to legally and unconditionally waive his or her right to an Elective Share in the Property provided them under South Carolina Law."

54. Decedent did not ratify his Will or Trust and did not condition his marriage to Petitioner on the requirement that she waive any right to his Estate.

55. While South Carolina Courts have held that a Decedent's choice to leave a previous Will intact is evidence of an intentional omission, the opposite is true in this case. Green ex rel. Estate of Cottrell v. Cottrell ex rel. Estate of Cottrell, 550 S.E.2d 324 (Ct. App. 2001).

56. The Court finds that the Decedent's failure to comply with Section IV 4.2 of the Agreement for Mutual Wills and Trusts is evidence that the Decedent did not intentionally omit the Petitioner from his Estate.

57. With respect to the fourth element, Petitioner must demonstrate that "that the Decedent did not provide for Petitioner outside of the Will."

58. To satisfy the fourth element, the testator must provide for the spouse outside the will and intend this provision to be in lieu of any testamentary disposition. S.C. Code Ann. § 62-2-301.

59. In re Estate of Timmerman, 502 S.E.2d 920 (Ct. App. 1998), the Court found that the Decedent provided for the spouse outside the will, in lieu of any testamentary disposition, based on "the sheer magnitude" of the transfers to the surviving spouse. In Timmerman, the transfers from the Decedent to the Petitioner amounted to $1.2 million, including joint bank accounts and substantial gifts to the surviving spouse and her children. Id.

60. Respondents argue that the Decedent provided for Petitioner outside of the Will, during his lifetime, by paying for Petitioner's living expenses, expenses related to Petitioner's own individual home on Seabrook, Petitioner's health care related expenses, and providing for rights of survivorship to the BB&T account, time share, Toyota Camry lease, and Seabrook Island Club membership.

61. The Court finds that, although the Decedent shared expenses with the Petitioner during their marriage, there is no evidence that the Decedent intended these transfers to be in lieu of any testamentary disposition.

Based on the foregoing, it is hereby,

ORDERED ADJUDGED AND DECREED that Petitioner's claim for omitted spouse share is **GRANTED**; it is further

ORDERED, ADJUDGED, AND DECREED that the Petitioner is entitled to her intestate share of the Decedent's estate; it is further

ORDERED, ADJUDGED, AND DECREED that the parties shall have ten (10) days from the date of this Supplemental Order to file any post-hearing motions.

IT IS SO ORDERED.

IRVIN G. CONDON
Judge of Probate
Charleston County

This 18th day of January, 2019
Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2016-ES-10-1631
	)	
IN RE: ESTATE OF STEPHEN DAY WARD, JR.	)	
	)	
MARY K. WARD A/K/A MARY KIMBERLY WARD	)	ORDER DENYING RESPONDENTS' MOTION FOR RECONSIDERATION OF JANUARY 18, 2019 ORDER
	)	
Petitioner,	)	
	)	
v.	)	
	)	
STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives,	)	
	)	
Respondents.	)	
	)	

Presiding Judge:	**Irvin G. Condon**
Petitioner:	**Mary K. Ward a/k/a Mary Kimberly Ward**
Petitioner's Attorney:	**Jane A. McFaddin, Esq.**
Respondents:	**Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward**
Respondents' Attorneys:	**Amanda K. Bailey, Esq. and George E. Morrison, Esq.**

THIS MATTER comes before the Court upon a Motion to Reconsider, Alter & Amend Order dated and filed January 28, 2019 by Respondents. The present Motion is captioned as a "Motion for Reconsideration of January 18, 2019 Order," and is properly considered as a Rule 59(e) motion to alter or amend judgment.

Pursuant to Rule 59(f), SCRCP, this Court issues its ruling on the Respondents' Motion to Reconsider without holding a hearing. The filing of motions and other pleadings in the Probate Court is governed by the South Carolina Probate Code and, where not inconsistent, the South Carolina Rules of Civil Procedure, including Rule 59(e). In re: Estate of Timmerman, 331 S.C.

455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (see also S.C. Code Ann. §§ 14-23-280, 62-1-304). A party may not use a Rule 59 motion to re-litigate old matters or present issues that could have been raised prior to the judgment, but were not. Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008); Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

After a review of the relevant pleadings, memoranda, and hearing notes, the Court finds that the Motion filed raises no new argument and presents no new evidence, therefore, the Court respectfully **DENIES** the Motion.

Based upon the foregoing, it is now therefore, hereby:

ORDERED, ADJUDGED, AND DECREED that Movant's Motion to Alter or Amend Judgment and Reconsider Order Dated January 18, 2019 is respectfully **DENIED.**

IT IS SO ORDERED.

IRVIN G. CONDON
Judge of Probate
Charleston County

This 2nd day of ~~March~~ April, 2019
Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1001932

Stephen Ward Cibinic et al
PLAINTIFF(S)

Mary K Ward et al
DEFENDANT(S)

RECEIVED
DEC 31 2019
SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Upon reviewing the record and the Probate Return, along with arguments from both parties, the decision of the Probate Court is affirmed.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/19/2019 .

Ward, Stephen Day Jr Estate of
Stephen Day Ward, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Dec 20 4:56 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001932

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

Case Caption: Stephen Ward Cibinic VS Mary K Ward

Case Number: 2019CP1001932

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

PLEADINGS

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF CHARLESTON	**CASE NO.: 2019-CP-10-1932**

IN RE: ESTATE OF STEPHEN DAY WARD, JR.

STEPHEN WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives,

Appellants/Respondents,

v.

MARY K. WARD A/K/A MARY KIMBERLY WARD,

Respondent/Petitioner.

NOTICE OF INTENT TO APPEAL (S.C. CODE ANN. §62-1-308(a))

Pursuant to S.C. Code Ann. §62-1-308(a), the Appellants/Respondents file this notice of intent to appeal the Order Denying Respondents' Motion for Reconsideration of January 18, 2019 Order in the Probate Court, dated April 2, 2019 and received by the undersigned on April 9, 2019, a copy of which is attached.

FILED
2019 APR 15 PM 1:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

BURR & FORMAN LLP

Dated: April 15, 2019

Amanda Bailey (GB)

Amanda A. Bailey, SC Bar No. 71085
E-mail:abailey@burr.com
George Morrison
E-mail:gmorrison@burr.com
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for the Respondents Stephen Ward Cibinic, David D. Ward, and Brian C. Ward

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF CHARLESTON	)	**CASE NO.: 2019-**

IN RE: ESTATE OF STEPHEN DAY WARD, JR.	)	
	)	
STEPHEN WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives,	)	**CERTIFICATE OF SERVICE**
	)	
Appellants/Respondents,	)	
	)	
v.	)	
	)	
MARY K. WARD A/K/A MARY KIMBERLY WARD,	)	
	)	
Respondent/Petitioner.	)	

FILED
2019 APR 15 PM 3:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Sharon Amerson, an employee of Burr & Forman, LLP, certify the following document:

NOTICE OF INTENT TO APPEAL

was served via U.S. Mail on this date on the following:

Charleston County Probate Court Attn: Estate Clerk 84 Broad Street Historic Courthouse Charleston, SC 29401 Case No: 2016-ES-10-01631	Jane A. McFadden, Esq. 665 St. Andrews Boulevard Charleston, SC 29407 Attorney for Respondent/Petitioner

I certify under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Dated: April 15, 2019

Sharon Amerson

Sharon Amerson

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF CHARLESTON	**CASE NO.: 2019-CP-10-1932**
IN RE: ESTATE OF STEPHEN DAY WARD, JR. **STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives,** **Appellants/Respondents,** **v.** **MARY K. WARD A/K/A MARY KIMBERLY WARD,** **Respondent/Petitioner.**	**STATEMENT OF ISSUES ON APPEAL** **S.C. Code Ann. §62-1-308(b)**

FILED
2019 MAY 22 AM 11:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Appellants/Respondents, Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives of the Estate of Stephen Day Ward, hereby submit their Statement of Issues on Appeal:

1) Whether the Probate Court erred in granting Petitioner an omitted spousal share because such finding is controlled by an erroneous conception of the application of the law?

2) Whether the Probate Court erred in failing to find Decedent intentionally omitted Petitioner from the Will because any intent to the contrary is wholly unsupported by the evidence?

3) Whether the Probate Court erred in denying Appellant's Motion for Summary Judgment and Motion for Involuntary Non-Suit because it appears from the Decedent's Will that the omission of the Respondent from the Will was intentional?

4) Whether the Probate Court erred in excluding the testimony of witnesses proffered by Appellants/Respondents?

Respectfully submitted,

BURR & FORMAN LLP

Dated: May 20, 2019

Amanda A. Bailey, SC Bar No. 71085
E-mail:abailey@burr.com
George Morrison
E-mail:gmorrison@burr.com
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for the Respondents
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF CHARLESTON	**CASE NO.: 2019-CP-10-1932**

FILED
2019 MAY 22 AM 11:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IN RE: ESTATE OF STEPHEN DAY WARD, JR.

STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives,

Appellants/Respondents,

v.

MARY K. WARD A/K/A MARY KIMBERLY WARD,

Respondent/Petitioner.

CERTIFICATE OF SERVICE

I, Christine Badami, an employee of Burr & Forman, LLP, certify the following document:

STATEMENT OF ISSUES ON APPEAL

was served via U. S. Mail on this date on the following:

Jane A. McFadden, Esq.
665 St. Andrews Boulevard
Charleston, SC 29407
Attorney for Respondent/Petitioner

I certify under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Dated: May 20, 2019

Christine Badami

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
County of Charleston
Case No. 2019-CP-10-01932

APPEAL FROM
Probate Court

The Honorable Irvin G. Condon
Probate Court Judge

Case No.:
2016-ES-10-01631

IN RE: ESTATE OF STEPHEN DAY WARD, JR.

STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives .....Appellants/Respondents,

vs.

MARY K. WARD A/K/A MARY KIMBERLY WARD .....Respondent/Petitioner.

APPELLANTS'
RECORD ON APPEAL
S.C. Code Ann. §62-1-308(f)

FILED
2019 AUG 19 AM 10:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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Order to Alter or Amend Judgment, January 18, 2019 0025

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Appellants'/Respondents' Exhibits 1-8, marked and admitted April 18, 2018

1. Last Will and Testament of Stephen D. Ward 0519
2. Nancy Diemer Trust.....0526
3. Last Will and Testament of Nancy L. Ward 0538
4. Trust Agreement of Stephen D. Ward 0545
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Correspondence to Judge Irvin Condon, and enclosed Respondent's proposed Order Denying the Petitioner's Claim for Omitted Spouse Share, May 7, 2018.....0707

CERTIFICATION

We hereby certify that the Record contains no matter which irrelevant to this Appeal.

Respectfully submitted,

BURR & FORMAN LLP

Dated: August 16, 2019

Amanda A. Bailey, SC Bar No. 71085
George Morrison, SC Bar No. 71622
E-mail:abailey@burr.com
George Morrison
E-mail:gmorrison@burr.com
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for the Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

THE HONORABLE JENNIFER B. MCCOY
Circuit Court Judge

RECEIVED
DEC 31 2019
SC Court of Appeals

Case No.: 2019-CP-10-01932

IN RE: ESTATE OF STEPHEN DAY WARD, JR.

STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives ..... Appellants,

vs.

MARY K. WARD A/K/A MARY KIMBERLY WARD .....Respondent

NOTICE OF APPEAL

Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives of the Estate of Stephen Day Ward, Jr. (collectively "Appellants") appeal from the Order entered by the Honorable Jennifer B. McCoy, which was signed on December 19, 2019 and entered on December 20, 2019, affirming the April 2, 2019 Order denying Respondents' Motion for Reconsideration of January 18, 2019 Order in the Probate Court. Appellants received written notice of the entry of the Order on December 20, 2019. A copy of the Orders are attached hereto.

Respectfully submitted,

BURR & FORMAN LLP

Dated: December 30, 2019

Amanda A. Bailey, SC Bar No. 71085
George Morrison, SC Bar No. 71622
E-mail:abailey@burr.com
George Morrison
E-mail:gmorrison@burr.com
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Appellants
Stephanie Ward Cibinic, David D. Ward, and
Brian C. Ward

OTHER COUNSEL OF RECORD:

Jane A. McFaddin, Esq.
665 St. Andrews Boulevard
Charleston, SC 29407
Attorney for Respondent

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2016-ES-10-1631
	)	
IN RE: ESTATE OF STEPHEN DAY WARD, JR.	)	
	)	
MARY K. WARD A/K/A MARY KIMBERLY WARD	)	ORDER DENYING RESPONDENTS' MOTION FOR RECONSIDERATION OF JANUARY 18, 2019 ORDER
	)	
Petitioner,	)	
	)	
v.	)	
	)	
STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives,	)	
	)	
Respondents.	)	

RECEIVED
DEC 31 2019
SC Court of Appeals

Presiding Judge:	**Irvin G. Condon**
Petitioner:	**Mary K. Ward a/k/a Mary Kimberly Ward**
Petitioner's Attorney:	**Jane A. McFaddin, Esq.**
Respondents:	**Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward**
Respondents' Attorneys:	**Amanda K. Bailey, Esq. and George E. Morrison, Esq.**

THIS MATTER comes before the Court upon a Motion to Reconsider, Alter & Amend Order dated and filed January 28, 2019 by Respondents. The present Motion is captioned as a "Motion for Reconsideration of January 18, 2019 Order," and is properly considered as a Rule 59(e) motion to alter or amend judgment.

Pursuant to Rule 59(f), SCRCP, this Court issues its ruling on the Respondents' Motion to Reconsider without holding a hearing. The filing of motions and other pleadings in the Probate Court is governed by the South Carolina Probate Code and, where not inconsistent, the South Carolina Rules of Civil Procedure, including Rule 59(e). In re: Estate of Timmerman, 331 S.C.

455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (see also S.C. Code Ann. §§ 14-23-280, 62-1-304). A party may not use a Rule 59 motion to re-litigate old matters or present issues that could have been raised prior to the judgment, but were not. Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008); Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

After a review of the relevant pleadings, memoranda, and hearing notes, the Court finds that the Motion filed raises no new argument and presents no new evidence, therefore, the Court respectfully **DENIES** the Motion.

Based upon the foregoing, it is now therefore, hereby:

ORDERED, ADJUDGED, AND DECREED that Movant's Motion to Alter or Amend Judgment and Reconsider Order Dated January 18, 2019 is respectfully **DENIED.**

IT IS SO ORDERED.

IRVIN G. CONDON
Judge of Probate
Charleston County

This 3rd day of ~~March~~ April, 2019
Charleston, South Carolina

Attest: A True Copy
Clerk Probate Court
Charleston County, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1001932

Stephen Ward Cibinic et al
PLAINTIFF(S)

Mary K Ward et al
DEFENDANT(S)

RECEIVED
DEC 31 2019
SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Upon reviewing the record and the Probate Return, along with arguments from both parties, the decision of the Probate Court is affirmed.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/19/2019 .

Ward, Stephen Day Jr Estate of
Stephen Day Ward, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Dec 20 4:56 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001932

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2019 Dec 20 4:56 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001932

Charleston Common Pleas

Case Caption: Stephen Ward Cibinic VS Mary K Ward

Case Number: 2019CP1001932

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

THE HONORABLE JENNIFER B. MCCOY
Circuit Court Judge

Case No.: 2019-CP-10-01932

IN RE: ESTATE OF STEPHEN DAY WARD, JR.

STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives ..... Appellants,

vs.

MARY K. WARD A/K/A MARY KIMBERLY WARD .....Respondent

PROOF OF SERVICE

I, Carole Koerner, an employee of Burr & Forman LLP attorneys for Appellants in the above-entitled action, certify that I have served **Notice of Appeal** and **Proof of Service** on Counsel of Record to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 30th day of December, 2019 as follows:

Jane A. McFadden, Esq.
665 St. Andrews Boulevard
Charleston, SC 29407
Attorney for Respondent

Carole Koerner

Myrtle Beach, South Carolina

MOTIONS & PETITIONS

STATE OF SOUTH CAROLINA)
)
COUNTY OF: CHARLESTON)

IN THE MATTER OF:)
STEPHEN DAY WARD, JR.)
(Decedent))

IN THE PROBATE COURT

CASE NUMBER: 2016-ES-10-_____

COPY

***COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

*
Petitioner(s)
vs.
*
Respondent(s)

APPLICATION FOR INFORMAL (check any that apply) ***PETITION FOR FORMAL**

☒ PROBATE OF WILL ☐ TESTACY
☒ APPOINTMENT ☐ APPOINTMENT

If this is a formal filing, please explain on page 3 or attach pleadings pursuant to *SC Rules of Civil Procedure.*

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Applicant/Petitioner(s): Please see attached sheet.
Address: _____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____
Relationship to Decedent: _____

2. Decedent Information:

Full Legal Name
(including all known names): Stephen Day Ward, Jr., Stephen D. Ward
Date of Birth: September 11, 1944
Date of Death: September 16, 2016
Age at Date of Death: 72

3. Venue for this proceeding is proper in this County because:

☒ Decedent was domiciled in this County at date of death:
Address: 2412 HIGH HAMMOCK ROAD County: CHARLESTON State: South Carolina.
☐ Decedent was **not** domiciled in **South Carolina**, but property of Decedent was located in this County at date of death at:
Address: County: State: South Carolina
☐ Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address of the Decedent prior to entering a facility:

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Stephanie Ward Cibinic	7/29/68	246 N. Barton Street, Arlington, VA 22201	Daughter
David D. Ward	9/17/70	12 Highview Drive, Ridgeville, CT 06877	Son
Brian C. Ward	5/29/74	573 North Bridgestone Ave., St. Johns, FL 32259	Son
Elizabeth A. Diemer Wiersum	5/2/65	6639 34th Street, Berwyn, IL 60402	Step-Daughter

☒ See attached for additional devisees (check if applicable).

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Stephen A. Ward	1/14/90	306 McGowen St., Apt. 1112, Houston, TX 77006	Son
Jeremy W. Ward	1/14/90	1505 NW 60th Street, Apt. 2, Seattle, WA 98107	Son
Mary Kimberly Ward	1/7/25	1220 Creek Watch Trace, Seabrook Island, SC 29455	Wife

☐ See attached for additional intestate heirs (check if applicable).

4(c). Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO *If no, please explain on page 3.*

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☐ NO ☒ YES *If yes, please explain, on page 3.*

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11(a). Did the Decedent own probate real estate?

☐ NO ☒ YES If yes, an approximate value of $TBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b). Did the Decedent own probate personal property?

☐ NO ☒ YES If yes, an approximate value of $TBD (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s)?

☒ NO ☐ YES If yes, then proceed to Section II.
If No, then proceed to Section III.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

☒ The original is attached.
☐ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☐ The original of the Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: April 21, 2005
Codicil(s): _____

3. Is there a memorandum that disposes of tangible personal property?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

☒ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

The decedent's wife at the time of the making of the will, Nancy Ward, predeceased the decedent, and the decedent subsequently married Mary Ward.

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

   _____

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

   - ☐ named as Primary Personal Representative in Will
   - ☒ named as Alternate Personal Representative in Will
   - ☐ nominee of Primary Personal Representative in Will
   - ☐ nominee of Alternate Personal Representative in Will
   - ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
   - ☐ other devisee of Decedent (describe): _____or nominee of said devisee
   - ☐ surviving spouse of Decedent or nominee of said spouse
   - ☐ other heir of Decedent (describe): _____ or nominee of said heir
   - ☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
   - ☐ other (describe):_____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

   _____

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

Signature of Applicant/Petitioner: _____

SWORN to before me this 23rd day of September, 20 16

_____

Notary Public for South Carolina
My Commission Expires: 5/20/25

Signature of Co-Applicant/Co-Petitioner: _____

SWORN to before me this 23rd day of Sept 20 16

_____

Notary Public for South Carolina
My Commission Expires: 5/20/25

ORDER OF INFORMAL PROBATE

April 21, 2005

IT IS HEREBY ORDERED that the above application for probate of a Will executed N and
☐ Codicil executed n/a and
☐ Memorandum n/a

be informally ☑ GRANTED ☐ DENIED.

Executed this 30th day of Sept, 2016.

, Probate Court Judge

☐ For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

Bond
☐ Fiduciary Bond in the amount of $_____
☑ Bond not required for Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other:_____

Notice to Creditors
☑ Required
☐ Not Required

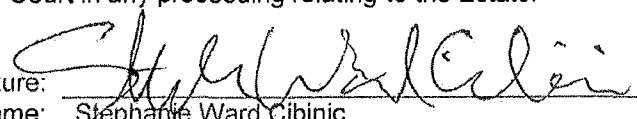
Executed this 30th day of Sept, 2016.

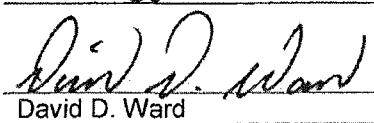
, Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed _____.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: 
Print Name: Stephanie Ward Cibinic
Address: 246 N. Barton Street
Arlington, VA 22201
Telephone (Work):
(Home): 202-486-8297
(Cell):
Email: swardleo@gmail.com

Signature: 
Print Name: David D. Ward
Address: 12 Highview Drive
Ridgeville, CT 06877
Telephone (Work):
(Home): 203-803-3423
(Cell):
Email:

*Attorney: George E. Morrison
Address: McNair Law Firm, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401
Telephone: 843-723-7831
Email: gmorrison@mcnair.net

1309016v1

***By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.**

ATTACHMENT TO PETITION FOR PROBATE OF WILL OF STEPHEN D. WARD

1. Applicant/Petitioner: Stephanie Ward Cibinic
Address: 246 N. Barton Street, Arlington, VA 22201
Telephone: 202-486-8297
Email: swardleo@gmail.com
Relationship to Decedent: Daughter

Applicant/Petitioner: David D. Ward
Address: 12 Highview Drive, Ridgeville, CT 06877
Telephone: 203-803-3423
Relationship to Decedent: Son

Applicant/Petitioner: Brian C. Ward
Address: 573 North Bridgestone Avenue, St. Johns, FL 32259
Telephone: 904-228-8010
Relationship to Decedent: Son

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Garett C. Diemer	3/23/71 ~~xxxxxxxx~~	72 Kingsport Dr., South, Elgin, IL 60177 ~~xxxxxxx~~	Step-Son

---

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

Signature of

SWORN to before me this 23rd day of September, 2016.

Applicant/Petitioner: _____
Brian C. Ward

_____
Notary Public for South Carolina
My Commission Expires: 5/20/25

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: _____
Print Name: Brian C. Ward
Address: 573 North Bridgestone Avenue
St. Johns, FL 32259
Telephone: 904-228-8010

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT

IN THE MATTER OF:
Stephen Day Ward, Jr.
(Decedent)

CASE NUMBER: 2016-ES-10-01631

Mary K. Ward, a/k/a Mary Kimberly Ward
Petitioner(s)

vs.

***PETITION FOR OMITTED SPOUSE SHARE**

Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives
Respondent(s)

The undersigned hereby alleges:

1. Petitioner married the Decedent on September 7, 2013. (See the attached certified copy of the Marriage License or the certified copy of the Court Order declaring the existence of a Common Law Marriage between the Decedent and me.)

2. Petitioner was still married to the Decedent when he/she died on September 16, 2016. I am informed and believe that a Will executed by Decedent on April 21, 2005 is being probated in this Court.

3. Petitioner elects to take her omitted spouse share of the Decedent's estate

4. This election is made within the later of (a) eight (8) months after the date of the Decedent's death, (b) six (6) months after the Informal or Formal Probate of the Decedent's Will, or (c) thirty (30) days after I was served with a a Summons and Petition to set aside an Informal Probate or to modify or vacate an Order for Formal Probate of the Decedent's Will.

Executed this 12 day of Jan., 2017.

Signature: Ann Noble - Kiley Conservator for Mary K. Ward
Print Name: Ann Noble - Kiley, Conservator for Mary K. Ward
Address: 8 Pulaski Dr
Manchester, MA 01941
Telephone (Work):
(Home):
(Cell): 617-817-1308
Email: a.noble.kiley@gmail.com

Attorney: Jane A. McFaddin, Esq.
Address: PO Box 1124
Charleston, SC 29402
Telephone: 843-556-3333
Email: jamcfaddin@bellsouth.net

17 JAN 18 PM 1:57
CHARLESTON COUNTY

***NOTE: THIS IS A FORMAL ACTION. IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

FORM #382ES (1/2014)
62-2-301

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	
	)	
	)	
IN THE MATTER OF:	)	
Stephen Day Ward, Jr.	)	CASE NUMBER: 2016-ES-10-01631
(Decedent)	)	
	)	
Mary K. Ward, a/k/a Mary Kimberly Ward,	)	
	)	
Petitioner,	)	
	)	
v.	)	**RESPONSE TO PETITION FOR OMITTED SPOUSE SHARE**
	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives,	)	
	)	
Respondents.	)	
	)	

17 APR 11 AM 11:21

Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward ("Respondents"), by and through their undersigned counsel, denying every allegation in the Petition in the above-referenced matter not admitted specifically herein, hereby answers the Petition as follows:

1. Respondents admit the allegations in Paragraph 1 of the Petition.

2. Respondents admit the allegations in Paragraph 2 of the Petition.

3. Respondents deny the allegations in Paragraph 3 of the Petition. Specifically, Respondents deny that Petitioner is entitled to an omitted spousal share because it appears from the will and other evidence that Petitioner's omission was intentional and/or that Petitioner was provided for outside of the will.

4. Respondents admit the allegations in Paragraph 4 of the Petition.

Dated: April 7, 2017

MCNAIR LAW FIRM, P.A.

By _____

Josh Dixon (SC75815)
E-mail:jdixon@mcnair.net
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Defendants Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	
	)	
	)	
IN THE MATTER OF: Stephen Day Ward, Jr. (Decedent)	)	CASE NUMBER: 2016-ES-10-01631
	)	
Mary K. Ward, a/k/a Mary Kimberly Ward,	)	
	)	
Petitioner,	)	
	)	
v.	)	**MOTION FOR SUMMARY JUDGMENT**
	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives,	)	
	)	
Respondents.	)	
	)	

Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives of the Estate of Stephen Day Ward, Jr., hereby file and serve this Motion for Summary Judgment. By this motion, Respondents seek an order granting them summary judgment pursuant to Rule 56, SCRCP because there is no genuine issue of material fact as to the claim alleged in the Petition for Omitted Spouse Share in this case (the "Petition").

SUMMARY OF ARGUMENT

In the Petition, Petitioner alleges that she is entitled to the omitted spousal share under S.C. Code Ann § 62-2-301 (the "Omitted Spouse Statute"). Petitioner, however, is not entitled to the omitted spousal share because it is apparent from the Last Will and Testament of Stephen D. Ward (the "Will") that Petitioner's omission therefrom was intentional.

FILED
17 JUN 30 PM 12:49
PROBATE COURT
CHARLESTON COUNTY

FACTS

Decedent executed the Will on April 21, 2005. At the time, Decedent was married to Nancy L. Ward (the "Prior Wife"). The Will was not executed as a standalone document; rather, it was executed as an exhibit to a document entitled *Agreement for Mutual Wills and Trusts*, which was also executed on April 21, 2005. The *Agreement for Mutual Wills and Trusts* contained five Exhibits:

(1) Exhibit 1 was the *Trust Agreement of Stephen D. Ward*, which was also executed on April 21, 2005;

(2) Exhibit 2 was the Will (entitled the *Last Will and Testament of Stephen D. Ward*);

(3) Exhibit 3 was the *Nancy Diemer Trust*, which was executed on April 28, 1998;

(4) Exhibit 4 was the *First Amendment and Restatement of Trust Agreement of Nancy L. Ward*, which was also executed on April 21, 2005; and

(5) Exhibit 5 *Last Will and Testament of Nancy L. Ward*, which was also executed on April 21, 2005.

A true and correct copy of the *Agreement for Mutual Wills and Trusts*, along with all of its Exhibits, is attached hereto as Exhibit A. Item XII of the Will expressly provides that: "The Agreement for Mutual Will sand Trusts dated as of even date herewith between Stephen D. Ward and Nancy L. Ward is incorporated by reference into this Last Will and Testament."

The purpose of the *Agreement for Mutual Wills and Trusts* is apparent from the four corners of the document. In short:

> Husband and Wife mutually desire for the Survivor to have full use of the Property during his or her life with the Property after the death of the Survivor to be distributed as provided for in the Trust Agreement of Stephen D. Ward (dated of even date herewith and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (dated of even date herewith).

Agreement for Mutual Wills and Trusts ¶ II.2.3. Prior Wife pre-deceased the Decedent and thus, Decedent has been the Survivor under the terms of the *Agreement for Mutual Wills and Trusts* until his death. Per the plain and ordinary language of the Decedent's Will, the Decedent, as the Survivor under the *Agreement for Mutual Wills Trusts,* intended to omit any future spouse and intended to distribute the Property as provided for in the Trust Agreement of Stephen D. Ward upon his death.

ANALYSIS

The Omitted Spouse Statute provides, in relevant part:

> If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse . . . shall receive the same share of the estate he would have received if the decedent left no will ***unless***: . . . ***it appears from the will that the omission was intentional*** . . . .

S.C. Code Ann § 62-2-301(a)(1). Here, there is no dispute over the facts that Decedent married Petitioner after he executed the Will, that the Will did not provide for Petitioner, and that Petitioner survived Decedent. However, it is also apparent from the Will that Petitioner's omission of Petitioner therefrom was intentional.

Specifically, the Will provides for a general bequest of the personal and household effects by memoranda. Will, Item II. The Will further establishes a pour over gift of all the rest, residue and reminder to the "Trustee under that certain Trust Agreement between me as Settlor and me as Trustee executed prior to the execution of this Will on the 21st day of April 21, 2005." Will, Item III. The *Agreement for Mutual Wills and Trust* is expressly incorporated into the Will. Will, Item XIII.

Section 62-2-509 of the South Carolina Code provides that: "Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification." In this case, there can be no

dispute that the *Agreement for Mutual Wills and Trusts* was in existence when the Will was executed based on the plain and ordinary language of the Will. Further, there can be no dispute that Item XIII of the Will expressly and clearly manifests the intent of the Decedent to incorporate the *Agreement for Mutual Wills and Trusts* by reference. Thus, the terms and the language used in the *Agreement for Mutual Wills and Trusts* are part and parcel of the Will.

The *Agreement for Mutual Wills and Trusts* clearly and unequivocally expresses the Decedent's intent to omit future spouses from the Will. Specifically, the terms of the *Agreement for Mutual Wills and Trusts* provides:

> II. RECITALS.
>
> 2.1 Husband and Wife are now married.
>
> 2.2 Husband and Wife each have children from a former marriage.
>
> 2.3 Husband and Wife mutually desire for the Survivor to have full use of the Property during his or her life with the Property after the death of the Survivor to be distributed as provided for in the Trust Agreement of Stephen D. Ward (dated as of even date herewith) and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (dated as of even date herewith).
>
> 2.4 Husband and Wife have executed their Wills and Trusts, copies of which have been annexed hereto as Exhibits 1 through 5.
>
> 2.5 The Wills and Trusts of the Parties have been made as they are on the condition that the disposition of the Property be made according to their Wills and Trusts, unless this Agreement is altered, amended or revoked as provided for hereinafter.
>
> *2.6 This Agreement is made to insure that the mutual plan of the Parties shall not be altered by acts subsequent to date hereof, except as agreed upon between the Parties.*

Agreement for Mutual Wills and Trusts, Section II (Emphasis supplied).

Further, the *Agreement for Mutual Wills and Trusts* provides that while both Husband and Wife are living, the Agreement for Mutual Wills and Trusts may not be altered, amended or

revoked except pursuant to a writing signed by both parties. *Agreement for Mutual Wills and Trusts,* Sections III, ¶ 3.1, and VI. There is not a writing signed by both the Decedent and Prior Wife altering, amending, or revoking the *Agreement for Mutual Wills and Trusts*. Moreover, upon Prior Wife's death, the *Agreement for Mutual Wills and Trusts* became irrevocable. *Agreement for Mutual Wills and Trusts*, Section III, ¶ 3.2.

As a result, the clear and unambiguous intent expressed in the *Agreement for Mutual Wills and Trusts*, and incorporated by reference in the Will, expresses the intentional omission of any subsequent spouse, including Petitioner, from the Will.

For the foregoing reasons, as well as any further or additional reasons to be set forth in a Memorandum in support of this Motion that will be filed and served before the hearing on the Motion, there is no genuine issue of material fact that Petitioner was intentionally omitted from the Will, and thus, precluded from recovering from the Estate pursuant to S.C. Code Ann. § 62-2-301(a)(1).

This Motion is based upon the pleadings, the affidavits and other evidence attached hereto, any forthcoming Memorandum in support of this Motion, any additional or affidavits and other evidence attached to the Memorandum, and applicable law.

Dated: June 28, 2017

MCNAIR LAW FIRM, P.A.

By _____

George Morrison
E-mail: gmorrison@mcnair.net
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Defendants Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives

RECEIVED
JUL 13 2017
McNAIR LAW FIRM, P.A.

17 JUL 11 AM 9:55
CHARLESTON DIST.

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AGREEMENT FOR MUTUAL WILLS AND TRUSTS

THIS AGREEMENT FOR MUTUAL WILLS AND TRUSTS made this 21st day of April, 2005, between Stephen D. Ward of the County of Charleston, State of South Carolina (hereinafter called "Husband") and Nancy L. Ward of the County of Charleston, State of South Carolina (hereinafter called "Wife").

I. DEFINITIONS. In addition to any other terms whose definitions are fixed and defined by this Agreement, each of the following defined terms, when used in this Agreement with an initial capital letter, shall have the meaning ascribed thereto by this paragraph:

1.1 "Agreement" means this Agreement for Mutual Wills and Trusts together with all exhibits attached hereto.

1.2 "Husband" means Stephen D. Ward.

1.3 "Husband's Trust" means the Trust Agreement of Stephen D. Ward of even date herewith, a copy of which is attached hereto as Exhibit 1.

1.4 "Husband's Will" means the Last Will and Testament of Stephen D. Ward of even date herewith, a copy of which is attached hereto as Exhibit 2.

1.5 "Parties" means Stephen D. Ward and Nancy L. Ward.

1.6 "Predecessor" means that person, as between the Husband and the Wife, who is first to die.

1.7 "Property" means all of the property of the Survivor at time of the Predecessor's death, together with all property acquired by the Survivor because of the Predecessor's death.

1.8 "Survivor" means that person, as between the Husband and the Wife, who is last to die.

1.9 "Wife" means Nancy L. Ward.

1.10 "Wife's Trust" means the Nancy Diemer Trust Dated April 28, 1998, as amended by the First Amendment and Restatement of Trust Agreement of Nancy L. Ward of even date herewith, copies of which are attached hereto as Exhibit 3 and Exhibit 4, respectively.

1.11 "Wife's Will" means the Last Will and Testament of Nancy L. Ward of even date herewith, a copy of which is attached hereto as Exhibit 5.

II. RECITALS.

2.1 Husband and Wife are now married.

2.2. Husband and Wife each have children from a former marriage.

2.3 Husband and Wife mutually desire for the Survivor to have full use of the Property during his or her life with the Property after the death of the Survivor to be distributed as provided for in the Trust Agreement of Stephen D. Ward (dated as of even date herewith) and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (dated as of even date herewith).

2.4 Husband and Wife have executed their Wills and Trusts, copies of which have been annexed hereto as Exhibits 1 through 5.

2.5 The Wills and Trusts of the Parties have been made as they are on the condition that the disposition of the Property be made according to their Wills and Trusts, unless this Agreement is altered, amended or revoked as provided for hereinafter.

2.6 This Agreement is made to insure that the mutual plan of the Parties shall not be altered by acts subsequent to date hereof, except as agreed upon between the Parties.

III. ALTERATION, AMENDMENT AND REVOCATION OF WILLS. The Parties mutually covenant with each other and agree that:

3.1 While both Husband and Wife are living, except by amendment, modification or revocation of this Agreement as hereinafter provided, neither he nor she shall in any manner alter, amend or revoke his or her Will or Trust, including amendment by codicil, alteration by defacement, or revocation by destruction.

3.2 Upon the Predecessor's death, this Agreement and the Survivor's Will and Trust shall become irrevocable and the Survivor shall have no right or power to thereafter alter, amend or revoke this Agreement or his or her Will or Trust.

IV. SURVIVOR'S AFFIRMATIVE COVENANTS. The Parties mutually covenant with each other and agree that if he or she is the Survivor of them:

4.1 He or she will take such measures as may be necessary or required to maintain his or her Will and Trust in full force until his or her death and as will maintain title to the Property in a form that shall cause the same, at the Survivor's death, to be disposed of according to the terms and provisions of his or her Will and Trust annexed hereto.

4.2 If he or she remarries after the death of the Predecessor, he or she will:

4.2.1 Thereafter ratify his or her Will and Trust in the form and with the provisions contained in his or her Will and Trust annexed hereto; and

4.2.2 As a condition of such re-marriage, require any person he or she re-marries to legally and unconditionally waive his or her right to an Elective Share in the Property provided to them under S.C. Code Ann. Section 62-2-201 (1976, as amended from time to time).

V. NEGATIVE COVENANTS. The Parties mutually covenant with each other and agree that if he or she is the survivor of them, he or she will not create, commit, permit, or suffer to exist:

5.1 Any condition that would alter the plan of distribution contained in his or her Will or Trust annexed hereto;

5.2 Any condition that would cause the alteration, amendment or revocation of his or her Will or Trust annexed hereto;

5.3 The dissipation of any of the Property other than through consumption by him or her;

5.4 Any transfer of the Property, or any part thereof from the Survivor to any other person, including any gift to a spouse, child or relative, provided, nothing herein contained shall be construed as prohibiting him or her from making customary and reasonable gifts to a spouse or child;

5.5 Any transfer of title to the Property or any part thereof to the name or joint name of any other person or party;

5.6 Any transfer of title to the Property, or any part thereof, in such manner as would cause the Property to be transmitted upon the Survivor's death, by any means other than through the provisions of his or her Will or Trust annexed hereto; and

5.7 Any investment of the Property or any part thereof, in any form of investment that would or may cause the same to be transmitted upon his or her death through any means other than according to the terms and provisions of his or her Will or Trust annexed hereto.

VI. FORM OF AMENDMENT OR MODIFICATION. The ability of one of the Parties to this Agreement to unilaterally rescind and revoke this Agreement and their Will or Trust by giving notice to the non-revoking person before death as permitted in *Wilson v. Gordon*, 53 S.E. 79 (S.C. 1905), is not a sufficient method to allow the parties to this Agreement to revoke their respective Will or Trust and this Agreement. No agreement between the Parties shall be effective to alter, amend, modify or revoke this Agreement, unless such Agreement is reduced to writing and signed by both Parties.

VII. MISCELLANEOUS.

7.1 Governing Law. This Agreement is made and shall be construed under and in accordance with the laws of the State of South Carolina.

NW esw

7.2 Non-assignability. This Agreement shall not be assignable and any attempt to assign the same by either party shall be ineffective, null and void.

7.3 Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Parties and contains the sole and entire understanding between them with regard to matters contained herein. All promises, inducements, offers, agreements, commitments and representations heretofore made between such Parties are merged into this Agreement.

7.4 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if such exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

7.5 Captions. All captions, headings, paragraph and subparagraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the day and year first written above.

WITNESSES:

Jeanne A. Pusey

Magdalene Ely

S. D. Ward
STEPHEN D. WARD

Nancy L. Ward
NANCY L. WARD

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned and made oath that (s)he saw the within named Stephen D. Ward and Nancy L. Ward, sign, seal and as their act and deed deliver the within written instrument and that (s)he with Jeanne Pusey witnessed the execution thereof.

Magdalene Ely

SWORN to before me this 21st day of April, 2005.

Notary Public for South Carolina
My Commission Expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

The undersigned acknowledge:

1. The foregoing Agreement for Mutual Wills and Trusts was prepared by Brett A. Bluestein, attorney at law.

2. The Wills of the undersigned were prepared by Brett A. Bluestein, attorney at law.

3. The Trust Agreement of Stephen D. Ward and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (collectively, the "Trusts") were prepared by Brett A. Bluestein, attorney at law.

4. The foregoing Agreement for Mutual Wills and Trusts, the Wills and the Trusts were prepared based on information provided to the drafter by and at the direction of the undersigned.

5. The undersigned acknowledge that we have been advised by Brett A. Bluestein, attorney at law, and we understand that he as the drafter of these instruments has a conflict of interest; that our individual and collective interests may be best served by the employment of separate and independent counsel for each of us; we acknowledge the existence of a conflict of interest between us; in spite of the advice and notice of Brett A. Bluestein, attorney at law, we have requested him to prepare the Agreement for Mutual Wills and Trusts, the Wills and the Trusts for us and we, and each of us, do knowingly consent to his drafting, presenting and interpreting the same for and to us; and, each of us do hereby waive and release the said Brett A. Bluestein from any claim we may have because of the drafting of the Agreement for Mutual Wills and Trusts the Wills and the Trusts and presenting the same to us with knowledge that a conflict of interest, actual or potential, legally exists between us.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the 21st day of April, 2005.

In the Presence of:

Joann A. Pusey

Magdalene Cotty

S. D. Ward
STEPHEN D. WARD

Nancy L. Ward
NANCY L. WARD

EXHIBIT 1

Trust Agreement of Stephen D. Ward

TRUST AGREEMENT
OF
STEPHEN D. WARD

Introductory Clause. This Trust Agreement of **STEPHEN D. WARD** made this 21st day of April, 2005, between **STEPHEN D. WARD**, hereinafter referred to as the Settlor and **STEPHEN D. WARD**, hereinafter referred to as the Trustee.

The Settlor is married to **NANCY L. WARD** and has five living children: **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, STEPHEN A. WARD** and **JEREMY W. WARD.** The Settlor's children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Trust Agreement as they will be provided for by their mother with assets she received from the Settlor pursuant to their divorce. Their omission is intentional.

The Settlor has two living step-children: **ELIZABETH A. DIEMER** and **GARETT C. DIEMER**.

ARTICLE I

Trustee Succession if Settlor Dies or Becomes Incapacitated. If the Settlor dies or is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of two licensed physicians, unable to properly handle the Settlor's own affairs, then and in that event the Trustee named below shall immediately become the Trustee under this Trust Agreement. The Settlor names the following as successor Trustee:

NANCY L. WARD

Third parties may rely on an affidavit by the Trustee named above stating that the successor Trustee is now acting as Trustee hereunder.

ARTICLE II

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee certain property, and has caused or will cause the Trustee to be designated as beneficiary of certain life insurance policies. These insurance policies, and any other insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE III

Rights of Settlor and Trustee in Insurance Policies. During the Settlor's lifetime, the Settlor shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to the Settlor or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon the Settlor's written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy. However, no revocation of the trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of the Settlor that matures any such policy, the Trustee, in its discretion, either may collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on the Settlor's life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE IV

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

1. During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

2. During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

3. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to engage in additional estate planning to reduce the expected gift and estate tax liability as well as provide for additional resources for family transfers and, if consistent with the Settlor's desires,

charitable purposes. The estate planning, which is specifically authorized, may include the design, implementation, and funding of techniques such as limited partnerships, limited liability companies, lifetime gifts and transfers, qualified personal residence trusts, charitable trusts, family foundations, and other trusts and techniques designed to reduce the total estate and gift taxes anticipated to be paid by the Settlor and the Settlor's estate to increase the expected benefit to the Settlor's family, beneficiaries, and charities, if any.

4. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to (but shall not be required to) make gifts equal to or in excess of the annual gift tax exclusion to the Settlor's children and their issue, and their respective spouses, if appropriate, and in such amounts and upon such terms and conditions as the Trustee, in the Trustee's discretion, shall determine.

ARTICLE V

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. Except as provided for in the **AGREEMENT FOR MUTUAL WILLS AND TRUSTS**, dated as of even date herewith and entered into between the Settlor and the Settlor's wife, **NANCY L. WARD**, the Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE VI

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's executors or administrators, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Ward Family Trust and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make

such payments directly or may pay over the amounts thereof to the executors or administrators of the Settlor's estate. Written statements by the executors or administrators of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Ward Family Trust. The Trustee shall have the power to charge expenses of administration against income or principal, or apportion such expenses; provided, however, this power may not be exercised in a way which would reduce or otherwise adversely affect the marital or charitable deduction otherwise available for federal estate tax purposes. The Trustee shall not exercise this discretion in a manner which is inconsistent with the IRC regulations now in effect or subsequently promulgated.

ARTICLE VII

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **Specific Distribution**. The Charles Schwab & Co., Inc. Account Number 8041-2928 shall be distributed outright and free of trust to the Settlor's children **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** who survive the Settlor, in approximately equal shares; provided, however, the surviving issue of a deceased child shall take per stirpes the share their parent would have taken had he or she survived the Settlor.

(2) **Definition of Trust Estate**. As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VIII

Upon the death of the Settlor, the Trustee shall divide the Trust Estate (which shall include any property which may be added from the Settlor's general estate) as follows:

1. **Creation of The Marital Trust and The Ward Family Trust.** If the Settlor is survived by the Settlor's wife, **NANCY L. WARD**, the Trustee shall divide the Trust Estate into Two (2) separate shares, hereinafter designated as "**the Marital Trust**" and "**the Ward Family Trust.**" **The Marital Trust** shall be composed of cash, securities or other property of the Trust Estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in the Settlor's federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such estate tax purposes by reason of property or interests in property passing or which have passed to the Settlor's wife otherwise than pursuant to the provisions of this Article; provided, however, the amount for **the Marital Trust** hereunder shall be reduced by the amount, if any, needed to increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on the Settlor's estate. The term "maximum marital deduction" shall not be construed as a direction by the Settlor to exercise any election respecting the deduction of estate

administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. The Trustee shall have the sole discretion to select the assets which shall constitute **the Marital Trust**. In no event, however, shall there be included in this **the Marital Trust** any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this **the Marital Trust** shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind as a part of **the Marital Trust** hereunder at the value of such asset at the date of distribution of such asset. **The Marital Trust** shall be administered as hereinafter set forth. **The Ward Family Trust** shall be the balance of the Trust Estate after the assets have been selected for **the Marital Trust**.

2. **Creation of The Ward Family Trust**. If the Settlor's wife shall not survive the Settlor, **the Ward Family Trust** shall be the entire Trust Estate.

The Marital Trust and **the Ward Family Trust** shall be administered as hereinafter set forth.

ARTICLE IX

The Ward Family Trust Introductory Provision. **The Ward Family Trust** shall be *held, administered and distributed as follows:*

1. **Payment to Wife of All Income**. If the Settlor's wife shall survive the Settlor, then commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's wife during her lifetime all the net income from **the Ward Family Trust** in convenient installments but no less frequently than quarter-annually.

2, **Discretionary Payments of Principal for Wife**. If the Settlor's wife shall survive the Settlor, and if there is no principal remaining in the Marital Trust, the Trustee may pay to or apply for the benefit of the Settlor's wife during her lifetime, such sums from the principal of the Ward Family Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

3. **Outright Final Distribution if Wife is Deceased**. Upon or after the death of the survivor of the Settlor's wife and the Settlor, **the Ward Family Trust** shall be distributed outright and free of trust to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares; provided, however, if one of these individuals are deceased then the issue of the deceased individual surviving the Settlor and the Settlor's wife shall take per stirpes the share their parent would have taken had he or she survived the Settlor and the Settlor's wife. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to the Settlor's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C.**

DIEMER, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

ARTICLE X

The Marital Trust Introductory Provision. **The Marital Trust** shall be held, administered and distributed as follows:

1. **Direction to Pay All Income to Wife.** Commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's wife during her lifetime all the net income from **the Marital Trust** in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of the Settlor's wife shall be paid with the entire remaining principal as provided in this **the Marital Trust.**

2. **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, the Trustee may pay to or apply for the benefit of the Settlor's wife such sums from the principal of **the Marital Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

3. **Power in Wife to Cause Nonproductive Property to Be Made Productive.** The Settlor's wife may at any time by written notice, require the Trustee either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

4. **Payment of Death Taxes From The Marital Trust on Death of Wife.** Unless the Settlor's wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of **the Marital Trust** be paid otherwise, the Trustee shall pay to the executors or administrators of the estate of the wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of the Settlor's wife's death shall be increased as a result of the inclusion of the assets of **the Marital Trust** in her estate for such tax purposes.

5. **Trust Property to Be Added to The Ward Family Trust on Wife's Death.** Upon the death of the Settlor's wife, the entire remaining principal of **the Marital Trust** shall be added to and become a part of **the Ward Family Trust** and shall be held and administered or distributed in whole or in part, as if it had been an original part of **the Ward Family Trust.**

ARTICLE XI

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

1. **Individual Trustees Succession.** If **NANCY L. WARD** should fail to qualify as successor Trustee hereunder, or for any reason should cease to act in such capacity, the successor or substitute Trustee who shall also serve without bond shall be the Settlor's brother **DUDLEY M. WARD.**

2. **Final Succession If Individual Successor Trustee Cannot Act.** If **NANCY L. WARD** and **DUDLEY M. WARD** should fail to qualify as individual successor Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD**. If any individual Trustee named herein should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining Trustees named herein shall continue to serve without a successor or substitute.

3. **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

4. **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees. Provided, however, that if only two Trustees shall be serving as co-Trustees, then the Trustees shall act with unanimity on all actions, unless the co-Trustees shall have otherwise agreed in writing.

5. **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

6. **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ARTICLE XII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder.

and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIII

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

1. To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

3. To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

4. To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

5. To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

6. To sell or exercise stock subscription or conversion rights.

7. To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general

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to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

8. To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

9. To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

10. To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

11. To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12. To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

13. To continue and operate any business owned by the Settlor at the Settlor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

14. To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

15. To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

16. In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

17. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

18. To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

19. To determine what shall be fairly and equitably charged or credited to income and what to principal.

20. To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

21. To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

22. In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

23. To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's executors or administrators and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's executors or administrators and the Trustee are the same shall in no way affect the validity of this provision.

24. To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's executors or administrators and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

25. To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as

beneficiary; to execute all necessary receipts and releases to Executors, donors, insurance companies and other parties adding property to the Trust Estate.

26. To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

27. To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

28. To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

29. If the Trustee shall act as the Executor of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer which the Settlor is the transferror for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Executor will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to the Ward Family Trust, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Executor deems in the best interest of the Settlor's estate.

ARTICLE XIV

Trustee's Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence. Provided, however, the Trustee shall not exercise this power in any way which would deprive the wife under the Marital Trust of the beneficial enjoyment of the Marital Trust and the wife shall have the right to limit, restrict or terminate the Trustee's exercises of this power if they interfere with such beneficial enjoyment.

ARTICLE XV

Marital Deduction Savings Clause for the Marital Trust. It is expressly provided that the grant of rights, powers, privileges and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust Agreement or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in **the Marital Trust** hereof. It is the Settlor's intention that the Settlor's wife under the provisions of **the Marital Trust** have substantially that degree of beneficial enjoyment of the Trust Estate during her lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and the Trustee shall not exercise its discretion in a manner which is not in accord with this expressed intention. The Trustee shall invest the Trust Estate so it will produce for the Settlor's wife during her lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that the Trustee shall not in the exercise of its discretion make any determination inconsistent with the foregoing.

ARTICLE XVI

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XVII

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that the Trustee shall not make any payment from the Marital Trust under (3) above.

ARTICLE XVIII

Power of Trustee to Resign During Settlor's Lifetime. Any Trustee may resign this trusteeship during the Settlor's lifetime by giving the Settlor Thirty (30) days notice in writing delivered to the Settlor in person or mailed to the Settlor's last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, the Settlor shall appoint a successor Trustee. Upon the failure of the Settlor to appoint a successor Trustee who accepts the trust within Thirty (30) days from the time notice was delivered in person or mailed to the Settlor, the Trustee may resign to the court having jurisdiction over this trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee which shall be an individual as successor to an individual trustee or a bank or trust company qualified to do business in the state of the Settlor's domicile as successor to a corporate trustee. Upon the appointment of and acceptance by the successor Trustee, the original Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Settlor, whereupon its resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIX

Settlor During Lifetime to Designate Substitute or Successor Trustee. The Settlor during the Settlor's lifetime may name a substitute or successor Trustee by delivery to any Trustee herein a notice naming the successor or substitute Trustee and indicating an intent to replace the Trustee named. Upon receipt of such notice the Trustee named shall pay over, deliver, assign, transfer or convey to such substitute or successor Trustee (which accepts the appointment as trustee), the Trust Estate and make a full and proper accounting to the Settlor, whereupon the Trustee named shall be discharged and have no further responsibility under this Trust Agreement. Upon the failure of the Trustee to make such conveyance the Settlor may apply to the court having jurisdiction of this trust and such court may compel the conveyance by the Trustee. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Trust, "children" of the Settlor means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** For purposes of this Trust, "children" of the Settlor's wife means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XXI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," "qualified terminable interest," "qualified terminable interest property," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XXII

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XXIII

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XXIV

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XXV

Agreement for Mutual Wills and Trusts. The **Agreement for Mutual Wills and Trusts** dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this Trust Agreement of Stephen D. Ward.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

Jeanne A. Pusey

Magdalena Ortiz

STEPHEN D. WARD, SETTLOR

Jeanne A. Pusey

Magdalena Ortiz

STEPHEN D. WARD, TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

Personally appeared the undersigned witness and made oath that he saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Magdalen Cuy

Sworn to before me this

21st day of April, 2005

Notary Public for South Carolina
My Commission expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by **STEPHEN D. WARD**, as Settlor and Trustee, to be the free and voluntary act and deed of the Settlor and Trustee.

WITNESS my signature this 21st day of April, 2005.

Signature of Notary Public

Brett A. Bluestein
Typed Name of Notary Public

Notary Public for: South Carolina
My commission expires: July 24, 2012

EXHIBIT 2

Last Will and Testament of Stephen D. Ward

Attest: A True Copy
Deputy Clerk Probate Court
Charleston County, South Carolina

LAST WILL AND TESTAMENT OF STEPHEN D. WARD

Introductory Clause. I, **STEPHEN D. WARD**, a resident of and domiciled in the County of Charleston and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to **NANCY L. WARD**.

I have five living children: **STEPHANIE L. WARD**; **DAVID D. WARD**; **BRIAN C. WARD**; **STEPHEN A. WARD**; and **JEREMY W. WARD**. My children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Will as they will be provided for by their mother with assets she received from me pursuant to our divorce. Their omission is intentional.

I have two living step-children: **ELIZABETH A. DIEMER**; and **GARETT C. DIEMER**.

ITEM I

Direction to Pay Debts with Discretionary Refinancing by Executor. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Executor may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

1. I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Executor within ninety (90) days after my Executor's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered

memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

2. In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my wife, **NANCY L. WARD**, for her lifetime, if she shall survive me. If my wife shall not survive me or upon my wife's death, I give and bequeath my personal and household effects that were acquired by me (prior to my marriage to my wife or by inheritance during my marriage to my wife) to my children **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD** in approximately equal shares. If my wife shall not survive me or upon my wife's death, I give and bequeath my personal and household effects that were acquired by me and my wife during our marriage to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares.

However, if any of the aforementioned individuals predecease the survivor of me and my wife, then the issue of the deceased individual surviving me and my wife shall take per stirpes the share their parent would have taken had he or she survived me and my wife. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of me and my wife and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to my issue. If **ELIZABETH A. DIEMER** predeceases the survivor of me and my wife and has no issue then living, the shares of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of me and my wife and has no issue then living, the shares of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

If any of the aforementioned individuals do not agree to the division of the property among themselves, my Executor shall make such division among them, the decision of my Executor to be in all respects binding upon them. If any beneficiary hereunder is a minor, my Executor may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Executor. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM III

Pour-Over Gift to Trustee of Testator's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to the successor Trustee under that certain Trust Agreement between me as Settlor and me as Trustee executed prior to the execution of this Will on the 21st day of April, 2005. My Trustee shall add the property bequeathed and devised by this Item to the principal of

the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM IV

Naming the Executor, Executor Succession, Executor's Fees and Other Matters. The provisions for naming the Executor, Executor succession, Executor's fees and other matters are set forth below:

1. **Naming an Individual Executor.** I hereby nominate, constitute and appoint as Executor of this my Last Will and Testament **NANCY L. WARD** and direct that she shall serve without bond.

2. **Naming Individual Successor or Substitute Executor.** If my individual Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the successor or substitute Executor who shall also serve without bond shall be **DUDLEY M. WARD.**

3. **Final Succession If Individual Successor Executor Cannot Act.** If my individual successor Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Executors who shall also serve without bond shall be **STEPHANIE L. WARD, DAVID D. WARD,** and **BRIAN C. WARD.** If any individual Executor named herein should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the remaining individual Executor(s) named herein shall continue to serve without a successor or substitute.

4. **Fee Schedule for Individual Executor.** For its services as Executor, my individual Executor shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

5. **Executor Voting Rights.** If there is more than one Executor serving, then the vote of the Executors for any action hereunder must be by majority action of the Executors. Provided, however, that if only two Executors shall be serving as co-Executors, then the Executors shall act with unanimity on all actions, unless the co-Executors shall have otherwise agreed in writing.

6. **Delegation Among Executors.** When there is more than one individual or entity serving as co-Executors, then any Executor may delegate to any other Executor the power to exercise any or all of the powers granted to the Executors in this Last Will and Testament, including those powers, which are discretionary, to the extent allowed by law. Any delegating Executor may revoke any such delegation with written notice to the other serving co-Executors. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Executor. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Executor receiving such delegation with the same force and effect as if the delegating Executor had personally joined in the exercise of such power. Provided, however, that if such Executor, or co-

Executor, shall also be a current beneficiary and such delegation shall be deemed to create in that Executor a right that shall be deemed to be a general power of appointment, then such individual Executor shall not be vested with such right to delegate such power.

ITEM V

Definition of Executor. Whenever the word "Executor" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor named herein and to any successor or substitute Executor acting hereunder, and such successor or substitute Executor shall possess all the rights, powers and duties, authority and responsibility conferred upon the Executor originally named herein.

ITEM VI

Powers for Executor. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Executors generally, my Executor is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Executor may seem best, and to execute and deliver any and all instruments and to do all acts which my Executor may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Executor to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Executor acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Executor deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Executor deems advisable any other income or resources of the beneficiary or his or her parents known to my Executor. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. Whenever my Executor determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created

hereunder, then the amounts shall be paid out by my Executor in such of the following ways as my Executor deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Executor using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Executor as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Executor.

ITEM VIII

Discretion Granted to Executor in Reference to Tax Matters. My Executor as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Executor believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Executor shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Executor shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my wife. If my estate plan includes a revocable trust agreement and it contains directions to my Executor, I direct my Executor to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Will, my "children" mean **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** For purposes of this Will, "children" of my wife means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have

the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Statement by Testator of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

ITEM XII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testator. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIII

Agreement for Mutual Wills and Trusts. The Agreement for Mutual Wills and Trusts dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this Last Will and Testament.

Testimonium, Attestation and Self-Proving Affidavit. I, **STEPHEN D. WARD**, the Testator, sign my name to this instrument this 21st day of April, 2005, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

S. D. Ward
STEPHEN D. WARD

We, Jeanne A. Pusey and Magdalena Cruz, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Jeanne A. Pusey
(Witness)

Magdalena Cruz
(Witness)

The State of South Carolina

County of Charleston

Subscribed, sworn to, and acknowledged before me by **STEPHEN D. WARD**, the Testator, and subscribed and sworn to before me by Jeanne A. Pusey and Magdalena Cruz, witnesses, this 21st day of April, 2005.

(Seal)
Notary Public for South Carolina

My Commission Expires: July 24, 2012

EXHIBIT 3

Nancy Diemer Trust

NANCY DIEMER TRUST

DATED APRIL 28, 1998

I, Nancy Diemer, of Oak Park, Illinois, declare that I have transferred to myself and now hold, as Trustee, the property described in the attached Schedule [it being my intention upon signing this instrument to immediately divest myself of title to the property, individually, and to vest title in me, as Trustee, without any separate act of assignment or transfer] and I declare that I will administer the scheduled property as Trustee, together with all other property added to the trust, upon the following trusts and conditions.

ARTICLE FIRST: (a) Trust name. This instrument and the trusts hereby evidenced shall be known as the "NANCY DIEMER TRUST DATED APRIL 28, 1998."

(b) Rules and definitions. For all purposes of this instrument: (1) the word "trust" refers, respectively, to the entire trust prior to the division of the whole into separate trusts and, thereafter, to each separate trust administered at the time of reference; (2) the word "Trustee" denotes the plural when two or more Trustees are acting at the time of reference, except where the context otherwise requires or specifically provides; (3) the term "support" includes maintenance of the beneficiary's health and accustomed manner of living, determined at the time the relevant power of the Trustee is exercised; (4) after my death no discretionary payment of trust principal may be made to or for any beneficiary that would discharge any legal obligation to support the beneficiary imposed on any Trustee, individually, or on any person who then has power [either alone or with others] to remove the Trustee; and (5) each reference to education includes, without limitation, primary through college education, postgraduate, professional and trade or vocational education. Titles of Articles and paragraphs are included for reference only and shall not be used to interpret this instrument.

(c) Trust additions. Any person may add other property or policies to any trust by delivery, conveyance or bequest or by causing the proceeds to be payable to the Trustee, but no additions may be made by any person

other than me without the Trustee's consent. At my death all references to any trust shall include all property to which the Trustee of that trust is entitled in any manner by reason of my death.

(d) My family I am unmarried at the time of the execution of this trust. I plan to marry Stephen D. Ward on May 23, 1998 and will then be known as Nancy Ward. I have two children now living, namely Elizabeth Ann Diemer and Garett Carter Diemer. I intend by this instrument to provide for my disability and, upon my death, to provide for my children.

ARTICLE SECOND: Trust administration during my life. During my lifetime the Trustee shall administer the trust as follows:

(a) Payments to me. Subject to paragraph (b), the net income and principal of the trust shall be paid to me or others as I shall direct from time to time and, in the absence of directions from me to the contrary, shall be paid to me or for my benefit in such manner as the Trustee determines to be for my best interests.

(b) Payments during my disability. The provisions of paragraph (a) or of any direction given by me thereunder to the contrary notwithstanding, whenever the Trustee shall determine that I have become unable to give prompt and intelligent consideration to business matters, because of physical or mental disability or for any other reason, the Trustee shall pay to me or expend for my benefit such part or all of the net income and principal of the trust as the Trustee shall deem desirable to provide for my support, taking into account all other income and resources known to the Trustee that are readily available to me for such purposes, and the Trustee shall accumulate any undistributed net income and add it to principal.

ARTICLE THIRD: Distribution of the balance of the Trust after my death. Subject to paragraph (b) of ARTICLE FOURTH, upon my death the Trustee shall forthwith distribute the principal of the trust in equal shares to my children then living at the time of my death. If one of my children is not then living at the time of my death but has descendants then living at the time of my death, then the Trustee shall distribute the share the deceased child would have received, if living, to the child's descendants, then living at the time of my death, per stirpes and not per capita.

ARTICLE FOURTH: General trust administration provisions. The Trustee and beneficiaries of each trust shall be governed by the following:

(a) Status of beneficiaries. Unless otherwise specified in the exercise of a power of appointment granted hereunder, for all purposes of this instrument: (1) a person legally adopted shall be considered a natural child of the adopting parent; and (2) a person born out of wedlock shall not be considered a child of either parent, unless the child's parents marry each other.

(b) Trust termination postponed until age 25. Any portion of the principal of any trust becoming distributable under ARTICLE THIRD to any beneficiary under twenty-five (25) years of age shall vest in the beneficiary, but distribution of the portion shall be postponed until the beneficiary attains that age. In the meantime the Trustee shall administer the portion as a separate trust and shall pay to or expend for the benefit of the beneficiary such part or all of the net income and principal of the trust as the Trustee deems desirable to provide for the support and education of the beneficiary, taking into account all other resources known to the Trustee that are readily available to the beneficiary for such purposes, and the Trustee shall accumulate any undistributed net income and add it to principal.

(c) Early termination of small trust. At any time after my death when the value of the principal of any trust shall be less than FIFTY THOUSAND DOLLARS ($50,000) and the Trustee shall determine that early distribution of the trust is desirable for any reason, the Trustee, without regard to the interests of the ultimate remaindermen [if any], may terminate the trust and distribute the principal to the beneficiary to whom the income from the trust then may be or is payable.

(d) Early termination to avoid rule against perpetuities. Unless sooner terminated in accordance with the other provisions of this instrument, any trust created hereunder or by appointment pursuant to this instrument shall cease and terminate upon the expiration of twenty-one (21) years after the death of the survivor of me and all other beneficiaries herein named or referred to living at the time of my death, whereupon the entire remaining principal of the trust shall be distributed

forthwith to the person or persons then entitled to receive the income therefrom.

(e) Payments to beneficiaries under disability; no assignment of trust interests. Payments or distributions of income or principal authorized or directed to be made to any beneficiary shall be made in person or upon the personal receipt of the beneficiary or, if the beneficiary directs, may be deposited in any bank account carried in the beneficiary's name or jointly with others; provided, however, that any payment or distribution to any beneficiary whom the Trustee making such payment or distribution believes to be incapable because of physical or mental disability, or for any other reason, of giving prompt and intelligent consideration to business matters may be made: (1) directly to the beneficiary, (2) to the legal representative of the beneficiary, (3) to any relative or friend of the beneficiary to be expended for the benefit of the beneficiary, (4) to a Custodian for the beneficiary under a Uniform Gifts [or Transfers] to Minors Act of any jurisdiction, or (5) by the Trustee expending the same for the benefit of the beneficiary, and the Trustee shall not be required to see to the application of any payments or distributions so made. No interest of any beneficiary shall be assignable in anticipation of payment or distribution either by the voluntary or involuntary act of the beneficiary or by operation of law or be liable in any way for the beneficiary's debts.

(f) Satisfaction of pecuniary amounts and fractional shares. In funding any pecuniary amount or fractional share trust or making any pecuniary amount or fractional share division or distribution to or between separate trusts or beneficiaries, the Trustee may: (1) divide, allocate or distribute in cash or in kind, or both; (2) select the property to be assigned to each trust or beneficiary; (3) assign undivided interests in any property to two or more trusts or beneficiaries; and (4) where fractional shares are concerned, allocate to each beneficiary or trust the required fractional share of each asset available to fund the share or assign to each beneficiary or trust the then value of its share by allocating to it any part or all [including disproportionate fractional interests] of any available asset. If property is allocated in kind to satisfy a pecuniary amount, or to satisfy the then value of a fractional share with disproportionate interests in the available assets, the property shall be valued at the time of allocation, as determined by the Trustee, and no adjustments shall be

made to compensate for any disproportionate allocation of unrealized gain or loss for income tax purposes.

(g) Commingling of separate trusts. The Trustee may combine any separate trusts administered under this instrument with each other, or with any trusts under other instruments which have similar terms and beneficiaries, for purposes of commingled investment and administration of the combined trusts, and the Trustee shall allocate all trust receipts and disbursements among the combined trusts proportionately.

(h) Principal and income allocations. The Trustee shall allocate receipts and expenses of any trust to or between income and principal in accordance with the rules of trust accounting law applicable thereto; provided, that (1) in any case where the Trustee concludes that there are no applicable rules, that the rules are ambiguous or that the application of the rules would alter the relative interests of the income and principal beneficiaries of the trust contrary to my intention hereunder, as determined by the Trustee, the Trustee may allocate the receipt or expense involved in such manner as the Trustee deems proper to carry out my intention and to fulfill the purposes of the trust; and (2) the Trustee may allocate any trust administration expenses [including, without limitation, accounting expenses, expenses of judicial proceedings and any regular or special compensation of any Trustee, investment counsel, attorney, accountant, custodian or other agent] all to income or all to principal, or partly to each, in such manner as the Trustee determines to be for the best interests of the beneficiaries, taking into account the nature of the trust assets, the trust interests benefited by the expense, the tax consequences and any other factors deemed relevant by the Trustee.

(i) General powers of Trustee; compensation. The Trustee shall have the following powers: (1) to invest and reinvest trust assets in any kind of property or undivided interests therein which the Trustee shall deem proper [including, without limitation, real estate, stocks, bonds, mortgages, debentures and shares or interests in investment companies, funds or trusts] without being restricted to investments as fixed by the laws of any jurisdiction; (2) to continue trust assets invested in any property received or acquired by the Trustee without obligation to sell all or any part thereof because not of a type or quality or constituting a diversification considered proper or wise for trust investments; (3) to hold

funds uninvested during any periods of unsettled financial conditions; (4) to purchase, sell, convey, assign or exchange any trust property and to grant and exercise options with respect to trust property; (5) to purchase property from, sell property to and otherwise deal with the fiduciary representing the estate or trust of any person, whether or not the Trustee is also acting as fiduciary for the estate or other trust; (6) to lease trust property for any time even extending beyond the term of any trust; (7) to insure, improve, repair, alter, partition, subdivide, grant easements or dedicate any trust property and to erect or raze improvements thereon; (8) to settle or abandon all claims and demands in favor of or against any trust; (9) to consent to the reorganization, consolidation or readjustment of the finances of any corporation; (10) to vote in person or issue proxies to others; (11) to borrow money from any lender, including any Trustee, individually, and to mortgage or pledge any trust property for any purpose deemed proper by the Trustee, including the purchase of bonds redeemable at more than market value for the payment of federal estate tax; (12) to employ attorneys, accountants, investment advisors and other agents [including persons who are associated with the Trustee in any business or profession], to rely and act upon the advice of any investment advisors or other agents without independent investigation, and to delegate to any one or more of them any of the Trustee's powers, discretionary or otherwise, for any purpose; and the Trustee shall not be liable for any loss that may result from following the advice, or for other acts, of any investment advisor or other agents unless the Trustee has failed to use due care in their selection; (13) to hold or register any property in the Trustee's own name or in the name of a nominee without disclosure of any fiduciary relationship; and (14) in addition to any powers conferred herein or by law, to do and perform all acts which the Trustee shall deem proper to carry out the purposes of each trust, it being my intention that the enumeration of particular powers shall not be construed as limiting the general powers intended to be granted to the Trustee. Each Trustee shall be paid reasonable compensation.

(j) Trust accounts; objections barred after 2 years; settlement of accounts before distribution. A statement showing all receipts and disbursements and the property comprising each trust shall be given at least annually to each beneficiary to whom the income from the trust then may be or is payable or to the beneficiary's representative under paragraph (k) of this Article. A majority in interest of the beneficiaries to

whom the income from any trust then may be or is payable, without liability to others, may approve any account of any acting or predecessor Trustee with respect to that trust and release the Trustee from liability for all matters covered by the account, which release shall bind all persons having any past, present or future interest in that trust. Each statement of account shall be deemed approved and the Trustee shall be deemed released by all beneficiaries having any past, present or future interest in the matters covered by the account unless objections to the account are filed with the Trustee within two (2) years after the account is mailed or delivered to the persons entitled thereto. Before distribution of any trust principal the Trustee shall have the right to require settlement of any open accounts of the trust from which the distribution is being made, either by the written agreement and release of all beneficiaries having any interest in the distribution or, if releases cannot be obtained, by court settlement of the open accounts. All of the Trustee's fees and expenses [including attorneys' fees] attributable to court approval of the Trustee's accounts shall be paid by the trust involved, but the trust shall not be liable if and to the extent the accounts are not approved. For all purposes of this paragraph and ARTICLE FIFTH, if more than one beneficiary is eligible to receive the same income at the time of reference, a "majority in interest" of those beneficiaries means a majority in number of the oldest generation of eligible beneficiaries.

(k) Persons to represent beneficiary during disability. If a beneficiary is under disability at the time of reference, the first of the following [in the order named] who is then living or acting and under no disability shall act for and represent the beneficiary to receive and review notices and accounts, approve or object to accounts, release Trustees from liability and appoint Trustees: the legal representative of the beneficiary's estate; the legal representative of the beneficiary's person; the person(s) having custody of the beneficiary; the beneficiary's spouse; or a majority of the adult children of the beneficiary. For all purposes of this paragraph and ARTICLE SECOND and ARTICLE FIFTH, any person shall be considered to be under "disability" if, at the time of reference: (1) the person is a minor under the law of his domicile or has been adjudicated an incompetent or disabled person or (2) two medical doctors familiar with the physical and mental condition of the person have certified in writing that the person is unable to give prompt and intelligent consideration to business matters and written notice of the determinations of disability has

been delivered to the person. Once established, disability will be deemed to continue until there is a like certification, or an adjudication, that the disability has ended.

(l) Undistributed income at beneficiary's death. Upon the death of any beneficiary all accrued but uncollected income, and all undistributed income received by the Trustee since the last regular income payment date, which would have been payable to the beneficiary had the beneficiary continued to live shall be payable as income to the beneficiary who shall next be entitled upon the death of the deceased beneficiary to receive the principal, or the income from the principal, from which the income was derived.

(m) Designation of "appointed Trustee." The term "appointed Trustee" means a Trustee acting pursuant to this paragraph. If at any time or times the Trustee other than an appointed Trustee determines that it is advisable to change the situs of any part or all of any trust or is unable or unwilling to act as Trustee with respect to any trust property, such Trustee may resign as Trustee with respect to any trust property and designate an appointed Trustee thereof, which appointed Trustee shall have and exercise such of the appointing Trustee's powers, discretions and titles and on such conditions as the appointing Trustee shall specify. At any time the appointed Trustee may be removed by the Trustee who may designate another as appointed Trustee or, in the absence of such appointment, shall again have and exercise all powers, discretions and titles theretofore vested in the appointed Trustee. Each appointed Trustee so designated may delegate any and all powers, discretions and authorities to the Trustee as agent.

(n) Liabilities and transfer of powers and property between Trustees. Unless otherwise provided in this instrument: (l) the legal title to all property of any trust shall remain vested in the Trustee of that trust from time to time acting hereunder without any act of conveyance or transfer to, by or from any succeeding or retiring Trustee; (2) all of the rights, powers and authorities, discretionary or otherwise, herein granted to the original Trustee of any trust shall descend to and vest in the acting Trustee of that trust; (3) any corporation which succeeds by merger, consolidation, purchase or other means to substantially all of the assets and business of any acting or nominated corporate Trustee shall also

succeed to the office of Trustee; (4) no Trustee shall ever be liable for any act or default of any other Trustee nor for any loss sustained through any error of judgment but shall only be liable for his own willful default; (5) no Trustee shall be required to give any bond or security or to render any periodic court accounting; (6) as used with reference to the Trustee, all words denoting number and gender shall be construed to denote the proper number and gender applicable to the Trustee acting at the time of reference with respect to the power or duty involved; (7) no person dealing with the Trustee shall be obliged to inquire into the Trustee's powers or to see to the application of any money or property delivered to the Trustee; and (8) a successor Trustee may accept the account rendered and the trust property delivered by the predecessor Trustee without review or liability.

(o) Co-Trustee provisions. If and while a corporate co-Trustee is acting and willing to do so, it shall have custody of all trust personal property and cash and may solely perform all ministerial duties. Any individual co-Trustee shall have the right at any time or times to delegate to a consenting co-Trustee any or all of the delegating Trustee's powers, authorities or duties, whether ministerial or discretionary in character, for any period of time or permanently by a writing delivered to the delegate.

(p) Insurance payable to Trustee. With respect to each policy of insurance upon my life subject to this instrument: (1) during my lifetime I reserve all rights and interests with respect to the policy, including without limitation the right to change the beneficiary, to borrow upon the policy from any lender [including any Trustee, individually] and to assign the policy as collateral; the Trustee shall only be responsible for the safekeeping of the policy but it may be returned to my custody and will remain subject to this instrument so long as the proceeds remain payable to the Trustee; and the Trustee shall not be obligated to pay any premiums or assessments upon the policy; and (2) upon my death only the proceeds of the policy due upon my death, after deduction of all loans and charges payable therefrom, shall be subject to this instrument and the Trustee shall take appropriate action to collect the policy, but shall not be obligated to engage in litigation unless indemnified to the Trustee's satisfaction.

(q) Payment of estate obligations by Trustee. Upon my death all estate obligations shall be paid out of the principal of my residuary

probate estate [if any] or the trust, or partly from each, as my fiduciary shall determine to be for the best interests of my beneficiaries, without abatement of any nonresiduary gifts under my will and without reimbursement or contribution from any person; provided, however, that the amount by which my death taxes are increased by assets subject to generation-skipping taxes, a power of appointment or a qualifying income interest for life shall be paid out of those assets; and provided, further, that (1) property which, except for this paragraph, would be exempt, excludable or nontaxable in determining my federal estate tax shall not be used to pay estate obligations and (2) all bonds owned by my probate estate or the Trustee which are redeemable at more than market value for the payment of federal estate tax shall first be used for that purpose. In this paragraph the term "estate obligations" means all of the following obligations payable by reason of my death: all taxes, including interest and penalties thereon ["my death taxes"], all fees and other expenses of administration attributable to probate and nonprobate property and all claims allowed against my estate [or if there is no probate administration of my estate, then all claims against my estate which the Trustee considers just and proper]; and in this paragraph the term "my fiduciary" means the legal representative of my probate estate [my "legal representative"] and the Trustee, acting together, or the Trustee, alone, if no legal representative is acting. Payment of estate obligations shall be made through my legal representative, if any, and the Trustee may distribute trust property to my legal representative at any time or times to fund estate obligations, without regard to when those obligations may be due. Nothing herein shall restrict the right of my fiduciary to litigate or settle any estate obligations and any action taken by my fiduciary to litigate, settle or pay estate obligations shall be binding and conclusive on all persons. The Trustee may accept as correct and act without liability on the basis of the determination by my legal representative as to any matter of fact or law material to compliance with this paragraph. My fiduciary may make such elections under the tax laws as my fiduciary shall deem advisable and no adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of such elections.

ARTICLE FIFTH: Successor Trustees. Any Trustee may resign as Trustee of any trust by giving ten (10) days prior written notice to all co-Trustees, if any, then acting, to all successor Trustees, if any, hereinafter

designated and to each beneficiary to whom income from that trust then may be or is payable. If I become unable to act as Trustee, then my brother, Robert A. Goelkel, currently residing in Park Ridge, Illinois, shall act as Trustee, or if he becomes unable to act then my fiance, Stephen D. Ward, currently residing in Edina, Minnesota, shall act as successor Trustee. Any Trustee acting or designated to act pursuant to this instrument shall be deemed unable to act in the event of such Trustee's death, disability, refusal to act, removal or resignation [excluding, however, a resignation for purposes of paragraph (m) of ARTICLE FOURTH]. The provisions of this paragraph shall not apply to an appointed Trustee acting pursuant to paragraph (m) of ARTICLE FOURTH.

ARTICLE SIXTH: Governing law. Illinois law shall govern all questions concerning (a) the validity of this instrument and the trusts hereby created and (b) the interpretation of my intent as to the disposition of the trust property and all other questions relating to any trust, including all matters of trust administration.

ARTICLE SEVENTH: Right to amend or terminate. I reserve the right, exercisable at any time or times by a writing signed by me, to amend or terminate this instrument and the trusts hereby created, either in whole or in part, and to direct the disposition of any part or all of the trust property; provided, however, that the Trustee's powers, duties and liabilities shall not be substantially increased without the Trustee's consent.

This instrument has been signed on the date specified in ARTICLE FIRST.

NANCY DIEMER,
individually and as Trustee

NANCY DIEMER TRUST

SCHEDULE

1. Ten dollars ($10.00)

NANCY DIEMER,
individually and as Trustee

PREPARED BY:
LAW OFFICE OF NATASHA M. HANNA, P.C.
4712 JENN DRIVE, SUITE A
MYRTLE BEACH, SC 29577

SPACE ABOVE THIS LINE RESERVED FOR RECORDING INFORMATION

THE STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS, That, **KB, LLC**, herein referred to as the Grantor, for and in consideration of the sum of **FOUR HUNDRED FIFTY FIVE THOUSAND AND 00/100 Dollars ($455,000.00)** to it paid by **SHIV OF CFTC, LLC**, hereinafter referred to as the Grantee, in the State aforesaid, the receipt and sufficiency whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns forever:

All that certain piece, parcel or lot of land shown and designated as "Lot 14 - 27, 148 +/- sf, 0.62 +/- ac.", and being delineated on a plat entitled "Lots 13 & 14 - Carolina Forest Shopping Center Dogwood Neck Township, Township, Horry County, South Carolina Subdivision Plat, prepared for Carolina Forest Investment Group, LLC," by DDC Engineers, Inc. dated March 27, 2014, last revised April 16, 2014, and recorded May 27, 2014,-in the Office of the Register of Deeds for Horry County, South Carolina in Plat Book 261 at page 323. For a more complete description as to courses, metes-and bounds, reference may be made to said plat of record.

DERIVATION: This being the identical property conveyed to KB, LLC, by Deed of CEB Holdings, LLC, dated March 2, 2018, recorded in the Office of the Register of Deeds for Horry County in Deed Book 4087 at Page 1121.

TAX MAP / PARCEL ID NUMBER: 165-00-01-494 / 396-12-03-0010

GRANTEE'S ADDRESS: 39 Chapin Circle, Myrtle Beach, SC 29572

This conveyance is made subject to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, its successors and assigns forever.

AND THE GRANTOR does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against the Grantor and the Grantor's successors and assigns and against every person whomsoever lawfully claiming or to claim, the same or any part thereof.

WITNESS Its Hand and Seal this this _____ day of **May, 2019**.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

_____
Witness #1

KB, LLC

By:_____
Kim Oanh Nguyen, Sole Member

_____
Witness #2

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this this _____ day of May, **2019**, , by the Grantor(s), **KB, LLC** by **Kim Oanh Nguyen, Sole Member**.

_____ (L.S.)
Notary Public for South Carolina
Notary Printed Name: _____
Commission Expires: _____

EXHIBIT 4

First Amendment and Restatement of Trust Agreement of Nancy L. Ward

FIRST AMENDMENT AND RESTATEMENT
OF
TRUST AGREEMENT
OF
NANCY L. WARD

Introductory Clause. This First Amendment and Restatement of Trust Agreement of **NANCY L. WARD** made this 21st day of April, 2005, between **NANCY L. WARD**, hereinafter referred to as the Settlor and **NANCY L. WARD**, hereinafter referred to as the Trustee.

The Settlor is married to **STEPHEN D. WARD** and has two living children: **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.**

The Settlor has five living step-children: **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, STEPHEN A. WARD** and **JEREMY W. WARD**. The Settlor's husband's children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Trust Agreement as they will be provided for by their mother with assets she received from the Settlor's husband pursuant to their divorce. Their omission is intentional.

WHEREAS, the Settlor and the Trustee entered into the **NANCY DIEMER TRUST** dated April 28, 1998, hereinafter called the Trust Agreement; and

WHEREAS, ARTICLE SEVENTH of the Trust Agreement provided that the Settlor reserved the right to amend in any manner or revoke in whole or in part the Trust Agreement; and

WHEREAS, the Settlor is desirous of modifying and amending the Trust Agreement and the Trustee is agreeable to the modifications and amendments contained herein;

NOW, THEREFORE, IT IS AGREED that the entire Trust Agreement as modified and amended will read as follows:

ARTICLE I

Trustee Succession if Settlor Dies or Becomes Incapacitated. If the Settlor dies or is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of two licensed physicians, unable to properly handle the Settlor's own affairs, then and in that event the Trustee named below shall immediately become the Trustee under this Trust Agreement. The Settlor names the following as successor Trustee:

STEPHEN D. WARD

Third parties may rely on an affidavit by the Trustee named above stating that the successor Trustee is now acting as Trustee hereunder.

ARTICLE II

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee certain property, and has caused or will cause the Trustee to be designated as beneficiary of certain life insurance policies. These insurance policies, and any other insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the ''Trust Estate''), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE III

Rights of Settlor and Trustee in Insurance Policies. During the Settlor's lifetime, the Settlor shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to the Settlor or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon the Settlor's written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy. However, no revocation of the trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of the Settlor that matures any such policy, the Trustee, in its discretion, either may collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on the Settlor's life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE IV

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

NW

1. During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

2. During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

3. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to engage in additional estate planning to reduce the expected gift and estate tax liability as well as provide for additional resources for family transfers and, if consistent with the Settlor's desires, charitable purposes. The estate planning, which is specifically authorized, may include the design, implementation, and funding of techniques such as limited partnerships, limited liability companies, lifetime gifts and transfers, qualified personal residence trusts, charitable trusts, family foundations, and other trusts and techniques designed to reduce the total estate and gift taxes anticipated to be paid by the Settlor and the Settlor's estate to increase the expected benefit to the Settlor's family, beneficiaries, and charities, if any.

4. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to (but shall not be required to) make gifts equal to or in excess of the annual gift tax exclusion to the Settlor's children and their issue, and their respective spouses, if appropriate, and in such amounts and upon such terms and conditions as the Trustee, in the Trustee's discretion, shall determine.

ARTICLE V

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. Except as provided for in the **AGREEMENT FOR MUTUAL WILLS AND TRUSTS**, dated as of even date herewith and entered into between the Settlor and the Settlor's husband, **STEPHEN D. WARD**, the Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE VI

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's executors or administrators, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the **Family Trust** and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the executors or administrators of the Settlor's estate. Written statements by the executors or administrators of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Family Trust. The Trustee shall have the power to charge expenses of administration against income or principal, or apportion such expenses; provided, however, this power may not be exercised in a way which would reduce or otherwise adversely affect the marital or charitable deduction otherwise available for federal estate tax purposes. The Trustee shall not exercise this discretion in a manner which is inconsistent with the IRC regulations now in effect or subsequently promulgated.

ARTICLE VII

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **Specific Distribution.** The Charles Schwab & Co., Inc. Account Number 9091-9831 shall be distributed outright and free of trust to the Settlor's surviving children in approximately equal shares; provided, however, the surviving issue of a deceased child shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If **ELIZABETH A. DIEMER** predeceases the Settlor and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the Settlor and has no issue then living, the share of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

(2) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VIII

Upon the death of the Settlor, the Trustee shall divide the Trust Estate (which shall include any property which may be added from the Settlor's general estate) as follows:

1. **Creation of The Marital Trust and The Family Trust.** If the Settlor is survived by the Settlor's husband, **STEPHEN D. WARD**, the Trustee shall divide the Trust Estate into Two (2) separate shares, hereinafter designated as "**the Marital Trust**" and "**the Family Trust.**" **The Marital Trust** shall be composed of cash, securities or other property of the Trust Estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in the Settlor's federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such estate tax purposes by reason of property or interests in property passing or which have passed to the Settlor's husband otherwise than pursuant to the provisions of this Article; provided, however, the amount for **the Marital Trust** hereunder shall be reduced by the amount, if any, needed to increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on the Settlor's estate. The term "maximum marital deduction" shall not be construed as a direction by the Settlor to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. The Trustee shall have the sole discretion to select the assets which shall constitute **the Marital Trust**. In no event, however, shall there be included in this **the Marital Trust** any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this **the Marital Trust** shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind as a part of **the Marital Trust** hereunder at the value of such asset at the date of distribution of such asset. **The Marital Trust** shall be administered as hereinafter set forth. **The Family Trust** shall be the balance of the Trust Estate after the assets have been selected for **the Marital Trust.**

2. **Creation of the Family Trust.** If the Settlor's husband shall not survive the Settlor, **the Family Trust** shall be the entire Trust Estate.

The Marital Trust and **the Family Trust** shall be administered as hereinafter set forth.

ARTICLE IX

The Family Trust Introductory Provision. **The Family Trust** shall be held, administered and distributed as follows:

1. **Payment to Husband of All Income.** If the Settlor's husband shall survive the Settlor, then commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's husband during his lifetime all the net income from **the Family Trust** in convenient installments but no less frequently than quarter-annually.

2. **Discretionary Payments of Principal for Husband.** If the Settlor's husband shall survive the Settlor, and if there is no principal remaining in the Marital Trust, the Trustee may pay to or apply for the benefit of the Settlor's husband during his lifetime, such sums from the principal of **the Family Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's husband, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's husband known to the Trustee.

3. **Outright Final Distribution if Husband is Deceased.** Upon or after the death of the survivor of the Settlor's husband and the Settlor, **the Family Trust** shall be distributed outright and free of trust to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares; provided, however, if one of these individuals are deceased then the issue of the deceased individual surviving the Settlor and the Settlor's husband shall take per stirpes the share their parent would have taken had he or she survived the Settlor and the Settlor's husband. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to the Settlor's husband's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

ARTICLE X

The Marital Trust Introductory Provision. **The Marital Trust** shall be held, administered and distributed as follows:

1. **Direction to Pay All Income to Husband.** Commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's husband during his lifetime all the net income from **the Marital Trust** in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of the Settlor's husband shall be paid with the entire remaining principal as provided in this **the Marital Trust**.

2. **Discretionary Payments of Principal by Trustee for Benefit of Husband.** In addition, the Trustee may pay to or apply for the benefit of the Settlor's husband such sums from the principal of **the Marital Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of

the Settlor's husband, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's husband known to the Trustee.

3. **Power in Husband to Cause Nonproductive Property to Be Made Productive.** The Settlor's husband may at any time by written notice, require the Trustee either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

4. **Payment of Death Taxes From the Marital Trust on Death of Husband.** Unless the Settlor's husband's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of **the Marital Trust** be paid otherwise, the Trustee shall pay to the executors or administrators of the estate of the husband for the purposes of paying such taxes, the amount by which such taxes assessed by reason of the Settlor's husband's death shall be increased as a result of the inclusion of the assets of **the Marital Trust** in his estate for such tax purposes.

5. **Trust Property to Be Added to the Family Trust on Husband's Death.** Upon the death of the Settlor's husband, the entire remaining principal of **the Marital Trust** shall be added to and become a part of **the Family Trust** and shall be held and administered or distributed in whole or in part, as if it had been an original part of **the Family Trust.**

ARTICLE XI

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

1. **Individual Trustees Succession.** If **STEPHEN D. WARD** should fail to qualify as successor Trustee hereunder, or for any reason should cease to act in such capacity, the successor or substitute Trustee who shall also serve without bond shall be the Settlor's brother **ROBERT A. GOEKEL.**

2. **Final Succession If Individual Successor Trustee Cannot Act.** If **STEPHEN D. WARD** and **ROBERT A. GOEKEL** should fail to qualify as individual successor Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** If any individual Trustee named herein should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining Trustees named herein shall continue to serve without a successor or substitute.

3. **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

4. **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees. Provided, however, that if only two Trustees shall be serving as co-Trustees, then the Trustees shall act with unanimity on all actions, unless the co-Trustees shall have otherwise agreed in writing.

5. **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

6. **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ARTICLE XII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIII

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

1. To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

3. To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

4. To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

5. To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

6. To sell or exercise stock subscription or conversion rights.

7. To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

8. To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

9. To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

10. To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

11. To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12. To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

13. To continue and operate any business owned by the Settlor at the Settlor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

14. To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

15. To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

16. In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

17. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

18. To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

19. To determine what shall be fairly and equitably charged or credited to income and what to principal.

20. To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

21. To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

22. In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

23. To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's executors or administrators and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's executors or administrators and the Trustee are the same shall in no way affect the validity of this provision.

24. To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's executors or administrators and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

25. To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Executors, donors, insurance companies and other parties adding property to the Trust Estate.

26. To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

27. To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

28. To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an

inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

29. If the Trustee shall act as the Executor of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Executor will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to the **Family Trust**, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Executor deems in the best interest of the Settlor's estate.

ARTICLE XIV

Trustee's Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence. Provided, however, the Trustee shall not exercise this power in any way which would deprive the husband under the Marital Trust of the beneficial enjoyment of the Marital Trust and the husband shall have the right to limit, restrict or terminate the Trustee's exercises of this power if they interfere with such beneficial enjoyment.

ARTICLE XV

Marital Deduction Savings Clause for the Marital Trust. It is expressly provided that the grant of rights, powers, privileges and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust Agreement or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in **the Marital Trust** hereof. It is the Settlor's intention that the Settlor's husband under the provisions of **the Marital Trust** have substantially that degree of beneficial enjoyment of the Trust Estate during his lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and the Trustee shall not exercise its discretion in a manner which is not in accord with this expressed intention. The Trustee shall invest the Trust Estate so it will produce for the Settlor's husband during his lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that the Trustee shall not in the exercise of its discretion make any determination inconsistent with the foregoing.

ARTICLE XVI

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of

Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XVII

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that the Trustee shall not make any payment from the Marital Trust under (3) above.

ARTICLE XVIII

Power of Trustee to Resign During Settlor's Lifetime. Any Trustee may resign this trusteeship during the Settlor's lifetime by giving the Settlor Thirty (30) days notice in writing delivered to the Settlor in person or mailed to the Settlor's last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, the Settlor shall appoint a successor Trustee. Upon the failure of the Settlor to appoint a successor Trustee who accepts the trust within Thirty (30) days from the time notice was delivered in person or mailed to the Settlor, the Trustee may resign to the court having jurisdiction over this trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee which shall be an individual as successor to an individual trustee or a bank or trust company qualified to do business in the state of the Settlor's domicile as successor to a corporate trustee. Upon the appointment of and acceptance by the successor Trustee, the original Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Settlor, whereupon its resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIX

Settlor During Lifetime to Designate Substitute or Successor Trustee. The Settlor during the Settlor's lifetime may name a substitute or successor Trustee by delivery to any Trustee herein a notice naming the successor or substitute Trustee and indicating an intent to replace the Trustee named. Upon receipt of such notice the Trustee named shall pay over, deliver, assign, transfer or convey to such substitute or successor Trustee (which accepts the appointment as trustee), the Trust Estate and make a full and proper accounting to the Settlor, whereupon the Trustee named shall be discharged and have no further responsibility under this Trust Agreement. Upon the failure of the Trustee to make such conveyance the Settlor may apply to the court having jurisdiction of this trust and such court may compel the conveyance by the Trustee. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Trust, "children" of the Settlor means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** For purposes of this Trust, "children" of the Settlor's husband means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XXI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," "qualified terminable interest," "qualified terminable interest property," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which

the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XXII

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XXIII

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XXIV

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XXV

Agreement for Mutual Wills and Trusts. The Agreement for Mutual Wills and Trusts dated as of even date herewith between STEPHEN D. WARD and NANCY L. WARD is incorporated by reference into this First Amendment and Restatement of Trust Agreement of Nancy L. Ward.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

Jeanne A. Pusey

Magdalena Greig

Jeanne A. Pusey

Magdalena Greig

Nancy L. Ward

NANCY L. WARD, SETTLOR

Nancy L. Ward

NANCY L. WARD, TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

Personally appeared the undersigned witness and made oath that S he saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this
21st day of April, 2005

Notary Public for South Carolina

My Commission expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by **NANCY L. WARD**, as Settlor and Trustee, to be the free and voluntary act and deed of the Settlor and Trustee.

WITNESS my signature this 21st day of April, 2005.

Signature of Notary Public

Brett A. Bluestein
Typed Name of Notary Public

Notary Public for: South Carolina
My commission expires: July 29, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property being transferred is located at Lot 14 Fresh Drive, Myrtle Beach, SC 29579, bearing Horry County TMS and/or Parcel ID# 165-00-01-494 / 396-12-03-0010, and is transferred by KB, LLC to Shiv of CFTC, LLC on May 21, 2019.

3. Check one of the following: The Deed is:
(a) **XX** Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth;
(b) Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and/or a stockholder, partner, or owner of the entity, or is a transfer to a Trust or as a distribution to a Trust beneficiary;
(c) Exempt from the deed recording fee because (See Information section of this Affidavit - If exempt, please skip items 4-7, and go on to item 8 of this Affidavit).

4. Check one of the following:
(a) **XX** The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $455,000.00.
(b) The fee is computed on the fair market value of the realty which is ____.
(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is____.

5. Check Yes _____ or No **XX** to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of lien or encumbrance is: N/A.

6. The deed recording fee is computed as follows:

(a)	Place the amount listed in item 4 above here:	$455,000.00
(b)	Place the amount listed in item 5 above here:	$ 0.00
(c)	Subtract line 6(b) from line 6(a) and place result here:	$455,000.00

7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is $1,683.50.

8. I state that I am a responsible person/party who is connected with the transaction as: GRANTOR.

9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this _____ day of May, 2019.

_____
Notary Public for South Carolina

Notary Printed Name: _____

My Commission Expires:_____

Responsible Person Connected with the Transaction

KB, LLC

By: _____
Kim Oanh Nguyen, Sole Member

EXHIBIT 5

Last Will and Testament of Nancy L. Ward

LAST WILL AND TESTAMENT OF NANCY L. WARD

2011 JUL -7 PM 12:02

Introductory Clause. I, **NANCY L. WARD**, a resident of and domiciled in the County of Charleston and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to **STEPHEN D. WARD**.

I have two living children: **ELIZABETH A. DIEMER**; and **GARETT C. DIEMER**.

I have five living step-children: **STEPHANIE L. WARD**; **DAVID D. WARD**; **BRIAN C. WARD**; **STEPHEN A. WARD**; and **JEREMY W. WARD**. My step-children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Will as they will be provided for by their mother with assets she received from my husband pursuant to their divorce. Their omission is intentional.

ITEM I

Direction to Pay Debts with Discretionary Refinancing by Executor. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Executor may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

1. I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Executor within ninety (90) days after my Executor's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered

memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

2. In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my husband, **STEPHEN D. WARD**, for his lifetime, if he shall survive me. If my husband shall not survive me or upon my husband's death, I give and bequeath my personal and household effects that were acquired by me (prior to my marriage to my husband or by inheritance during my marriage to my husband) to my children **ELIZABETH A. DIEMER** and **GARRET C. DIEMER** in approximately equal shares. If my husband shall not survive me or upon my husband's death, I give and bequeath my personal and household effects that were acquired by me and my husband during our marriage to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares.

However, if any of the aforementioned individuals predecease the survivor of me and my husband, then the issue of the deceased individual surviving me and my husband shall take per stirpes the share their parent would have taken had he or she survived me and my husband. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of me and my husband and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to my husband's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of me and my husband and has no issue then living, the shares of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of me and my husband and has no issue then living, the shares of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

If any of the aforementioned individuals do not agree to the division of the property among themselves, my Executor shall make such division among them, the decision of my Executor to be in all respects binding upon them. If any beneficiary hereunder is a minor, my Executor may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Executor. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM III

Pour-Over Gift to Trustee of Testatrix's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to the successor Trustee under the Nancy Diemer Trust Dated April 28, 1998 between me as Settlor and me as Trustee executed prior to the execution of this Will, as amended by the First Amendment and Restatement of Trust Agreement dated as of even date

herewith. My Trustee shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM IV

Naming the Executor, Executor Succession, Executor's Fees and Other Matters. The provisions for naming the Executor, Executor succession, Executor's fees and other matters are set forth below:

1. **Naming an Individual Executor.** I hereby nominate, constitute and appoint as Executor of this my Last Will and Testament **STEPHEN D. WARD** and direct that he shall serve without bond.

2. **Naming Individual Successor or Substitute Executor.** If my individual Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the successor or substitute Executor who shall also serve without bond shall be **ROBERT A. GOELKEL.**

3. **Final Succession If Individual Successor Executor Cannot Act.** If my individual successor Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Executors who shall also serve without bond shall be **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** If any individual Executor named herein should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the remaining individual Executor named herein shall continue to serve without a successor or substitute.

4 **Fee Schedule for Individual Executor.** For its services as Executor, my individual Executor shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

5 **Executor Voting Rights.** If there is more than one Executor serving, then the vote of the Executors for any action hereunder must be by majority action of the Executors. Provided, however, that if only two Executors shall be serving as co-Executors, then the Executors shall act with unanimity on all actions, unless the co-Executors shall have otherwise agreed in writing.

6 **Delegation Among Executors.** When there is more than one individual or entity serving as co-Executors, then any Executor may delegate to any other Executor the power to exercise any or all of the powers granted to the Executors in this Last Will and Testament, including those powers, which are discretionary, to the extent allowed by law. Any delegating Executor may revoke any such delegation with written notice to the other serving co-Executors. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Executor. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Executor receiving such delegation with the same force and effect as if the delegating Executor had personally joined in the exercise of such power. Provided, however, that if such Executor, or co-

Executor, shall also be a current beneficiary and such delegation shall be deemed to create in that Executor a right that shall be deemed to be a general power of appointment, then such individual Executor shall not be vested with such right to delegate such power.

ITEM V

Definition of Executor. Whenever the word "Executor" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor named herein and to any successor or substitute Executor acting hereunder, and such successor or substitute Executor shall possess all the rights, powers and duties, authority and responsibility conferred upon the Executor originally named herein.

ITEM VI

Powers for Executor. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Executors generally, my Executor is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Executor may seem best, and to execute and deliver any and all instruments and to do all acts which my Executor may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Executor to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Executor acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Executor deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Executor deems advisable any other income or resources of the beneficiary or his or her parents known to my Executor. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. Whenever my Executor determines it

appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Executor in such of the following ways as my Executor deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Executor using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Executor as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Executor.

ITEM VIII

Discretion Granted to Executor in Reference to Tax Matters. My Executor as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Executor believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Executor shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Executor shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my husband. If my estate plan includes a revocable trust agreement and it contains directions to my Executor, I direct my Executor to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Will, my "children" mean **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** For purposes of this Will, "children" of my husband means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words

which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Statement by Testatrix of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

ITEM XII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIII

Agreement For Mutual Wills and Trusts. The Agreement for Mutual Wills and Trusts dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this Last Will and Testament.

Testimonium, Attestation and Self-Proving Affidavit. I, **NANCY L. WARD**, the Testatrix, sign my name to this instrument this 21st day of April, 2005, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Nancy L. Ward
NANCY L. WARD

We, Jeanne A. Pusey and Magdalena Cruz, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, and in the presence of each other, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Jeanne A. Pusey
(Witness)

Magdalena Cruz
(Witness)

The State of South Carolina

County of Charleston

Subscribed, sworn to, and acknowledged before me by **NANCY L. WARD**, the Testatrix, and subscribed and sworn to before me by Jeanne A. Pusey and Magdalena Cruz, witnesses, this 21st day of April, 2005.

(Seal)
Notary Public for South Carolina

My Commission Expires: July 24, 2012

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON IN THE MATTER OF: Stephen Day Ward, Jr. (Decedent) Mary K. Ward, a/k/a Mary Kimberly Ward, Petitioner, v. Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives, Respondents.	)	IN THE PROBATE COURT CASE NUMBER: 2016-ES-10-01631 **MOTION FOR RECONSIDERATION OF ORDER DENYING SUMMARY JUDGMENT**

The Respondents move under Rule 59(e) of the South Carolina Rules of Civil Procedure for an order altering or amending the Order Denying Summary Judgment dated November 10, 2017 (hereinafter referred to as the "Order"), based upon the following:

1. The Order erroneously finds that the Respondents did not present any testamentary documents other than the 2005 Will. To the contrary, the Respondents presented numerous testamentary documents, including an *Agreement for Mutual Wills and Trusts*, together with all referenced exhibits, executed contemporaneously with the 2005 Will and incorporated by reference in the 2005 Will.

2. The Order erroneously sets forth the law as provided for in S.C. Code Ann. §62-2-301(a). Specifically, the Order provides that Section 62-2-301 provides exceptions to a presumption that "a will, executed by one spouse prior to marriage, was revoked by a subsequent marriage." S.C. Code Ann. §62-2-301(a)(1) provides for no such presumption; and, to the contrary, provides exceptions to a statutorily created rule to provide for an omitted spouse as if

there were no will, but keeps all the remaining terms of the will in place. The Reporter's Comment to Section 62-2-301 specifically provides that "Section 62-2-301 does not totally revoke the will...."

3. The Order further erroneously sets forth the law as provided for in S.C. Code Ann. §62-2-301(a). Specifically, the Order states that Section 62-2-301(a), "as amended in 1986, provides...." Section 62-2-301(a) was created by act in 1986, and has been amended several times thereafter.

4. The Order further erroneously relies on a revoked statute, S.C. Code Ann. Sect. 21-7-220, SC Code 1962 Sect. 19-222, for support related to public policy. The statute relied upon by Petitioner is no longer the law of the state and has been expressly revoked. In reviewing public policy, courts must determine public policy by reference to legislative enactments wherever possible. Gladden v. Boykin, 402 S.C. 140, 143, 739 S.E.2d 882, 883 (2013). That the legislature has revoked the statute Petitioner relies upon, is clear evidence that it is NOT the public policy of this state.

5. The current statute, rather, §62-2-301(a) provides for two alternate exceptions to Petitioner's claim for omitted spouse, if (1) "it appears from the will that the omission was intentional, OR (emphasis supplied) (2) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence." The Order erroneously cites to "and" (emphasis supplied) between the two alternate exceptions, and erroneously requires evidence that the testator "provided" for the spouse outside the will. Rather, the omitted spouse exception does not require evidence that the omitted spouse was provided for outside the will in order to be satisfied under Section 62-2-301(a)(1).

6. The Order erroneously concludes that the 2005 Will did not evidence the testator's intent to omit a subsequent spouse. This is contrary to the plain and ordinary language of the 2005 Will and all documents incorporated therein by reference, which evidences the express intent of the testator to omit ANY future spouses from the will, even future spouses not contemplated at the time of the 2005 Will.

7. The Order overlooks Section 62-2-509 of the South Carolina Code, which provides that: "Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification." In this case, there can be no dispute that the *Agreement for Mutual Wills and Trusts* was in existence when the 2005 Will was executed based on the plain and ordinary language of the 2005 Will. Further, there can be no dispute that Item XIII of the 2005 Will expressly and clearly manifests the intent of the Decedent to incorporate the *Agreement for Mutual Wills and Trusts* by reference. Thus, the terms and the language used in the *Agreement for Mutual Wills and Trusts* are part and parcel of the 2005 Will.

8. The court erroneously finds, based on revoked statutory language, that the public policy of the state is for a testator to "provide" for a surviving spouse. The 1924 case cited by Petitioner, however, rightfully holds that "public policy imports something that is uncertain, fluctuating, varying with the changing economic needs, social customs, and moral aspirations of the people. A state has no public policy cognizable by the courts which is not derivable by clear implication from established law as found in its Constitution, statutes, and judicial decisions. Weeks v. New York Life Ins. Co., 128 S.C. 223, 122 S.E. 586 (1924). The public policy of South

Carolina clearly allows a testator to intentionally omit a surviving spouse. See S.C. Code Ann. §62-2-301(a)(1).

9. The court disregarded the statute that provides, regardless of public policy, that a spouse may intentionally omit a surviving spouse. S.C. Code Ann. §62-2-301(a)(1).

10. The court erroneously found that the 2005 Will must have been made in contemplation of Petitioner as a specific, contemplated, future spouse, in order to intentionally omit her. This is neither the law nor the public policy of this state. On the face of the 2005 Will and according to its plain and ordinary language, the 2005 Will was made in contemplation of ANY future spouse.

11. The proposed Order was submitted to the Court *ex parte*, and was not copied to counsel for the Respondents. As a result of this *ex parte* communication, the Petitioner did not provide for counsel to the Respondents to review, object, or comment regarding Petitioner's proposed order prior to the Court's entry.

12. The Order makes erroneous and superfluous findings of fact and law. Further, the factual findings cited by the court, including but not limited to that "the parties did not even know one another until 2012", are not supported by any evidence presented to the court. The findings of fact and conclusions of law in the Order should be stricken. "[I]t is unnecessary to make findings of fact and conclusions of law in denying motions for summary judgment." Watson v. Underwood, 407 S.C. 443, 457, 756 S.E.2d 155, 163 (Ct. App. 2014).

As a light of the above, the court should reconsider the Order Denying Summary Judgment, vacate the order, and grant Respondent's Motion for Summary Judgment. In the alternative, the court should alter and amend the Order Denying Summary Judgment to remove the erroneous and superfluous findings and analysis.

Dated: November 22,, 2017

MCNAIR LAW FIRM, P.A.

By _____

George Morrison
E-mail: gmorrison@mcnair.net
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Defendants Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO: 2016-ES-10-01630
	)	
IN THE MATTER OF: Stephen Day Ward, Jr. (Decedent)	)	
	)	
Mary K. Ward, a/k/a Mary Kimberly Ward,	)	
	)	**MOTION FOR RECONSIDERATION OF AUGUST 9, 2018 ORDER**
Petitioner,	)	
	)	
v.	)	
	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives,	)	
	)	
Respondents.	)	

FILED
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PROBATE COURT
CHARLESTON COUNTY

TO: PETITIONER AND JANE MCFADDIN, ESQ.

Respondents, Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward ("Respondents"), by and through their undersigned attorneys, hereby move under Rule 59(e) of the South Carolina Rules of Civil Procedure for an order altering or amending the Order dated August 9, 2018 (the "Order"). In support of this Motion, Respondents state the following:

1. The Order contains errors of law in concluding and ordering that the "Petitioner has clearly proved her claim to a spousal share of the Estate of her late husband, Stephen Day Ward, Jr., as provided by S.C. Code 1976 Sect. 62-2-301, which share shall be equal to one-half of the probate estate of the decedent," contrary to the unambiguous law of this state set forth in S.C. Code Ann. Section 62-2-301(a)(1) and Cottrell v. Cottrell ex rel. Estate of Cottrell, 346 S.C. 53, 60-62, 550 S.E.2d 324, 328-29 (Ct. App. 2001) ("A surviving spouse who wishes to qualify as an 'omitted spouse' must demonstrate: (1) the decedent spouse executed the Will in question prior to the marriage; (2) the Will does not provide for her as the surviving spouse; (3) the omission was

unintentional; and (4) the decedent did not provide for the spouse with transfers outside of the Will").

2. The Order erroneously concludes and orders, without evidentiary support, that the "Petitioner has clearly proved her claim to a spousal share of the Estate of her late husband, Stephen Day ward, Jr., as provided by S.C. Code 1976 Sect. 62-2-301, which share shall be equal to one-half of the probate estate of the decedent," because Petitioner failed to present any evidence that the omission was unintentional and because this finding is contrary to the evidence at trial that the Decedent's omission of the Respondent from his Will was intentional.

3. The Order fails to consider and rule upon the arguments presented by Respondents in the proposed orders submitted with the parties' consent in lieu of closing statements on May 7, 2018, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference.

4. The Order erroneously finds, contrary to the evidence and law, that the 2005 Will "makes no mention of Petitioner, the surviving spouse of Stephen Day Ward, Jr.", when the 2005 Will and all documents incorporated therein by reference, expressly contemplate and omit any subsequent spouse, including Petitioner.

5. The Order erroneously finds, contrary to the evidence and law, that the 2005 Will "could not 'intentionally' omit provision [sic] for [Petitioner], as a surviving spouse, as [Petitioner] did not, and could not, by any legal or actual, factual construction, have the status of 'spouse' to Stephen Day Ward[, Jr.] in 2005." The plain and ordinary language of the S.C. Code Ann. §62-2-301, however, does not provide for a spouse who was intentionally omitted from a will *and* married to the decedent at the time of the execution of the will.[1] Rather, the plain and ordinary language of S.C. Code Ann. §62-2-301 provides for a "surviving spouse who married the testator *after* the

[1] A spouse who was omitted *and* married to the decedent at the time of the will would be entitled to claim the elective share, not the omitted spouse share.

execution of the will." See also, Cottrell v. Cottrell ex rel. Estate of Cottrell, 346 S.C. 53, 60, 550 S.E.2d 324, 328 (Ct. App. 2001) ("A surviving spouse who wishes to qualify as an 'omitted spouse' must demonstrate: (1) the decedent spouse executed the Will in question prior to the marriage..."). Thus, that Petitioner was not married to Decedent at the time of the 2005 Will is irrelevant to whether the 2005 Will intentionally omitted Petitioner, as a subsequent spouse. To the contrary, the plain and ordinary language of the 2005 Will, and all documents incorporated therein by reference, make it clear that the Decedent intentionally omitted any subsequent spouse, including Petitioner.

6. The Order erroneously concludes as a matter of law and fact that "non-specific 'blanket' language in an Agreement between two parties, even if married to each other at the time and held to applicable to their testamentary wishes during their lifetime together, could not be construed to apply as a limitation on the rights of a third-party, 'innocent', subsequent spouse of the of the parties to the former agreement." South Carolina specifically permits an expressed testamentary compact for joint wills, such as the one contained in the 2005 Will and all documents incorporated therein by reference, including the Agreement for Mutual Wills, which becomes irrevocable when one party predeceases. See e.g., Pruitt v. Moss, 271 S.C. 305, 311–12, 247 S.E.2d 324, 327–28 (1978); S.C. Code Ann. §62-2-701 (2014).

7. The Order erroneously fails to conclude as a matter of law and fact that the 2005 Will expressly incorporates by reference:

Resp. Ex. 1- Trust Agreement of Stephen D. Ward, April 21, 2005;

Resp. Ex. 2- Last Will and Testament of Stephen D. Ward, April 21, 2005;

Resp. Ex. 3- Nancy Diemer Trust, April 28, 1998;

Resp. Ex. 4- First Amendment and Restatement of Trust Agreement of Nancy L. Ward, April 21, 2005; and

Resp. Ex. 5- Last Will and Testament of Nancy L. Ward, April 21, 2005.

See S.C. Code Ann. §62-2-509.

8. The Order erroneously concludes as a matter of law and fact that the public policy of that "a surviving spouse to be reasonably 'provided for' after the death of a spouse" trumps the public policy of the State of South Carolina to "support the right of an individual to direct the disposition of his or her estate after his death by a valid Will, regardless of the otherwise unreasonableness, in third party eyes, of the distribution." The current public policy of this State, as found in the current Constitution, statutes[2], and judicial decisions, clearly and unambiguously permit a decedent to intentionally omit a surviving spouse and permit them to do so by contract for joint wills. S.C. Code Ann. §62-2-301(a)(1) and S.C. Code Ann. §62-2-701. "'Public policy' imports something that is uncertain, fluctuating, varying with the changing economic needs, social customs, and moral aspirations of the people. A state has no public policy cognizable by the courts which is not derivable by clear implication from established law as found in its Constitution, statutes, and judicial decisions." See also Weeks v. New York Life Ins. Co., 128 S.C. 223, 122 S.E. 586 (1924).

9. The Order erroneously concludes as a matter of law and fact that Decedent did not "take all 'necessary' or 'required' measures to maintain his or her Will and Trust in full force until his or her death." It is undisputed that the 2005 Will is the Decedent's validly executed last Will. Petitioner set forth no evidence to the contrary or that Decedent failed to maintain the 2005 Will, and all documents incorporated therein by reference, until his death.

[2] Although unclear, the public policy reflected in the Order may have been derived from the previous revoked and superseded version of South Carolina's Omitted Spouse Statute. That the Omitted Spouse Statute has been amended and updated indicates that the public policy of the State regarding providing for an omitted spouse and contracting to exclude future spouses has also been amended and updated. Gladden v. Boykin, 402 S.C. 140, 143, 739 S.E.2d 882, 883 (2013) ("Our courts must determine public policy by reference to legislative enactments whenever possible.")

10. The Order erroneously concludes as a matter of law and fact that Decedent was required to provide a document demonstrating that Petitioner waived her "statuary rights of inheritance as a surviving spouse." The 2005 Will, and all documents incorporated therein by reference, references only that a remarriage requires waiver of an *Elective Share,* and makes no reference whatsoever to the Omitted Spousal Share. The Elective Share is a separate and distinct statutory remedy that the Petitioner did not avail herself to in this case and that is not before the Court in this Petition. See S.C. Code Ann. §62-2-201. The 2005 Will and all documents incorporated therein by reference, did not require Petitioner affirmatively waive Omitted Spouse Share.

11. The Order erroneously fails to conclude that the Decedent ratified the 2005 Will and all documents incorporated therein by reference. It is undisputed that the 2005 Will is the Decedent's validly executed last Will. The only testimony and evidence presented at trial reflect that Decedent ratified the 2005 Will and all documents incorporated therein by reference.

12. The Order erroneously concludes as a matter of law and fact that the S.C. Dead Man's Statute excluded the testimony from the Respondents. Respondents incorporate by reference the transcript of the April 18, 2018 hearing before Judge Irvin G. Condon, as **Exhibit B**, for the specific portions of testimony by the Respondents that was excluded on the basis of the Dead Man's Statute. Respondents maintain all issues raised to and ruled upon at the April 18, 2018 hearing.

13. The Order erroneously concludes as a matter of law and fact that the 2005 Will was required to make specific mention of Petitioner by name in order to intentionally omit and intentionally transfer outside of the will in lieu of a testamentary provision. Further, the order erroneously seems to conclude that in order to intentionally omit and intentionally transfer outside of the will in lieu of a testamentary provision the bequest must be made "in anticipation or

contemplation of marriage". This finding and discussion in the Order is contrary to the plain and ordinary language of S.C. Code Ann. §62-2-301(a)(2).

14. The Order erroneously concludes as a matter of law and fact that Respondents presented no evidence that Decedent provided for Petitioner outside of the 2005 Will. To the contrary, the only evidence at the hearing was that Decedent did provide for Petitioner outside of the 2005 Will. Decedent provided for Petitioner outside of the Will, during his lifetime, by paying for Petitioner's living expenses, expenses related to Petitioner's own individual home in Seabrook, Petitioner's healthcare-related expenses, providing for rights of survivorship to the BB&T account, time share, Toyota Camry lease and Seabrook Island Club membership. Respondents incorporate by reference the transcript of the April 18, 2018 hearing before Judge Irvin G. Condon, as **Exhibit B,** for the specific evidence admitted at the hearing.

15. The Order erroneously finds that the Estate Inventory was amended by the testimony of Respondent Brian Ward and reflected a net value of more than $999,000.00. This issue was not raised, nor argued at the April 18, 2018 hearing. Further, this finding is contrary to the law and evidence as the Inventory is the best evidence of the Estate's net value, the finding fails to properly value the Estate, and fails to account for the fact that the home at 2312 High Hammock Road was not owned by Decedent outright at date of death, but rather was owned by Stephen D. Ward, as trustee of the Nancy L. Ward Family Trust, under the First Amendment and Restatement of the Trust Agreement of Nancy L. Ward, pursuant to the Deed of Distribution, Exhibit 7.

WHEREFORE, upon consideration of the foregoing, the Court should reconsider and vacate the Order of August 9, 2018 and grant in favor of the Respondents pursuant to the proposed Order Denying Petitioner's Claim for Omitted Spouse, **Exhibit A**. In the alternative, the court should alter and amend the Order to remove the erroneous and superfluous findings and analysis.

Dated: August 23, 2018

MCNAIR LAW FIRM, P.A.

By _____

Amanda Bailey (SC Bar 71085)
E-mail:abailey@mcnair.net
George Morrison
E-mail:gmorrison@mcnair.net
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO: 2016-ES-10-01631
	)	
IN THE MATTER OF: Stephen Day Ward, Jr. (Decedent)	)	
Mary K. Ward, a/k/a Mary Kimberly Ward, Petitioner, v. Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives, Respondents.	)	**MOTION FOR RECONSIDERATION OF JANUARY 18, 2019 ORDER**

TO: PETITIONER AND JANE MCFADDIN, ESQ.

Respondents, Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward ("Respondents"), by and through their undersigned attorneys, hereby move under Rule 59(e) of the South Carolina Rules of Civil Procedure for an order altering or amending the Order to Alter or Amend Judgment dated January 18, 2019 (the "Order"). "A True Copy" of the Order, which was signed and included the raised seal of the Probate Court, was received by the undersigned on January 24, 2019.[1]

Respondents specifically request a hearing on this motion. Should the court decline to grant the request for a hearing, Respondents request the opportunity to fully brief the matters raised herein, and in response to any briefs or filings of the Petitioner, prior to the court's ruling.

In support of this Motion, Respondents state the following:

[1] No "file stamped" copy has been received. Upon inquiry with the Probate Court, the Court indicates that it is not their practice to "file stamp" orders.

1. Respondents incorporate by reference the arguments set forth at trial, in support of their motion for involuntary non-suit, in their proposed order submitted to the court on May 7, 2018, in the Motion for Reconsideration dated August 20, 2018, and in the Memorandum in Support of Motion for Reconsideration of the August 9, 2018 Order dated October 8, 2018.

2. The Order erred in Paragraph 36 by finding that "Brian Ward testified that in his role as Co-Personal Representative, he was able to identify Social Security and other investment income of the *Decedent*, but that Petitioner's income was not used to pay Petitioner and Decedent's living expenses and was not deposited in the BB&T joint account" (emphasis supplied). This is incorrect. Contrary to this finding, the evidence reflected that Decedent's income was used to pay for Petitioner's and Decedent's living expenses and was the only income deposited in the BB&T joint account. Brian Ward testified that he identified investment and Social Security income of the *Petitioner* that was not used to pay the joint living expenses and not deposited in the BB&T joint account. In other words, Petitioner retained her per-marriage assets as well as her income, specifically including but not limited to her house, her investments, and her Social Security income, outside of the marriage and did not use it for marital expenses.

3. The Order erred in finding that that Respondents testified that Decedent did not ratify the Will. Respondents presented substantial evidence of ratification of the Will, and it is undisputed that the Will is the Last Will and Testament of the Decedent.

4. The Order erred in finding that Decedent did not ratify his Will or Trust. The Court held in Paragraph 13 of the Order that the Will "is the valid Last Will and Testament of Decedent." The Will was, in fact, ratified after Decedent's marriage to Petitioner. To conclude otherwise, as the Court does in Paragraph 54, contradicts this Court's express finding that the Will is the Decedent's valid, last will. A ratification of a Will need not be in writing as argued by Petitioner and as the Court has apparently concluded. Rather, a will may be ratified expressly or impliedly,

by the passage of time, or by other words or actions indicating affirmation. See Bazell Bros. Contractors v. Hill, 245 S.C. 69, 74-75, 138 S.E. 2d 835, 837 (1964) (stating that ratification may be either express or implied, and further stating that "[t]o ratify is to sanction or affirm, to give validity to something done for one by another, not to contract anew or upon different terms."); see also, e.g. Calhoun v. Calhoun, 277 S.C. 527, 533, 290 S.E.2d 415, 419 (1982) (in the context of undue influence, finding a will ratified where the testator has had the unhampered opportunity to revoke his will subsequent to the operation of any undue influence upon him, but makes no changes in it). In this case, multiple sources testified that the Decedent verbally affirmed his Will and communicated that this marriage to Petitioner would not change the Will or his and Nancy Ward's joint estate plan.

5. The Order erred in finding that Decedent did not condition his marriage to Petitioner on the requirement that she waive any right to his estate. Moreover, the court's finding in Paragraph 54 applies the incorrect legal standard, and continues to blur the lines between separate and distinct statutory recoveries under the Elective Share and Omitted Spousal Share. The Decedent was under no duty or obligation to require that Petitioner waive any right to his estate in order for the Will to be valid.[2] Rather, at most, the Agreement for Mutual Wills requires Decedent require Petitioner to waive her right to an *Elective Share* as a condition of marriage. Nothing in the Will requires Decedent to require Petitioner waive her right to his entire *Estate*.[3] The Elective Share is simply not an issue and not relevant to Petitioner's claim for an Omitted Spousal Share. The intent of the Decedent at the time of his Will to intentionally omit a future

[2]There are numerous terms, active and passive, of the Agreement for Mutual Wills, as well as the Decedent's joint estate plan with Nancy Ward, taken as a whole, that also express the intent of Decedent at the time of the Will to omit future spouses.

[3] The Reporter's Comment notes that the Omitted Spousal Share can presumable be waived. Obtaining a waiver of the Omitted Spousal Share was not required as a condition to any subsequent marriage in the Will or the Agreement for Mutual Wills, and there exists no alleged failure to comply with any requirement to waive the Omitted Spousal Share.

spouse is the relevant inquiry. Decedent's compliance with the contractual terms regarding the Elective Share are not relevant to the inquiry of his intent at the time of his Will for purposes of determining the proof required of Petitioner to claim the Omitted Spousal Share.

6. The Order erred in finding that Decedent's choice to leave the Will intact before, during, and after his marriage to Petitioner is evidence that Decedent *unintentionally* omitted Petitioner from the Estate. This conclusion is contrary to the burden set forth in the Omitted Spousal Statute, case law precedent, the express intentions set forth in the Will and the verbal intention expressed by Decedent. See e.g., Cottrell v. Cottrell ex Re. Estate of Cottrell, 346 S.C. 53, 550 S.E.2d 324 (Ct. App. 2001) (holding that a *surviving spouse* must prove, among other things, that the omission from the will was unintentional). In this case, the Petitioner presented no evidence regarding Decedent's intent and the motion for involuntary non-suit should have been granted. Moreover, Decedent expressed his desires to omit subsequent spouses in the plain and ordinary language of the Will that the Will become irrevocable upon Nancy Ward's death, and confirmed those intentions on multiple occasions to multiple witnesses in contemplation of his marriage to Petitioner. That no evidence was presented of a written ratification[4] or written waiver of the Elective Share by Petitioner is not relevant evidence of Decedent's intent to exclude subsequent spouses from his Will. Further, the absence of written evidence is not reliable evidence of Decedent's alleged failure to comply with contractual terms of the agreement for Mutual Wills as neither Petitioner[5] nor Decedent were capable of providing testimony.

7. The Order erred in finding that Decedent failed to comply with Section IV 4.2 of the Agreement for Mutual Wills and Trusts. There is no allegation or evidence that Decedent

[4] Respondent presented substantial evidence of implied and verbal ratification of the Will, and it is undisputed that the Will is the Last Will and Testament of the Decedent.
[5] Petitioner did not testify and is subject to the order of Conservatorship of this court.

breached the Agreement for Mutual Wills and this finding is irrelevant to the analysis of intentional omission from the Will for the Omitted Spousal Share. Obtaining a waiver of the Omitted Spousal Share was not required as a condition to any subsequent marriage in the Will or the Agreement for Mutual Wills and there exists no alleged failure to comply with any requirement to waive the Omitted Spousal Share. For the Court to conclude that Decedent failed to comply with Section IV 4.2 of the Agreement for Mutual Wills and Trusts as a result of an alleged lack of written ratification of the Will (despite the fact that it is uncontested that the Will is the valid last will of the Decedent) and an alleged failure to require written waiver of the Elective Share by Petitioner (despite the fact that Petitioner is not claiming nor being granted the Elective Share), unjustly penalizes the devisees of Nancy Ward's estate. For illustration of this unjust result, Decedent had the benefit of his and Nancy Ward's marital estate, including the home, following Nancy's death and to the exclusion of Nancy Ward's children/devisees pursuant to the First Amendment and Restatement of Trust Agreement of Nancy L. Ward, executed on April 21, 2005 and their joint estate plan. Nancy Ward's children/devisees had a testamentary expectation that Decedent's Will be upheld pursuant to the Agreement for Joint Wills and that they would obtain their devise upon Decedent's death. For this court to conclude that Decedent failed to comply with Section IV 4.2 of the Agreement for Mutual Wills and Trusts, when such conclusion is irrelevant to the analysis of Decedent's intent at the time of the Will and Omitted Spousal Share, deprives Nancy Ward of her testamentary intent, deprives Decedent of his testamentary intent, and deprives Nancy Ward's children/devisees of their testamentary expectations. Moreover, the lack of evidence presented at trial regarding a written waiver by Petitioner of the right to an Elective Share, at most, would have provided a path for Petitioner to seek the *Elective Share* pursuant to the statutory requirements, but is not evidence that Decedent intended to provide for Petitioner in the Will and failed to do so,

or that Decedent otherwise intended for Petitioner to recover an Omitted Spousal Share. Petitioner is not claiming and this court is not awarding Petitioner an Elective Share.

8. The Order erred in finding evidence that Decedent unintentionally omit Petitioner from his *Estate*. This is not the correct legal standard under the Omitted Spouse Statute. To recover under the Omitted Spousal Statute requires the court to conclude that the Decedent unintentionally omitted Petitioner from his *Will* not his *Estate*. The intent of the Decedent is determined on the face of the Will or circumstances surrounding the Will *at the time of execution*. The construction of the Will is not to be determined by acts subsequent to its execution.

9. The Order erred in finding no evidence that Decedent intended transfers to be in lieu of testamentary disposition. Considering all the evidence presented regarding Decedent's intent to omit future spouses from the Will pursuant to the joint estate plan with Nancy Ward, and the evidence of his affirmation of the Will, the only reasonable conclusion is that the non-testamentary transfers were in lieu of providing for Petitioner in the Will. Petitioner presented no evidence the non-testimentary transfers were not in lieu of providing for Petitioner.

10. The Order erred in finding "The current statutory provision, amended in 1986, provides two specific and limited exceptions to the presumption of revocation." There exists no presumption of revocation of a Will by subsequent marriage in South Carolina. Rather, the Omitted Spousal Statute specifically provides for a will created prior to marriage to continue on in full effect. See 62-2-301(b). Even if the Omitted Spousal Share is granted upon a finding that the spouse from the subsequent marriage was unintentionally omitted from the Will, the Will is not revoked. Rather, the Will is upheld and distributions thereunder are modified by the rights granted to the omitted spouse. The reporters comments to Section 62-2-301 specifically provide that the Omitted Spousal Statute "does not totally revoke the will; rather...merely abates the will's devises to the extent necessary to satisfy the spouse's intestate share." The Omitted Spousal Statute

provides a means for the omitted spouse to recover an intestate share from the estate by strict compliance with the statute.

11. The Order erred in considering the lack of evidence regarding written ratification or written waiver of Elective Share at the time of Decedent's marriage to Petitioner (more than seven years after the execution of the Will and more than 2 years prior to his death), as evidence of Decedent's unintentional omission of Petitioner from his Will. In this case, neither the Petitioner nor the Decedent were capable of providing testimony or evidence regarding their communications leading up to marriage. Evidence of Decedent's intent related to his marriage to Petitioner was provided, including but not limited to that: this was Decedent's fourth marriage, they were married for approximately 2 years prior to his death, Decedent and Petitioner had no children together; Decedent and Petitioner each had adult children of their own prior to marriage; Petitioner retained all her individual property and income, Decedent provided for Petitioner during marriage with Decedent's assets, Decedent provided for Petitioner after his death as a result of rights of survivorship outside of the Will, Decedent omitted Petitioner from Will pursuant to a joint estate plan with Nancy Ward, Decedent assured witnesses that his marriage to Petitioner would not change his joint estate plan with Nancy Ward.

12. The court erred in failing to consider that Petitioner did not testify and did not present any evidence regarding Decedent's intent, and in denying the motion for involuntary non-suit.

13. The court erred in granting the Omitted Spousal Share.

14. The court erred in applying the erroneous burden of proof and shifting the burden to Decedent.

15. The court erred in ordering post-trial motions within 10 days of the date of the order. Written notice of the "True Copy" Order was received on January 24, 2018 and the Order has not been "filed" or entered.

WHEREFORE, upon consideration of the foregoing, the Court should reconsider and vacate the Order of January 18, 2019 and grant in favor of the Respondents pursuant to

Dated: January 24, 2019

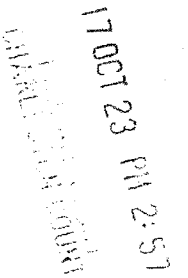
BURR & FORMAN LLP

By _____

Amanda Bailey (SC Bar 71085)
E-mail:abailey@mcnair.net
George Morrison (SC Bar 71622)
E-mail:gmorrison@mcnair.net
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives

MEMORANDA

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NUMBER: 2016-ES-10-01631
	)	
IN THE MATTER OF: Stephen Day Ward, Jr. (Decedent)	)	
	)	
Mary K. Ward, a/k/a Mary Kimberly Ward,	)	**REPLY TO MOTION FOR SUMMARY JUDGMENT**
Petitioner	)	
v.	)	
	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives	)	
	)	
Respondents.	)	
	)	



Petitioner, by and through her undersigned Attorney, does reply to Respondent's Motion For Summary Judgment as follows:

1. That Petitioner does not dispute the facts that Stephen D. Ward apparently executed a Last Will and Testament on April 21, 2005, said Last Will now having been admitted to Probate in Charleston County in above-referenced file, 2016-ES-10-1631; further, that said Last Will and Testament states that the decedent was married to Nancy C. Ward at the time of its execution.

2. That Nancy L. Ward subsequently died on June 4, 2011, according to Charleston County Probate file no. 2011-ES-10-000965, leaving Stephen D. Ward as her surviving spouse.

3. That Stephen D. Ward subsequently married Mary K. Ward, Petitioner herein, on September 7, 2013, thereafter, died on September 16, 2016, leaving Mary K. Ward as his surviving spouse.

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4. That no testamentary writing, of any kind, of decedent Stephen D. Ward's is known to Petitioner, nor has any been alleged or produced by Respondents' subsequent to the aforesaid Last Will and Testament ("2005 Will").

5. That Petitioner does not possess, nor have Respondents alleged or produced, any written evidence of any intent for Petitioner, as decedent's spouse, to be "provided for" or in lieu of a testamentary provision.

6. That neither of the two limited exclusions to the provisions of S.C. Code Ann. Sect. 62-2-301 ("Omitted spouse statute") are applicable to the case at hand.

7. That the "2005 Will" contains no evidence that decedent made it in contemplation of his marriage to Petitioner; indeed, such would have been illegal, as he was already married at the time, as well as, there being no evidence the Petitioner and the decedent were even acquainted in 2005.

8. That the "2005 Will" contains no "specific language" pertaining to Mary K. Ward at all, and therefore could not be plausibly construed to intend to omit her, as a future spouse, from testamentary provisions.

9. That Respondents' attempt to reinterpret the true and reasonable meaning of S.C. Code 62-2-301 ("Omitted spouse statute") by incorporating language from decedent's Trust documents, bearing date of April 21, 2005, can not contradict the clear meaning and long-standing public policy of said statute, i.e. to provide for a surviving spouse who is not otherwise "provided for" by a decedent, as confirmed in S.C. case law. See Miles v. Miles (S.C. 1994) 312 S.C. 408, 440 S.E. 2d 882, rehearing denied.

10. That Petitioner is entitled to reasonable legal fees and costs made necessary in responding to Respondents' Motion.

This Reply may be supplemented by references to matters previously filed, replies to discovery, and by additional memoranda of law to be presented at or before the hearing in this Motion.

WHEREFORE, having fully replied to Respondent's Motion for Summary Judgment herein, prays this Court to dismiss same, with prejudice, and award Petitioner reasonable and necessary legal fees and costs of this action.

23rd day of October 2017

Charleston, South Carolina

Jane A. McFaddin, Esq.
P.O. Box 1124
Charleston, SC 29402
(843) 556-3333
Email: jamcfaddin@bellsouth.net

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO: 2016-ES-10-01631
	)	
IN THE MATTER OF:	)	
Stephen Day Ward, Jr.	)	
(Decedent)	)	
	)	
Mary K. Ward, a/k/a Mary Kimberly Ward,	)	
	)	**MEMORANDUM IN SUPPORT OF**
Petitioner,	)	**MOTION FOR RECONSIDERATION OF**
	)	**AUGUST 9, 2018 ORDER**
v.	)	
	)	
Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives,	)	
	)	
Respondents.	)	

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CHARLESTON COUNTY

The Petition pending before the court is not for an Elective Share. This Court erred in ruling for the Petitioner because the August 9, 2018 Order applies the incorrect law and policy and ignores the undisputed evidence presented at trial and the absence of any evidence that Decedent's omission of Petitioner was unintentional. The only Petition pending before the court is for an Omitted Spouse Share, pursuant to S.C. Code Ann. §62-2-301. Notwithstanding, the Court's order erroneously applies the standards of law, fact, and policy applicable to a petition for an Elective Share in an effort to craft a result in blatant disregard to the intent of the Decedent.

In support of this motion and in addition to the arguments set forth at trial and in the August 20, 2018 Motion for Reconsideration, Respondents incorporate by reference their Motion for Reconsideration of August 9, 2018 Order, Memorandum in Support of Summary Judgment, their oral argument in support of involuntary non-suit, their proposed order submitted to the court on May 7, 2018, and their Memorandum in Opposition to Petitioners Motion for Sanctions Under the Frivolous Proceedings Act. In addition, Respondents specifically request a hearing on this motion.

FACTS

It is undisputed that the April 21, 2005 Will is the Last Will and Testament of the Decedent ("the Will"). **(Exhibit 1).** It is undisputed that the Will pre-dated Petitioner's marriage to Decedent and that Petitioner is not provided for in the Will. It is further undisputed that the Decedent pre-deceased the Petitioner on September 16, 2016.

At the hearing on the Petition for Omitted Spousal Share, Petitioner's daughter and conservator, Ann Noble Kiley, was Petitioner's only witness. Kiley testified that Petitioner and Decedent were married on August 27, 2013, and remained married at the time of Decedent's death just three (3) years later on September 16, 2016. Kiley testified that Petitioner was 88 years old, twenty (20) years older than the Decedent, at the time of their marriage and that Petitioner owned her own home at 1220 Creek Watch on Seabrook Island during their marriage. **(Trans., pp. 10-12).** In addition to this testimony, Petitioner included a copy of the Petitioner's and Decedent's marriage certificate with the Petition for Omitted Spousal Share. Petitioner presented no other evidence or testimony in support of her Petition for Omitted Spousal Share. Petitioner presented no evidence or testimony in any way related to the intent of the Decedent at the time of the Will or anytime thereafter.

The Will provides:

> **Agreement for Mutual Wills and Trust.** The Agreement for Mutual Wills and Trust dated as of even date herewith between Stephen D. Ward and Nancy L. Ward is incorporated by reference in to this Last Will and Testament.

(Exhibit 1, Item XIII).

At the time of the Will, Decedent was married to Nancy L. Ward (the "Prior Wife"). **(Exhibit 6, §2.1).** The Will was not executed as a standalone document; rather, it was executed

as an exhibit to a document entitled Agreement for Mutual Wills and Trusts **(Exhibit 6),** which was also executed on April 21, 2005 and incorporated by referenced in to the Will.

The Agreement for Mutual Wills and Trusts contained five Exhibits:

(1) Exhibit 1 was the Trust Agreement of Stephen D. Ward, which was also executed on April 21, 2005 **(admitted into evidence as Exhibit 4)**;

(2) Exhibit 2 was the Will (entitled the Last Will and Testament of Stephen D. Ward) **(admitted into evidence as Exhibit 1)**;

(3) Exhibit 3 was the Nancy Diemer Trust, which was executed on April 28, 1998 **(admitted into evidence as Exhibit 2)**;

(4) Exhibit 4 was the First Amendment and Restatement of Trust Agreement of Nancy L. Ward, which was also executed on April 21, 2005 **(admitted into evidence as Exhibit 5)**; and

(5) Exhibit 5 Last Will and Testament of Nancy L. Ward, which was also executed on April 21, 2005 **(admitted into evidence as Exhibit 3)**.

(Exhibit 6). The Agreement for Mutual Wills and its exhibits, along with financial powers of attorney, healthcare powers of attorney, and living wills and declarations of desire for natural death were prepared by attorney Brett Bluestein at the direction of Prior Wife and Decedent in 2005 (hereinafter referred to as the "2005 Estate Planning Documents"). **(Trans. pp. 28, 31, 33, 34, 35, 37; Exhibit 8; Exhibit 6 "Acknowledgement").**

The purpose of the Agreement for Mutual Wills and Trusts is apparent from the four corners of the document. In short:

Husband and Wife each have children from a former marriage.

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Husband and Wife mutually desire for the Survivor to have full use of the Property during his or her life with the Property after the death of the Survivor to be distributed as provided for in the Trust Agreement of Stephen D. Ward (dated of even date herewith) and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (dated of even date herewith).

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> This Agreement is made to insure that the mutual plan of the Parties shall not be altered by acts subsequent to date hereof, except as agreed upon between the Parties.

(Exhibit 6, ¶ II.2.3; 2.6).

Based on the four corners and plain and ordinary language of the Agreement for Mutual Wills and Trust, the 2005 Estate Planning Documents were intended to insure that upon the death of the Survivor, Predecessor's children from his/her former marriage were provided for as agreed upon, despite any changes in circumstance, including remarriage, after the Predecessor's death. **(Exhibit 6).**

Consistent with the plain and ordinary language of the Agreement for Mutual Wills and Trusts, attorney Brett Bluestein testified regarding the Decedent's intent in preparing the Agreement for Mutual Wills and all of the 2005 Estate Planning Documents. Specifically, Bluestein testified that the purpose of an agreement for mutual wills was for a "situation where there's a husband and wife, often times, an older couple, and always a couple with children from a prior marriage, where the ultimate concern was what was going to happen after the death of the first spouse, in respect to individual husband and wife's collective assets" **(Trans. p. 37, ll. 16-22).** Bluestein reiterated that the intent was crystal clear that neither Prior Wife nor Decedent could amend their estate planning documents, in the event of the death of the first spouse. **(Trans. p. 46, ll. 17-20).** With respect to the Decedent's intent in having the 2005 Estate Planning Documents prepared, Bluestein confirmed that he would not have even suggested a mutual will agreement unless Prior Wife and Decedent were not very concerned about circumstances changing after the first spouse died, including a subsequent marriage by the surviving spouse. **(Trans. P. 42, ll. 6-18).** Bluestein stressed that he would not have prepared the Agreement for Mutual Wills for Prior Wife nor Decedent if it were not crystal clear that their intent was to omit any subsequent

spouse from inheriting from the surviving spouse's estate. **(Trans. p. 52, ll. 11-25 – p. 53, ll. 1-2).**

Prior Wife pre-deceased the Decedent on June 4, 2011 and thus, Decedent was the Survivor under the terms of the Agreement for Mutual Wills and Trusts until his death on September 16, 2016. **(Trans. P. 159, ll. 18-19; Exhibit 7).** As the Survivor under the terms of the Agreement for Mutual Wills and Trusts, Decedent had the benefit of his and Prior Wife's assets during his lifetime. **(Trans. P. 45, ll. 7-13).** Pursuant to the 2005 Estate Planning Documents, Prior Wife's children do not receive the benefit of the majority of Prior Wife's assets until after Decedent's death. **(Trans. P. 45).**

Following Prior Wife's death, the Decedent married the Petitioner, his fourth wife, on September 7, 2013 and did not amend, modify, alter or revoke the 2005 Estate Planning Documents. **(Trans. p. 47, ll. 3-6; p. 124, ll. 7-17; 167, ll. 23-25- p. 168, ll. 1-5).** Decedent's friend for many years, Trish Ernstrom, testified that she discussed Decedent's estate plans with Decedent after 2005, both prior to and after Prior Wife's death. Specifically, Ernstrom recalls discussing Decedent's estate plan in contemplation of his fourth marriage to Petitioner, on at least three occasions, in which Decedent expressed that any marriage to Petitioner would not affect his estate plan and that everything in his estate plan was intended to and would stay the same as he and his Prior Wife had planned. **(Trans. p. 81-85).**

Brian Ward, one of Decedent's children[1], testified that Decedent gave him a copy of the 2005 Estate Planning Documents, **Exhibit 8**, in late 2005, early 2006. **(Trans. 99, ll. 11-14).** David Ward and Stephanie Ward Cibinic, children of the Decedent, also testified that Decedent provided

[1] Decedent had three biological children from his first marriage to Linda Ward - Brian, David, and Stephanie. Decedent also had two adopted children with his second wife, Sally Ward. **(Trans. p. 93).** Decedent did not have any children with his third wife, Nancy Ward, or his fourth wife, Mary Ward.

them copies of the 2005 Estate Planning Documents, **Exhibit 8. (Trans. p. 145, ll. 18-25; p. 160, ll. 11-22).** In Brian Ward's proffer[2], Brian testified consistent with Trish Ernstrom's testimony, that he had a conversation with the Decedent in 2013, in contemplation of Decedent's marriage to Petitioner, that Decedent's estate plan contained in Exhibit 8 would remain unchanged and would not change as a result of the marriage. **(Trans. p. 106-107).** Similarly, in David Ward's proffer[3], David also testified consistent with Trish Ernstrom's testimony, that he had two conversation with the Decedent in 2011 and 2013 regarding the 2005 Estate Plan Documents, **Exhibit 8. (Trans. p. 148, ll. 13-17).** In 2011, David proffered that Decedent told David that everything in **Exhibit 8** was still good. **(Trans. p. 149, ll. 16-22).** Also in the proffered testimony, David stated that again in 2013, in contemplation of Decedent's marriage to Petitioner, the Decedent told him his marriage did not affect his prior estate plan in **Exhibit 8. (Trans. p. 151, ll. 7-11).**

Stephanie Cibinic also testified directly regarding her conversations with Decedent. Petitioner objected to this testimony, but the objection was overruled and her testimony was admitted. **(Trans. p. 168).** Stephanie stated that Decedent told her in 2013 that his impending marriage to Petitioner did not impact the Will. **(Trans. p. 168, l. 2-5).**

In addition to the evidence concerning the intent of the Decedent both at the time he executed the 2005 Estate Planning Documents, and thereafter, Respondent's also presented testimony concerning transfers to Petitioner outside of the Will, both during their marriage and payable on death. Decedent and Petitioner were married three years prior to Decedent's death. Both had prior marriages, and for the Decedent, this marriage was his fourth. Petitioner was 20 years older than Decedent, and maintained her own home and assets outside of the marriage,

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[2] Petitioner objected to this proffered testimony on the Dead Man's Statute, and such objection was sustained. **(Trans. p. 101-105).** Respondent asserts this testimony should have been admitted.

[3] Petitioner objected to this proffered testimony on the Dead Man's Statute, and such objection was sustained. **(Trans. p. 149, ll. 5-14).** Respondent asserts this testimony should have been admitted.

including but not limited to real property at 1220 Creek Watch on Seabrook Island; a life insurance policy, and a Schwab account. Despite Petitioner's assets held outside of the marriage, Decedent transferred multiple assets outside of the estate to Petitioner, that were payable on death, including: (1) the BB&T account, (2) Toyota Camry lease, (3) club membership, and (5) a timeshare. In addition, despite Petitioner's own income and assets, during their marriage, Decedent used his income to provide for Petitioner during his lifetime, and also paid for delinquent taxes in the amount of approximately $1,400 on Petitioner's property at 1220 Creek Watch on Seabrook Island and Petitioner's medical bills in the amount of approximately $7,500 from his assets. Despite having income from social security and a life insurance policy, Petitioner did not utilize her own assets to provide for Decedent or to purchase their joint assets during their marriage. **(Trans. p. 119-124).** All of the expenses paid and assets acquired during their marriage were paid for by the Decedent's income and benefitted Petitioner outside of Decedent's estate.

Petitioner did not present any evidence disputing the above fact regarding intent or non-testamentary transfer.

DISCUSSION

1) The evidence presented reflects only Decedent's clear intent to omit any subsequent spouse, including Petitioner, from the Will

Petitioner failed to meet the elements of a claim for an Omitted Spousal Share. Petitioner failed to present ANY evidence that her omission was unintentional.

The paramount rule of will construction is to determine and give effect to the testator's intent. S.C.Code Ann. § 62–1–102(b)(2) ("The underlying purposes and policies of this Code are ... (2) to discover and make effective the intent of a decedent in the distribution of his property."); see, e.g., Holcombe-Burdette v. Bank of Am., 371 S.C. 648, 655–57, 640 S.E.2d 480, 483–84 (Ct. App. 2006). In determining the intent of the deceased, a court must always look first to the

language of the will itself. In assigning meaning to the words used in the will and ascertaining the intent of the testator, the court must view the will as a whole. "An interpretation that fits into the whole scheme or plan of the will is most likely to be the correct interpretation of the intent of the testator." Id. Construction depends upon the Decedent's intent at the time of execution as shown by the face of the document and not on any secret wishes, desires or thoughts after the event. Id.; see also In re Estate of Prioleau, 361 S.C. 627, 633, 606 S.E.2d 769, 773 (2004)

The four corners of the Will, and all documents incorporated therein by reference, reflect that Decedent intended to omit any subsequent spouse from his estate plan and Will and intended that his 2005 Estate Planning Documents would be unaffected by any changes in circumstance, including remarriage, after the Prior Wife's death.

The reporter's comments to the Omitted Spouse Statute specifically contemplates evidence of the Decedent's intentions from the face of the Will, from the Decedent's statements, or other evidence. See also The South Carolina Probate Code's Omitted Spouse Statute and in Re Estate of Timmerman, 50 S.C. L. Rev. 979, 987 (1999) (discussing cases that suggest that looking beyond the language of a will is acceptable when applying the statute and determining if the intentional-omission exclusion applies as extrinsic facts aid in interpretation of the testator's intent). All extrinsic evidence regarding Decedent's intent at the time of the execution of the will reflects his intentional omission of any subsequent spouse from inheriting his estate. Further, all extrinsic evidence regarding Decedent's intent subsequent to his execution of the will reflects his intention to that any subsequent marriage, and specifically his marriage to Petitioner, affect his estate plans and the Will.

In summation, all evidence presented at the hearing, including the 2005 Estate Planning Documents and all testimony, reflect that the Decedent intended, at all times, to intentionally omit the Petitioner, or any subsequent spouse, from this Will and estate plan. There was no evidence

presented at the hearing that Decedent's omission of the Petitioner from his 2005 Will or estate plan was *unintentional.*

2) The Order erroneously sets forth the wrong legal standards

The Order finds that the Will could not intentionally omit Petitioner because she was not Decedent's spouse in 2005. This is a legally erroneous statement of the requirements of the Omitted Spousal Share, and appears to blur the lines between the requirements for the Omitted Spousal Share and the Elective Share[4].

The standards required of Petitioner to recover the Omitted Spousal Share are set forth in S.C. Code Ann. Section 62-2-301(a)(1) and Cottrell v. Cottrell ex rel. Estate of Cottrell, 346 S.C. 53, 60-62, 550 S.E.2d 324, 328-29 (Ct. App. 2001) ("A surviving spouse who wishes to qualify as an 'omitted spouse' must demonstrate: (1) the decedent spouse executed the Will in question prior to the marriage; (2) the Will does not provide for her as the surviving spouse; (3) the omission was unintentional; and (4) the decedent did not provide for the spouse with transfers outside of the Will").

Contrary to the legal conclusion set forth in the August 9, 2018 Order, if Petitioner were Decadent's spouse in 2005, she would not qualify for the Omitted Spousal Share. Section 62-2-301 specifically requires that the surviving spouse marry "the testator *after* the execution of the will." Petitioner is not entitled to the Omitted Spousal Share simply due to her marriage to Decedent at time of death, as provided for in the Elective Share. Rather, Petitioner must provide the elements of S.C. Cod §62-2-301 and must prove her omission was unintentional. She failed to do so.

[4] The Elective Share is not before this court and is separate and distinct from the Omitted Spousal Share Statute. S.C. Code Ann. 62-2-301

3) **The Order erroneously refuses to honor the intent of the Decedent regarding a testamentary contract for joint wills that becomes irrevocable when one party predeceases.**

All evidence presented at the hearing, including the 2005 Estate Planning Documents and all testimony, reflect that the Decedent intended, at all times, to intentionally omit the Petitioner, or any subsequent spouse, from this Will and estate plan. There was no evidence presented at the hearing that Decedent's omission of the Petitioner from his 2005 Will or estate plan was *unintentional.* S.C. Code Ann. §62-2-701 and Pruitt v. Moss, 271 S.C. 305, 311-312, 247 S.E.2d 324, 327 -328 (1978) specifically permits an expressed testamentary compact for joint wills that becomes irrevocable when one party predeceases the other, such as the one entered into by Prior Wife and Decedent in the 2005 Estate Planning Documents. There is absolutely no public policy contrary to this type of agreement and a complete absence of any public policy in South Carolina prohibiting a decedent's intentional omission of subsequent spouse. To the contrary, South Carolina statutes specifically permit the very type of compact for joint wills and intentional omission of future spouses as set forth in the 2005 Estate Planning Documents, and specifically precludes a spouse from recovering under the Omitted Spousal Statute if his/her omission is intentional. See S.C. Code Ann. §§62-2-62-2-509, 62-2-701, and 62-2-301. This is the public policy of the State.

Any public policy set forth in the Order is that expressed within the Elective Share statute, which Petitioner did not avail herself to and which is not pending before this court. The public policy set forth in the Elective Share statute is erroneous and does not apply to the petition before the court. Further, the public policy on the Elective Share Statute does not trump the specific requirements of proof in the Omitted Share Statute and the other public policies of this state expressly set forth in the Probate Code, including but not limited to S.C. Code Ann. § 62–1–

102(b)(2), which expressly provides that "[t]he underlying purposes and policies of this Code are ... (2) to discover and make effective the intent of a decedent in the distribution of his property."

CONCLUSION

In addition to the arguments raised at trial and in the August 20, 2018 Motion for Reconsideration, the Court should reconsider and vacate the Order of August 9, 2018 and deny Petitioner's Claim for Omitted Spouse.

Dated: October 8, 2018

MCNAIR LAW FIRM, P.A.

By _____

Amanda Bailey (SC Bar 71085)
E-mail:abailey@mcnair.net
George Morrison (SC Bar 71622)
E-mail:gmorrison@mcnair.net
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward, Personal Representatives

EXHIBIT 1

Attest: A True Copy
Deputy Clerk Probate Court
Charleston County, South Carolina

LAST WILL AND TESTAMENT
OF
STEPHEN D. WARD

Introductory Clause. I, **STEPHEN D. WARD**, a resident of and domiciled in the County of Charleston and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to **NANCY L. WARD.**

I have five living children: **STEPHANIE L. WARD; DAVID D. WARD; BRIAN C. WARD; STEPHEN A. WARD;** and **JEREMY W. WARD.** My children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Will as they will be provided for by their mother with assets she received from me pursuant to our divorce. Their omission is intentional.

I have two living step-children: **ELIZABETH A. DIEMER;** and **GARETT C. DIEMER.**

ITEM I

Direction to Pay Debts with Discretionary Refinancing by Executor. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Executor may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

1. I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Executor within ninety (90) days after my Executor's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered

EXHIBIT
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memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

2. In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my wife, **NANCY L. WARD**, for her lifetime, if she shall survive me. If my wife shall not survive me or upon my wife's death, I give and bequeath my personal and household effects that were acquired by me (prior to my marriage to my wife or by inheritance during my marriage to my wife) to my children **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD** in approximately equal shares. If my wife shall not survive me or upon my wife's death, I give and bequeath my personal and household effects that were acquired by me and my wife during our marriage to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER,** in five (5) approximately equal shares.

However, if any of the aforementioned individuals predecease the survivor of me and my wife, then the issue of the deceased individual surviving me and my wife shall take per stirpes the share their parent would have taken had he or she survived me and my wife. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of me and my wife and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to my issue. If **ELIZABETH A. DIEMER** predeceases the survivor of me and my wife and has no issue then living, the shares of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER,** if any, and in default of issue to **GARETT C. DIEMER.** If **GARETT C. DIEMER** predeceases the survivor of me and my wife and has no issue then living, the shares of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER,** if any, and in default of issue to **ELIZABETH A. DIEMER.**

If any of the aforementioned individuals do not agree to the division of the property among themselves, my Executor shall make such division among them, the decision of my Executor to be in all respects binding upon them. If any beneficiary hereunder is a minor, my Executor may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Executor. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM III

Pour-Over Gift to Trustee of Testator's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to the successor Trustee under that certain Trust Agreement between me as Settlor and me as Trustee executed prior to the execution of this Will on the 21st day of April, 2005. My Trustee shall add the property bequeathed and devised by this Item to the principal of

the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM IV

Naming the Executor, Executor Succession, Executor's Fees and Other Matters. The provisions for naming the Executor, Executor succession, Executor's fees and other matters are set forth below:

1. **Naming an Individual Executor.** I hereby nominate, constitute and appoint as Executor of this my Last Will and Testament **NANCY L. WARD** and direct that she shall serve without bond.

2. **Naming Individual Successor or Substitute Executor.** If my individual Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the successor or substitute Executor who shall also serve without bond shall be **DUDLEY M. WARD.**

3. **Final Succession If Individual Successor Executor Cannot Act.** If my individual successor Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Executors who shall also serve without bond shall be **STEPHANIE L. WARD, DAVID D. WARD,** and **BRIAN C. WARD.** If any individual Executor named herein should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the remaining individual Executor(s) named herein shall continue to serve without a successor or substitute.

4. **Fee Schedule for Individual Executor.** For its services as Executor, my individual Executor shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

5. **Executor Voting Rights.** If there is more than one Executor serving, then the vote of the Executors for any action hereunder must be by majority action of the Executors. Provided, however, that if only two Executors shall be serving as co-Executors, then the Executors shall act with unanimity on all actions, unless the co-Executors shall have otherwise agreed in writing.

6. **Delegation Among Executors.** When there is more than one individual or entity serving as co-Executors, then any Executor may delegate to any other Executor the power to exercise any or all of the powers granted to the Executors in this Last Will and Testament, including those powers, which are discretionary, to the extent allowed by law. Any delegating Executor may revoke any such delegation with written notice to the other serving co-Executors. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Executor. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Executor receiving such delegation with the same force and effect as if the delegating Executor had personally joined in the exercise of such power. Provided, however, that if such Executor, or co-

Executor, shall also be a current beneficiary and such delegation shall be deemed to create in that Executor a right that shall be deemed to be a general power of appointment, then such individual Executor shall not be vested with such right to delegate such power.

ITEM V

Definition of Executor. Whenever the word "Executor" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor named herein and to any successor or substitute Executor acting hereunder, and such successor or substitute Executor shall possess all the rights, powers and duties, authority and responsibility conferred upon the Executor originally named herein.

ITEM VI

Powers for Executor. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Executors generally, my Executor is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Executor may seem best, and to execute and deliver any and all instruments and to do all acts which my Executor may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Executor to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Executor acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Executor deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Executor deems advisable any other income or resources of the beneficiary or his or her parents known to my Executor. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. Whenever my Executor determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created

hereunder, then the amounts shall be paid out by my Executor in such of the following ways as my Executor deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Executor using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Executor as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Executor.

ITEM VIII

Discretion Granted to Executor in Reference to Tax Matters. My Executor as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Executor believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Executor shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Executor shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my wife. If my estate plan includes a revocable trust agreement and it contains directions to my Executor, I direct my Executor to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Will, my "children" mean **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** For purposes of this Will, "children" of my wife means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have

the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Statement by Testator of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

ITEM XII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testator. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIII

Agreement for Mutual Wills and Trusts. The Agreement for Mutual Wills and Trusts dated as of even date herewith between STEPHEN D. WARD and NANCY L. WARD is incorporated by reference into this Last Will and Testament.

Testimonium, Attestation and Self-Proving Affidavit. I, **STEPHEN D. WARD**, the Testator, sign my name to this instrument this 21st day of April, 2005, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

S. D. Ward
STEPHEN D. WARD

We, Jeanne A. Pusey and Magdalena Cruz, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Jeanne A. Pusey
(Witness)

Magdalena Cruz
(Witness)

The State of South Carolina

County of Charleston

Subscribed, sworn to, and acknowledged before me by **STEPHEN D. WARD**, the Testator, and subscribed and sworn to before me by Jeanne A. Pusey and Magdalena Cruz, witnesses, this 21st day of April, 2005.

Brian A. Thurston (Seal)
Notary Public for South Carolina

My Commission Expires: July 24, 2012

EXHIBIT 2

NANCY DIEMER TRUST

DATED APRIL 28, 1998

I, Nancy Diemer, of Oak Park, Illinois, declare that I have transferred to myself and now hold, as Trustee, the property described in the attached Schedule [it being my intention upon signing this instrument to immediately divest myself of title to the property, individually, and to vest title in me, as Trustee, without any separate act of assignment or transfer] and I declare that I will administer the scheduled property as Trustee, together with all other property added to the trust, upon the following trusts and conditions.

ARTICLE FIRST: (a) Trust name. This instrument and the trusts hereby evidenced shall be known as the "NANCY DIEMER TRUST DATED APRIL 28, 1998."

(b) Rules and definitions. For all purposes of this instrument: (1) the word "trust" refers, respectively, to the entire trust prior to the division of the whole into separate trusts and, thereafter, to each separate trust administered at the time of reference; (2) the word "Trustee" denotes the plural when two or more Trustees are acting at the time of reference, except where the context otherwise requires or specifically provides; (3) the term "support" includes maintenance of the beneficiary's health and accustomed manner of living, determined at the time the relevant power of the Trustee is exercised; (4) after my death no discretionary payment of trust principal may be made to or for any beneficiary that would discharge any legal obligation to support the beneficiary imposed on any Trustee, individually, or on any person who then has power [either alone or with others] to remove the Trustee; and (5) each reference to education includes, without limitation, primary through college education, postgraduate, professional and trade or vocational education. Titles of Articles and paragraphs are included for reference only and shall not be used to interpret this instrument.

(c) Trust additions. Any person may add other property or policies to any trust by delivery, conveyance or bequest or by causing the proceeds to be payable to the Trustee, but no additions may be made by any person



other than me without the Trustee's consent. At my death all references to any trust shall include all property to which the Trustee of that trust is entitled in any manner by reason of my death.

(d) My family. I am unmarried at the time of the execution of this trust. I plan to marry Stephen D. Ward on May 23, 1998 and will then be known as Nancy Ward. I have two children now living, namely Elizabeth Ann Diemer and Garett Carter Diemer. I intend by this instrument to provide for my disability and, upon my death, to provide for my children.

ARTICLE SECOND: Trust administration during my life. During my lifetime the Trustee shall administer the trust as follows:

(a) Payments to me. Subject to paragraph (b), the net income and principal of the trust shall be paid to me or others as I shall direct from time to time and, in the absence of directions from me to the contrary, shall be paid to me or for my benefit in such manner as the Trustee determines to be for my best interests.

(b) Payments during my disability. The provisions of paragraph (a) or of any direction given by me thereunder to the contrary notwithstanding, whenever the Trustee shall determine that I have become unable to give prompt and intelligent consideration to business matters, because of physical or mental disability or for any other reason, the Trustee shall pay to me or expend for my benefit such part or all of the net income and principal of the trust as the Trustee shall deem desirable to provide for my support, taking into account all other income and resources known to the Trustee that are readily available to me for such purposes, and the Trustee shall accumulate any undistributed net income and add it to principal.

ARTICLE THIRD: Distribution of the balance of the Trust after my death. Subject to paragraph (b) of ARTICLE FOURTH, upon my death the Trustee shall forthwith distribute the principal of the trust in equal shares to my children then living at the time of my death. If one of my children is not then living at the time of my death but has descendants then living at the time of my death, then the Trustee shall distribute the share the deceased child would have received, if living, to the child's descendants, then living at the time of my death, per stirpes and not per capita.

ARTICLE FOURTH: General trust administration provisions. The Trustee and beneficiaries of each trust shall be governed by the following:

(a) Status of beneficiaries. Unless otherwise specified in the exercise of a power of appointment granted hereunder, for all purposes of this instrument: (1) a person legally adopted shall be considered a natural child of the adopting parent; and (2) a person born out of wedlock shall not be considered a child of either parent, unless the child's parents marry each other.

(b) Trust termination postponed until age 25. Any portion of the principal of any trust becoming distributable under ARTICLE THIRD to any beneficiary under twenty-five (25) years of age shall vest in the beneficiary, but distribution of the portion shall be postponed until the beneficiary attains that age. In the meantime the Trustee shall administer the portion as a separate trust and shall pay to or expend for the benefit of the beneficiary such part or all of the net income and principal of the trust as the Trustee deems desirable to provide for the support and education of the beneficiary, taking into account all other resources known to the Trustee that are readily available to the beneficiary for such purposes, and the Trustee shall accumulate any undistributed net income and add it to principal.

(c) Early termination of small trust. At any time after my death when the value of the principal of any trust shall be less than FIFTY THOUSAND DOLLARS ($50,000) and the Trustee shall determine that early distribution of the trust is desirable for any reason, the Trustee, without regard to the interests of the ultimate remaindermen [if any], may terminate the trust and distribute the principal to the beneficiary to whom the income from the trust then may be or is payable.

(d) Early termination to avoid rule against perpetuities. Unless sooner terminated in accordance with the other provisions of this instrument, any trust created hereunder or by appointment pursuant to this instrument shall cease and terminate upon the expiration of twenty-one (21) years after the death of the survivor of me and all other beneficiaries herein named or referred to living at the time of my death, whereupon the entire remaining principal of the trust shall be distributed

forthwith to the person or persons then entitled to receive the income therefrom.

(e) Payments to beneficiaries under disability; no assignment of trust interests. Payments or distributions of income or principal authorized or directed to be made to any beneficiary shall be made in person or upon the personal receipt of the beneficiary or, if the beneficiary directs, may be deposited in any bank account carried in the beneficiary's name or jointly with others; provided, however, that any payment or distribution to any beneficiary whom the Trustee making such payment or distribution believes to be incapable because of physical or mental disability, or for any other reason, of giving prompt and intelligent consideration to business matters may be made: (1) directly to the beneficiary, (2) to the legal representative of the beneficiary, (3) to any relative or friend of the beneficiary to be expended for the benefit of the beneficiary, (4) to a Custodian for the beneficiary under a Uniform Gifts [or Transfers] to Minors Act of any jurisdiction, or (5) by the Trustee expending the same for the benefit of the beneficiary, and the Trustee shall not be required to see to the application of any payments or distributions so made. No interest of any beneficiary shall be assignable in anticipation of payment or distribution either by the voluntary or involuntary act of the beneficiary or by operation of law or be liable in any way for the beneficiary's debts.

(f) Satisfaction of pecuniary amounts and fractional shares. In funding any pecuniary amount or fractional share trust or making any pecuniary amount or fractional share division or distribution to or between separate trusts or beneficiaries, the Trustee may: (1) divide, allocate or distribute in cash or in kind, or both; (2) select the property to be assigned to each trust or beneficiary; (3) assign undivided interests in any property to two or more trusts or beneficiaries; and (4) where fractional shares are concerned, allocate to each beneficiary or trust the required fractional share of each asset available to fund the share or assign to each beneficiary or trust the then value of its share by allocating to it any part or all [including disproportionate fractional interests] of any available asset. If property is allocated in kind to satisfy a pecuniary amount, or to satisfy the then value of a fractional share with disproportionate interests in the available assets, the property shall be valued at the time of allocation, as determined by the Trustee, and no adjustments shall be

made to compensate for any disproportionate allocation of unrealized gain or loss for income tax purposes.

(g) Commingling of separate trusts. The Trustee may combine any separate trusts administered under this instrument with each other, or with any trusts under other instruments which have similar terms and beneficiaries, for purposes of commingled investment and administration of the combined trusts, and the Trustee shall allocate all trust receipts and disbursements among the combined trusts proportionately.

(h) Principal and income allocations. The Trustee shall allocate receipts and expenses of any trust to or between income and principal in accordance with the rules of trust accounting law applicable thereto; provided, that (1) in any case where the Trustee concludes that there are no applicable rules, that the rules are ambiguous or that the application of the rules would alter the relative interests of the income and principal beneficiaries of the trust contrary to my intention hereunder, as determined by the Trustee, the Trustee may allocate the receipt or expense involved in such manner as the Trustee deems proper to carry out my intention and to fulfill the purposes of the trust; and (2) the Trustee may allocate any trust administration expenses [including, without limitation, accounting expenses, expenses of judicial proceedings and any regular or special compensation of any Trustee, investment counsel, attorney, accountant, custodian or other agent] all to income or all to principal, or partly to each, in such manner as the Trustee determines to be for the best interests of the beneficiaries, taking into account the nature of the trust assets, the trust interests benefited by the expense, the tax consequences and any other factors deemed relevant by the Trustee.

(i) General powers of Trustee; compensation. The Trustee shall have the following powers: (1) to invest and reinvest trust assets in any kind of property or undivided interests therein which the Trustee shall deem proper [including, without limitation, real estate, stocks, bonds, mortgages, debentures and shares or interests in investment companies, funds or trusts] without being restricted to investments as fixed by the laws of any jurisdiction; (2) to continue trust assets invested in any property received or acquired by the Trustee without obligation to sell all or any part thereof because not of a type or quality or constituting a diversification considered proper or wise for trust investments; (3) to hold

funds uninvested during any periods of unsettled financial conditions; (4) to purchase, sell, convey, assign or exchange any trust property and to grant and exercise options with respect to trust property; (5) to purchase property from, sell property to and otherwise deal with the fiduciary representing the estate or trust of any person, whether or not the Trustee is also acting as fiduciary for the estate or other trust; (6) to lease trust property for any time even extending beyond the term of any trust; (7) to insure, improve, repair, alter, partition, subdivide, grant easements or dedicate any trust property and to erect or raze improvements thereon; (8) to settle or abandon all claims and demands in favor of or against any trust; (9) to consent to the reorganization, consolidation or readjustment of the finances of any corporation; (10) to vote in person or issue proxies to others; (11) to borrow money from any lender, including any Trustee, individually, and to mortgage or pledge any trust property for any purpose deemed proper by the Trustee, including the purchase of bonds redeemable at more than market value for the payment of federal estate tax; (12) to employ attorneys, accountants, investment advisors and other agents [including persons who are associated with the Trustee in any business or profession], to rely and act upon the advice of any investment advisors or other agents without independent investigation, and to delegate to any one or more of them any of the Trustee's powers, discretionary or otherwise, for any purpose; and the Trustee shall not be liable for any loss that may result from following the advice, or for other acts, of any investment advisor or other agents unless the Trustee has failed to use due care in their selection; (13) to hold or register any property in the Trustee's own name or in the name of a nominee without disclosure of any fiduciary relationship; and (14) in addition to any powers conferred herein or by law, to do and perform all acts which the Trustee shall deem proper to carry out the purposes of each trust, it being my intention that the enumeration of particular powers shall not be construed as limiting the general powers intended to be granted to the Trustee. Each Trustee shall be paid reasonable compensation.

(j) Trust accounts; objections barred after 2 years; settlement of accounts before distribution. A statement showing all receipts and disbursements and the property comprising each trust shall be given at least annually to each beneficiary to whom the income from the trust then may be or is payable or to the beneficiary's representative under paragraph (k) of this Article. A majority in interest of the beneficiaries to

whom the income from any trust then may be or is payable, without liability to others, may approve any account of any acting or predecessor Trustee with respect to that trust and release the Trustee from liability for all matters covered by the account, which release shall bind all persons having any past, present or future interest in that trust. Each statement of account shall be deemed approved and the Trustee shall be deemed released by all beneficiaries having any past, present or future interest in the matters covered by the account unless objections to the account are filed with the Trustee within two (2) years after the account is mailed or delivered to the persons entitled thereto. Before distribution of any trust principal the Trustee shall have the right to require settlement of any open accounts of the trust from which the distribution is being made, either by the written agreement and release of all beneficiaries having any interest in the distribution or, if releases cannot be obtained, by court settlement of the open accounts. All of the Trustee's fees and expenses [including attorneys' fees] attributable to court approval of the Trustee's accounts shall be paid by the trust involved, but the trust shall not be liable if and to the extent the accounts are not approved. For all purposes of this paragraph and ARTICLE FIFTH, if more than one beneficiary is eligible to receive the same income at the time of reference, a "majority in interest" of those beneficiaries means a majority in number of the oldest generation of eligible beneficiaries.

(k) Persons to represent beneficiary during disability. If a beneficiary is under disability at the time of reference, the first of the following [in the order named] who is then living or acting and under no disability shall act for and represent the beneficiary to receive and review notices and accounts, approve or object to accounts, release Trustees from liability and appoint Trustees: the legal representative of the beneficiary's estate; the legal representative of the beneficiary's person; the person(s) having custody of the beneficiary; the beneficiary's spouse; or a majority of the adult children of the beneficiary. For all purposes of this paragraph and ARTICLE SECOND and ARTICLE FIFTH, any person shall be considered to be under "disability" if, at the time of reference: (1) the person is a minor under the law of his domicile or has been adjudicated an incompetent or disabled person or (2) two medical doctors familiar with the physical and mental condition of the person have certified in writing that the person is unable to give prompt and intelligent consideration to business matters and written notice of the determinations of disability has

been delivered to the person. Once established, disability will be deemed to continue until there is a like certification, or an adjudication, that the disability has ended.

(l) Undistributed income at beneficiary's death. Upon the death of any beneficiary all accrued but uncollected income, and all undistributed income received by the Trustee since the last regular income payment date, which would have been payable to the beneficiary had the beneficiary continued to live shall be payable as income to the beneficiary who shall next be entitled upon the death of the deceased beneficiary to receive the principal, or the income from the principal, from which the income was derived.

(m) Designation of "appointed Trustee." The term "appointed Trustee" means a Trustee acting pursuant to this paragraph. If at any time or times the Trustee other than an appointed Trustee determines that it is advisable to change the situs of any part or all of any trust or is unable or unwilling to act as Trustee with respect to any trust property, such Trustee may resign as Trustee with respect to any trust property and designate an appointed Trustee thereof, which appointed Trustee shall have and exercise such of the appointing Trustee's powers, discretions and titles and on such conditions as the appointing Trustee shall specify. At any time the appointed Trustee may be removed by the Trustee who may designate another as appointed Trustee or, in the absence of such appointment, shall again have and exercise all powers, discretions and titles theretofore vested in the appointed Trustee. Each appointed Trustee so designated may delegate any and all powers, discretions and authorities to the Trustee as agent.

(n) Liabilities and transfer of powers and property between Trustees. Unless otherwise provided in this instrument: (1) the legal title to all property of any trust shall remain vested in the Trustee of that trust from time to time acting hereunder without any act of conveyance or transfer to, by or from any succeeding or retiring Trustee; (2) all of the rights, powers and authorities, discretionary or otherwise, herein granted to the original Trustee of any trust shall descend to and vest in the acting Trustee of that trust; (3) any corporation which succeeds by merger, consolidation, purchase or other means to substantially all of the assets and business of any acting or nominated corporate Trustee shall also

succeed to the office of Trustee; (4) no Trustee shall ever be liable for any act or default of any other Trustee nor for any loss sustained through any error of judgment but shall only be liable for his own willful default; (5) no Trustee shall be required to give any bond or security or to render any periodic court accounting; (6) as used with reference to the Trustee, all words denoting number and gender shall be construed to denote the proper number and gender applicable to the Trustee acting at the time of reference with respect to the power or duty involved; (7) no person dealing with the Trustee shall be obliged to inquire into the Trustee's powers or to see to the application of any money or property delivered to the Trustee; and (8) a successor Trustee may accept the account rendered and the trust property delivered by the predecessor Trustee without review or liability.

(o) Co-Trustee provisions. If and while a corporate co-Trustee is acting and willing to do so, it shall have custody of all trust personal property and cash and may solely perform all ministerial duties. Any individual co-Trustee shall have the right at any time or times to delegate to a consenting co-Trustee any or all of the delegating Trustee's powers, authorities or duties, whether ministerial or discretionary in character, for any period of time or permanently by a writing delivered to the delegate.

(p) Insurance payable to Trustee. With respect to each policy of insurance upon my life subject to this instrument: (1) during my lifetime I reserve all rights and interests with respect to the policy, including without limitation the right to change the beneficiary, to borrow upon the policy from any lender [including any Trustee, individually] and to assign the policy as collateral; the Trustee shall only be responsible for the safekeeping of the policy but it may be returned to my custody and will remain subject to this instrument so long as the proceeds remain payable to the Trustee; and the Trustee shall not be obligated to pay any premiums or assessments upon the policy; and (2) upon my death only the proceeds of the policy due upon my death, after deduction of all loans and charges payable therefrom, shall be subject to this instrument and the Trustee shall take appropriate action to collect the policy, but shall not be obligated to engage in litigation unless indemnified to the Trustee's satisfaction.

(q) Payment of estate obligations by Trustee. Upon my death all estate obligations shall be paid out of the principal of my residuary

probate estate [if any] or the trust, or partly from each, as my fiduciary shall determine to be for the best interests of my beneficiaries, without abatement of any nonresiduary gifts under my will and without reimbursement or contribution from any person; provided, however, that the amount by which my death taxes are increased by assets subject to generation-skipping taxes, a power of appointment or a qualifying income interest for life shall be paid out of those assets; and provided, further, that (1) property which, except for this paragraph, would be exempt, excludable or nontaxable in determining my federal estate tax shall not be used to pay estate obligations and (2) all bonds owned by my probate estate or the Trustee which are redeemable at more than market value for the payment of federal estate tax shall first be used for that purpose. In this paragraph the term "estate obligations" means all of the following obligations payable by reason of my death: all taxes, including interest and penalties thereon ["my death taxes"], all fees and other expenses of administration attributable to probate and nonprobate property and all claims allowed against my estate [or if there is no probate administration of my estate, then all claims against my estate which the Trustee considers just and proper]; and in this paragraph the term "my fiduciary" means the legal representative of my probate estate [my "legal representative"] and the Trustee, acting together, or the Trustee, alone, if no legal representative is acting. Payment of estate obligations shall be made through my legal representative, if any, and the Trustee may distribute trust property to my legal representative at any time or times to fund estate obligations, without regard to when those obligations may be due. Nothing herein shall restrict the right of my fiduciary to litigate or settle any estate obligations and any action taken by my fiduciary to litigate, settle or pay estate obligations shall be binding and conclusive on all persons. The Trustee may accept as correct and act without liability on the basis of the determination by my legal representative as to any matter of fact or law material to compliance with this paragraph. My fiduciary may make such elections under the tax laws as my fiduciary shall deem advisable and no adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of such elections.

ARTICLE FIFTH: Successor Trustees. Any Trustee may resign as Trustee of any trust by giving ten (10) days prior written notice to all co-Trustees, if any, then acting, to all successor Trustees, if any, hereinafter

designated and to each beneficiary to whom income from that trust then may be or is payable. If I become unable to act as Trustee, then my brother, Robert A. Goelkel, currently residing in Park Ridge, Illinois, shall act as Trustee, or if he becomes unable to act then my fiance, Stephen D. Ward, currently residing in Edina, Minnesota, shall act as successor Trustee. Any Trustee acting or designated to act pursuant to this instrument shall be deemed unable to act in the event of such Trustee's death, disability, refusal to act, removal or resignation [excluding, however, a resignation for purposes of paragraph (m) of ARTICLE FOURTH]. The provisions of this paragraph shall not apply to an appointed Trustee acting pursuant to paragraph (m) of ARTICLE FOURTH.

ARTICLE SIXTH: Governing law. Illinois law shall govern all questions concerning (a) the validity of this instrument and the trusts hereby created and (b) the interpretation of my intent as to the disposition of the trust property and all other questions relating to any trust, including all matters of trust administration.

ARTICLE SEVENTH: Right to amend or terminate. I reserve the right, exercisable at any time or times by a writing signed by me, to amend or terminate this instrument and the trusts hereby created, either in whole or in part, and to direct the disposition of any part or all of the trust property; provided, however, that the Trustee's powers, duties and liabilities shall not be substantially increased without the Trustee's consent.

This instrument has been signed on the date specified in ARTICLE FIRST.

NANCY DIEMER,
individually and as Trustee

NANCY DIEMER TRUST

SCHEDULE

1. Ten dollars ($10.00)

NANCY DIEMER,
individually and as Trustee

EXHIBIT 3

LAST WILL AND TESTAMENT
OF
NANCY L. WARD

2011 JUL -7 PM 12:02

Introductory Clause. I, **NANCY L. WARD**, a resident of and domiciled in the County of Charleston and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to **STEPHEN D. WARD.**

I have two living children: **ELIZABETH A. DIEMER**; and **GARETT C. DIEMER.**

I have five living step-children: **STEPHANIE L. WARD; DAVID D. WARD; BRIAN C. WARD; STEPHEN A. WARD**; and **JEREMY W. WARD.** My step-children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Will as they will be provided for by their mother with assets she received from my husband pursuant to their divorce. Their omission is intentional.

ITEM I

Direction to Pay Debts with Discretionary Refinancing by Executor. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Executor may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

1. I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Executor within ninety (90) days after my Executor's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered

EXHIBIT 3 tabbies

memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

2. In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my husband, **STEPHEN D. WARD**, for his lifetime, if he shall survive me. If my husband shall not survive me or upon my husband's death, I give and bequeath my personal and household effects that were acquired by me (prior to my marriage to my husband or by inheritance during my marriage to my husband) to my children **ELIZABETH A. DIEMER** and **GARRET C. DIEMER** in approximately equal shares. If my husband shall not survive me or upon my husband's death, I give and bequeath my personal and household effects that were acquired by me and my husband during our marriage to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares.

However, if any of the aforementioned individuals predecease the survivor of me and my husband, then the issue of the deceased individual surviving me and my husband shall take per stirpes the share their parent would have taken had he or she survived me and my husband. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of me and my husband and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to my husband's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of me and my husband and has no issue then living, the shares of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of me and my husband and has no issue then living, the shares of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

If any of the aforementioned individuals do not agree to the division of the property among themselves, my Executor shall make such division among them, the decision of my Executor to be in all respects binding upon them. If any beneficiary hereunder is a minor, my Executor may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Executor. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM III

Pour-Over Gift to Trustee of Testatrix's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to the successor Trustee under the Nancy Diemer Trust Dated April 28, 1998 between me as Settlor and me as Trustee executed prior to the execution of this Will, as amended by the First Amendment and Restatement of Trust Agreement dated as of even date

herewith. My Trustee shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM IV

Naming the Executor, Executor Succession, Executor's Fees and Other Matters. The provisions for naming the Executor, Executor succession, Executor's fees and other matters are set forth below:

1. **Naming an Individual Executor.** I hereby nominate, constitute and appoint as Executor of this my Last Will and Testament **STEPHEN D. WARD** and direct that he shall serve without bond.

2. **Naming Individual Successor or Substitute Executor.** If my individual Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the successor or substitute Executor who shall also serve without bond shall be **ROBERT A. GOELKEL.**

3. **Final Succession If Individual Successor Executor Cannot Act.** If my individual successor Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Executors who shall also serve without bond shall be **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** If any individual Executor named herein should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the remaining individual Executor named herein shall continue to serve without a successor or substitute.

4 **Fee Schedule for Individual Executor.** For its services as Executor, my individual Executor shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

5 **Executor Voting Rights.** If there is more than one Executor serving, then the vote of the Executors for any action hereunder must be by majority action of the Executors. Provided, however, that if only two Executors shall be serving as co-Executors, then the Executors shall act with unanimity on all actions, unless the co-Executors shall have otherwise agreed in writing.

6 **Delegation Among Executors.** When there is more than one individual or entity serving as co-Executors, then any Executor may delegate to any other Executor the power to exercise any or all of the powers granted to the Executors in this Last Will and Testament, including those powers, which are discretionary, to the extent allowed by law. Any delegating Executor may revoke any such delegation with written notice to the other serving co-Executors. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Executor. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Executor receiving such delegation with the same force and effect as if the delegating Executor had personally joined in the exercise of such power. Provided, however, that if such Executor, or co-

Executor, shall also be a current beneficiary and such delegation shall be deemed to create in that Executor a right that shall be deemed to be a general power of appointment, then such individual Executor shall not be vested with such right to delegate such power.

ITEM V

Definition of Executor. Whenever the word "Executor" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor named herein and to any successor or substitute Executor acting hereunder, and such successor or substitute Executor shall possess all the rights, powers and duties, authority and responsibility conferred upon the Executor originally named herein.

ITEM VI

Powers for Executor. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Executors generally, my Executor is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Executor may seem best, and to execute and deliver any and all instruments and to do all acts which my Executor may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Executor to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Executor acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Executor deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Executor deems advisable any other income or resources of the beneficiary or his or her parents known to my Executor. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. Whenever my Executor determines it

appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Executor in such of the following ways as my Executor deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Executor using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Executor as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Executor.

ITEM VIII

Discretion Granted to Executor in Reference to Tax Matters. My Executor as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Executor believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Executor shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Executor shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my husband. If my estate plan includes a revocable trust agreement and it contains directions to my Executor, I direct my Executor to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Will, my "children" mean **ELIZABETH A. DIEMER** and **GARETT C. DIEMER**. For purposes of this Will, "children" of my husband means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD**, but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD**. "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words

which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Statement by Testatrix of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

ITEM XII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIII

Agreement For Mutual Wills and Trusts. The Agreement for Mutual Wills and Trusts dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this Last Will and Testament.

Testimonium, Attestation and Self-Proving Affidavit. I, **NANCY L. WARD**, the Testatrix, sign my name to this instrument this 21st day of April, 2005, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Nancy L. Ward
NANCY L. WARD

We, Jeanne A. Pusey and Magdalena Cruz, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, and in the presence of each other, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Jeanne A. Pusey
(Witness)

Magdalena Cruz
(Witness)

The State of South Carolina

County of Charleston

Subscribed, sworn to, and acknowledged before me by **NANCY L. WARD**, the Testatrix, and subscribed and sworn to before me by Jeanne A. Pusey and Magdalena Cruz, witnesses, this 21st day of April, 2005.

Jean A. Pusey (Seal)
Notary Public for South Carolina

My Commission Expires: July 24, 2012

EXHIBIT 4

TRUST AGREEMENT
OF
STEPHEN D. WARD

Introductory Clause. This Trust Agreement of **STEPHEN D. WARD** made this 21st day of April, 2005, between **STEPHEN D. WARD**, hereinafter referred to as the Settlor and **STEPHEN D. WARD**, hereinafter referred to as the Trustee.

The Settlor is married to **NANCY L. WARD** and has five living children: **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, STEPHEN A. WARD** and **JEREMY W. WARD.** The Settlor's children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Trust Agreement as they will be provided for by their mother with assets she received from the Settlor pursuant to their divorce. Their omission is intentional.

The Settlor has two living step-children: **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.**

ARTICLE I

Trustee Succession if Settlor Dies or Becomes Incapacitated. If the Settlor dies or is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of two licensed physicians, unable to properly handle the Settlor's own affairs, then and in that event the Trustee named below shall immediately become the Trustee under this Trust Agreement. The Settlor names the following as successor Trustee:

NANCY L. WARD

Third parties may rely on an affidavit by the Trustee named above stating that the successor Trustee is now acting as Trustee hereunder.

ARTICLE II

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee certain property, and has caused or will cause the Trustee to be designated as beneficiary of certain life insurance policies. These insurance policies, and any other insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.



ARTICLE III

Rights of Settlor and Trustee in Insurance Policies. During the Settlor's lifetime, the Settlor shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to the Settlor or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon the Settlor's written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy. However, no revocation of the trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of the Settlor that matures any such policy, the Trustee, in its discretion, either may collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on the Settlor's life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE IV

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

1. During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

2. During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

3. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to engage in additional estate planning to reduce the expected gift and estate tax liability as well as provide for additional resources for family transfers and, if consistent with the Settlor's desires,

charitable purposes. The estate planning, which is specifically authorized, may include the design, implementation, and funding of techniques such as limited partnerships, limited liability companies, lifetime gifts and transfers, qualified personal residence trusts, charitable trusts, family foundations, and other trusts and techniques designed to reduce the total estate and gift taxes anticipated to be paid by the Settlor and the Settlor's estate to increase the expected benefit to the Settlor's family, beneficiaries, and charities, if any.

4. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to (but shall not be required to) make gifts equal to or in excess of the annual gift tax exclusion to the Settlor's children and their issue, and their respective spouses, if appropriate, and in such amounts and upon such terms and conditions as the Trustee, in the Trustee's discretion, shall determine.

ARTICLE V

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. Except as provided for in the **AGREEMENT FOR MUTUAL WILLS AND TRUSTS**, dated as of even date herewith and entered into between the Settlor and the Settlor's wife, **NANCY L. WARD**, the Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE VI

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's executors or administrators, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Ward Family Trust and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make

such payments directly or may pay over the amounts thereof to the executors or administrators of the Settlor's estate. Written statements by the executors or administrators of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Ward Family Trust. The Trustee shall have the power to charge expenses of administration against income or principal, or apportion such expenses; provided, however, this power may not be exercised in a way which would reduce or otherwise adversely affect the marital or charitable deduction otherwise available for federal estate tax purposes. The Trustee shall not exercise this discretion in a manner which is inconsistent with the IRC regulations now in effect or subsequently promulgated.

ARTICLE VII

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **Specific Distribution.** The Charles Schwab & Co., Inc. Account Number 8041-2928 shall be distributed outright and free of trust to the Settlor's children **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** who survive the Settlor, in approximately equal shares; provided, however, the surviving issue of a deceased child shall take per stirpes the share their parent would have taken had he or she survived the Settlor.

(2) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VIII

Upon the death of the Settlor, the Trustee shall divide the Trust Estate (which shall include any property which may be added from the Settlor's general estate) as follows:

1. **Creation of The Marital Trust and The Ward Family Trust.** If the Settlor is survived by the Settlor's wife, **NANCY L. WARD,** the Trustee shall divide the Trust Estate into Two (2) separate shares, hereinafter designated as "**the Marital Trust**" and "**the Ward Family Trust.**" **The Marital Trust** shall be composed of cash, securities or other property of the Trust Estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in the Settlor's federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such estate tax purposes by reason of property or interests in property passing or which have passed to the Settlor's wife otherwise than pursuant to the provisions of this Article; provided, however, the amount for **the Marital Trust** hereunder shall be reduced by the amount, if any, needed to increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on the Settlor's estate. The term "maximum marital deduction" shall not be construed as a direction by the Settlor to exercise any election respecting the deduction of estate

administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. The Trustee shall have the sole discretion to select the assets which shall constitute **the Marital Trust**. In no event, however, shall there be included in this **the Marital Trust** any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this **the Marital Trust** shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind as a part of **the Marital Trust** hereunder at the value of such asset at the date of distribution of such asset. **The Marital Trust** shall be administered as hereinafter set forth. **The Ward Family Trust** shall be the balance of the Trust Estate after the assets have been selected for **the Marital Trust.**

2. **Creation of The Ward Family Trust.** If the Settlor's wife shall not survive the Settlor, **the Ward Family Trust** shall be the entire Trust Estate.

The Marital Trust and **the Ward Family Trust** shall be administered as hereinafter set forth.

ARTICLE IX

The Ward Family Trust Introductory Provision. The Ward Family Trust shall be held, administered and distributed as follows:

1. **Payment to Wife of All Income.** If the Settlor's wife shall survive the Settlor, then commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's wife during her lifetime all the net income from **the Ward Family Trust** in convenient installments but no less frequently than quarter-annually.

2, **Discretionary Payments of Principal for Wife.** If the Settlor's wife shall survive the Settlor, and if there is no principal remaining in the Marital Trust, the Trustee may pay to or apply for the benefit of the Settlor's wife during her lifetime, such sums from the principal of **the Ward Family Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

3. ***Outright Final Distribution if Wife is Deceased.*** Upon or after the death of the survivor of the Settlor's wife and the Settlor, **the Ward Family Trust** shall be distributed outright and free of trust to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares; provided, however, if one of these individuals are deceased then the issue of the deceased individual surviving the Settlor and the Settlor's wife shall take per stirpes the share their parent would have taken had he or she survived the Settlor and the Settlor's wife. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to the Settlor's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C.**

DIEMER, if any, and in default of issue to GARETT C. DIEMER. If GARETT C. DIEMER predeceases the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of GARETT C. DIEMER shall be distributed per stirpes to the issue of ELIZABETH A. DIEMER, if any, and in default of issue to ELIZABETH A. DIEMER.

ARTICLE X

The Marital Trust Introductory Provision. The Marital Trust shall be held, administered and distributed as follows:

1. **Direction to Pay All Income to Wife.** Commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's wife during her lifetime all the net income from the Marital Trust in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of the Settlor's wife shall be paid with the entire remaining principal as provided in this the Marital Trust.

2. **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, the Trustee may pay to or apply for the benefit of the Settlor's wife such sums from the principal of the Marital Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

3. **Power in Wife to Cause Nonproductive Property to Be Made Productive.** The Settlor's wife may at any time by written notice, require the Trustee either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

4. **Payment of Death Taxes From The Marital Trust on Death of Wife.** Unless the Settlor's wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of the Marital Trust be paid otherwise, the Trustee shall pay to the executors or administrators of the estate of the wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of the Settlor's wife's death shall be increased as a result of the inclusion of the assets of the Marital Trust in her estate for such tax purposes.

5. **Trust Property to Be Added to The Ward Family Trust on Wife's Death.** Upon the death of the Settlor's wife, the entire remaining principal of the Marital Trust shall be added to and become a part of the Ward Family Trust and shall be held and administered or distributed in whole or in part, as if it had been an original part of the Ward Family Trust.

ARTICLE XI

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

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1. **Individual Trustees Succession.** If NANCY L. WARD should fail to qualify as successor Trustee hereunder, or for any reason should cease to act in such capacity, the successor or substitute Trustee who shall also serve without bond shall be the Settlor's brother **DUDLEY M. WARD.**

2. **Final Succession If Individual Successor Trustee Cannot Act.** If NANCY L. WARD and DUDLEY M. WARD should fail to qualify as individual successor Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD.** If any individual Trustee named herein should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining Trustees named herein shall continue to serve without a successor or substitute.

3. **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

4. **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees. Provided, however, that if only two Trustees shall be serving as co-Trustees, then the Trustees shall act with unanimity on all actions, unless the co-Trustees shall have otherwise agreed in writing.

5. **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

6. **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ARTICLE XII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder.

and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIII

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

1. To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

3. To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

4. To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

5. To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

6. To sell or exercise stock subscription or conversion rights.

7. To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general

to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

8. To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

9. To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

10. To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

11. To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12. To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

13. To continue and operate any business owned by the Settlor at the Settlor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

14. To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

15. To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

16. In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

17. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

18. To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

19. To determine what shall be fairly and equitably charged or credited to income and what to principal.

20. To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

21. To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

22. In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

23. To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's executors or administrators and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's executors or administrators and the Trustee are the same shall in no way affect the validity of this provision.

24. To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's executors or administrators and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

25. To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as

beneficiary; to execute all necessary receipts and releases to Executors, donors, insurance companies and other parties adding property to the Trust Estate.

26. To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

27. To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

28. To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

29. If the Trustee shall act as the Executor of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer which the Settlor is the transferror for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Executor will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to the Ward Family Trust, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Executor deems in the best interest of the Settlor's estate.

ARTICLE XIV

Trustee's Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence. Provided, however, the Trustee shall not exercise this power in any way which would deprive the wife under the Marital Trust of the beneficial enjoyment of the Marital Trust and the wife shall have the right to limit, restrict or terminate the Trustee's exercises of this power if they interfere with such beneficial enjoyment.

ARTICLE XV

Marital Deduction Savings Clause for the Marital Trust. It is expressly provided that the grant of rights, powers, privileges and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust Agreement or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in **the Marital Trust** hereof. It is the Settlor's intention that the Settlor's wife under the provisions of **the Marital Trust** have substantially that degree of beneficial enjoyment of the Trust Estate during her lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and the Trustee shall not exercise its discretion in a manner which is not in accord with this expressed intention. The Trustee shall invest the Trust Estate so it will produce for the Settlor's wife during her lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that the Trustee shall not in the exercise of its discretion make any determination inconsistent with the foregoing.

ARTICLE XVI

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XVII

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that the Trustee shall not make any payment from the Marital Trust under (3) above.

ARTICLE XVIII

Power of Trustee to Resign During Settlor's Lifetime. Any Trustee may resign this trusteeship during the Settlor's lifetime by giving the Settlor Thirty (30) days notice in writing delivered to the Settlor in person or mailed to the Settlor's last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, the Settlor shall appoint a successor Trustee. Upon the failure of the Settlor to appoint a successor Trustee who accepts the trust within Thirty (30) days from the time notice was delivered in person or mailed to the Settlor, the Trustee may resign to the court having jurisdiction over this trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee which shall be an individual as successor to an individual trustee or a bank or trust company qualified to do business in the state of the Settlor's domicile as successor to a corporate trustee. Upon the appointment of and acceptance by the successor Trustee, the original Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Settlor, whereupon its resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIX

Settlor During Lifetime to Designate Substitute or Successor Trustee. The Settlor during the Settlor's lifetime may name a substitute or successor Trustee by delivery to any Trustee herein a notice naming the successor or substitute Trustee and indicating an intent to replace the Trustee named. Upon receipt of such notice the Trustee named shall pay over, deliver, assign, transfer or convey to such substitute or successor Trustee (which accepts the appointment as trustee), the Trust Estate and make a full and proper accounting to the Settlor, whereupon the Trustee named shall be discharged and have no further responsibility under this Trust Agreement. Upon the failure of the Trustee to make such conveyance the Settlor may apply to the court having jurisdiction of this trust and such court may compel the conveyance by the Trustee. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Trust, "children" of the Settlor means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** For purposes of this Trust, "children" of the Settlor's wife means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XXI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," "qualified terminable interest," "qualified terminable interest property," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XXII

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XXIII

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XXIV

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XXV

Agreement for Mutual Wills and Trusts. The Agreement for Mutual Wills and Trusts dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this Trust Agreement of Stephen D. Ward.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

Jeanne A. Pusey

Magdalena Ortiz

Jeanne A. Pusey

Magdalena Ortiz

S. D. Ward

STEPHEN D. WARD, SETTLOR

S. D. Ward

STEPHEN D. WARD, TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

Personally appeared the undersigned witness and made oath that he saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this

21st day of April, 2005

Notary Public for South Carolina
My Commission expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by **STEPHEN D. WARD**, as Settlor and Trustee, to be the free and voluntary act and deed of the Settlor and Trustee.

WITNESS my signature this 21st day of April, 2005.

Signature of Notary Public

Brett A. Bluestein
Typed Name of Notary Public

Notary Public for: South Carolina
My commission expires: July 24, 2012

EXHIBIT 5

FIRST AMENDMENT AND RESTATEMENT
OF
TRUST AGREEMENT
OF
NANCY L. WARD

Introductory Clause. This First Amendment and Restatement of Trust Agreement of **NANCY L. WARD** made this 21st day of April, 2005, between **NANCY L. WARD**, hereinafter referred to as the Settlor and **NANCY L. WARD**, hereinafter referred to as the Trustee.

The Settlor is married to **STEPHEN D. WARD** and has two living children: **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.**

The Settlor has five living step-children: **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, STEPHEN A. WARD** and **JEREMY W. WARD.** The Settlor's husband's children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Trust Agreement as they will be provided for by their mother with assets she received from the Settlor's husband pursuant to their divorce. Their omission is intentional.

WHEREAS, the Settlor and the Trustee entered into the **NANCY DIEMER TRUST** dated April 28, 1998, hereinafter called the Trust Agreement; and

WHEREAS, ARTICLE SEVENTH of the Trust Agreement provided that the Settlor reserved the right to amend in any manner or revoke in whole or in part the Trust Agreement; and

WHEREAS, the Settlor is desirous of modifying and amending the Trust Agreement and the Trustee is agreeable to the modifications and amendments contained herein;

NOW, THEREFORE, IT IS AGREED that the entire Trust Agreement as modified and amended will read as follows:

ARTICLE I

Trustee Succession if Settlor Dies or Becomes Incapacitated. If the Settlor dies or is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of two licensed physicians, unable to properly handle the Settlor's own affairs, then and in that event the Trustee named below shall immediately become the Trustee under this Trust Agreement. The Settlor names the following as successor Trustee:

STEPHEN D. WARD

EXHIBIT
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Third parties may rely on an affidavit by the Trustee named above stating that the successor Trustee is now acting as Trustee hereunder.

ARTICLE II

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee certain property, and has caused or will cause the Trustee to be designated as beneficiary of certain life insurance policies. These insurance policies, and any other insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE III

Rights of Settlor and Trustee in Insurance Policies. During the Settlor's lifetime, the Settlor shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to the Settlor or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon the Settlor's written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy. However, no revocation of the trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of the Settlor that matures any such policy, the Trustee, in its discretion, either may collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on the Settlor's life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE IV

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

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1. During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

2. During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

3. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to engage in additional estate planning to reduce the expected gift and estate tax liability as well as provide for additional resources for family transfers and, if consistent with the Settlor's desires, charitable purposes. The estate planning, which is specifically authorized, may include the design, implementation, and funding of techniques such as limited partnerships, limited liability companies, lifetime gifts and transfers, qualified personal residence trusts, charitable trusts, family foundations, and other trusts and techniques designed to reduce the total estate and gift taxes anticipated to be paid by the Settlor and the Settlor's estate to increase the expected benefit to the Settlor's family, beneficiaries, and charities, if any.

4. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to (but shall not be required to) make gifts equal to or in excess of the annual gift tax exclusion to the Settlor's children and their issue, and their respective spouses, if appropriate, and in such amounts and upon such terms and conditions as the Trustee, in the Trustee's discretion, shall determine.

ARTICLE V

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. Except as provided for in the **AGREEMENT FOR MUTUAL WILLS AND TRUSTS**, dated as of even date herewith and entered into between the Settlor and the Settlor's husband, **STEPHEN D. WARD**, the Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE VI

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's executors or administrators, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the **Family Trust** and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the executors or administrators of the Settlor's estate. Written statements by the executors or administrators of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Family Trust. The Trustee shall have the power to charge expenses of administration against income or principal, or apportion such expenses; provided, however, this power may not be exercised in a way which would reduce or otherwise adversely affect the marital or charitable deduction otherwise available for federal estate tax purposes. The Trustee shall not exercise this discretion in a manner which is inconsistent with the IRC regulations now in effect or subsequently promulgated.

ARTICLE VII

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **Specific Distribution.** The Charles Schwab & Co., Inc. Account Number 9091-9831 shall be distributed outright and free of trust to the Settlor's surviving children in approximately equal shares; provided, however, the surviving issue of a deceased child shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If **ELIZABETH A. DIEMER** predeceases the Settlor and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the Settlor and has no issue then living, the share of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

(2) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VIII

Upon the death of the Settlor, the Trustee shall divide the Trust Estate (which shall include any property which may be added from the Settlor's general estate) as follows:

1. **Creation of The Marital Trust and The Family Trust.** If the Settlor is survived by the Settlor's husband, **STEPHEN D. WARD**, the Trustee shall divide the Trust Estate into Two (2) separate shares, hereinafter designated as **"the Marital Trust"** and **"the Family Trust."** **The Marital Trust** shall be composed of cash, securities or other property of the Trust Estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in the Settlor's federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such estate tax purposes by reason of property or interests in property passing or which have passed to the Settlor's husband otherwise than pursuant to the provisions of this Article; provided, however, the amount for **the Marital Trust** hereunder shall be reduced by the amount, if any, needed to increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on the Settlor's estate. The term "maximum marital deduction" shall not be construed as a direction by the Settlor to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. The Trustee shall have the sole discretion to select the assets which shall constitute **the Marital Trust.** In no event, however, shall there be included in this **the Marital Trust** any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this **the Marital Trust** shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind as a part of **the Marital Trust** hereunder at the value of such asset at the date of distribution of such asset. **The Marital Trust** shall be administered as hereinafter set forth. **The Family Trust** shall be the balance of the Trust Estate after the assets have been selected for **the Marital Trust.**

2. **Creation of the Family Trust.** If the Settlor's husband shall not survive the Settlor, **the Family Trust** shall be the entire Trust Estate.

The Marital Trust and **the Family Trust** shall be administered as hereinafter set forth.

ARTICLE IX

The Family Trust Introductory Provision. **The Family Trust** shall be held, administered and distributed as follows:

1. **Payment to Husband of All Income.** If the Settlor's husband shall survive the Settlor, then commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's husband during his lifetime all the net income from **the Family Trust** in convenient installments but no less frequently than quarter-annually.

2. **Discretionary Payments of Principal for Husband.** If the Settlor's husband shall survive the Settlor, and if there is no principal remaining in the Marital Trust, the Trustee may pay to or apply for the benefit of the Settlor's husband during his lifetime, such sums from the principal of **the Family Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's husband, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's husband known to the Trustee.

3. **Outright Final Distribution if Husband is Deceased.** Upon or after the death of the survivor of the Settlor's husband and the Settlor, **the Family Trust** shall be distributed outright and free of trust to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares; provided, however, if one of these individuals are deceased then the issue of the deceased individual surviving the Settlor and the Settlor's husband shall take per stirpes the share their parent would have taken had he or she survived the Settlor and the Settlor's husband. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to the Settlor's husband's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

ARTICLE X

The Marital Trust Introductory Provision. **The Marital Trust** shall be held, administered and distributed as follows:

1. **Direction to Pay All Income to Husband.** Commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's husband during his lifetime all the net income from **the Marital Trust** in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of the Settlor's husband shall be paid with the entire remaining principal as provided in this **the Marital Trust**.

2. **Discretionary Payments of Principal by Trustee for Benefit of Husband.** In addition, the Trustee may pay to or apply for the benefit of the Settlor's husband such sums from the principal of **the Marital Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of

the Settlor's husband, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's husband known to the Trustee.

3. **Power in Husband to Cause Nonproductive Property to Be Made Productive.** The Settlor's husband may at any time by written notice, require the Trustee either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

4. **Payment of Death Taxes From the Marital Trust on Death of Husband.** Unless the Settlor's husband's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of **the Marital Trust** be paid otherwise, the Trustee shall pay to the executors or administrators of the estate of the husband for the purposes of paying such taxes, the amount by which such taxes assessed by reason of the Settlor's husband's death shall be increased as a result of the inclusion of the assets of **the Marital Trust** in his estate for such tax purposes.

5. **Trust Property to Be Added to the Family Trust on Husband's Death.** Upon the death of the Settlor's husband, the entire remaining principal of **the Marital Trust** shall be added to and become a part of **the Family Trust** and shall be held and administered or distributed in whole or in part, as if it had been an original part of **the Family Trust.**

ARTICLE XI

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

1. **Individual Trustees Succession.** If **STEPHEN D. WARD** should fail to qualify as successor Trustee hereunder, or for any reason should cease to act in such capacity, the successor or substitute Trustee who shall also serve without bond shall be the Settlor's brother **ROBERT A. GOEKEL.**

2. **Final Succession If Individual Successor Trustee Cannot Act.** If **STEPHEN D. WARD** and **ROBERT A. GOEKEL** should fail to qualify as individual successor Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** If any individual Trustee named herein should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining Trustees named herein shall continue to serve without a successor or substitute.

3. **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

4. **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees. Provided, however, that if only two Trustees shall be serving as co-Trustees, then the Trustees shall act with unanimity on all actions, unless the co-Trustees shall have otherwise agreed in writing.

5. **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

6. **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ARTICLE XII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIII

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

1. To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

3. To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

4. To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

5. To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

6. To sell or exercise stock subscription or conversion rights.

7. To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

8. To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

9. To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

10. To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

11. To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12. To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

13. To continue and operate any business owned by the Settlor at the Settlor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

14. To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

15. To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

16. In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

17. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

18. To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

19. To determine what shall be fairly and equitably charged or credited to income and what to principal.

20. To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

21. To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

22. In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

23. To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's executors or administrators and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's executors or administrators and the Trustee are the same shall in no way affect the validity of this provision.

24. To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's executors or administrators and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

25. To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Executors, donors, insurance companies and other parties adding property to the Trust Estate.

26. To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

27. To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

28. To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an

inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

29. If the Trustee shall act as the Executor of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Executor will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to the **Family Trust**, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Executor deems in the best interest of the Settlor's estate.

ARTICLE XIV

Trustee's Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence. Provided, however, the Trustee shall not exercise this power in any way which would deprive the husband under the Marital Trust of the beneficial enjoyment of the Marital Trust and the husband shall have the right to limit, restrict or terminate the Trustee's exercises of this power if they interfere with such beneficial enjoyment.

ARTICLE XV

Marital Deduction Savings Clause for the Marital Trust. It is expressly provided that the grant of rights, powers, privileges and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust Agreement or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in **the Marital Trust** hereof. It is the Settlor's intention that the Settlor's husband under the provisions of **the Marital Trust** have substantially that degree of beneficial enjoyment of the Trust Estate during his lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and the Trustee shall not exercise its discretion in a manner which is not in accord with this expressed intention. The Trustee shall invest the Trust Estate so it will produce for the Settlor's husband during his lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that the Trustee shall not in the exercise of its discretion make any determination inconsistent with the foregoing.

ARTICLE XVI

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of

Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XVII

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that the Trustee shall not make any payment from the Marital Trust under (3) above.

ARTICLE XVIII

Power of Trustee to Resign During Settlor's Lifetime. Any Trustee may resign this trusteeship during the Settlor's lifetime by giving the Settlor Thirty (30) days notice in writing delivered to the Settlor in person or mailed to the Settlor's last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, the Settlor shall appoint a successor Trustee. Upon the failure of the Settlor to appoint a successor Trustee who accepts the trust within Thirty (30) days from the time notice was delivered in person or mailed to the Settlor, the Trustee may resign to the court having jurisdiction over this trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee which shall be an individual as successor to an individual trustee or a bank or trust company qualified to do business in the state of the Settlor's domicile as successor to a corporate trustee. Upon the appointment of and acceptance by the successor Trustee, the original Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Settlor, whereupon its resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIX

Settlor During Lifetime to Designate Substitute or Successor Trustee. The Settlor during the Settlor's lifetime may name a substitute or successor Trustee by delivery to any Trustee herein a notice naming the successor or substitute Trustee and indicating an intent to replace the Trustee named. Upon receipt of such notice the Trustee named shall pay over, deliver, assign, transfer or convey to such substitute or successor Trustee (which accepts the appointment as trustee), the Trust Estate and make a full and proper accounting to the Settlor, whereupon the Trustee named shall be discharged and have no further responsibility under this Trust Agreement. Upon the failure of the Trustee to make such conveyance the Settlor may apply to the court having jurisdiction of this trust and such court may compel the conveyance by the Trustee. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Trust, "children" of the Settlor means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** For purposes of this Trust, "children" of the Settlor's husband means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XXI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," "qualified terminable interest," "qualified terminable interest property," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which

the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XXII

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XXIII

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XXIV

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XXV

Agreement for Mutual Wills and Trusts. The **Agreement for Mutual Wills and Trusts** dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this First Amendment and Restatement of Trust Agreement of Nancy L. Ward.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

Jeanne A. Pusey

Magdalene Craig

Jeanne A. Pusey

Magdalene Craig

Nancy L. Ward

NANCY L. WARD, SETTLOR

Nancy L. Ward

NANCY L. WARD, TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

Personally appeared the undersigned witness and made oath that S he saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Magdalena

Sworn to before me this
21st day of April, 2005

Notary Public for South Carolina

My Commission expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by **NANCY L. WARD**, as Settlor and Trustee, to be the free and voluntary act and deed of the Settlor and Trustee.

WITNESS my signature this 21st day of April, 2005.

Signature of Notary Public

Brett A. Blakely
Typed Name of Notary Public

Notary Public for: South Carolina
My commission expires: July 24, 2012

EXHIBIT 6

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AGREEMENT FOR MUTUAL WILLS AND TRUSTS

THIS AGREEMENT FOR MUTUAL WILLS AND TRUSTS made this 21st day of April, 2005, between Stephen D. Ward of the County of Charleston, State of South Carolina (hereinafter called "Husband") and Nancy L. Ward of the County of Charleston, State of South Carolina (hereinafter called "Wife").

I. DEFINITIONS. In addition to any other terms whose definitions are fixed and defined by this Agreement, each of the following defined terms, when used in this Agreement with an initial capital letter, shall have the meaning ascribed thereto by this paragraph:

1.1 "Agreement" means this Agreement for Mutual Wills and Trusts together with all exhibits attached hereto.

1.2 "Husband" means Stephen D. Ward.

1.3 "Husband's Trust" means the Trust Agreement of Stephen D. Ward of even date herewith, a copy of which is attached hereto as Exhibit 1.

1.4 "Husband's Will" means the Last Will and Testament of Stephen D. Ward of even date herewith, a copy of which is attached hereto as Exhibit 2.

1.5 "Parties" means Stephen D. Ward and Nancy L. Ward.

1.6 "Predecessor" means that person, as between the Husband and the Wife, who is first to die.

1.7 "Property" means all of the property of the Survivor at time of the Predecessor's death, together with all property acquired by the Survivor because of the Predecessor's death.

1.8 "Survivor" means that person, as between the Husband and the Wife, who is last to die.

1.9 "Wife" means Nancy L. Ward.

1.10 "Wife's Trust" means the Nancy Diemer Trust Dated April 28, 1998, as amended by the First Amendment and Restatement of Trust Agreement of Nancy L. Ward of even date herewith, copies of which are attached hereto as Exhibit 3 and Exhibit 4, respectively.

1.11 "Wife's Will" means the Last Will and Testament of Nancy L. Ward of even date herewith, a copy of which is attached hereto as Exhibit 5.

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EXHIBIT
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II. RECITALS.

2.1 Husband and Wife are now married.

2.2. Husband and Wife each have children from a former marriage.

2.3 Husband and Wife mutually desire for the Survivor to have full use of the Property during his or her life with the Property after the death of the Survivor to be distributed as provided for in the Trust Agreement of Stephen D. Ward (dated as of even date herewith) and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (dated as of even date herewith).

2.4 Husband and Wife have executed their Wills and Trusts, copies of which have been annexed hereto as Exhibits 1 through 5.

2.5 The Wills and Trusts of the Parties have been made as they are on the condition that the disposition of the Property be made according to their Wills and Trusts, unless this Agreement is altered, amended or revoked as provided for hereinafter.

2.6 This Agreement is made to insure that the mutual plan of the Parties shall not be altered by acts subsequent to date hereof, except as agreed upon between the Parties.

III. ALTERATION, AMENDMENT AND REVOCATION OF WILLS. The Parties mutually covenant with each other and agree that:

3.1 While both Husband and Wife are living, except by amendment, modification or revocation of this Agreement as hereinafter provided, neither he nor she shall in any manner alter, amend or revoke his or her Will or Trust, including amendment by codicil, alteration by defacement, or revocation by destruction.

3.2 Upon the Predecessor's death, this Agreement and the Survivor's Will and Trust shall become irrevocable and the Survivor shall have no right or power to thereafter alter, amend or revoke this Agreement or his or her Will or Trust.

IV. SURVIVOR'S AFFIRMATIVE COVENANTS. The Parties mutually covenant with each other and agree that if he or she is the Survivor of them:

4.1 He or she will take such measures as may be necessary or required to maintain his or her Will and Trust in full force until his or her death and as will maintain title to the Property in a form that shall cause the same, at the Survivor's death, to be disposed of according to the terms and provisions of his or her Will and Trust annexed hereto.

4.2 If he or she remarries after the death of the Predecessor, he or she will:

4.2.1 Thereafter ratify his or her Will and Trust in the form and with the provisions contained in his or her Will and Trust annexed hereto; and

4.2.2 As a condition of such re-marriage, require any person he or she re-marries to legally and unconditionally waive his or her right to an Elective Share in the Property provided to them under S.C. Code Ann. Section 62-2-201 (1976, as amended from time to time).

V. NEGATIVE COVENANTS. The Parties mutually covenant with each other and agree that if he or she is the survivor of them, he or she will not create, commit, permit, or suffer to exist:

5.1 Any condition that would alter the plan of distribution contained in his or her Will or Trust annexed hereto;

5.2 Any condition that would cause the alteration, amendment or revocation of his or her Will or Trust annexed hereto;

5.3 The dissipation of any of the Property other than through consumption by him or her;

5.4 Any transfer of the Property, or any part thereof from the Survivor to any other person, including any gift to a spouse, child or relative, provided, nothing herein contained shall be construed as prohibiting him or her from making customary and reasonable gifts to a spouse or child;

5.5 Any transfer of title to the Property or any part thereof to the name or joint name of any other person or party;

5.6 Any transfer of title to the Property, or any part thereof, in such manner as would cause the Property to be transmitted upon the Survivor's death, by any means other than through the provisions of his or her Will or Trust annexed hereto; and

5.7 Any investment of the Property or any part thereof, in any form of investment that would or may cause the same to be transmitted upon his or her death through any means other than according to the terms and provisions of his or her Will or Trust annexed hereto.

VI. FORM OF AMENDMENT OR MODIFICATION. The ability of one of the Parties to this Agreement to unilaterally rescind and revoke this Agreement and their Will or Trust by giving notice to the non-revoking person before death as permitted in *Wilson v. Gordon*, 53 S.E. 79 (S.C. 1905), is not a sufficient method to allow the parties to this Agreement to revoke their respective Will or Trust and this Agreement. No agreement between the Parties shall be effective to alter, amend, modify or revoke this Agreement, unless such Agreement is reduced to writing and signed by both Parties.

VII. MISCELLANEOUS.

7.1 Governing Law. This Agreement is made and shall be construed under and in accordance with the laws of the State of South Carolina.

7.2 Non-assignability. This Agreement shall not be assignable and any attempt to assign the same by either party shall be ineffective, null and void.

7.3 Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Parties and contains the sole and entire understanding between them with regard to matters contained herein. All promises, inducements, offers, agreements, commitments and representations heretofore made between such Parties are merged into this Agreement.

7.4 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if such exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

7.5 Captions. All captions, headings, paragraph and subparagraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the day and year first written above.

WITNESSES:

Jeanne A. Pusey

Magdalene Ely

S. D. Ward
STEPHEN D. WARD

Nancy L. Ward
NANCY L. WARD

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned and made oath that (s)he saw the within named Stephen D. Ward and Nancy L. Ward, sign, seal and as their act and deed deliver the within written instrument and that (s)he with Jeanne Pusey witnessed the execution thereof.

Magdalene Ely

SWORN to before me this 21st day of April, 2005.

Notary Public for South Carolina
My Commission Expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

The undersigned acknowledge:

1. The foregoing Agreement for Mutual Wills and Trusts was prepared by Brett A. Bluestein, attorney at law.

2. The Wills of the undersigned were prepared by Brett A. Bluestein, attorney at law.

3. The Trust Agreement of Stephen D. Ward and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (collectively, the "Trusts") were prepared by Brett A. Bluestein, attorney at law.

4. The foregoing Agreement for Mutual Wills and Trusts, the Wills and the Trusts were prepared based on information provided to the drafter by and at the direction of the undersigned.

5. The undersigned acknowledge that we have been advised by Brett A. Bluestein, attorney at law, and we understand that he as the drafter of these instruments has a conflict of interest; that our individual and collective interests may be best served by the employment of separate and independent counsel for each of us; we acknowledge the existence of a conflict of interest between us; in spite of the advice and notice of Brett A. Bluestein, attorney at law, we have requested him to prepare the Agreement for Mutual Wills and Trusts, the Wills and the Trusts for us and we, and each of us, do knowingly consent to his drafting, presenting and interpreting the same for and to us; and, each of us do hereby waive and release the said Brett A. Bluestein from any claim we may have because of the drafting of the Agreement for Mutual Wills and Trusts the Wills and the Trusts and presenting the same to us with knowledge that a conflict of interest, actual or potential, legally exists between us.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the 21st day of April, 2005.

In the Presence of:

Joann A. Pusey

Magdalena Patty

S. D. Ward
STEPHEN D. WARD

Nancy L. Ward
NANCY L. WARD

EXHIBIT 1

Trust Agreement of Stephen D. Ward

EXHIBIT 2

Last Will and Testament of Stephen D. Ward

EXHIBIT 3

Nancy Diemer Trust

EXHIBIT 4

First Amendment and Restatement of Trust Agreement of Nancy L. Ward

EXHIBIT 5

Last Will and Testament of Nancy L. Ward

EXHIBIT 7

BP0274483

RMC Bk 0274 Pg 483 : Pg 1 *

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PROBATE COURT

IN THE MATTER: ESTATE OF NANCY L. WARD
CASE NUMBER: 2011 ES-10-000965

BP0277830

RE-REC Bk 0277 Pg 830 : Pg 1 *

DEED OF DISTRIBUTION

WHEREAS, Nancy L. Ward, the decedent, departed this life on June 4, 2011, testate and seized and possessed of the real property hereinbelow described; and

WHEREAS, the Estate of decedent is being administered in the Probate Court for Charleston County, South Carolina under Case No. 2011 ES-10-000965; and

WHEREAS, the undersigned Stephen D. Ward ("Personal Representative") is the duly appointed Personal Representative of the Estate of Nancy L. Ward; and

WHEREAS, the Grantee herein is the beneficiary of the Decedent.

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release the undivided one-half (1/2) interest owned by Nancy L. Ward, subject to any and all Restrictions, Covenants, Conditions, Easements, Rights of Way, and all other matters affecting the subject property of record, in the Office of the RMC for Charleston County, South Carolina, unto **STEPHEN D. WARD, TRUSTEE OF THE NANCY L. WARD FAMILY TRUST UNDER FIRST AMENDMENT AND RESTATEMENT OF TRUST AGREEMENT OF NANCY L. WARD DATED APRIL 21, 2005**, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO
AND MADE A PART HEREOF BY THIS REFERENCE

TOGETHER with, all and singular, the said Premises before mentioned unto the said, * STEPHEN D. WARD, TRUSTEE OF THE NANCY L. WARD FAMILY TRUST UNDER FIRST AMENDMENT AND RESTATEMENT OF TRUST AGREEMENT OF NANCY L. WARD DATED APRIL 21, 2005, its successors and assigns, forever.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

* RE-RECORDING TO CORRECT SCRIVENER'S ERROR IN THE NAME OF THE PERSONAL REPRESENTATIVE AND TRUSTEE

EXHIBIT 7 tabbies

IN WITNESS WHEREOF, the undersigned as the Personal Representative of the Estate of Nancy L. Ward, has executed this Deed of Distribution this 24 day of August in the year of our Lord two thousand and twelve.

WITNESSES:

Stacey Gray

Rhonda R. Dailey

ESTATE OF NANCY L. WARD

By: S. D. Ward

Stephen D. Ward

Its: Personal Representative

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Stephen D. Ward as Personal Representative of the Estate of Nancy L. Ward, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 24 day of August, 2012

Rhonda R. Dailey

Notary Public for South Carolina

My commission expires: 12/16/2012

RMC Bk 0274 Pg 483 ; pg 2 *

RE-REC Bk 0277 Pg 830 ; pg 2 *

RMC Bk 0274 Pg 483 : pg 3 *

RE-REC Bk 0277 Pg 830 : pg 3 *

EXHIBIT "A"

ALL that certain lot, piece or parcel of land, situate, lying and being on Seabrook Island, Charleston County, South Carolina, and known and designated as **Lot 8, Block 24**, on a plat by E.M. Seabrook, Jr., C.E., and L.S, entitled: "SEABROOK ISLAND CHARLESTON COUNTY, SOUTH CAROLINA PLAT OF LOTS 1-11 BLOCK 24 AND LOTS 1-11 BLOCK 25" dated January 19, 1978 and recorded February 10, 1978 in Plat Book AK, Page 81, in the RMC Office for Charleston County, S.C. SAID lot having the size, shape, dimensions, buttings, and boundings more or less as are shown on said plat, which is specifically incorporated herein by reference.

SUBJECT to any and all Restrictions, Covenants, Conditions, Easements, Rights of Way, and all other matters affecting the subject property of record, in the Office of the RMC for Charleston County, South Carolina.

BEING the same undivided one-half interest conveyed to Nancy L. Ward by deed of Stephen D. Ward dated April 27, 2001, and recorded May 1, 2001, in Book F-370, Page 140, in the RMC Office for Charleston County, S.C.

TMS No. 147-11-00-056

Grantee's address: 2412 High Hammock Road
Seabrook Island SC 29455

RMC Bk 0274 Pg 483 : pg 4 *

RE-REC Bk 0277 Pg 830 : pg 4 *

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT RE DEED RECORDING FEE

PERSONALLY APPEARED before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred by STEPHEN D. WARD, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF NANCY L. WARD to STEVEN D. WARD, TRUSTEE OF THE NANCY L. WARD FAMILY TRUST UNDER FIRST AMENDMENT AND RESTATEMENT OF TRUST AGREEMENT OF NANCY L. WARD DATED APRIL 21, 2005 on August ____, 2012, is known as 2412 High Hammock Road, Seabrook Island, Charleston County, South Carolina.
3. CHECK ONE of the following:
   (a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   (c) ☒ EXEMPT from the deed recording fee because of ; if exempt, skip items 4-7 and go to item 8 of this Affidavit.
4. Check one of the following if either 3(a) or 3(b) has been checked:
   (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.
   (b) ☐ The fee is computed on the fair market value of the realty which is $_____.
   (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.
5. Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If YES, the amount of the outstanding balance of this lien or encumbrance is $_____.
6. The DEED Recording Fee is computed as follows:
   (a) $_____ the amount listed in 4 above; LESS
   (b) $ -0- _____, the amount listed in 5 above (if none, show 0);
   (c) $_____, *Subtract 6(b) from 6(a) and place result.*
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney
8. Check if Property other than Real Property is being transferred on this Deed.
   (A) ☐ Mobile Home
   (B) ☐ Other
9. ☒ DEED OF DISTRIBUTION – ATTORNEY'S AFFIDAVIT: Estate of Nancy L. Ward deceased CASE NUMBER 2011 ES-10-000965 Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Representative in the Estate of Nancy L. Ward deceased and that the grantee(s) therein are correct and confirm to the estate file for the above named decedent.
10. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN TO before me this
24 day of August 2012.

Notary Public for South Carolina
Commission Expires: 11-13-12

Rhonda R. Tapley
Rhonda R. Tapley

CHARLESTON 339722v1

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
MCNAIR LAW FIRM, P.A.

100 CALHOUN ST.
CHARLESTON SC 29401 (BOX)

RECORDED

Date:	August 29, 2012
Time:	3:45:12 PM

Book	Page	DocType
0274	483	Deed/Dist

Charlie Lybrand, Register
Charleston County, SC

MAKER:
WARD NANCY L EST

RECIPIENT:
WARD STEPHEN D TR AL

Original Book:

Original Page:

Note:

# of Pages: 5

Recording Fee	$ 10.00
State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00

DRAWER: Drawer 1
CLERK: KLH

DO NOT STAMP THERE
RECEIVED FROM RMC
AUG 31 2012
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

UPDATED
PID VERIFIED BY ASSESSOR
REP
DATE AUG 31 2012
ASTRJB
35

0274	483	08/29/2012	5
Book	Page	Recorded Date	# Pgs

		D	15:45:12
Original Book	Original Page	Doc Type	Recorded Time

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

RMC Bk 0274 Pg 483 : pg 5 *

RE-REC Bk 0277 Pg 830 : pg 5 *

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
MCNAIR LAW FIRM, P.A.

100 CALHOUN ST.
CHARLESTON SC 29401 (BOX)

RECORDED

Date:	September 14, 2012
Time:	1:38:57 PM

Book	Page	DocType
0277	830	Re-Rec/Deed/Dist

Charlie Lybrand, Register
Charleston County, SC

MAKER:
WARD NANCY L EST

RECIPIENT:
WARD STEPHEN D TR AL

Original Book: 0274

Original Page: 483

Note:

# of Pages: 6

Recording Fee	$	10.00
State Fee	$	-
County Fee	$	-
Extra Pages	$	-
Postage	$	-
Chattel	$	-
TOTAL	$	10.00

DRAWER: Drawer 1
CLERK: KLH

AUDITOR'S STAMP HERE
RECEIVED FROM RMC
SEP 18 2012
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR
REP MKD
DATE 9/18/12
35

RE-REC Bk 0277 Pg 830 : pg 6 *

0277	830	09/14/2012	6
Book	Page	Recorded Date	# Pgs

0274	483	D	13:38:57
Original Book	Original Page	Doc Type	Recorded Time

CERTIFIED TRUE COPY
ELAINE H. BOZMAN
REGISTER OF DEEDS
CHARLESTON COUNTY, SC
DATE: Jan 31, 2018
BY Nancy P Wagner

ESTATE PLANNING DOCUMENTS
FOR
STEPHEN D. WARD & NANCY L. WARD

EXHIBIT
8

ESTATE PLANNING DOCUMENTS
FOR
STEPHEN D. WARD & NANCY L. WARD

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LAST WILL AND TESTAMENT
OF
STEPHEN D. WARD

Introductory Clause. I, **STEPHEN D. WARD**, a resident of and domiciled in the County of Charleston and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to **NANCY L. WARD.**

I have five living children: **STEPHANIE L. WARD; DAVID D. WARD; BRIAN C. WARD; STEPHEN A. WARD**; and **JEREMY W. WARD**. My children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Will as they will be provided for by their mother with assets she received from me pursuant to our divorce. Their omission is intentional.

I have two living step-children: **ELIZABETH A. DIEMER**; and **GARETT C. DIEMER.**

ITEM I

Direction to Pay Debts with Discretionary Refinancing by Executor. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Executor may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

1. I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Executor within ninety (90) days after my Executor's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered

memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

2. In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my wife, **NANCY L. WARD**, for her lifetime, if she shall survive me. If my wife shall not survive me or upon my wife's death, I give and bequeath my personal and household effects that were acquired by me (prior to my marriage to my wife or by inheritance during my marriage to my wife) to my children **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD** in approximately equal shares. If my wife shall not survive me or upon my wife's death, I give and bequeath my personal and household effects that were acquired by me and my wife during our marriage to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares.

However, if any of the aforementioned individuals predecease the survivor of me and my wife, then the issue of the deceased individual surviving me and my wife shall take per stirpes the share their parent would have taken had he or she survived me and my wife. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of me and my wife and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to my issue. If **ELIZABETH A. DIEMER** predeceases the survivor of me and my wife and has no issue then living, the shares of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of me and my wife and has no issue then living, the shares of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

If any of the aforementioned individuals do not agree to the division of the property among themselves, my Executor shall make such division among them, the decision of my Executor to be in all respects binding upon them. If any beneficiary hereunder is a minor, my Executor may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Executor. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM III

Pour-Over Gift to Trustee of Testator's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to the successor Trustee under that certain Trust Agreement between me as Settlor and me as Trustee executed prior to the execution of this Will on the 21st day of April, 2005. My Trustee shall add the property bequeathed and devised by this Item to the principal of

the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM IV

Naming the Executor, Executor Succession, Executor's Fees and Other Matters. The provisions for naming the Executor, Executor succession, Executor's fees and other matters are set forth below:

1. **Naming an Individual Executor.** I hereby nominate, constitute and appoint as Executor of this my Last Will and Testament **NANCY L. WARD** and direct that she shall serve without bond.

2. **Naming Individual Successor or Substitute Executor.** If my individual Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the successor or substitute Executor who shall also serve without bond shall be **DUDLEY M. WARD.**

3. **Final Succession If Individual Successor Executor Cannot Act.** If my individual successor Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Executors who shall also serve without bond shall be **STEPHANIE L. WARD, DAVID D. WARD,** and **BRIAN C. WARD.** If any individual Executor named herein should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the remaining individual Executor(s) named herein shall continue to serve without a successor or substitute.

4. **Fee Schedule for Individual Executor.** For its services as Executor, my individual Executor shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

5. **Executor Voting Rights.** If there is more than one Executor serving, then the vote of the Executors for any action hereunder must be by majority action of the Executors. Provided, however, that if only two Executors shall be serving as co-Executors, then the Executors shall act with unanimity on all actions, unless the co-Executors shall have otherwise agreed in writing.

6. **Delegation Among Executors.** When there is more than one individual or entity serving as co-Executors, then any Executor may delegate to any other Executor the power to exercise any or all of the powers granted to the Executors in this Last Will and Testament, including those powers, which are discretionary, to the extent allowed by law. Any delegating Executor may revoke any such delegation with written notice to the other serving co-Executors. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Executor. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Executor receiving such delegation with the same force and effect as if the delegating Executor had personally joined in the exercise of such power. Provided, however, that if such Executor, or co-

Executor, shall also be a current beneficiary and such delegation shall be deemed to create in that Executor a right that shall be deemed to be a general power of appointment, then such individual Executor shall not be vested with such right to delegate such power.

ITEM V

Definition of Executor. Whenever the word "Executor" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor named herein and to any successor or substitute Executor acting hereunder, and such successor or substitute Executor shall possess all the rights, powers and duties, authority and responsibility conferred upon the Executor originally named herein.

ITEM VI

Powers for Executor. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Executors generally, my Executor is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Executor may seem best, and to execute and deliver any and all instruments and to do all acts which my Executor may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Executor to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Executor acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Executor deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Executor deems advisable any other income or resources of the beneficiary or his or her parents known to my Executor. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. Whenever my Executor determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created

hereunder, then the amounts shall be paid out by my Executor in such of the following ways as my Executor deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Executor using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Executor as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Executor.

ITEM VIII

Discretion Granted to Executor in Reference to Tax Matters. My Executor as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Executor believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Executor shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Executor shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my wife. If my estate plan includes a revocable trust agreement and it contains directions to my Executor, I direct my Executor to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Will, my "children" mean **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** For purposes of this Will, "children" of my wife means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have

the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Statement by Testator of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

ITEM XII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testator. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIII

Agreement for Mutual Wills and Trusts. The Agreement for Mutual Wills and Trusts dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this Last Will and Testament.

Testimonium, Attestation and Self-Proving Affidavit. I, **STEPHEN D. WARD**, the Testator, sign my name to this instrument this 21st day of April, 2005, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

S. D. Ward
STEPHEN D. WARD

We, Jeanne A. Pusey and Magdalena Cruz, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Jeanne A. Pusey
(Witness)

Magdalena Cruz
(Witness)

The State of South Carolina

County of Charleston

Subscribed, sworn to, and acknowledged before me by **STEPHEN D. WARD**, the Testator, and subscribed and sworn to before me by Jeanne A. Pusey and Magdalena Cruz, witnesses, this 21st day of April, 2005.

Brian A. Thiesen (Seal)
Notary Public for South Carolina

My Commission Expires: July 24, 2012

LAST WILL AND TESTAMENT
OF
NANCY L. WARD

Introductory Clause. I, **NANCY L. WARD**, a resident of and domiciled in the County of Charleston and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I am married to **STEPHEN D. WARD**.

I have two living children: **ELIZABETH A. DIEMER**; and **GARETT C. DIEMER**.

I have five living step-children: **STEPHANIE L. WARD**; **DAVID D. WARD**; **BRIAN C. WARD**; **STEPHEN A. WARD**; and **JEREMY W. WARD**. My step-children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Will as they will be provided for by their mother with assets she received from my husband pursuant to their divorce. Their omission is intentional.

ITEM I

Direction to Pay Debts with Discretionary Refinancing by Executor. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Executor may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

1. I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Executor within ninety (90) days after my Executor's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered

memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

2. In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my husband, **STEPHEN D. WARD**, for his lifetime, if he shall survive me. If my husband shall not survive me or upon my husband's death, I give and bequeath my personal and household effects that were acquired by me (prior to my marriage to my husband or by inheritance during my marriage to my husband) to my children **ELIZABETH A. DIEMER** and **GARRET C. DIEMER** in approximately equal shares. If my husband shall not survive me or upon my husband's death, I give and bequeath my personal and household effects that were acquired by me and my husband during our marriage to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER**, in five (5) approximately equal shares.

However, if any of the aforementioned individuals predecease the survivor of me and my husband, then the issue of the deceased individual surviving me and my husband shall take per stirpes the share their parent would have taken had he or she survived me and my husband. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of me and my husband and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to my husband's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of me and my husband and has no issue then living, the shares of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of me and my husband and has no issue then living, the shares of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

If any of the aforementioned individuals do not agree to the division of the property among themselves, my Executor shall make such division among them, the decision of my Executor to be in all respects binding upon them. If any beneficiary hereunder is a minor, my Executor may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Executor. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM III

Pour-Over Gift to Trustee of Testatrix's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to the successor Trustee under the Nancy Diemer Trust Dated April 28, 1998 between me as Settlor and me as Trustee executed prior to the execution of this Will, as amended by the First Amendment and Restatement of Trust Agreement dated as of even date

herewith. My Trustee shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM IV

Naming the Executor, Executor Succession, Executor's Fees and Other Matters. The provisions for naming the Executor, Executor succession, Executor's fees and other matters are set forth below:

1. **Naming an Individual Executor.** I hereby nominate, constitute and appoint as Executor of this my Last Will and Testament **STEPHEN D. WARD** and direct that he shall serve without bond.

2. **Naming Individual Successor or Substitute Executor.** If my individual Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the successor or substitute Executor who shall also serve without bond shall be **ROBERT A. GOELKEL.**

3. **Final Succession If Individual Successor Executor Cannot Act.** If my individual successor Executor should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Executors who shall also serve without bond shall be **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** If any individual Executor named herein should fail to qualify as Executor hereunder, or for any reason should cease to act in such capacity, the remaining individual Executor named herein shall continue to serve without a successor or substitute.

4 **Fee Schedule for Individual Executor.** For its services as Executor, my individual Executor shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

5 **Executor Voting Rights.** If there is more than one Executor serving, then the vote of the Executors for any action hereunder must be by majority action of the Executors. Provided, however, that if only two Executors shall be serving as co-Executors, then the Executors shall act with unanimity on all actions, unless the co-Executors shall have otherwise agreed in writing.

6 **Delegation Among Executors.** When there is more than one individual or entity serving as co-Executors, then any Executor may delegate to any other Executor the power to exercise any or all of the powers granted to the Executors in this Last Will and Testament, including those powers, which are discretionary, to the extent allowed by law. Any delegating Executor may revoke any such delegation with written notice to the other serving co-Executors. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Executor. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Executor receiving such delegation with the same force and effect as if the delegating Executor had personally joined in the exercise of such power. Provided, however, that if such Executor, or co-

Executor, shall also be a current beneficiary and such delegation shall be deemed to create in that Executor a right that shall be deemed to be a general power of appointment, then such individual Executor shall not be vested with such right to delegate such power.

ITEM V

Definition of Executor. Whenever the word "Executor" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Executor named herein and to any successor or substitute Executor acting hereunder, and such successor or substitute Executor shall possess all the rights, powers and duties, authority and responsibility conferred upon the Executor originally named herein.

ITEM VI

Powers for Executor. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Executors generally, my Executor is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Executor may seem best, and to execute and deliver any and all instruments and to do all acts which my Executor may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Executor to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Executor acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Executor deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Executor deems advisable any other income or resources of the beneficiary or his or her parents known to my Executor. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. Whenever my Executor determines it

appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Executor in such of the following ways as my Executor deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Executor using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Executor as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Executor.

ITEM VIII

Discretion Granted to Executor in Reference to Tax Matters. My Executor as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Executor believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Executor shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Executor shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions and shall have the discretion to file a joint income tax return with my husband. If my estate plan includes a revocable trust agreement and it contains directions to my Executor, I direct my Executor to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Will, my "children" mean **ELIZABETH A. DIEMER** and **GARETT C. DIEMER**. For purposes of this Will, "children" of my husband means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words

which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Statement by Testatrix of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

ITEM XII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIII

Agreement For Mutual Wills and Trusts. The Agreement for Mutual Wills and Trusts dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this Last Will and Testament.

Testimonium, Attestation and Self-Proving Affidavit. I, **NANCY L. WARD**, the Testatrix, sign my name to this instrument this 21st day of April, 2005, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Nancy L. Ward
NANCY L. WARD

We, Jeanne A. Pusey and Magdalena Cruz, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, and in the presence of each other, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Jeanne A. Pusey
(Witness)

Magdalena Cruz
(Witness)

The State of South Carolina

County of Charleston

Subscribed, sworn to, and acknowledged before me by **NANCY L. WARD**, the Testatrix, and subscribed and sworn to before me by Jeanne A. Pusey and Magdalena Cruz, witnesses, this 21st day of April, 2005.

(Seal)
Notary Public for South Carolina

My Commission Expires: July 24, 2012

TRUST AGREEMENT
OF
STEPHEN D. WARD

Introductory Clause. This Trust Agreement of **STEPHEN D. WARD** made this 21st day of April, 2005, between **STEPHEN D. WARD**, hereinafter referred to as the Settlor and **STEPHEN D. WARD**, hereinafter referred to as the Trustee.

The Settlor is married to **NANCY L. WARD** and has five living children: **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, STEPHEN A. WARD** and **JEREMY W. WARD.** The Settlor's children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Trust Agreement as they will be provided for by their mother with assets she received from the Settlor pursuant to their divorce. Their omission is intentional.

The Settlor has two living step-children: **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.**

ARTICLE I

Trustee Succession if Settlor Dies or Becomes Incapacitated. If the Settlor dies or is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of two licensed physicians, unable to properly handle the Settlor's own affairs, then and in that event the Trustee named below shall immediately become the Trustee under this Trust Agreement. The Settlor names the following as successor Trustee:

NANCY L. WARD

Third parties may rely on an affidavit by the Trustee named above stating that the successor Trustee is now acting as Trustee hereunder.

ARTICLE II

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee certain property, and has caused or will cause the Trustee to be designated as beneficiary of certain life insurance policies. These insurance policies, and any other insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE III

Rights of Settlor and Trustee in Insurance Policies. During the Settlor's lifetime, the Settlor shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to the Settlor or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon the Settlor's written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy. However, no revocation of the trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of the Settlor that matures any such policy, the Trustee, in its discretion, either may collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on the Settlor's life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE IV

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

1. During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

2. During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

3. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to engage in additional estate planning to reduce the expected gift and estate tax liability as well as provide for additional resources for family transfers and, if consistent with the Settlor's desires,

charitable purposes. The estate planning, which is specifically authorized, may include the design, implementation, and funding of techniques such as limited partnerships, limited liability companies, lifetime gifts and transfers, qualified personal residence trusts, charitable trusts, family foundations, and other trusts and techniques designed to reduce the total estate and gift taxes anticipated to be paid by the Settlor and the Settlor's estate to increase the expected benefit to the Settlor's family, beneficiaries, and charities, if any.

4. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to (but shall not be required to) make gifts equal to or in excess of the annual gift tax exclusion to the Settlor's children and their issue, and their respective spouses, if appropriate, and in such amounts and upon such terms and conditions as the Trustee, in the Trustee's discretion, shall determine.

ARTICLE V

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. Except as provided for in the **AGREEMENT FOR MUTUAL WILLS AND TRUSTS**, dated as of even date herewith and entered into between the Settlor and the Settlor's wife, **NANCY L. WARD**, the Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE VI

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's executors or administrators, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Ward Family Trust and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make

such payments directly or may pay over the amounts thereof to the executors or administrators of the Settlor's estate. Written statements by the executors or administrators of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Ward Family Trust. The Trustee shall have the power to charge expenses of administration against income or principal, or apportion such expenses; provided, however, this power may not be exercised in a way which would reduce or otherwise adversely affect the marital or charitable deduction otherwise available for federal estate tax purposes. The Trustee shall not exercise this discretion in a manner which is inconsistent with the IRC regulations now in effect or subsequently promulgated.

ARTICLE VII

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **Specific Distribution.** The Charles Schwab & Co., Inc. Account Number 8041-2928 shall be distributed outright and free of trust to the Settlor's children **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** who survive the Settlor, in approximately equal shares; provided, however, the surviving issue of a deceased child shall take per stirpes the share their parent would have taken had he or she survived the Settlor.

(2) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VIII

Upon the death of the Settlor, the Trustee shall divide the Trust Estate (which shall include any property which may be added from the Settlor's general estate) as follows:

1. **Creation of The Marital Trust and The Ward Family Trust.** If the Settlor is survived by the Settlor's wife, **NANCY L. WARD,** the Trustee shall divide the Trust Estate into Two (2) separate shares, hereinafter designated as "**the Marital Trust**" and "**the Ward Family Trust.**" **The Marital Trust** shall be composed of cash, securities or other property of the Trust Estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in the Settlor's federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such estate tax purposes by reason of property or interests in property passing or which have passed to the Settlor's wife otherwise than pursuant to the provisions of this Article; provided, however, the amount for **the Marital Trust** hereunder shall be reduced by the amount, if any, needed to increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on the Settlor's estate. The term "maximum marital deduction" shall not be construed as a direction by the Settlor to exercise any election respecting the deduction of estate

administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. The Trustee shall have the sole discretion to select the assets which shall constitute **the Marital Trust**. In no event, however, shall there be included in this **the Marital Trust** any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this **the Marital Trust** shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind as a part of **the Marital Trust** hereunder at the value of such asset at the date of distribution of such asset. **The Marital Trust** shall be administered as hereinafter set forth. **The Ward Family Trust** shall be the balance of the Trust Estate after the assets have been selected for **the Marital Trust**.

2. **Creation of The Ward Family Trust.** If the Settlor's wife shall not survive the Settlor, **the Ward Family Trust** shall be the entire Trust Estate.

The Marital Trust and **the Ward Family Trust** shall be administered as hereinafter set forth.

ARTICLE IX

The Ward Family Trust Introductory Provision. The Ward Family Trust shall be held, administered and distributed as follows:

1. **Payment to Wife of All Income.** If the Settlor's wife shall survive the Settlor, then commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's wife during her lifetime all the net income from **the Ward Family Trust** in convenient installments but no less frequently than quarter-annually.

2, **Discretionary Payments of Principal for Wife.** If the Settlor's wife shall survive the Settlor, and if there is no principal remaining in the Marital Trust, the Trustee may pay to or apply for the benefit of the Settlor's wife during her lifetime, such sums from the principal of **the Ward Family Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

3. **Outright Final Distribution if Wife is Deceased.** Upon or after the death of the survivor of the Settlor's wife and the Settlor, **the Ward Family Trust** shall be distributed outright and free of trust to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER,** in five (5) approximately equal shares; provided, however, if one of these individuals are deceased then the issue of the deceased individual surviving the Settlor and the Settlor's wife shall take per stirpes the share their parent would have taken had he or she survived the Settlor and the Settlor's wife. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to the Settlor's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C.**

DIEMER, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the survivor of the Settlor and the Settlor's wife and has no issue then living, the share of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

ARTICLE X

The Marital Trust Introductory Provision. **The Marital Trust** shall be held, administered and distributed as follows:

1. **Direction to Pay All Income to Wife.** Commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's wife during her lifetime all the net income from **the Marital Trust** in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of the Settlor's wife shall be paid with the entire remaining principal as provided in this **the Marital Trust.**

2. **Discretionary Payments of Principal by Trustee for Benefit of Wife.** In addition, the Trustee may pay to or apply for the benefit of the Settlor's wife such sums from the principal of **the Marital Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's wife, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's wife known to the Trustee.

3. **Power in Wife to Cause Nonproductive Property to Be Made Productive.** The Settlor's wife may at any time by written notice, require the Trustee either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

4. **Payment of Death Taxes From The Marital Trust on Death of Wife.** Unless the Settlor's wife's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of the Marital Trust be paid otherwise, the Trustee shall pay to the executors or administrators of the estate of the wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of the Settlor's wife's death shall be increased as a result of the inclusion of the assets of **the Marital Trust** in her estate for such tax purposes.

5. **Trust Property to Be Added to The Ward Family Trust on Wife's Death.** Upon the death of the Settlor's wife, the entire remaining principal of **the Marital Trust** shall be added to and become a part of **the Ward Family Trust** and shall be held and administered or distributed in whole or in part, as if it had been an original part of **the Ward Family Trust.**

ARTICLE XI

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

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1. **Individual Trustees Succession.** If **NANCY L. WARD** should fail to qualify as successor Trustee hereunder, or for any reason should cease to act in such capacity, the successor or substitute Trustee who shall also serve without bond shall be the Settlor's brother **DUDLEY M. WARD.**

2. **Final Succession If Individual Successor Trustee Cannot Act.** If **NANCY L. WARD** and **DUDLEY M. WARD** should fail to qualify as individual successor Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD.** If any individual Trustee named herein should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining Trustees named herein shall continue to serve without a successor or substitute.

3. **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

4. **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees. Provided, however, that if only two Trustees shall be serving as co-Trustees, then the Trustees shall act with unanimity on all actions, unless the co-Trustees shall have otherwise agreed in writing.

5. **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

6. **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ARTICLE XII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder.

and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIII

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

1. To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

3. To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

4. To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

5. To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

6. To sell or exercise stock subscription or conversion rights.

7. To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general

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to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

8. To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

9. To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

10. To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

11. To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12. To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

13. To continue and operate any business owned by the Settlor at the Settlor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

14. To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

15. To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

16. In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

17. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

18. To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

19. To determine what shall be fairly and equitably charged or credited to income and what to principal.

20. To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

21. To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

22. In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

23. To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's executors or administrators and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's executors or administrators and the Trustee are the same shall in no way affect the validity of this provision.

24. To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's executors or administrators and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

25. To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as

beneficiary; to execute all necessary receipts and releases to Executors, donors, insurance companies and other parties adding property to the Trust Estate.

26. To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

27. To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

28. To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

29. If the Trustee shall act as the Executor of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer which the Settlor is the transferror for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Executor will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to the Ward Family Trust, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Executor deems in the best interest of the Settlor's estate.

ARTICLE XIV

Trustee's Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence. Provided, however, the Trustee shall not exercise this power in any way which would deprive the wife under the Marital Trust of the beneficial enjoyment of the Marital Trust and the wife shall have the right to limit, restrict or terminate the Trustee's exercises of this power if they interfere with such beneficial enjoyment.

ARTICLE XV

Marital Deduction Savings Clause for the Marital Trust. It is expressly provided that the grant of rights, powers, privileges and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust Agreement or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in **the Marital Trust** hereof. It is the Settlor's intention that the Settlor's wife under the provisions of **the Marital Trust** have substantially that degree of beneficial enjoyment of the Trust Estate during her lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and the Trustee shall not exercise its discretion in a manner which is not in accord with this expressed intention. The Trustee shall invest the Trust Estate so it will produce for the Settlor's wife during her lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that the Trustee shall not in the exercise of its discretion make any determination inconsistent with the foregoing.

ARTICLE XVI

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XVII

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that the Trustee shall not make any payment from the Marital Trust under (3) above.

ARTICLE XVIII

Power of Trustee to Resign During Settlor's Lifetime. Any Trustee may resign this trusteeship during the Settlor's lifetime by giving the Settlor Thirty (30) days notice in writing delivered to the Settlor in person or mailed to the Settlor's last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, the Settlor shall appoint a successor Trustee. Upon the failure of the Settlor to appoint a successor Trustee who accepts the trust within Thirty (30) days from the time notice was delivered in person or mailed to the Settlor, the Trustee may resign to the court having jurisdiction over this trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee which shall be an individual as successor to an individual trustee or a bank or trust company qualified to do business in the state of the Settlor's domicile as successor to a corporate trustee. Upon the appointment of and acceptance by the successor Trustee, the original Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Settlor, whereupon its resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIX

Settlor During Lifetime to Designate Substitute or Successor Trustee. The Settlor during the Settlor's lifetime may name a substitute or successor Trustee by delivery to any Trustee herein a notice naming the successor or substitute Trustee and indicating an intent to replace the Trustee named. Upon receipt of such notice the Trustee named shall pay over, deliver, assign, transfer or convey to such substitute or successor Trustee (which accepts the appointment as trustee), the Trust Estate and make a full and proper accounting to the Settlor, whereupon the Trustee named shall be discharged and have no further responsibility under this Trust Agreement. Upon the failure of the Trustee to make such conveyance the Settlor may apply to the court having jurisdiction of this trust and such court may compel the conveyance by the Trustee. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Trust, "children" of the Settlor means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** For purposes of this Trust, "children" of the Settlor's wife means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XXI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," "qualified terminable interest," "qualified terminable interest property," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XXII

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XXIII

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XXIV

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XXV

Agreement for Mutual Wills and Trusts. The **Agreement for Mutual Wills and Trusts** dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this Trust Agreement of Stephen D. Ward.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

Jeanne A. Pusey

Magdalena Cruz

STEPHEN D. WARD, SETTLOR

Jeanne A. Pusey

Magdalena Cruz

STEPHEN D. WARD, TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

Personally appeared the undersigned witness and made oath that he saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Magdalen Cut

Sworn to before me this

21st day of April, 2005

Notary Public for South Carolina
My Commission expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by **STEPHEN D. WARD**, as Settlor and Trustee, to be the free and voluntary act and deed of the Settlor and Trustee.

WITNESS my signature this 21st day of April, 2005.

Signature of Notary Public

Brett A. Bluestein
Typed Name of Notary Public

Notary Public for: South Carolina
My commission expires: July 24, 2012

FIRST AMENDMENT AND RESTATEMENT
OF
TRUST AGREEMENT
OF
NANCY L. WARD

Introductory Clause. This First Amendment and Restatement of Trust Agreement of **NANCY L. WARD** made this 21st day of April, 2005, between **NANCY L. WARD**, hereinafter referred to as the Settlor and **NANCY L. WARD**, hereinafter referred to as the Trustee.

The Settlor is married to **STEPHEN D. WARD** and has two living children: **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.**

The Settlor has five living step-children: **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, STEPHEN A. WARD** and **JEREMY W. WARD**. The Settlor's husband's children **STEPHEN A. WARD** and **JEREMY W. WARD** and their respective issue shall not receive any benefits under this Trust Agreement as they will be provided for by their mother with assets she received from the Settlor's husband pursuant to their divorce. Their omission is intentional.

WHEREAS, the Settlor and the Trustee entered into the **NANCY DIEMER TRUST** dated April 28, 1998, hereinafter called the Trust Agreement; and

WHEREAS, ARTICLE SEVENTH of the Trust Agreement provided that the Settlor reserved the right to amend in any manner or revoke in whole or in part the Trust Agreement; and

WHEREAS, the Settlor is desirous of modifying and amending the Trust Agreement and the Trustee is agreeable to the modifications and amendments contained herein;

NOW, THEREFORE, IT IS AGREED that the entire Trust Agreement as modified and amended will read as follows:

ARTICLE I

Trustee Succession if Settlor Dies or Becomes Incapacitated. If the Settlor dies or is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of two licensed physicians, unable to properly handle the Settlor's own affairs, then and in that event the Trustee named below shall immediately become the Trustee under this Trust Agreement. The Settlor names the following as successor Trustee:

STEPHEN D. WARD

Third parties may rely on an affidavit by the Trustee named above stating that the successor Trustee is now acting as Trustee hereunder.

ARTICLE II

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee certain property, and has caused or will cause the Trustee to be designated as beneficiary of certain life insurance policies. These insurance policies, and any other insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE III

Rights of Settlor and Trustee in Insurance Policies. During the Settlor's lifetime, the Settlor shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to the Settlor or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon the Settlor's written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy. However, no revocation of the trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of the Settlor that matures any such policy, the Trustee, in its discretion, either may collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on the Settlor's life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE IV

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

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1. During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

2. During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

3. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to engage in additional estate planning to reduce the expected gift and estate tax liability as well as provide for additional resources for family transfers and, if consistent with the Settlor's desires, charitable purposes. The estate planning, which is specifically authorized, may include the design, implementation, and funding of techniques such as limited partnerships, limited liability companies, lifetime gifts and transfers, qualified personal residence trusts, charitable trusts, family foundations, and other trusts and techniques designed to reduce the total estate and gift taxes anticipated to be paid by the Settlor and the Settlor's estate to increase the expected benefit to the Settlor's family, beneficiaries, and charities, if any.

4. During the Settlor's lifetime and in the event that the Settlor is adjudicated to be incompetent or in the event that the Settlor is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of the Trustee, unable to properly handle the Settlor's own affairs, then and in that event the Trustee shall have the authorization to (but shall not be required to) make gifts equal to or in excess of the annual gift tax exclusion to the Settlor's children and their issue, and their respective spouses, if appropriate, and in such amounts and upon such terms and conditions as the Trustee, in the Trustee's discretion, shall determine.

ARTICLE V

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. Except as provided for in the **AGREEMENT FOR MUTUAL WILLS AND TRUSTS**, dated as of even date herewith and entered into between the Settlor and the Settlor's husband, **STEPHEN D. WARD**, the Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE VI

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's executors or administrators, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the **Family Trust** and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the executors or administrators of the Settlor's estate. Written statements by the executors or administrators of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Family Trust. The Trustee shall have the power to charge expenses of administration against income or principal, or apportion such expenses; provided, however, this power may not be exercised in a way which would reduce or otherwise adversely affect the marital or charitable deduction otherwise available for federal estate tax purposes. The Trustee shall not exercise this discretion in a manner which is inconsistent with the IRC regulations now in effect or subsequently promulgated.

ARTICLE VII

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **Specific Distribution**. The Charles Schwab & Co., Inc. Account Number 9091-9831 shall be distributed outright and free of trust to the Settlor's surviving children in approximately equal shares; provided, however, the surviving issue of a deceased child shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If **ELIZABETH A. DIEMER** predeceases the Settlor and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER**, if any, and in default of issue to **GARETT C. DIEMER**. If **GARETT C. DIEMER** predeceases the Settlor and has no issue then living, the share of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER**, if any, and in default of issue to **ELIZABETH A. DIEMER**.

(2) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VIII

Upon the death of the Settlor, the Trustee shall divide the Trust Estate (which shall include any property which may be added from the Settlor's general estate) as follows:

1. **Creation of The Marital Trust and The Family Trust.** If the Settlor is survived by the Settlor's husband, **STEPHEN D. WARD,** the Trustee shall divide the Trust Estate into Two (2) separate shares, hereinafter designated as **"the Marital Trust"** and **"the Family Trust."** **The Marital Trust** shall be composed of cash, securities or other property of the Trust Estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in the Settlor's federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such estate tax purposes by reason of property or interests in property passing or which have passed to the Settlor's husband otherwise than pursuant to the provisions of this Article; provided, however, the amount for **the Marital Trust** hereunder shall be reduced by the amount, if any, needed to increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on the Settlor's estate. The term "maximum marital deduction" shall not be construed as a direction by the Settlor to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. The Trustee shall have the sole discretion to select the assets which shall constitute **the Marital Trust.** In no event, however, shall there be included in this **the Marital Trust** any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this **the Marital Trust** shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind as a part of **the Marital Trust** hereunder at the value of such asset at the date of distribution of such asset. **The Marital Trust** shall be administered as hereinafter set forth. **The Family Trust** shall be the balance of the Trust Estate after the assets have been selected for **the Marital Trust.**

2. **Creation of the Family Trust.** If the Settlor's husband shall not survive the Settlor, **the Family Trust** shall be the entire Trust Estate.

The Marital Trust and **the Family Trust** shall be administered as hereinafter set forth.

ARTICLE IX

The Family Trust Introductory Provision. **The Family Trust** shall be held, administered and distributed as follows:

1. **Payment to Husband of All Income.** If the Settlor's husband shall survive the Settlor, then commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's husband during his lifetime all the net income from **the Family Trust** in convenient installments but no less frequently than quarter-annually.

2. **Discretionary Payments of Principal for Husband.** If the Settlor's husband shall survive the Settlor, and if there is no principal remaining in the Marital Trust, the Trustee may pay to or apply for the benefit of the Settlor's husband during his lifetime, such sums from the principal of **the Family Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor's husband, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's husband known to the Trustee.

3. **Outright Final Distribution if Husband is Deceased.** Upon or after the death of the survivor of the Settlor's husband and the Settlor, **the Family Trust** shall be distributed outright and free of trust to **STEPHANIE L. WARD, DAVID D. WARD, BRIAN C. WARD, ELIZABETH A. DIEMER** and **GARETT C. DIEMER,** in five (5) approximately equal shares; provided, however, if one of these individuals are deceased then the issue of the deceased individual surviving the Settlor and the Settlor's husband shall take per stirpes the share their parent would have taken had he or she survived the Settlor and the Settlor's husband. If any of **STEPHANIE L. WARD, DAVID D. WARD** or **BRIAN C. WARD** predecease the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of such predeceased individual shall be distributed per stirpes to the Settlor's husband's issue. If **ELIZABETH A. DIEMER** predeceases the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of **ELIZABETH A. DIEMER** shall be distributed per stirpes to the issue of **GARETT C. DIEMER,** if any, and in default of issue to **GARETT C. DIEMER.** If **GARETT C. DIEMER** predeceases the survivor of the Settlor and the Settlor's husband and has no issue then living, the share of **GARETT C. DIEMER** shall be distributed per stirpes to the issue of **ELIZABETH A. DIEMER,** if any, and in default of issue to **ELIZABETH A. DIEMER.**

ARTICLE X

The Marital Trust Introductory Provision. The Marital Trust shall be held, administered and distributed as follows:

1. **Direction to Pay All Income to Husband.** Commencing with the date of the Settlor's death, the Trustee shall pay to or apply for the benefit of the Settlor's husband during his lifetime all the net income from **the Marital Trust** in convenient installments but no less frequently than quarter-annually. Any accrued and undistributed income at the death of the Settlor's husband shall be paid with the entire remaining principal as provided in this **the Marital Trust.**

2. **Discretionary Payments of Principal by Trustee for Benefit of Husband.** In addition, the Trustee may pay to or apply for the benefit of the Settlor's husband such sums from the principal of **the Marital Trust** as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of

the Settlor's husband, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor's husband known to the Trustee.

3. **Power in Husband to Cause Nonproductive Property to Be Made Productive.** The Settlor's husband may at any time by written notice, require the Trustee either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

4. **Payment of Death Taxes From the Marital Trust on Death of Husband.** Unless the Settlor's husband's Will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of **the Marital Trust** be paid otherwise, the Trustee shall pay to the executors or administrators of the estate of the husband for the purposes of paying such taxes, the amount by which such taxes assessed by reason of the Settlor's husband's death shall be increased as a result of the inclusion of the assets of **the Marital Trust** in his estate for such tax purposes.

5. **Trust Property to Be Added to the Family Trust on Husband's Death.** Upon the death of the Settlor's husband, the entire remaining principal of **the Marital Trust** shall be added to and become a part of **the Family Trust** and shall be held and administered or distributed in whole or in part, as if it had been an original part of **the Family Trust.**

ARTICLE XI

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

1. **Individual Trustees Succession.** If **STEPHEN D. WARD** should fail to qualify as successor Trustee hereunder, or for any reason should cease to act in such capacity, the successor or substitute Trustee who shall also serve without bond shall be the Settlor's brother **ROBERT A. GOEKEL.**

2. **Final Succession If Individual Successor Trustee Cannot Act.** If **STEPHEN D. WARD** and **ROBERT A. GOEKEL** should fail to qualify as individual successor Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** If any individual Trustee named herein should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining Trustees named herein shall continue to serve without a successor or substitute.

3. **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive no compensation but shall be entitled to reimbursement for reasonable expenses.

4. **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees. Provided, however, that if only two Trustees shall be serving as co-Trustees, then the Trustees shall act with unanimity on all actions, unless the co-Trustees shall have otherwise agreed in writing.

5. **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

6. **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

ARTICLE XII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIII

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

1. To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

3. To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

4. To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

5. To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

6. To sell or exercise stock subscription or conversion rights.

7. To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

8. To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

9. To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

10. To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

11. To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12. To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

13. To continue and operate any business owned by the Settlor at the Settlor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

14. To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

15. To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

16. In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

17. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

18. To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

19. To determine what shall be fairly and equitably charged or credited to income and what to principal.

20. To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

21. To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

22. In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

23. To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's executors or administrators and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's executors or administrators and the Trustee are the same shall in no way affect the validity of this provision.

24. To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's executors or administrators and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

25. To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Executors, donors, insurance companies and other parties adding property to the Trust Estate.

26. To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

27. To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

28. To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an

inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

29. If the Trustee shall act as the Executor of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Executor will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to the **Family Trust**, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Executor deems in the best interest of the Settlor's estate.

ARTICLE XIV

Trustee's Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence. Provided, however, the Trustee shall not exercise this power in any way which would deprive the husband under the Marital Trust of the beneficial enjoyment of the Marital Trust and the husband shall have the right to limit, restrict or terminate the Trustee's exercises of this power if they interfere with such beneficial enjoyment.

ARTICLE XV

Marital Deduction Savings Clause for the Marital Trust. It is expressly provided that the grant of rights, powers, privileges and authority to the Trustee in connection with the imposition of duties upon the Trustee by any provision of this Trust Agreement or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in **the Marital Trust** hereof. It is the Settlor's intention that the Settlor's husband under the provisions of **the Marital Trust** have substantially that degree of beneficial enjoyment of the Trust Estate during his lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and the Trustee shall not exercise its discretion in a manner which is not in accord with this expressed intention. The Trustee shall invest the Trust Estate so it will produce for the Settlor's husband during his lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that the Trustee shall not in the exercise of its discretion make any determination inconsistent with the foregoing.

ARTICLE XVI

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of

Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her executors or administrators. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XVII

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. Provided, however, that the Trustee shall not make any payment from the Marital Trust under (3) above.

ARTICLE XVIII

Power of Trustee to Resign During Settlor's Lifetime. Any Trustee may resign this trusteeship during the Settlor's lifetime by giving the Settlor Thirty (30) days notice in writing delivered to the Settlor in person or mailed to the Settlor's last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, the Settlor shall appoint a successor Trustee. Upon the failure of the Settlor to appoint a successor Trustee who accepts the trust within Thirty (30) days from the time notice was delivered in person or mailed to the Settlor, the Trustee may resign to the court having jurisdiction over this trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee which shall be an individual as successor to an individual trustee or a bank or trust company qualified to do business in the state of the Settlor's domicile as successor to a corporate trustee. Upon the appointment of and acceptance by the successor Trustee, the original Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Settlor, whereupon its resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIX

Settlor During Lifetime to Designate Substitute or Successor Trustee. The Settlor during the Settlor's lifetime may name a substitute or successor Trustee by delivery to any Trustee herein a notice naming the successor or substitute Trustee and indicating an intent to replace the Trustee named. Upon receipt of such notice the Trustee named shall pay over, deliver, assign, transfer or convey to such substitute or successor Trustee (which accepts the appointment as trustee), the Trust Estate and make a full and proper accounting to the Settlor, whereupon the Trustee named shall be discharged and have no further responsibility under this Trust Agreement. Upon the failure of the Trustee to make such conveyance the Settlor may apply to the court having jurisdiction of this trust and such court may compel the conveyance by the Trustee. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XX

Definitions of Family. The following definitions shall be used to define the family:

1. **Definition of Children.** For purposes of this Trust, "children" of the Settlor means **ELIZABETH A. DIEMER** and **GARETT C. DIEMER.** For purposes of this Trust, "children" of the Settlor's husband means **STEPHANIE L. WARD, DAVID D. WARD** and **BRIAN C. WARD,** but "children" does not mean **STEPHEN A. WARD** and **JEREMY W. WARD.** "Issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; however, it does not include **STEPHEN A. WARD** and **JEREMY W. WARD** or their respective issue.

2. **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XXI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit" ("unified credit" shall also mean "applicable credit amount"), "applicable exclusion amount," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," "qualified terminable interest," "qualified terminable interest property," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which

the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XXII

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XXIII

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XXIV

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XXV

Agreement for Mutual Wills and Trusts. The **Agreement for Mutual Wills and Trusts** dated as of even date herewith between **STEPHEN D. WARD** and **NANCY L. WARD** is incorporated by reference into this First Amendment and Restatement of Trust Agreement of Nancy L. Ward.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

Jeanne A. Pusey

Magdalena Gray

Nancy L. Ward

NANCY L. WARD, SETTLOR

Jeanne A. Pusey

Magdalena Gray

Nancy L. Ward

NANCY L. WARD, TRUSTEE

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

Personally appeared the undersigned witness and made oath that S he saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Magdalena

Sworn to before me this
21st day of April, 2005

Notary Public for South Carolina

My Commission expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by **NANCY L. WARD**, as Settlor and Trustee, to be the free and voluntary act and deed of the Settlor and Trustee.

WITNESS my signature this 21st day of April, 2005.

Signature of Notary Public

Brett A. Blakely
Typed Name of Notary Public

Notary Public for: South Carolina
My commission expires: July 29, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AGREEMENT FOR MUTUAL WILLS AND TRUSTS

THIS AGREEMENT FOR MUTUAL WILLS AND TRUSTS made this 21st day of April, 2005, between Stephen D. Ward of the County of Charleston, State of South Carolina (hereinafter called "Husband") and Nancy L. Ward of the County of Charleston, State of South Carolina (hereinafter called "Wife").

I. DEFINITIONS. In addition to any other terms whose definitions are fixed and defined by this Agreement, each of the following defined terms, when used in this Agreement with an initial capital letter, shall have the meaning ascribed thereto by this paragraph:

1.1 "Agreement" means this Agreement for Mutual Wills and Trusts together with all exhibits attached hereto.

1.2 "Husband" means Stephen D. Ward.

1.3 "Husband's Trust" means the Trust Agreement of Stephen D. Ward of even date herewith, a copy of which is attached hereto as Exhibit 1.

1.4 "Husband's Will" means the Last Will and Testament of Stephen D. Ward of even date herewith, a copy of which is attached hereto as Exhibit 2.

1.5 "Parties" means Stephen D. Ward and Nancy L. Ward.

1.6 "Predecessor" means that person, as between the Husband and the Wife, who is first to die.

1.7 "Property" means all of the property of the Survivor at time of the Predecessor's death, together with all property acquired by the Survivor because of the Predecessor's death.

1.8 "Survivor" means that person, as between the Husband and the Wife, who is last to die.

1.9 "Wife" means Nancy L. Ward.

1.10 "Wife's Trust" means the Nancy Diemer Trust Dated April 28, 1998, as amended by the First Amendment and Restatement of Trust Agreement of Nancy L. Ward of even date herewith, copies of which are attached hereto as Exhibit 3 and Exhibit 4, respectively.

1.11 "Wife's Will" means the Last Will and Testament of Nancy L. Ward of even date herewith, a copy of which is attached hereto as Exhibit 5.

II. RECITALS.

2.1 Husband and Wife are now married.

2.2. Husband and Wife each have children from a former marriage.

2.3 Husband and Wife mutually desire for the Survivor to have full use of the Property during his or her life with the Property after the death of the Survivor to be distributed as provided for in the Trust Agreement of Stephen D. Ward (dated as of even date herewith) and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (dated as of even date herewith).

2.4 Husband and Wife have executed their Wills and Trusts, copies of which have been annexed hereto as Exhibits 1 through 5.

2.5 The Wills and Trusts of the Parties have been made as they are on the condition that the disposition of the Property be made according to their Wills and Trusts, unless this Agreement is altered, amended or revoked as provided for hereinafter.

2.6 This Agreement is made to insure that the mutual plan of the Parties shall not be altered by acts subsequent to date hereof, except as agreed upon between the Parties.

III. ALTERATION, AMENDMENT AND REVOCATION OF WILLS. The Parties mutually covenant with each other and agree that:

3.1 While both Husband and Wife are living, except by amendment, modification or revocation of this Agreement as hereinafter provided, neither he nor she shall in any manner alter, amend or revoke his or her Will or Trust, including amendment by codicil, alteration by defacement, or revocation by destruction.

3.2 Upon the Predecessor's death, this Agreement and the Survivor's Will and Trust shall become irrevocable and the Survivor shall have no right or power to thereafter alter, amend or revoke this Agreement or his or her Will or Trust.

IV. SURVIVOR'S AFFIRMATIVE COVENANTS. The Parties mutually covenant with each other and agree that if he or she is the Survivor of them:

4.1 He or she will take such measures as may be necessary or required to maintain his or her Will and Trust in full force until his or her death and as will maintain title to the Property in a form that shall cause the same, at the Survivor's death, to be disposed of according to the terms and provisions of his or her Will and Trust annexed hereto.

4.2 If he or she remarries after the death of the Predecessor, he or she will:

4.2.1 Thereafter ratify his or her Will and Trust in the form and with the provisions contained in his or her Will and Trust annexed hereto; and

4.2.2 As a condition of such re-marriage, require any person he or she re-marries to legally and unconditionally waive his or her right to an Elective Share in the Property provided to them under S.C. Code Ann. Section 62-2-201 (1976, as amended from time to time).

V. NEGATIVE COVENANTS. The Parties mutually covenant with each other and agree that if he or she is the survivor of them, he or she will not create, commit, permit, or suffer to exist:

5.1 Any condition that would alter the plan of distribution contained in his or her Will or Trust annexed hereto;

5.2 Any condition that would cause the alteration, amendment or revocation of his or her Will or Trust annexed hereto;

5.3 The dissipation of any of the Property other than through consumption by him or her;

5.4 Any transfer of the Property, or any part thereof from the Survivor to any other person, including any gift to a spouse, child or relative, provided, nothing herein contained shall be construed as prohibiting him or her from making customary and reasonable gifts to a spouse or child;

5.5 Any transfer of title to the Property or any part thereof to the name or joint name of any other person or party;

5.6 Any transfer of title to the Property, or any part thereof, in such manner as would cause the Property to be transmitted upon the Survivor's death, by any means other than through the provisions of his or her Will or Trust annexed hereto; and

5.7 Any investment of the Property or any part thereof, in any form of investment that would or may cause the same to be transmitted upon his or her death through any means other than according to the terms and provisions of his or her Will or Trust annexed hereto.

VI. FORM OF AMENDMENT OR MODIFICATION. The ability of one of the Parties to this Agreement to unilaterally rescind and revoke this Agreement and their Will or Trust by giving notice to the non-revoking person before death as permitted in *Wilson v. Gordon,* 53 S.E. 79 (S.C. 1905), is not a sufficient method to allow the parties to this Agreement to revoke their respective Will or Trust and this Agreement. No agreement between the Parties shall be effective to alter, amend, modify or revoke this Agreement, unless such Agreement is reduced to writing and signed by both Parties.

VII. MISCELLANEOUS.

7.1 Governing Law. This Agreement is made and shall be construed under and in accordance with the laws of the State of South Carolina.

7.2 Non-assignability. This Agreement shall not be assignable and any attempt to assign the same by either party shall be ineffective, null and void.

7.3 Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Parties and contains the sole and entire understanding between them with regard to matters contained herein. All promises, inducements, offers, agreements, commitments and representations heretofore made between such Parties are merged into this Agreement.

7.4 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if such exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

7.5 Captions. All captions, headings, paragraph and subparagraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the day and year first written above.

WITNESSES:

Jeanne A. Pusey

Magdalene Coy

S. D. Ward
STEPHEN D. WARD

Nancy L. Ward
NANCY L. WARD

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned and made oath that (s)he saw the within named Stephen D. Ward and Nancy L. Ward, sign, seal and as their act and deed deliver the within written instrument and that (s)he with Jeanne Pusey witnessed the execution thereof.

Magdalene Coy

SWORN to before me this 21st day of April, 2005.

Notary Public for South Carolina
My Commission Expires: July 24, 2012

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

The undersigned acknowledge:

1. The foregoing Agreement for Mutual Wills and Trusts was prepared by Brett A. Bluestein, attorney at law.

2. The Wills of the undersigned were prepared by Brett A. Bluestein, attorney at law.

3. The Trust Agreement of Stephen D. Ward and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (collectively, the "Trusts") were prepared by Brett A. Bluestein, attorney at law.

4. The foregoing Agreement for Mutual Wills and Trusts, the Wills and the Trusts were prepared based on information provided to the drafter by and at the direction of the undersigned.

5. The undersigned acknowledge that we have been advised by Brett A. Bluestein, attorney at law, and we understand that he as the drafter of these instruments has a conflict of interest; that our individual and collective interests may be best served by the employment of separate and independent counsel for each of us; we acknowledge the existence of a conflict of interest between us; in spite of the advice and notice of Brett A. Bluestein, attorney at law, we have requested him to prepare the Agreement for Mutual Wills and Trusts, the Wills and the Trusts for us and we, and each of us, do knowingly consent to his drafting, presenting and interpreting the same for and to us; and, each of us do hereby waive and release the said Brett A. Bluestein from any claim we may have because of the drafting of the Agreement for Mutual Wills and Trusts the Wills and the Trusts and presenting the same to us with knowledge that a conflict of interest, actual or potential, legally exists between us.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the 21st day of April, 2005.

In the Presence of:

Joann A. Pusey

Magdalena Petty

S. D. Ward
STEPHEN D. WARD

Nancy L. Ward
NANCY L. WARD

EXHIBIT 1

Trust Agreement of Stephen D. Ward

EXHIBIT 2

Last Will and Testament of Stephen D. Ward

EXHIBIT 3

Nancy Diemer Trust

EXHIBIT 4

First Amendment and Restatement of Trust Agreement of Nancy L. Ward

EXHIBIT 5

Last Will and Testament of Nancy L. Ward

REC'D. PAYMENT 4/28/0
PER CLERK
RMC OFFICE SW
CHARLESTON COUNTY, SC

FINANCIAL SPRINGING POWER OF ATTORNEY

State of South Carolina
County of Charleston

Know all men by these presents, that I, **Stephen D. Ward**, the undersigned, of Charleston County, South Carolina, hereby make, constitute and appoint **Nancy L. Ward** (with full power of substitution and revocation) my true and lawful attorney-in-fact for me and in my name, place and stead to do and perform for me anything of any character which I might do or perform if I were personally present and acting. If **Nancy L. Ward** shall be unable or unwilling or unavailable to serve or continue to serve, then I appoint **Dudley M. Ward**, as an alternate agent to serve with the same powers and discretions. Such attorney-in-fact only has the authority to act on my behalf in the event that I am adjudicated to be incompetent or in the event that I am not adjudicated incompetent, but by reason of illness or mental or physical disability in the opinion of two licensed physicians I am unable to properly handle my own affairs, then and in that event my attorney-in-fact shall immediately be authorized to act on my behalf pursuant to this Financial Power of Attorney. Without in any way diminishing the broad general power just conferred, which is believed and intended to include all of the following, as well as other powers not mentioned, I specifically grant my attorney-in-fact the following powers:

1. REAL AND PERSONAL PROPERTY TRANSACTIONS. To lease, purchase, option, exchange and acquire; to agree, bargain and contract for the lease, purchase, option, exchange and acquisition of; to accept, take, receive, collect, hold and possess any interest in real or personal property whatsoever, tangible or intangible, including any bond (registered or unregistered or eligible for redemption at par in payment of federal estate tax), stock certificate, share, instrument of similar character, commodity interest or any instrument with respect thereto, together with the interest, dividends, proceeds or other distributions connected therewith, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, operate, conserve, insure, rent, sell, dispose of, convey, subject to liens, mortgage, subject to deeds of trust and in any way or manner deal with all or any part of any interest in such property, under such terms and conditions and under such covenants, as said attorney-in-fact shall deem proper.

2. BOND, SHARE AND COMMODITY TRANSACTIONS. To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, find to make,

execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

3. BANKING TRANSACTIONS. To make, receive, sign, endorse, execute, acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of, banks, savings and loan or other institutions or associations for the principal.

4. BUSINESS OPERATING TRANSACTIONS. To conduct, engage in, and transact any and all lawful business of whatever nature or kind for the principal.

5. DEMAND AND RECEIVE OR RECOVER. To request, ask, demand, sue for, recover, collect, receive, and hold and possess all legacies, bequests, devises, as are, owned by, or due, owing, payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

6. PERSONAL RELATIONSHIPS AND AFFAIRS. To do all acts necessary for maintaining the customary standard of living of the principal, the spouse and children, and other dependents of the principal; to provide medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, and children, and other dependents of the principal; to continue whatever provision has been made by the principal, for the principal, the spouse, and children, and other dependents of the principal, with respect to automobiles, or other means of transportation; to continue whatever charge accounts have been operated by the principal, for the convenience of the principal, the spouse, and children, and other dependents, of the principal, to open such new accounts as the attorney-in-fact shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal or the attorney-in-fact to make such charges; to continue the discharge of any services or duties assumed by the principal, to any parent, relative or friend of the principal; to continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization, or to continue contributions thereto.

7. SOCIAL SECURITY AND UNEMPLOYMENT. To prepare, execute, acknowledge upon oath and file all social security, unemployment insurance and information returns required by the laws of the United States, of any state or subdivision thereof, or of any foreign government. To claim and collect for my benefit from any governmental agency or body, such benefits as Supplemental Social Security (SSI), Medicaid, Medicare, and Social Security Disability Insurance (SSDI) and, for the purposes of

receiving social security benefits, my Agent is herewith appointed my "Representative Payee"; to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf and to compromise claims and grant discharges in regard to the matters described herein; to utilize all lawful means and methods to recover such assets and/or rights; to qualify me for such benefits and claim such benefits on my behalf, including but not limited to converting my assets into assets that do not disqualify me from receiving such benefits or divesting me of such assets. To prepare, execute, acknowledge upon oath and file all other papers and instruments which my attorney-in-fact determines to be desirable or necessary to safeguard me against excess or illegal penalties imposed for claimed violation of any law or other governmental regulation.

8. BENEFITS FROM MILITARY SERVICE. To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or subdivision thereof, to the principal, arising from or based upon military service and to receive, to endorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or subdivision thereof, to take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose; to prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after execution.

9. TAX. To prepare, execute, verify and file in the name of the principal and on behalf of the principal any and all types of tax returns, amended returns, declaration of estimated tax, report, protest, application for correction of assessed valuation of real or other property, appeal, brief, claim for refund, or petition, including petition to the Tax Court of the United States, in connection with any tax imposed or proposed to be imposed by any government, or claimed, levied or assessed by any government, and to pay any such tax and to obtain any extension of time for any of the foregoing; to execute waivers or consents agreeing to a later determination and assessment of taxes than is provided by any statute of limitations; to execute waivers of restriction on the assessment and collection of deficiency in any tax; to execute closing agreements and all other documents, instruments and papers relating to any tax liability of any sort; to institute and carry on through counsel any proceeding in connection with determining or contesting any such tax or to recover any tax paid or to resist any claim for additional tax on any proposed assessment or levy thereof; and to enter into any agreements or stipulations for compromise or other

adjustments or disposition of any tax, to represent me personally, or through attorneys of my attorney-in-fact's selection, with respect to any matter before the Internal Revenue Service and department of revenue of any state or any court relative to taxes owed, allegedly owed or paid by me or on my behalf; and to pay, compromise, contest or apply for refunds in connection with any taxes or assessments for which I am or may be liable, and on my behalf to execute IRS Form 2848 and appoint my Agent or any suitable person selected by my Agent as my representative before the Internal Revenue Service.

10. EMPLOYMENT OF AGENTS. To employ agents such as legal counsel, accountants or other professional representation as may be appropriate and to grant such agents such powers of attorney or other appropriate authorization as may be required in connection with such representation or by the Internal Revenue Service or other governmental authority.

11. SAFE DEPOSITS. To have free access at any time to any safe deposit box or vault which I have leased in my name, wherever the same may be located, and to place property in and remove property from same.

12. INSURANCE TRANSACTIONS. To exercise or perform any act, power, duty, right or obligation in regard to any contract of life, accident, health, disability, liability, personal property or automobile insurance or any combination of such insurance procured by me; to procure new, different or additional contracts of such insurance for me and to designate the beneficiary of any such contract of insurance; and to purchase, apply for and make affidavits with respect to any lost original securities bond (or similar coverage) required as a condition precedent to the issuance of replacement securities.

13. ESTATE TRANSACTIONS. To receive, hold and possess all legacies, bequests and devises as are owned by or due, owing, payable or belonging to me.

14. LEGAL AUTHORITY. To request, ask, demand, sue for, recover, collect and to have, use and take all lawful means and equitable and legal remedies, procedures and writs in my name for the collection and recovery of any property, interest in property and any rights of mine, including all sums of money, debts, dues, accounts, insurance proceeds, legacies, devises, bequests, interest, dividends, annuities and any other interests as are owned by or due, owing, payable or belonging to me (whether such sums are due me from the government of the United States or any subdivision thereof); to adjust, sell, compromise, arbitrate or otherwise agree for me respecting the same; to make, execute and deliver for me all endorsements, acquittances, releases, receipts or other sufficient discharges for the same; and to make oaths, acknowledgments and verifications in my name.

15. DEBTS. To pay, adjust and settle any legitimate and just claims or debts which may be due and owing by me at any time; and to credit payment of or cancel any note, mortgage, deed of trust, or other obligation to me upon proper payment being made,

whether in full or by way of compromise or settlement, on evidence thereof satisfactory to my attorney-in-fact being furnished.

16. BORROWING. To borrow on my behalf and in my name such funds as my attorney-in-fact deems advisable; to give notes or other evidence of debt therefor at such rate or rates of interest as my attorney-in-fact deems advisable; and to pledge, mortgage or otherwise encumber as security therefor any property of any kind, real, personal or mixed, owned by me, as my attorney-in-fact may, in said attorney-in-fact's discretion, select.

17. NOMINEE NAME. To effect all transactions in the name of my attorney-in-fact as attorney-in-fact, in my name or in the name of any nominee of my said attorney-in-fact.

18. INVEST AND REINVEST. To invest and reinvest without restriction any of my money or other property of whatever kind coming into my attorney-in-fact's possession or known to belong to me, whether income or principal, in such manner as said attorney-in-fact may deem fit and proper and to execute any instruments necessary to accomplish these purposes. I hereby authorize said attorney-in-fact to retain any property owned by me without regard to any requirement of diversification otherwise imposed by law or government regulation and without liability for any loss or decrease in the value of any such property while retained by her and to exercise by proxy or otherwise any voting rights I may have in shares of stock.

19. MAKE GIFTS. To make gifts to such persons or institutions, in such amounts or proportions, in the sole discretion as my said attorney-in-fact may deem appropriate; provided, however, the total value of gifts to any one donee in any calendar year shall not exceed the amount specified for the federal gift tax annual exclusion (including such additional amount of any gift tax annual exclusion attributable to the consent of my spouse under Section 2513 of the Internal Revenue Code).

The powers herein granted shall be deemed continuing and relate as fully to any property which I may hereafter acquire as to any property which I may now own and may be exercised repeatedly. In the event my attorney-in-fact will occupy, from a legal standpoint, positions in which a conflict of interest is either real or apparent, I hereby declare that the existence of any conflict of whatever nature or however arising shall not in any manner limit any of the powers herein conferred upon my attorney-in-fact, which may perform any act my attorney-in-fact is authorized to perform hereunder notwithstanding any such conflict of interest.

I hereby ratify and confirm all that which my attorney-in-fact shall lawfully do or cause to be done by such attorney-in-fact by virtue of the powers herein conferred upon such attorney-in-fact, and I direct that during my lifetime my attorney-in-fact shall not be required to make or give any inventories, appraisals, accounts or reports to any court or to give bond, but shall keep full and accurate records of all transactions for me as my attorney-in-fact and of all my property and the disposition thereof, and shall render to me, if competent, or to my spouse or oldest adult child or nearest living relative, if I shall be incompetent or incapacitated, at least annually, inventories and

accounts of all such transactions. At my death an inventory and a final account of all such transactions shall be delivered to the personal representative of my estate, together with all property of mine included in such final inventory.

This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders principal incapable of managing principal's own estate.

IN WITNESS WHEREOF, I have executed this Durable Power of Attorney this 21st day of April, 2005.

S. D. Ward (SEAL)
Stephen D. Ward, Principal

ATTESTATION

The foregoing durable power of attorney was this 21st day of April, 2005, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Witness

Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, Brett A. Blumstein, a Notary Public for the State of South Carolina, do hereby certify that **Stephen D. Ward** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 21st day of April, 2005.

Notary Public, State of South Carolina

My Commission expires: July 24, 2012

REC'D. PAYMENT 4/28/05
PER CLERK SW
RMC OFFICE
CHARLESTON COUNTY, SC

FINANCIAL SPRINGING POWER OF ATTORNEY

State of South Carolina
County of Charleston

Know all men by these presents, that I, **Nancy L. Ward**, the undersigned, of Charleston County, South Carolina, hereby make, constitute and appoint **Stephen D. Ward** (with full power of substitution and revocation) my true and lawful attorney-in-fact for me and in my name, place and stead to do and perform for me anything of any character which I might do or perform if I were personally present and acting. If **Stephen D. Ward** shall be unable or unwilling or unavailable to serve or continue to serve, then I appoint **Robert A. Goelkel**, as an alternate agent to serve with the same powers and discretions. Such attorney-in-fact only has the authority to act on my behalf in the event that I am adjudicated to be incompetent or in the event that I am not adjudicated incompetent, but by reason of illness or mental or physical disability in the opinion of two licensed physicians I am unable to properly handle my own affairs, then and in that event my attorney-in-fact shall immediately be authorized to act on my behalf pursuant to this Financial Power of Attorney. Without in any way diminishing the broad general power just conferred, which is believed and intended to include all of the following, as well as other powers not mentioned, I specifically grant my attorney-in-fact the following powers:

1. REAL AND PERSONAL PROPERTY TRANSACTIONS. To lease, purchase, option, exchange and acquire; to agree, bargain and contract for the lease, purchase, option, exchange and acquisition of; to accept, take, receive, collect, hold and possess any interest in real or personal property whatsoever, tangible or intangible, including any bond (registered or unregistered or eligible for redemption at par in payment of federal estate tax), stock certificate, share, instrument of similar character, commodity interest or any instrument with respect thereto, together with the interest, dividends, proceeds or other distributions connected therewith, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, operate, conserve, insure, rent, sell, dispose of, convey, subject to liens, mortgage, subject to deeds of trust and in any way or manner deal with all or any part of any interest in such property, under such terms and conditions and under such covenants, as said attorney-in-fact shall deem proper.

2. BOND, SHARE AND COMMODITY TRANSACTIONS. To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, find to make,

execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

3. BANKING TRANSACTIONS. To make, receive, sign, endorse, execute, acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of, banks, savings and loan or other institutions or associations for the principal.

4. BUSINESS OPERATING TRANSACTIONS. To conduct, engage in, and transact any and all lawful business of whatever nature or kind for the principal.

5. DEMAND AND RECEIVE OR RECOVER. To request, ask, demand, sue for, recover, collect, receive, and hold and possess all legacies, bequests, devises, as are, owned by, or due, owing, payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

6. PERSONAL RELATIONSHIPS AND AFFAIRS. To do all acts necessary for maintaining the customary standard of living of the principal, the spouse and children, and other dependents of the principal; to provide medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, and children, and other dependents of the principal; to continue whatever provision has been made by the principal, for the principal, the spouse, and children, and other dependents of the principal, with respect to automobiles, or other means of transportation; to continue whatever charge accounts have been operated by the principal, for the convenience of the principal, the spouse, and children, and other dependents, of the principal, to open such new accounts as the attorney-in-fact shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal or the attorney-in-fact to make such charges; to continue the discharge of any services or duties assumed by the principal, to any parent, relative or friend of the principal; to continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization, or to continue contributions thereto.

7. SOCIAL SECURITY AND UNEMPLOYMENT. To prepare, execute, acknowledge upon oath and file all social security, unemployment insurance and information returns required by the laws of the United States, of any state or subdivision thereof, or of any foreign government. To claim and collect for my benefit from any governmental agency or body, such benefits as Supplemental Social Security (SSI), Medicaid, Medicare, and Social Security Disability Insurance (SSDI) and, for the purposes of

receiving social security benefits, my Agent is herewith appointed my "Representative Payee"; to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf and to compromise claims and grant discharges in regard to the matters described herein; to utilize all lawful means and methods to recover such assets and/or rights; to qualify me for such benefits and claim such benefits on my behalf, including but not limited to converting my assets into assets that do not disqualify me from receiving such benefits or divesting me of such assets. To prepare, execute, acknowledge upon oath and file all other papers and instruments which my attorney-in-fact determines to be desirable or necessary to safeguard me against excess or illegal penalties imposed for claimed violation of any law or other governmental regulation.

8. BENEFITS FROM MILITARY SERVICE. To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or subdivision thereof, to the principal, arising from or based upon military service and to receive, to endorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or subdivision thereof, to take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose; to prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after execution.

9. TAX. To prepare, execute, verify and file in the name of the principal and on behalf of the principal any and all types of tax returns, amended returns, declaration of estimated tax, report, protest, application for correction of assessed valuation of real or other property, appeal, brief, claim for refund, or petition, including petition to the Tax Court of the United States, in connection with any tax imposed or proposed to be imposed by any government, or claimed, levied or assessed by any government, and to pay any such tax and to obtain any extension of time for any of the foregoing; to execute waivers or consents agreeing to a later determination and assessment of taxes than is provided by any statute of limitations; to execute waivers of restriction on the assessment and collection of deficiency in any tax; to execute closing agreements and all other documents, instruments and papers relating to any tax liability of any sort; to institute and carry on through counsel any proceeding in connection with determining or contesting any such tax or to recover any tax paid or to resist any claim for additional tax on any proposed assessment or levy thereof; and to enter into any agreements or stipulations for compromise or other

adjustments or disposition of any tax, to represent me personally, or through attorneys of my attorney-in-fact's selection, with respect to any matter before the Internal Revenue Service and department of revenue of any state or any court relative to taxes owed, allegedly owed or paid by me or on my behalf; and to pay, compromise, contest or apply for refunds in connection with any taxes or assessments for which I am or may be liable, and on my behalf to execute IRS Form 2848 and appoint my Agent or any suitable person selected by my Agent as my representative before the Internal Revenue Service.

10. EMPLOYMENT OF AGENTS. To employ agents such as legal counsel, accountants or other professional representation as may be appropriate and to grant such agents such powers of attorney or other appropriate authorization as may be required in connection with such representation or by the Internal Revenue Service or other governmental authority.

11. SAFE DEPOSITS. To have free access at any time to any safe deposit box or vault which I have leased in my name, wherever the same may be located, and to place property in and remove property from same.

12. INSURANCE TRANSACTIONS. To exercise or perform any act, power, duty, right or obligation in regard to any contract of life, accident, health, disability, liability, personal property or automobile insurance or any combination of such insurance procured by me; to procure new, different or additional contracts of such insurance for me and to designate the beneficiary of any such contract of insurance; and to purchase, apply for and make affidavits with respect to any lost original securities bond (or similar coverage) required as a condition precedent to the issuance of replacement securities.

13. ESTATE TRANSACTIONS. To receive, hold and possess all legacies, bequests and devises as are owned by or due, owing, payable or belonging to me.

14. LEGAL AUTHORITY. To request, ask, demand, sue for, recover, collect and to have, use and take all lawful means and equitable and legal remedies, procedures and writs in my name for the collection and recovery of any property, interest in property and any rights of mine, including all sums of money, debts, dues, accounts, insurance proceeds, legacies, devises, bequests, interest, dividends, annuities and any other interests as are owned by or due, owing, payable or belonging to me (whether such sums are due me from the government of the United States or any subdivision thereof); to adjust, sell, compromise, arbitrate or otherwise agree for me respecting the same; to make, execute and deliver for me all endorsements, acquittances, releases, receipts or other sufficient discharges for the same; and to make oaths, acknowledgments and verifications in my name.

15. DEBTS. To pay, adjust and settle any legitimate and just claims or debts which may be due and owing by me at any time; and to credit payment of or cancel any note, mortgage, deed of trust, or other obligation to me upon proper payment being made,

whether in full or by way of compromise or settlement, on evidence thereof satisfactory to my attorney-in-fact being furnished.

16. BORROWING. To borrow on my behalf and in my name such funds as my attorney-in-fact deems advisable; to give notes or other evidence of debt therefor at such rate or rates of interest as my attorney-in-fact deems advisable; and to pledge, mortgage or otherwise encumber as security therefor any property of any kind, real, personal or mixed, owned by me, as my attorney-in-fact may, in said attorney-in-fact's discretion, select.

17. NOMINEE NAME. To effect all transactions in the name of my attorney-in-fact as attorney-in-fact, in my name or in the name of any nominee of my said attorney-in-fact.

18. INVEST AND REINVEST. To invest and reinvest without restriction any of my money or other property of whatever kind coming into my attorney-in-fact's possession or known to belong to me, whether income or principal, in such manner as said attorney-in-fact may deem fit and proper and to execute any instruments necessary to accomplish these purposes. I hereby authorize said attorney-in-fact to retain any property owned by me without regard to any requirement of diversification otherwise imposed by law or government regulation and without liability for any loss or decrease in the value of any such property while retained by her and to exercise by proxy or otherwise any voting rights I may have in shares of stock.

19. MAKE GIFTS. To make gifts to such persons or institutions, in such amounts or proportions, in the sole discretion as my said attorney-in-fact may deem appropriate; provided, however, the total value of gifts to any one donee in any calendar year shall not exceed the amount specified for the federal gift tax annual exclusion (including such additional amount of any gift tax annual exclusion attributable to the consent of my spouse under Section 2513 of the Internal Revenue Code).

The powers herein granted shall be deemed continuing and relate as fully to any property which I may hereafter acquire as to any property which I may now own and may be exercised repeatedly. In the event my attorney-in-fact will occupy, from a legal standpoint, positions in which a conflict of interest is either real or apparent, I hereby declare that the existence of any conflict of whatever nature or however arising shall not in any manner limit any of the powers herein conferred upon my attorney-in-fact, which may perform any act my attorney-in-fact is authorized to perform hereunder notwithstanding any such conflict of interest.

I hereby ratify and confirm all that which my attorney-in-fact shall lawfully do or cause to be done by such attorney-in-fact by virtue of the powers herein conferred upon such attorney-in-fact, and I direct that during my lifetime my attorney-in-fact shall not be required to make or give any inventories, appraisals, accounts or reports to any court or to give bond, but shall keep full and accurate records of all transactions for me as my attorney-in-fact and of all my property and the disposition thereof, and shall render to me, if competent, or to my spouse or oldest adult child or nearest living relative, if I shall be incompetent or incapacitated, at least annually, inventories and

accounts of all such transactions. At my death an inventory and a final account of all such transactions shall be delivered to the personal representative of my estate, together with all property of mine included in such final inventory.

This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders principal incapable of managing principal's own estate.

IN WITNESS WHEREOF, I have executed this Durable Power of Attorney this 21st day of April, 2005.

Nancy L. Ward (SEAL)
Nancy L. Ward, Principal

ATTESTATION

The foregoing durable power of attorney was this 21st day of April, 2005, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Joanne A. Pusey
Witness

Magdalena Cruz
Witness

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, Brett A. Bluestein, a Notary Public for the State of South Carolina, do hereby certify that **Nancy L. Ward** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 21st day of April, 2005.

Notary Public, State of South Carolina

My Commission expires: July 24, 2012

HEALTH CARE POWER OF ATTORNEY

(South Carolina Statutory Form, Code of Laws, Section 62-5-504)

1. DESIGNATION OF HEALTH CARE AGENT

I, **Stephen D. Ward**, hereby appoint:

Nancy L. Ward
2412 High Hammock Road
Seabrook Island, SC 29455
Home Telephone: 843-768-4511

as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my Agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desire is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by Section E, below, my agent is authorized as follows:

A. To consent to, refuse, or withdraw consent from any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge from, even against medical advice, any hospital, nursing care facility, or similar facility or service; and

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers, or are subject to the following rules or limitations:

4. ORGAN DONATION (INITIAL ONLY ONE):

My Agent may/~~may not~~ _____ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

5. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL):

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS:

With respect to any Life-Sustaining Treatment, I direct the following (INITIAL ONLY ONE OF THE FOLLOWING FOUR (4) PARAGRAPHS):

(1) _____ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) JW DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

OR

(4) _____ DIRECTIVE IN MY OWN WORDS:

_____

_____

_____

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING:

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines or veins, I wish to make clear that (INITIAL ONLY ONE):

JW I DO NOT want to receive these forms of artificial nutrition and hydration, and they may be withheld or withdrawn under the conditions given above.

OR

_____ I DO want to receive these forms of artificial nutrition and hydration.

IF YOU DO NOT INITIAL EITHER OF THE ABOVE STATEMENTS, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

8. SUCCESSORS:

If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

A. First Alternate Agent:

Name: Dudley M. Ward
Address: 185 Hungerford Road
Briar Cliff Maynor, NY 10510
Telephone: (914) 944-3213

B. Second Alternate Agent:

Name: _____
Address: _____
_____
Telephone: _____

9. ADMINISTRATIVE PROVISIONS:

a. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

b. This Power of Attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT:

If at any relevant time, the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE, I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 21st day of April, 2005. My current home address is:

2412 High Hammock Road
Seabrook Island, SC 29455

Signature: S. D. Ward
Print Name: Stephen D Ward

(Witness Statement, Over)

WITNESS STATEMENT

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence.

I am not related to the principal by blood, marriage or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his/her decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as the Health Care Agent or Successor Health Care Agent by this document.

WITNESS NO. 1:

Jeanne A. Pusey
Signature

Date: 4/21/05

Jeanne A. Pusey
Print Name

Telephone: 843-723-7831

1345 S. Barksdale
Residence Address
Mt. Pleasant, SC 29464

WITNESS NO. 2

Magdalena Cruz
Signature

Date: 4-21-05

MAGDALENA CRUZ
Print Name

Telephone: 4860077

325 Marymeade Drive
Residence Address
Summerville, SC 29483

HEALTH CARE POWER OF ATTORNEY

(South Carolina Statutory Form, Code of Laws, Section 62-5-504)

1. DESIGNATION OF HEALTH CARE AGENT

I, **Nancy L. Ward**, hereby appoint:

Stephen D. Ward
2412 High Hammock Road
Seabrook Island, SC 29455
Home Telephone: 843-768-4511

as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my Agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desire is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by Section E, below, my agent is authorized as follows:

A. To consent to, refuse, or withdraw consent from any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge from, even against medical advice, any hospital, nursing care facility, or similar facility or service; and

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers, or are subject to the following rules or limitations:

4. ORGAN DONATION (INITIAL ONLY ONE):

My Agent may W; may not _____ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

5. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL):

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS:

With respect to any Life-Sustaining Treatment, I direct the following (INITIAL ONLY ONE OF THE FOLLOWING FOUR (4) PARAGRAPHS):

(1) _____ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) NW DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

OR

(4) _____ DIRECTIVE IN MY OWN WORDS:

_____

_____

_____

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING:

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines or veins, I wish to make clear that (INITIAL ONLY ONE):

NW I DO NOT want to receive these forms of artificial nutrition and hydration, and they may be withheld or withdrawn under the conditions given above.

OR

_____ I DO want to receive these forms of artificial nutrition and hydration.

IF YOU DO NOT INITIAL EITHER OF THE ABOVE STATEMENTS, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

8. SUCCESSORS:

If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

A. First Alternate Agent:

Name: Robert A. Goelkel
Address: 116 South Merrill Avenue
Park Ridge, IL 60068
Telephone: (847) 823-7877

B. Second Alternate Agent:

Name: _____
Address: _____
_____
Telephone: _____

9. ADMINISTRATIVE PROVISIONS:

a. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

b. This Power of Attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT:

If at any relevant time, the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE, I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 21st day of April, 2005. My current home address is:

2412 High Hammock Road
Seabrook Island, SC 29455

Signature: Nancy L. Ward
Print Name: NANCY L. WARD

(Witness Statement, Over)

WITNESS STATEMENT

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence.

I am not related to the principal by blood, marriage or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his/her decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as the Health Care Agent or Successor Health Care Agent by this document.

WITNESS NO. 1:

Jeanne A. Pusey — Date: 4/21/05
Signature

Jeanne A. Pusey — Telephone: 843-723-7831
Print Name

1345 S. Banksdale
Residence Address
Mt. Pleasant SC 29464

WITNESS NO. 2

Magdalena Cruz — Date: 4-21-05
Signature

MAGDALENA CRUZ — Telephone: 486077
Print Name

325 Marymeade Drive
Residence Address
Summerville, SC 29483

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

DECLARATION OF A DESIRE FOR A NATURAL DEATH

I, **Stephen D. Ward**, Declarant, being at least eighteen (18) years of age and a resident of and domiciled in Charleston County, South Carolina, make this Declaration this 21st day of April, 2005.

I willfully and voluntarily make known my desire that no life-sustaining procedures be used to prolong my dying if my condition is terminal or if I am in a state of permanent unconsciousness, and I declare:

If at any time I have a condition certified to be a terminal condition by two physicians who have personally examined me, one of whom is my attending physician, and the physicians have determined that my death could occur within a reasonably short period of time without the use of life-sustaining procedures or if the physicians certify that I am in a state of permanent unconsciousness and where the application of life-sustaining procedures would serve only to prolong the dying process, I direct that the procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure necessary to provide me with comfort care.

INSTRUCTIONS CONCERNING ARTIFICIAL NUTRITION AND HYDRATION

INITIAL ONE OF THE FOLLOWING STATEMENTS

If my condition is terminal and could result in death within a reasonably short time,

____ I direct that nutrition and hydration BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.



I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

INITIAL ONE OF THE FOLLOWING STATEMENTS

If I am in a persistent vegetative state or other condition of permanent unconsciousness,

____ I direct that nutrition and hydration BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.



I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this Declaration be honored by my family and physicians and any



health facility in which I may be a patient as the final expression of my legal right to refuse medical or surgical treatment, and I accept the consequences from the refusal.

I am aware that this Declaration authorizes a physician to withhold or withdraw life-sustaining procedures. I am emotionally and mentally competent to make this Declaration.

APPOINTMENT OF AN AGENT (OPTIONAL)

1. You may give another person authority to revoke this declaration on your behalf. If you wish to do so, please enter that person's name in the space below.

Name of Agent
with Power to Revoke: _____
Address: _____
_____
Telephone Number: _____

2. You may give another person authority to enforce this declaration on your behalf. If you wish to do so, please enter that person's name in the space below.

Name of Agent
with Power to Enforce: _____
Address: _____
_____
Telephone Number: _____

REVOCATION PROCEDURES

THIS DECLARATION MAY BE REVOKED BY ANY ONE OF THE FOLLOWING METHODS. HOWEVER, A REVOCATION IS NOT EFFECTIVE UNTIL IT IS COMMUNICATED TO THE ATTENDING PHYSICIAN.

(1) BY BEING DEFACED, TORN, OBLITERATED, OR OTHERWISE DESTROYED, IN EXPRESSION OF YOUR INTENT TO REVOKE, BY YOU OR BY SOME PERSON IN YOUR PRESENCE AND BY YOUR DIRECTION. REVOCATION BY DESTRUCTION OF ONE OR MORE OF MULTIPLE ORIGINAL DECLARATIONS REVOKES ALL OF THE ORIGINAL DECLARATIONS;

(2) BY A WRITTEN REVOCATION SIGNED AND DATED BY YOUR EXPRESSING YOUR INTENT TO REVOKE;

(3) BY YOUR ORAL EXPRESSION OF YOUR INTENT TO REVOKE THE DECLARATION. AN ORAL REVOCATION COMMUNICATED TO THE ATTENDING PHYSICIAN BY A PERSON OTHER THAN YOU IS EFFECTIVE ONLY IF:

(a) THE PERSON WAS PRESENT WHEN THE ORAL REVOCATION WAS MADE;

(b) THE REVOCATION WAS COMMUNICATED TO THE PHYSICIAN WITHIN A REASONABLE TIME;

(c) YOUR PHYSICAL OR MENTAL CONDITION MAKES IT IMPOSSIBLE FOR THE PHYSICIAN TO CONFIRM THROUGH SUBSEQUENT CONVERSATION WITH YOU THAT THE REVOCATION HAS OCCURRED;

TO BE EFFECTIVE AS A REVOCATION, THE ORAL EXPRESSION CLEARLY MUST INDICATE YOUR DESIRE THAT THE DECLARATION NOT BE GIVEN EFFECT OR THAT LIFE-SUSTAINING PROCEDURES BE ADMINISTERED;

(4) IF YOU, IN THE SPACE ABOVE, HAVE AUTHORIZED AN AGENT TO REVOKE THE DECLARATION, THE AGENT MAY REVOKE ORALLY OR BY A WRITTEN, SIGNED, AND DATED INSTRUMENT. AN AGENT MAY REVOKE ONLY IF YOU ARE INCOMPETENT TO DO SO. AN AGENT MAY REVOKE THE DECLARATION PERMANENTLY OR TEMPORARILY.

(5) BY YOUR EXECUTING ANOTHER DECLARATION AT A LATER TIME.

S. D. Ward

STEPHEN D. WARD

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

We, Jeanne A. Pusey and Magdalena Cruz, the undersigned witnesses to the foregoing Declaration, dated the 21st day of April, 2005, at least one of us being first duly sworn, declare to the undersigned authority, on the basis of our best information and belief, that the Declaration was on that date signed by the declarant as and for the declarant's DECLARATION OF A DESIRE FOR A NATURAL DEATH in our presence and we, at the declarant's request and in the declarant's presence, and in the presence of each other, subscribe our names and witnesses on that date. The declarant is personally known to us, and we believe the declarant to be of sound mind. Each of us affirms that we are qualified as witnesses to this Declaration under the provisions of the South Carolina Death With Dignity Act in that we are not related to the declarant by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the declarant, or spouse of any of them; nor directly financially responsible for the declarant's medical care; nor entitled to any portion of the declarant's estate upon death, whether under any will or as an heir by intestate succession; nor the beneficiary of a life insurance policy of the declarant; nor the declarant's attending physician; nor an employee of the attending physician; nor a person who has a claim against the declarant's decedent's estate as of this time. No more than one of us is an employee of a health facility in which the declarant is a patient. If the declarant is a resident in a hospital or nursing care facility at the date of execution of this Declaration, at least one of us is an ombudsman designated by the State Ombudsman, Office of the Governor.

Jeanne A. Pusey
Witness

Magdalena Cruz
Witness

Subscribed before me by Stephen D. Ward, the Declarant, and subscribed and sworn to before me by Jeanne Pusey and Magdalena Cruz, the witnesses, this 21st day of April, 2005.

(SEAL)
Signature of Notary

Notary Public for South Carolina
My commission expires: July 24, 2012

health facility in which I may be a patient as the final expression of my legal right to refuse medical or surgical treatment, and I accept the consequences from the refusal.

I am aware that this Declaration authorizes a physician to withhold or withdraw life-sustaining procedures. I am emotionally and mentally competent to make this Declaration.

APPOINTMENT OF AN AGENT (OPTIONAL)

1. You may give another person authority to revoke this declaration on your behalf. If you wish to do so, please enter that person's name in the space below.

Name of Agent
with Power to Revoke: _____
Address: _____
_____
Telephone Number: _____

2. You may give another person authority to enforce this declaration on your behalf. If you wish to do so, please enter that person's name in the space below.

Name of Agent
with Power to Enforce: _____
Address: _____
_____
Telephone Number: _____

REVOCATION PROCEDURES

THIS DECLARATION MAY BE REVOKED BY ANY ONE OF THE FOLLOWING METHODS. HOWEVER, A REVOCATION IS NOT EFFECTIVE UNTIL IT IS COMMUNICATED TO THE ATTENDING PHYSICIAN.

(1) BY BEING DEFACED, TORN, OBLITERATED, OR OTHERWISE DESTROYED, IN EXPRESSION OF YOUR INTENT TO REVOKE, BY YOU OR BY SOME PERSON IN YOUR PRESENCE AND BY YOUR DIRECTION. REVOCATION BY DESTRUCTION OF ONE OR MORE OF MULTIPLE ORIGINAL DECLARATIONS REVOKES ALL OF THE ORIGINAL DECLARATIONS;

(2) BY A WRITTEN REVOCATION SIGNED AND DATED BY YOUR EXPRESSING YOUR INTENT TO REVOKE;

(3) BY YOUR ORAL EXPRESSION OF YOUR INTENT TO REVOKE THE DECLARATION. AN ORAL REVOCATION COMMUNICATED TO THE ATTENDING PHYSICIAN BY A PERSON OTHER THAN YOU IS EFFECTIVE ONLY IF:

(a) THE PERSON WAS PRESENT WHEN THE ORAL REVOCATION WAS MADE;

(b) THE REVOCATION WAS COMMUNICATED TO THE PHYSICIAN WITHIN A REASONABLE TIME;

(c) YOUR PHYSICAL OR MENTAL CONDITION MAKES IT IMPOSSIBLE FOR THE PHYSICIAN TO CONFIRM THROUGH SUBSEQUENT CONVERSATION WITH YOU THAT THE REVOCATION HAS OCCURRED;

TO BE EFFECTIVE AS A REVOCATION, THE ORAL EXPRESSION CLEARLY MUST INDICATE YOUR DESIRE THAT THE DECLARATION NOT BE GIVEN EFFECT OR THAT LIFE-SUSTAINING PROCEDURES BE ADMINISTERED;

(4) IF YOU, IN THE SPACE ABOVE, HAVE AUTHORIZED AN AGENT TO REVOKE THE DECLARATION, THE AGENT MAY REVOKE ORALLY OR BY A WRITTEN, SIGNED, AND DATED INSTRUMENT. AN AGENT MAY REVOKE ONLY IF YOU ARE INCOMPETENT TO DO SO. AN AGENT MAY REVOKE THE DECLARATION PERMANENTLY OR TEMPORARILY.

(5) BY YOUR EXECUTING ANOTHER DECLARATION AT A LATER TIME.

Nancy L. Ward

NANCY L. WARD

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

We, Jeanne A. Pusey and Magdalena Cruz, the undersigned witnesses to the foregoing Declaration, dated the 21st day of April, 2005, at least one of us being first duly sworn, declare to the undersigned authority, on the basis of our best information and belief, that the Declaration was on that date signed by the declarant as and for the declarant's DECLARATION OF A DESIRE FOR A NATURAL DEATH in our presence and we, at the declarant's request and in the declarant's presence, and in the presence of each other, subscribe our names and witnesses on that date. The declarant is personally known to us, and we believe the declarant to be of sound mind. Each of us affirms that we are qualified as witnesses to this Declaration under the provisions of the South Carolina Death With Dignity Act in that we are not related to the declarant by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the declarant, or spouse of any of them; nor directly financially responsible for the declarant's medical care; nor entitled to any portion of the declarant's estate upon death, whether under any will or as an heir by intestate succession; nor the beneficiary of a life insurance policy of the declarant; nor the declarant's attending physician; nor an employee of the attending physician; nor a person who has a claim against the declarant's decedent's estate as of this time. No more than one of us is an employee of a health facility in which the declarant is a patient. If the declarant is a resident in a hospital or nursing care facility at the date of execution of this Declaration, at least one of us is an ombudsman designated by the State Ombudsman, Office of the Governor.

Jeanne A. Pusey
Witness

Magdalena Cruz
Witness

Subscribed before me by Nancy L. Ward, the Declarant, and subscribed and sworn to before me by Jeanne Pusey and Magdalena Cruz, the witnesses this 21st day of April, 2005.

(SEAL)
Signature of Notary

Notary Public for South Carolina
My commission expires: July 24, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

DECLARATION OF A DESIRE FOR A NATURAL DEATH

I, **Nancy L. Ward**, Declarant, being at least eighteen (18) years of age and a resident of and domiciled in Charleston County, South Carolina, make this Declaration this 21st day of April, 2005.

I willfully and voluntarily make known my desire that no life-sustaining procedures be used to prolong my dying if my condition is terminal or if I am in a state of permanent unconsciousness, and I declare:

If at any time I have a condition certified to be a terminal condition by two physicians who have personally examined me, one of whom is my attending physician, and the physicians have determined that my death could occur within a reasonably short period of time without the use of life-sustaining procedures or if the physicians certify that I am in a state of permanent unconsciousness and where the application of life-sustaining procedures would serve only to prolong the dying process, I direct that the procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure necessary to provide me with comfort care.

INSTRUCTIONS CONCERNING ARTIFICIAL NUTRITION AND HYDRATION

INITIAL ONE OF THE FOLLOWING STATEMENTS

If my condition is terminal and could result in death within a reasonably short time,

___ I direct that nutrition and hydration BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

NW ✓ I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

INITIAL ONE OF THE FOLLOWING STATEMENTS

If I am in a persistent vegetative state or other condition of permanent unconsciousness,

___ I direct that nutrition and hydration BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

NW I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this Declaration be honored by my family and physicians and any

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
County of Charleston
Case No. 2019-CP-10-01932

APPEAL FROM
Probate Court

The Honorable Irvin G. Condon
Probate Court Judge

Case No.:

FILED
2019 JUN 19 PM 3:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IN RE: ESTATE OF STEPHEN DAY WARD, JR.

STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives .....Appellants/Respondents,

vs.

MARY K. WARD A/K/A MARY KIMBERLY WARD .....Respondent/Petitioner.

BRIEF OF APPELLANTS

(pursuant to S.C. Code Ann. §62-1-308(e))

BURR & FORMAN LLP
Amanda A. Bailey SC Bar #71085
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Attorneys for Appellants

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Probate Court erred in granting Respondent an omitted spousal share because such finding is controlled by an erroneous conception of the application of the law?

II. Whether the Probate Court erred in failing to find Decedent intentionally omitted Respondent from the Will because any intent to the contrary is wholly unsupported by the evidence?

III. Whether the Probate Court erred in denying Appellant's Motion for Summary Judgment and Motion for Involuntary Non-Suit because it appears from the Decedent's Will that the omission of the Respondent from the Will was intentional?

STATEMENT OF THE CASE

This is an appeal from an order finding Respondent, Mary K. Ward a/k/a Mary Kimberly Ward, entitled to the omitted spousal share of the estate of Stephen Day Ward, Jr. ("Decedent") pursuant to S.C. Code Ann. 62-2-301.

Respondent does not seek an elective share of Decedent's estate pursuant to S.C. Code Ann. §62-2-201. The only relief the Respondent seeks and the only issue before this Court is the omitted spousal share of the Decedent's estate pursuant to S.C. Code Ann. §62-2-301.

Decedent died testate on September 16, 2016. **[Petition for Informal Testate].** On or about September 29, 2016, Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward filed a Petition for Informal Probate of Will and Appointment. **[Id.]** The will presented for probate was the April 21, 2005 Last Will and Testament of Stephen D. Ward ("Will"). Respondents were appointed co-personal representatives of the Estate of Stephen Day Ward, Jr. **[Order appointing Co-Personal Representatives].** Ann Noble–Kiley, as Conservator for Mary K. Ward, filed a Petition for Omitted Spouse Share on behalf of Respondent regarding the Estate of Stephen Day Ward, Jr. on or about January 18, 2017. **[Petition for Omitted Spousal Share].** Respondents timely denied the Petition for Omitted Spouse Share alleging that Decedent intentionally omitted Respondent from his Will and that Decedent provided for Respondent outside the Will pursuant to S.C. Code Ann. §62-2-301(a)(1) and (2). **[Response to Petition for Omitted Spousal Share].** Respondents moved for summary judgment on the Petition for Omitted Spouse Share on the grounds that it appeared from the Will that the Respondent's omission was intentional pursuant to S.C. Code Ann. §62-2-301(a)(1). **[Motion for Summary Judgment, with**

Exhibits, 6/30/18]. The motion was denied.[1] **[Order Denying Motion for Summary Judgment, 11/10/17].** After completing full discovery, a hearing on the Petition for Omitted Spouse Share was held on April 18, 2018. **[4/18/18 Transcript].** Respondent was not present at the hearing, but presented Ann Noble–Kiley, her conservator, as a witness in her case-in-chief. **[4/18/18 Transcript, pp. 10-12].** Following Respondent's case-in-chief, Respondents moved for involuntary non-suit, which was denied. **[4/18/18 Transcript, pp. 13-20].** Thereafter, Respondents presented their case-in-chief. Respondents were all present at the hearing and presented Brett Bluestein, Esquire, Trisha Ernstrom, Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward as witnesses. **[4/18/18 Transcript, pp. 20-169].** Respondents' Exhibits 1-8 were admitted into evidence. **[Id.].**

In lieu of closing statements and with the Parties' consent, the Court requested the Parties submit proposed orders. **[4/18/18 Transcript, pp. 169-171; Proposed Order Submitted by Appellant].**

On August 9, 2018, the Court issued an order granting the omitted spousal share to Respondent pursuant to S.C. Code Ann. 62-2-301. **[Order, 8/9/18].** Appellants timely moved for reconsideration pursuant to Rule 59(e), SCRCP, and submitted a memorandum in support of the motion for reconsideration. **[Motion for Reconsideration, 8/20/18, Memorandum of Law in Support, 10/8/18].** On January 18, 2019, the Court issued an order amending the August 9, 2019 Order, substantially altering and changing the findings of fact and conclusions of law, but holding

[1] A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial. The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict. Ballenger v. Bowen, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) (citations omitted).

Respondent entitled to the omitted spousal share to pursuant to S.C. Code Ann. 62-2-301. **[Order, 1/18/19].** As a result of the substantial alterations to the January 18, 2019 Order, Appellant timely filed a motion for reconsideration of the April 9, 2019 Order. **[Motion for Reconsideration, 1/28/19].** See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 19, 602 S.E.2d 772, 777 (2004). The Court denied the Motion for Reconsideration on April 2, 2019. **[Order, 4/2/19].** This appeal timely follows.

FACTS

There are several key undisputed facts in this case:

- First, it is undisputed that the Will is the last will and testament of the Decedent. **[See e.g. Reply to Motion for Summary Judgment, 10/23/17; Order, 1/18/19, ¶¶13, 49]**
- Second, it is undisputed that the Will pre-dated Respondent's marriage to Decedent and that Respondent is not provided for in the Will. **[See e.g. Reply to Motion for Summary Judgment, 10/23/17; Order, 1/18/19, ¶49]**
- Third, it is further undisputed that the Decedent pre-deceased the Respondent on September 16, 2016. **[Transcript, p. 11, Order, 1/18/19, ¶1]**
- Forth, and notably, it is also un-contradicted that, by virtue of his Will, the Decedent intended to omit any subsequent spouse from inheriting from his estate. **April 9, 2019 Order, ¶9, 10, and 11; Transcript pp. 52-53.**

In addition to these key facts, the lower court also made findings of fact that are not subject to any appeal and are incorporated herein by reference.[2]

At the hearing on the Petition for Omitted Spousal Share, Respondent's daughter and conservator, Ann Noble Kiley, was Respondent's only witness. Kiley testified that Respondent and Decedent were married on August 27, 2013, and remained married at the time of Decedent's

[2] Paragraphs 1-35 and 37-42 are unappealed findings of fact in the lower court's April 9, 2019 Order, and thus, law-of-the-case. See Dreher v. S.C. Dep't of Health & Envtl. Control, 412 S.C. 244, 249, 772 S.E.2d 505, 508 (2015). The Appellants appeals from the finding of fact in Paragraph 36 as unsupported by the evidence, and paragraphs 53-56, and 57, 58, 60 and 61 as unsupported by the evidenced and controlled by errors in law.

death just three (3) years later on September 16, 2016. Kiley testified that Respondent was 88 years old, twenty (20) years older than the Decedent, at the time of their marriage and that Respondent owned her own home at 1220 Creek Watch on Seabrook Island during their marriage. **(Trans., pp. 10-12).** In addition to this testimony, Respondent included a copy of the Respondent's and Decedent's marriage certificate with the Petition for Omitted Spousal Share. Respondent presented no other evidence or testimony in support of her Petition for Omitted Spousal Share. Respondent presented no evidence or testimony in any way related to the intent of the Decedent at the time of the Will or anytime thereafter.

Item XIII of the Will provides:

> **Agreement for Mutual Wills and Trust.** The Agreement for Mutual Wills and Trust dated as of even date herewith between Stephen D. Ward and Nancy L. Ward is incorporated by reference in to this Last Will and Testament.

At the time of the Will, Decedent was married to Nancy L. Ward (the "Prior Wife"). **(Exhibit 6, §2.1).** The Will was not executed as a standalone document; rather, it was executed as an exhibit to a document entitled Agreement for Mutual Wills and Trusts **(Exhibit 6),** which was also executed on April 21, 2005 and incorporated by referenced in to the Will.

The Agreement for Mutual Wills and Trusts contained five Exhibits:

(1) Exhibit 1 was the Trust Agreement of Stephen D. Ward, which was also executed on April 21, 2005 **(admitted into evidence as Exhibit 4);**

(2) Exhibit 2 was the Will (entitled the Last Will and Testament of Stephen D. Ward) **(admitted into evidence as Exhibit 1);**

(3) Exhibit 3 was the Nancy Diemer Trust, which was executed on April 28, 1998 **(admitted into evidence as Exhibit 2);**

(4) Exhibit 4 was the First Amendment and Restatement of Trust Agreement of Nancy L. Ward, which was also executed on April 21, 2005 **(admitted into evidence as Exhibit 5);** and

(5) Exhibit 5 Last Will and Testament of Nancy L. Ward, which was also executed on April 21, 2005 **(admitted into evidence as Exhibit 3)**.

(Exhibit 6). The Agreement for Mutual Wills and its exhibits, along with financial powers of attorney, healthcare powers of attorney, and living wills and declarations of desire for natural death were prepared by attorney Brett Bluestein at the direction of Prior Wife and Decedent in 2005 (hereinafter collectively referred to as the "2005 Estate Planning Documents"). **(Trans. pp. 28, 31, 33, 34, 35, 37; Exhibit 8; Exhibit 6 "Acknowledgement").**

The purpose of the Agreement for Mutual Wills and Trusts is apparent from the four corners of the document. In short:

> Husband and Wife each have children from a former marriage.
>
> ***
>
> Husband and Wife mutually desire for the Survivor to have full use of the Property during his or her life with the Property after the death of the Survivor to be distributed as provided for in the Trust Agreement of Stephen D. Ward (dated of even date herewith) and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (dated of even date herewith).
>
> ***
>
> *This Agreement is made to insure that the mutual plan of the Parties shall not be altered by acts subsequent to date hereof, except as agreed upon between the Parties.*

(Exhibit 6, ¶ II.2.3; 2.6).

Based on the four corners and plain and ordinary language of the Agreement for Mutual Wills and Trust, the 2005 Estate Planning Documents were intended to insure that upon the death of the Survivor, Predecessor's children from his/her former marriage were provided for as agreed upon, despite any changes in circumstance, including remarriage, after the Predecessor's death. **(Exhibit 6).**

Consistent with the plain and ordinary language of the Agreement for Mutual Wills and Trusts, attorney Brett Bluestein testified regarding the Decedent's intent in preparing the Agreement for Mutual Wills and all of the 2005 Estate Planning Documents. Specifically, Bluestein testified that the purpose of an agreement for mutual wills was for a "situation where there's a husband and wife, often times, an older couple, and always a couple with children from a prior marriage, where the ultimate concern was what was going to happen after the death of the first spouse, in respect to individual husband and wife's collective assets". **(Trans. p. 37, ll. 16-22).** Bluestein reiterated that the intent was crystal clear that neither Prior Wife nor Decedent could amend their estate planning documents, in the event of the death of the first spouse. **(Trans. p. 46, ll. 17-20).** With respect to the Decedent's intent in having the 2005 Estate Planning Documents prepared, Bluestein confirmed that he would not have even suggested a mutual will agreement unless Prior Wife and Decedent were not very concerned about circumstances changing after the first spouse died, including a subsequent marriage by the surviving spouse. **(Trans. P. 42, ll. 6-18).** Bluestein stressed that he would not have prepared the Agreement for Mutual Wills for Prior Wife nor Decedent if it were not crystal clear that their intent was to omit any subsequent spouse from inheriting from the surviving spouse's estate. **(Trans. p. 52, ll. 11-25 – p. 53, ll. 1-2).**

Prior Wife pre-deceased the Decedent on June 4, 2011 and thus, Decedent was the Survivor under the terms of the Agreement for Mutual Wills and Trusts until his death on September 16, 2016. **(Trans. P. 159, ll. 18-19; Exhibit 7).** As the Survivor under the terms of the Agreement for Mutual Wills and Trusts, Decedent had the benefit of his and Prior Wife's assets during his lifetime. **(Trans. P. 45, ll. 7-13).** Pursuant to the 2005 Estate Planning Documents, Prior Wife's

children do not receive the benefit of the majority of Prior Wife's assets until after Decedent's death.

Following Prior Wife's death, the Decedent married the Respondent, his fourth wife, on September 7, 2013 and did not amend, modify, alter or revoke the 2005 Estate Planning Documents. **(Trans. p. 47, ll. 3-6; p. 124, ll. 7-17; 167, ll. 23-25- p. 168, ll. 1-5).** Decedent's friend for many years, Trish Ernstrom, testified that she discussed Decedent's estate plans with Decedent after 2005, both prior to and after Prior Wife's death. Specifically, Ernstrom recalls discussing Decedent's estate plan in contemplation of his fourth marriage to Respondent, on at least three occasions, in which Decedent expressed that any marriage to Respondent would not affect his estate plan and that everything in his estate plan was intended to and would stay the same as he and his Prior Wife had planned. **(Trans. p. 81-85).**

Brian Ward, one of Decedent's children[3], testified that Decedent gave him a copy of the 2005 Estate Planning Documents, **Exhibit 8**, in late 2005, early 2006. **(Trans. 99, ll. 11-14).** David Ward and Stephanie Ward Cibinic, children of the Decedent, also testified that Decedent provided them copies of the 2005 Estate Planning Documents, **Exhibit 8. (Trans. p. 145, ll. 18-25; p. 160, ll. 11-22).** In Brian Ward's proffer[4], Brian testified consistent with Trish Ernstrom's testimony, that he had a conversation with the Decedent in 2013, in contemplation of Decedent's marriage to Respondent, that Decedent's estate plan contained in Exhibit 8 would remain unchanged and would not change as a result of the marriage. **(Trans. p. 106-107).** Similarly, in David Ward's

[3] Decedent had three biological children from his first marriage to Linda Ward - Brian, Stephen, and Stephanie. Decedent also had two adopted children with his second wife, Sally Ward. **(Trans. p. 93).** Decedent did not have any children with his third wife, Nancy Ward, or his fourth wife, Mary Ward.

[4] Respondent objected to this proffered testimony on the Dead Man's Statute, and such objection was sustained. **(Trans. p. 101-105).**

proffer[5], David also testified consistent with Trish Ernstrom's testimony, that he had two conversation with the Decedent in 2011 and 2013 regarding the 2005 Estate Plan Documents, **Exhibit 8. (Trans. p. 148, ll. 13-17).** In 2011, David proffered that Decedent told David that everything in **Exhibit 8** was still good. **(Trans. p. 149, ll. 16-22).** Also in the proffered testimony, David stated that again in 2013, in contemplation of Decedent's marriage to Respondent, the Decedent told him his marriage did not affect his prior estate plan in **Exhibit 8. (Trans. p. 151, ll. 7-11).**

Stephanie Cibinic also testified directly regarding her conversations with Decedent. Respondent objected to this testimony, but the objection was overruled and her testimony was permitted. **(Trans. p. 168).** Stephanie stated that Decedent told her in 2013 that his impending marriage to Respondent did not impact the Will. **(Trans. p. 168, l. 2-5).**

In addition to the testimony concerning the intent of the Decedent both at the time he executed the 2005 Estate Planning Documents, and thereafter, Respondent's also presented testimony concerning transfers to Respondent outside of the Will. Decedent and Respondent were married three years prior to Decedent's death. Both had prior marriages, and for the Decedent, this marriage was his fourth. Respondent was 20 years older than Decedent, and maintained her own home and assets outside of the marriage, including but not limited to real property at 1220 Creek Watch on Seabrook Island; a life insurance policy, and a Schwab account. Despite Respondent's assets held outside of the marriage, Decedent also transferred multiple assets to Respondent outside of the estate, that were payable on death, including: (1) the BB&T account, (2) Toyota Camry lease, (3) club membership, and (5) a timeshare. During their marriage,

[5] Respondent objected to this proffered testimony on the Dead Man's Statute, and such objection was sustained. **(Trans. p. 149, ll. 5-14).**

Decedent used his income to provide for Respondent during his lifetime, and also paid for delinquent taxes in the amount of approximately $1,400 on Respondent's property at 1220 Creek Watch on Seabrook Island and Respondent's medical bills in the amount of approximately $7,500 from his assets. Despite having income from social security and a life insurance policy, Respondent did not utilize her own assets to provide for Decedent or to purchase their joint assets during their marriage. **(Trans. p. 119-124).** All of the expenses paid and assets acquired during their marriage were paid for by the Decedent's income and benefitted Respondent outside of Decedent's estate.

SCOPE OF REVIEW

An action under the omitted spouse statute is an action at law. Timmerman v. Timmerman, 331 S.C. 455, 502 S.E.2d 920 (Ct.App.1998).

On appeal from an action at law that was tried without a jury, the appellate court can correct errors of law, but the findings of fact will not be disturbed unless found to be without evidence which reasonably supports the judge's findings. Blackmon v. Weaver, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005).

DISCUSSION

I. The Probate Court erred in granting Respondent an omitted spousal share because such finding is controlled by an erroneous conception of the application of the law.

The Probate Court erred in granting Respondent an omitted spousal share because the finding is controlled by errors of law. The Probate Court erroneously applied the law regarding the elective share to a claim for the omitted spousal share.[6]

[6] Respondent repeatedly and erroneously argued that the omitted spousal share could not be denied because the 2005 Will was drafted prior Decedent's marriage to Petitioner and not made in contemplation of Decedent's marriage to Petitioner. This is a legally incorrect statement of the law and public policy as the omitted spousal share statute requires that the surviving spouse claiming the share to be married to the testator *after the execution of the will.* S.C. Code Ann. 62-2-301. While the Probate Court originally adopted Respondent's erroneous argument in the August 9,

The Omitted Spouse Statute, Section 62–2–301 of the South Carolina Code, provides in relevant part:

> (a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse, upon compliance with the provisions of subsection (c), shall receive the same share of the estate he would have received if the decedent left no will unless:
>
> (1) ***it appears from the will that the omission was intentional;*** or
>
> (2) ***the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.***

(emphasis supplied).

In Green ex rel. Estate of Cottrell, the Court noted that the legislative purpose behind the Probate Code was "(2) ***to discover and make effective the intent of a decedent in the distribution of his property.***" Id. (emphasis supplied).

South Carolina specifically provides for documents to be incorporated into a will by reference. S.C. Code Ann. §62-2-509 (2014).

South Carolina also specifically permits an expressed testamentary compact for joint wills, such as the one contained in the Agreement for Mutual Wills, which becomes irrevocable when one party predeceases. See e.g., Pruitt v. Moss, 271 S.C. 305, 311–12, 247 S.E.2d 324, 327–28 (1978); S.C. Code Ann. §62-2-701 (2014).

2018 Order, it corrected this error in the January 18, 2019 Order. The Probate Court nonetheless continued to err in applying the elective share standard to this claim for an omitted spousal share in the January 18, 2019 Order and rendering a ruling controlled by errors of law and wholly unsupported by the evidence. The Appellant incorporates by reference the arguments set forth at trial, in support of their motion for involuntary non-suit, in their proposed order submitted to the court on May 7, 2018, in the Motion for Reconsideration dated August 20, 2018, in the Memorandum in Support of Motion for Reconsideration dated October 8, 2018, and Motion for Reconsideration dated January 23, 2019.

In this case, Item XII of the Will expressly provides that: "The Agreement for Mutual Wills and Trusts dated as of even date herewith between Stephen D. Ward and Nancy L. Ward is incorporated by reference into this Last Will and Testament."

Specifically, the purpose of the Agreement for Mutual Wills and Trusts is apparent from the four corners of the document. In short:

> Husband and Wife each have children from a former marriage.
>
> ***
>
> Husband and Wife mutually desire for the Survivor to have full use of the Property during his or her life with the Property after the death of the Survivor to be distributed as provided for in the Trust Agreement of Stephen D. Ward (dated of even date herewith) and the First Amendment and Restatement of Trust Agreement of Nancy L. Ward (dated of even date herewith).
>
> ***
>
> *This Agreement is made to insure that the mutual plan of the Parties shall not be altered by acts subsequent to date hereof, except as agreed upon between the Parties.*

(Exhibit 6, Section II. 2.3; 2.6). The Agreement for Mutual Wills and Trusts Provides that while both Husband and Wife are living, the Agreement for Mutual Wills and Trusts may not be altered, amended or revoked except pursuant to a writing signed by both parties. **(Exhibit 6, Section III. 3.1; IV).** There is not a writing signed by both the Decedent and Prior Wife altering, amending, or revoking the Agreement for Mutual Wills and Trusts. Moreover, upon Prior Wife's death, the Agreement for Mutual Wills and Trusts became irrevocable. **(Exhibit 6, Section III. 3.2)**

Based on the four corners and plain and ordinary language of the Agreement for Mutual Wills and Trust, the 2005 Estate Planning Documents were intended to insure that upon the death of the Survivor, Predecessor's children from his/her former marriage were provided for as agreed upon, despite any changes in circumstance, including remarriage, after the Predecessor's death.

(Exhibit 6). See also Uniform Probate Code § 2–301(a)(2) (stating the surviving spouse is not entitled to an intestate share when "the will expresses the intention that it is to be effective notwithstanding any subsequent marriage").

As a result, it appears from the Will that the omission of Respondent, and any subsequent spouse, was intentional. Under Section 62–2–301 of the South Carolina Code, the court, thus, must deny the omitted spousal share. As a result, the Court erred in granting Respondent's petition because the intention of the Decedent was apparent from the Will.

Notwithstanding, testimony outside the four corners of the Will also evidence the Decedent's intent to omit Petitioner, and any spouse, subsequent from the Will. The reporter's comments to the Omitted Spouse Statute specifically contemplates evidence of the Decedent's intentions from the face of the Will, from the Decedent's statements, or other evidence. See also The South Carolina Probate Code's Omitted Spouse Statute and in Re Estate of Timmerman, 50 S.C. L. Rev. 979, 987 (1999) (discussing cases that suggest that looking beyond the language of a will is acceptable when applying the statute and determining if the intentional-omission exclusion applies as extrinsic facts aid in interpretation of the testator's intent).

Applying the general rules of construction, where the testator's intent is ascertainable from the will and not counter to law, the Court will give it effect. In re Estate of Fabian, 326 S.C. 349, 353, 483 S.E.2d 474, 476 (Ct. App. 1997). The Court can neither "redraft the [w]ill, nor ... doctor a crucial part." Id. (citations omitted). In construing the language of a will, courts must give words their ordinary, plain meaning unless it is clear the testator intended a different sense, or unless such meaning would lead to an inconsistency with the testator's declared intention. Id. To do this, it must look at the words of the will and the circumstances known to Decedent *at the time of execution.* Id.

Petitioner is not entitled to the Omitted Spousal Share simply due to her marriage to Decedent at time of death, as provided for in the Elective Share. Rather, Petitioner must prove the elements of S.C. Code §62-2-301 and must prove her omission from the Will was unintentional.

A surviving spouse who wishes to qualify as an "omitted spouse" must demonstrate the follow four elements:

> (1) the decedent spouse executed the Will in question prior to the marriage;
> (2) the Will does not provide for her as the surviving spouse;
> (3) the omission was unintentional; and
> (4) the decedent did not provide for the spouse with transfers outside of the Will.

Green ex rel. Estate of Cottrell v. Cottrell ex rel. Estate of Cottrell, 346 S.C. 53, 60–62, 550 S.E.2d 324, 328–29 (Ct. App. 2001).

Petitioner failed to present any evidence that her omission from the Will was unintentional. In fact, Petitioner presented no evidence regarding elements 3 or 4 at all. As a result, the Court erred in granting Respondent's petition.

Moreover, the Court erred in applying facts and law regarding the elective share to Petitioner's claim for the omitted spousal share. In Paragraph 54-55 of the Order, the Court concluded that the Decedent failed to comply with Section IV 4.2 of the Agreement for Mutual Wills by: (a) failing to ratify the Will, and (b) failing to require Petitioner to waive a right to the Estate. These findings are wholly unsupported by the facts and law, and irrelevant to the Omitted Spousal Share.

First, the Probate Court erred in concluding that the Decedent failed to comply with the Agreement for Mutual Wills by failing ratify the Will. A finding that Decedent failed to ratify the Will is directly contrary to the un-appealed finding of fact in the order that the Will is the last will and testament of Decedent. **[Order, 1/18/19, ¶¶13, 49].** Moreover, this finding is directly contrary

to the evidence presented by Brett Bluestein, Esquire, Trisha Ernstrom, Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward as witnesses that the Will had not been amended, modified, or altered, and contrary to Decedent's verbal affirmations of the Will before, during, and after his marriage to Petitioner.

Second, the Probate Court erred in concluding that Decedent failed to comply with the Agreement for Mutual Wills by failing to require Petitioner to waive a right to the Estate. The Agreement for Mutual Wills does not require Decedent to require Petitioner waiver a right to the *Estate*. Rather, the Agreement for Mutual Wills discusses a waiver of the *elective share*. Petitioner has not made a claim for the elective share and the elective share is not before the Court. Further, any evidence of a waiver or non-waiver of the elective share by Petitioner is irrelevant to the elements of the Omitted Spousal Share under S.C. Code §62-2-301, where it is apparent from the Will that the omission was intentional. Rather, such evidence would only potentially be relevant to a claim for an elective share, which is not before this Court.

Third, the Probate Court erred in concluding that Decedent's failure to comply with Section IV 4.2 of the Agreement for Mutual Wills is evidence of an unintentional omission of Petitioner in the Will. This finding again confuses the legal standard required for an Omitted Spousal Share with evidence potentially be relevant to a claim for an elective share, which is not before this Court. Under the Omitted Spouse statute, where it is apparent from the Will that the omission is intention, Petition is not entitled to recover. No further inquiry was required. Notwithstanding, there was no extrinsic evidence presented at the hearing to suggest or support any finding that Petitioner was unintentionally omitted from Decedent's Will. Petitioner's potential rights to the Estate under the elective share statute are not asserted, not before the Court, and not relevant to a determination of the Decedent's intent as expressed in the language of Will.

As a result, the Probate Court erred in granting Respondent an omitted spousal share because such finding is controlled by an erroneous conception of the application of the law. This court should reverse and deny Petitioner's claim for an omitted spousal share.

II. The Probate Court erred in failing to find Decedent intentionally omitted Respondent from the Will because any intent to the contrary is wholly unsupported by the evidence.

The Probate Court erred in failing to conclude that Decedent intentionally omitted Respondent from the Will because the evidence was undisputed.

A) Evidence of intent at the time of the Will

Rules of construction are designed to help courts determine the testator's intent as expressed in the will. Albergotti v. Summers, 205 S.C. 179, 31 S.E.2d 129 (1944). Where the testator's intent is ascertainable from the will and not counter to law, we will give it effect. Schroder v. Antipas, 215 S.C. 552, 56 S.E.2d 354 (1949). We can neither "redraft the [w]ill, nor may we doctor a crucial part." Limehouse v. Limehouse, 256 S.C. 255, 257, 182 S.E.2d 58, 59 (1971). In construing the language of a will, we must give words their ordinary, plain meaning unless it is clear the testator intended a different sense, or unless such meaning would lead to an inconsistency with the testator's declared intention. Buist v. Walton, 104 S.C. 95, 88 S.E. 357 (1916). To do this, the Court must look at the words of the will and the circumstances known to Declarant at the time of execution. In re Estate of Fabian, 326 S.C. 349, 355, 483 S.E.2d 474, 477 (Ct. App. 1997).

In this case, the Decedent's intent is readily ascertainable from the plain and ordinary language of the Will. The Probate Court was not required to look any further. Based on the four corners and plain and ordinary language of the Agreement for Mutual Wills and Trust, the Will was intended to insure that upon the death of the Decedent, Nancy Ward's children from her former

marriage were provided for as agreed upon in the Joint Wills and Trusts, despite any changes in circumstance, including remarriage, after the Predecessor's death. **(Exhibit 6).** See also Uniform Probate Code § 2–301(a)(2) (stating the surviving spouse is not entitled to an intestate share when "the will expresses the intention that it is to be effective notwithstanding any subsequent marriage"). The Will expressed the intention for it to be effective notwithstanding Decedent's subsequent marriage to Petitioner. Further, at the time of the execution of the Will, Bluestein reiterated that Decedent's intent to omit a subsequent spouse from inheriting from Decedent's estate was crystal clear. **(Trans. p. 52, ll. 11-25 – p. 53, ll. 1-2).**

As a result, the Probate Court erred in granting Petitioner an omitted spousal share because it is undisputed that the intent of the Decedent at the time of the execution of the will was to omit subsequent spouses and for the Will to be effective notwithstanding any subsequent marriage of the Decedent.

B) Evidence of intent at the time of Marriage

As discussed above, the Court erred in concluding that the Will was not ratified. The Will was, in fact, ratified in contemplation of and after Decedent's marriage to Petitioner. To conclude otherwise, as the Court does in Paragraph 54, contradicts this Court's express finding that the Will is the Decedent's valid, last will. Further, a ratification of a Will need not be in writing as argued by Petitioner and as the Court has apparently concluded. Rather, a will may be ratified expressly or impliedly, by the passage of time, or by other words or actions indicating affirmation. See Bazell Bros. Contractors v. Hill, 245 S.C. 69, 74-75, 138 S.E. 2d 835, 837 (1964) (stating that ratification may be either express or implied, and further stating that "[t]o ratify is to sanction or affirm, to give validity to something done for one by another, not to contract anew or upon different terms."); see also, e.g. Calhoun v. Calhoun, 277 S.C. 527, 533, 290 S.E.2d 415, 419 (1982) (in the

context of undue influence, finding a will ratified where the testator has had the unhampered opportunity to revoke his will)

In contemplating marriage to Petitioner, the Decedent expressed that the marriage was not going to effect the estate plan he and Nancy Ward had in 2005, that nothing would change, and that "everything was going to stay as he and Nancy had planned". Further, in contemplation of marriage to Petitioner and after his marriage to Petitioner, the Decedent did not attempt to revise his estate plan, or seek to set aside the Agreement for Mutual Wills, despite being competent and capable of doing so. This is additional evidence that the Decedent's omission of Petitioner from the Will was intentional after the Will, and in contemplation of his marriage to Petitioner. See Green ex rel. Estate of Cottrell v. Cottrell ex rel. Estate of Cottrell, 346 S.C. 53, 64–65, 550 S.E.2d 324, 330–31 (Ct. App. 2001); see also In Re: Timmerman, 331 S.C. 455, 459, 502 S.E.2d 920, 922 (Ct. App. 1988) (stating that where Decedent "chose to leave his old will intact" was support that he unintentionally omitted her, and did not intend for his spouse to receive benefits under the omitted spouse statute).

Decedent ratified the Will by his verbal affirmations of the Will in contemplation of his subsequent remarriage and by declining to amend, modify or alter his estate plan documents in Exhibit 8. The only evidence presented to the Probate Court after the Will expressed the Decedent's intention that the Will was to be effective notwithstanding any subsequent marriage to Petitioner. The Probate Court erred in concluding otherwise, contrary to the law and evidence.

C) Evidence of Intent after marriage

Decedent's intent to omit subsequent spouses from his Will is apparent from the face of the Will, and evident and undisputed from the circumstances surrounding the execution of the Will. Moreover, Decedent's intent to omit subsequent spouses from the Will is also evident and

undisputed from the Decedent's verbal affirmations of the Will in contemplation to his marriage to Petitioner. Further, Decedent's intent to omit Respondent from the Will is also apparent from financial circumstances of the Respondent and Decedent during their 3 year marriage and the Decedent's non-testamentary transfers after marriage.

Decedent and Respondent were married three years prior to Decedent's death. Both had prior marriages, and for the Decedent, this marriage was his fourth. Respondent was 20 years older than Decedent, and maintained her own home and assets outside of the marriage, including but not limited to real property at 1220 Creek Watch on Seabrook Island; a life insurance policy, and a Schwab account. Despite Respondent's assets held outside of the marriage, Decedent also transferred multiple assets to Respondent outside of the estate, that were payable on death, including: (1) the BB&T account, (2) Toyota Camry lease, (3) club membership, and (5) a timeshare. During their marriage, Decedent used his income to provide for Respondent during his lifetime, and also paid for delinquent taxes in the amount of approximately $1,400 on Respondent's property at 1220 Creek Watch on Seabrook Island and Respondent's medical bills in the amount of approximately $7,500 from his assets. Despite having income from social security and a life insurance policy, Respondent did not utilize her own assets to provide for Decedent or to purchase their joint assets during their marriage. **(Trans. p. 119-124).** All of the expenses paid and assets acquired during their marriage were paid for by the Decedent's income and benefitted Respondent outside of Decedent's estate.

The evidence related to Decedent's and Petitioners financial course of dealing and Decedent's non-testamentary transfers to Petitioner during his lifetime is evidence of his continued intent to omit Petitioner from his Will. This was the only evidence presented to the Probate Court

after Petitioner and Decedent's marriage and continued to express the Decedent's intention that the Will was to be effective notwithstanding his subsequent marriage to Petitioner.

The paramount rule of will construction is to determine and give effect to the testator's intent. S.C.Code Ann. § 62–1–102(b)(2) ("The underlying purposes and policies of this Code are ... (2) to discover and make effective the intent of a decedent in the distribution of his property."); see, e.g., Holcombe-Burdette v. Bank of Am., 371 S.C. 648, 655–57, 640 S.E.2d 480, 483–84 (Ct. App. 2006). In determining the intent of the deceased, a court must always look first to the language of the will itself. In assigning meaning to the words used in the will and ascertaining the intent of the testator, the court must view the will as a whole. "An interpretation that fits into the whole scheme or plan of the will is most likely to be the correct interpretation of the intent of the testator." Id. Construction depends upon the Decedent's intent at the time of execution as shown by the face of the document and not on any secret wishes, desires or thoughts after the event. Id.; see also In re Estate of Prioleau, 361 S.C. 627, 633, 606 S.E.2d 769, 773 (2004).

The Probate Court erred in disregarding all evidence of Decedent's intent, at the time of the Will, in contemplation of his marriage to Petitioner, and following his marriage to Petitioner, in granting the omitted spousal share, contrary to the law and evidence.

III. The Probate Court erred in denying Appellant's Motion for Summary Judgment and Motion for Involuntary Non-Suit because it appears from the Decedent's Will that the omission of the Respondent from the Will was intentional.

The Probate Court erred in denying Appellant's Motion for Summary Judgment and Motion for Involuntary Non-Suit because Petitioner presented no evidence that the omission of the Respondent from the Will was unintentional.

"Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " Bruce v. Durney, 341 S.C. 563, 565, 534 S.E.2d 720, 722 (Ct.App. 2000) (quoting Rule 56(c), SCRCP). Involuntary non-suit is required, where there is no relevant competent evidence reasonably tending to establish the material elements of the plaintiff's case.

The Probate Court erred in denying Appellant's motion for summary judgment and involuntary non-suit as Respondent presented no evidence whatsoever regarding Decedent's intent in omitting Respondent from the Will. Respondent has the burden of proof to claim the omitted spousal share and failed to meet that burden.

CONCLUSION

For the reasons set forth herein, the Probate Court erred in granting Petitioner the omitted spousal share. This court should reverse.

BURR & FORMAN LLP

Dated: June 19, 2019

Amanda A. Bailey, SC Bar No. 71085
George Morrison, SC Bar No. 71622
E-mail:abailey@burr.com
George Morrison
E-mail:gmorrison@burr.com
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for the Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
County of Charleston
Case No. 2019-CP-10-01932

APPEAL FROM
Probate Court

The Honorable Irvin G. Condon
Probate Court Judge

Case No.:
2016-ES-10-01631

2019 JUN 19 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IN RE: ESTATE OF STEPHEN DAY WARD, JR.

STEPHANIE WARD CIBINIC, DAVID D. WARD, AND BRIAN C. WARD, Personal Representatives .....Appellants/Respondents,

vs.

MARY K. WARD A/K/A MARY KIMBERLY WARD .....Respondent/Petitioner.

PROOF OF SERVICE
S.C. Code Ann. §62-1-308(d)

I certify that on this day I have served the **Brief of Appellants and Designation of Matter to be Included in the Record on Appeal** by personally delivering a copy to:

Charleston County Probate Court
Attn: Estate Clerk
84 Broad Street
Historic Courthouse
Charleston, SC 29401

-and-

Jane A. McFaddin, Esq.
665 St. Andrews Boulevard
Charleston, SC 29407
Attorney for Respondent/Petitioner
33686950 v1

33686950 v1

BURR & FORMAN LLP

Dated: June 19, 2019

Amanda A. Bailey, SC Bar No. 71085
George Morrison, SC Bar No. 71622
E-mail:abailey@burr.com
George Morrison
E-mail:gmorrison@burr.com
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, SC 29402
Telephone: 843.723.7831
Fax: 843.722.3227
Attorneys for the Respondents Stephanie Ward Cibinic, David D. Ward, and Brian C. Ward