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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

Certiorari to the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCulloch
Probate Judge

Supreme Court Case No. 2024-001115

Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Petitioners

APPENDIX VOL II

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1 Q And you weren't asked to do that?

2 A I was not. In May of 1997, I lived in Arlington,
3 Virginia, and I was not dealing with this sort of
4 family thing.

5 THE COURT: Mr. Sowell, again, I apologize.
6 Anything?

7 MR. SOWELL: Nothing else.

8 THE COURT: Mr. Griffin?

9 MR. GRIFFIN: I don't have any questions.

10 THE COURT: Be very careful stepping down,
11 sir.

12 MR. SOWELL: The defendant calls Bill
13 Reynolds.

14 Whereupon,

15 William Reynolds,
16 being duly sworn and cautioned to speak the truth, the
17 whole truth, and nothing but the truth, testified as
18 follows:

19 - - - - -

20 EXAMINATION

21 BY MR. SOWELL:

22 Q Mr. Reynolds, state your full name.

23 A William M. Reynolds, III.

24 Q Are you a lawyer in the firm of Todd & Johnson?

25 A I am.

1 Q Have you been one for several years?

2 A I've been one since October of 2000.

3 Q Were you primarily trained by Albert Creswell
4 Todd, III?

5 A I was.

6 Q And you've continued as an estate planning lawyer?

7 A Yes.

8 Q Since then?

9 A Yes.

10 Q There was a reference by Mr. Griffin, I don't know
11 which exhibit it is, but I've got a copy of it, it
12 has a 10/15/2007 time entry, BRIII. Is that
13 William Reynolds, III?

14 A That's me.

15 Q What is the date on that statement?

16 A 10/15/07.

17 Q What does the time entry say?

18 A "Inner-office conference with Steve Johnson to
19 discuss equalization provision. Proof, revise,
20 edit the same."

21 Q What were your conversations with Steve Johnson?

22 A Well, just to give you some background, Steve and
23 I bounce provisions, drafting provisions, ideas,
24 off each other a good amount of time, and he came
25 to me and asked me to review the equalization

1 provision that we've been discussing today.

2 Q Did you do that?

3 A I did that.

4 Q What did you conclude from reviewing that
5 provision?

6 A I thought it was appropriate for the circumstances
7 that I knew about.

8 Q And what circumstances did you understand before
9 you had that conversation?

10 A I knew that Janet Brooker had a fairly large
11 taxable estate. There was an attempt, pretty
12 aggressive attempt, to give nontaxable gifts, but
13 also an attempt to equalize for Julia Brooker.
14 And so that was the context I looked at the
15 provision for.

16 Q Was there ever any discussion with Steve about
17 equalizing these payments going backwards?

18 A No. He basically told me this is a -- because
19 we're starting this aggressive gifting program,
20 and of course, annual exclusion gifts, gifts for
21 tuitions, for medical payments, are really the
22 lowest hanging fruit in estate planning. There
23 was never any discussion about retrospective or
24 looking back. I think, at least in my experience,
25 if you look back, you gotta start somewhere. And

1 if they had decided to look back, Steve would have
2 asked Mrs. Brooker what were the gifts you've
3 given thus far; let's start with an amount or
4 let's write a check to even up Julia. But that
5 was never part of the discussion between Steve and
6 I.

7 Q Looking at this document, which is the Trust
8 Agreement, and we're looking here at the board,
9 which is 2(a), is there any reference in there to
10 a starting date for looking backwards?

11 A Well, the date that he references in 2(a), says,
12 "From the date of this Trust forward."

13 Q Right. Which was October of 2007?

14 A Right.

15 Q Now, you've heard the arguments Mr. DuRant made
16 about (a)+(b). What you think is the proper
17 interpretation and what did you think then was the
18 proper interpretation of (a), (b), and (c)?

19 A Well, when I first looked at it, reading the first
20 paragraph number 2, the main paragraph, it shows
21 what Janet's intent was. It was clear that she
22 said Julia's not married, she doesn't have
23 children; Ellen's married and has children; Beach
24 is married and has children, and we want to
25 equalize going forward. And (a) says to determine

1 the gifts made to Ellen's family and to Beach's
2 family for the purpose of equalizing under
3 paragraph number two, and then apply five percent
4 and add the result of (a) and the result of (b)
5 and come up with a sum.

6 Q Is there anything in (a) that implies or imports
7 to you that the gifts to Ellen's family and the
8 gifts to Beach's family should be added together?

9 A No. And if you were to read it that way, it
10 wouldn't comport with 2, the main paragraph of 2,
11 which says to equalize. And it wouldn't comply
12 with (a), which says determine the lifetime gifts
13 between the two.

14 MR. SOWELL: Thank you, that's all I have,
15 Your Honor.

16 - - - - -

17 CROSS EXAMINATION

18 BY MR. GRIFFIN:

19 Q You spent 15 minutes looking at this?

20 A I did.

21 Q It says, "From the date of this Trust forward, the
22 trustee shall determine the date and the amount of
23 my lifetime gifts made to the Settlor -- "

24 THE COURT: "by"

25 Q -- "by the Settlor to the issue of Ellen Corontzes

1 Attorneys, come on, please.

2 [Off the Record]

3 THE COURT: We're back on the record.

4 Mr. Brooker is back on the witness stand.

5 - - - - -

6 FURTHER EXAMINATION (Beacham O. Brooker, Jr.)

7 BY THE COURT:

8 Q I think I confused you, sir, so I'm going to
9 apologize. The concept here is I'm trying to
10 understand a family dynamic that is complicated in
11 the sense that this is not the only estate
12 document that drove or led the way from '07 to her
13 death.

14 So when this Trust is created in '07, are you
15 aware of this Trust?

16 A Yes, I was there when it was signed.

17 Q You were there when she signed it. I know it's
18 initially funded with a dollar.

19 A Yes.

20 Q And at the time of your mother's signing this
21 Trust document, you are also being made the power
22 of attorney?

23 A Correct.

24 Q Is that correct?

25 A And Trustee under the Trust. Personal

1 Representative of the Will, Trustee under the
2 Trust, is what I --

3 Q So you're wearing a lot of fiduciary hats?

4 A Yes.

5 Q A lot of things that can get confusing, I get.

6 When your mother, from the '07 Trust forward, did
7 she continue to personally give lifetime gifts?
8 Personally.

9 A Without my knowledge, I wouldn't know.

10 Q Without your knowledge, you wouldn't know?

11 A I mean, if she gave --

12 Q Let me explain where I'm coming from. You're
13 given a directive here.

14 A Correct.

15 Q As the Trustee, you are to determine any lifetime
16 gifts, and you can see from '07 forward or all the
17 way back in '97 forward, that's not the point
18 right now, you have to know what she, she's the
19 Settlor, gave to your wife, Ellen's husband and
20 all of the grandchildren.

21 A Correct.

22 Q So you're given that directive. And the Trust
23 isn't funded until her death, yes?

24 A Correct.

25 Q So you're looking for gifts she made from other

1 sources. Did you do that?

2 A Yes. And the only liquid account she had at the
3 time of her death, or after the time of her death,
4 were an account with Stephens of the Janet B.
5 Brooker Estate, an account with Stephens,
6 Incorporated of the Janet B. Brooker Revocable
7 Trust, which then becomes irrevocable. There was
8 an IRA, I think at Stephens. Plus a checking
9 account at First Community Bank. Upon death, I
10 put together -- I knew that each year, I would
11 instruct Dino Corontzes to transfer out 14,000, or
12 whatever the death tax exclusion amount was in
13 January of that year to each of the children,
14 grandchildren and spouses.

15 Q How are you directing him to do that? As her
16 power of attorney?

17 A I don't know if I thought about that. I knew that
18 I was instructed --

19 Q Well, you're not doing it as a trustee because
20 there's no money in the Trust.

21 A Correct.

22 Q So how are you directing Dino to do that?

23 A From whatever funds that he had on account for my
24 mother.

25 Q As her power of attorney, as her agent under this

1 Power of Attorney?

2 A I think you're asking me for -- I didn't think
3 about that at the time, so I wouldn't want to
4 testify that hey, I'm calling you as -- but he
5 would confirm that I had the authority to do it
6 and I know that he had the Power of Attorney on
7 file.

8 Q Who is he?

9 A Dino Corontzes.

10 Q Well, he's not here to confirm that. You don't
11 know how you acted or how you captured what your
12 mother gifted? Did your mother continue to gift
13 herself?

14 A I don't think so, no.

15 Q You don't think so?

16 A No.

17 Q So did you continue to gift as her power of
18 attorney?

19 A Yes.

20 Q You're acting like that's a question when you say,
21 "yes," like you're not -- You've been given a
22 responsibility here.

23 A Right.

24 Q And it doesn't sound like I'm confident and that
25 you've gone and looked. That's your job. Are you

1 believing that the lifetime gifts are only the
2 gifts reported on these gift tax returns? You're
3 not gonna include tuition or anything else she
4 gifted?

5 A No, I'm taking the annual gifts that she made to
6 children, grandchildren, spouses --

7 Q Did she make them or did you do it on her behalf?

8 A They come from her assets, from her estate. I
9 would make the phone call to Dino Corontzes and
10 say transfer from her assets that you're holding
11 this amount --

12 Q As her agent?

13 A As her agent.

14 Q Did you pay the tuition for all the kids as her
15 agent?

16 A That was from her checking account. I think in
17 the later years I had signatory authority on the
18 checking account and I would sign the checks.

19 Q So from '07 forward, does she ever make those
20 checks out to Hammond?

21 A Does she sign them? No, I believe it's probably
22 my signature on the checks.

23 Q So you're making an independent decision to
24 continue to do that as gifting on her behalf?

25 A That's correct.

1 DAY TWO - Thursday, February 7, 2019

2 - - - - -

3 THE COURT: We're back on the record in the
4 trust matter regarding Janet B. Brooker,
5 2017-GC-40-36. I need to acknowledge that we've
6 actually had a day and about a half break in an
7 effort to verify -- and attorneys, please know
8 that you're welcome to clarify or correct what I'm
9 saying -- in an effort to make sure all bank
10 records have been reviewed, obtained and reviewed.
11 I believe that Mr. Griffin and Mr. Sowell, you
12 both agree that has happened.

13 MR. GRIFFIN: Yes, Your Honor.

14 MR. SOWELL: Yes. With the exception of now
15 these First Community Bank records, which would
16 touch upon these baby gifts, we call them corn
17 dogs, \$45 gifts. Those have not been completely
18 reviewed because we haven't had time, but we're
19 satisfied. If the Court's not, then we will
20 review.

21 THE COURT: Let's be clear on what that
22 means. Mr. DuRant, who has testified and is
23 available and here today, did review those
24 records --

25 MR. SOWELL: Yes.

1 not had time to go back and pull each of those
2 out. I need to actually -- I think I actually
3 have to get to Morgan Stanley, which my
4 brother-in-law who manages this no longer works
5 for. If they've kept them, I'm going have to beg
6 for them. I have not gone through page by page
7 the First Community bank statements over these
8 seven years, I think it's some 11,000 pages of
9 documents, to pull out these gifts. There are not
10 many of them that come from the First Community
11 Bank that were made out of the account of First
12 Community Bank. But, in other words, there are
13 very few needles, but it's a huge haystack. I
14 would have to go through tons of pages of papers
15 scrolling down to find those actual canceled
16 checks.

17 Q But you've seen Mr. DuRant's report.

18 A I have, yes.

19 Q Is it, with respect to a review these records,
20 acceptable to you?

21 A Yes, it is.

22 Q And so, these numbers you've got in here, they are
23 taken from the records, but also confirmed by
24 Mr. DuRant's report?

25 A Correct. With a difference of 24,000, which he

1 found, which I have not been able to locate.

2 \$24,000.

3 Q So you do not know what that discrepancy is
4 attributable to?

5 A I've worked on it all morning; I can't find it.

6 Q So your report, your chart in response to the
7 Court's email request of a couple days ago, is
8 satisfactory to you, except for you cannot discern
9 where that \$24,000 difference is between your
10 numbers and George DuRant's numbers?

11 A That's correct?

12 THE COURT: More or less?

13 Q Is it more or less?

14 A Mr. DuRant had 768,000. My calculation was
15 744,000. So roughly 24,000, a little bit more
16 than 24,000 difference. Which seems to suggest to
17 me they were two \$12,000 gifts that were either I
18 didn't pick up or he double counted and we're
19 still working on it.

20 MR. SOWELL: Those are the discrepancies
21 between George DuRant and Mr. Brooker. Now, if
22 you want us to, Mr. Brooker can go get those First
23 Community Bank statements. They're in that thumb
24 drive.

25 THE COURT: I'm about to say, you have them.

1 MR. SOWELL: We have them, but we haven't had
2 a chance to review in sufficient time. If you
3 want us to do it, we can do it, but, personally, I
4 don't think we need to because Mr. Brooker agrees
5 with Mr. DuRant except for \$24,000.

6 THE COURT: Do you want to ask him anymore
7 questions?

8 MR. SOWELL: No.

9 THE COURT: Okay. Mr. Griffin?

10 MR. GRIFFIN: I'm in October 2016 emails, can
11 I look through?

12 THE COURT: Yes. Here's some things that I
13 am wanting to know. There are three entities that
14 he or his mother banked with: Stephens, Morgan
15 Stanley, and First Community.

16 MR. SOWELL: Correct.

17 THE COURT: No other banks? No other --

18 MR. SOWELL: As I understand it, that's the
19 universe.

20 THE COURT: Well, that's for him to answer,
21 right?

22 MR. SOWELL: I can ask him.

23 BY MR. SOWELL:

24 Q Is that the universe?

25 A That is. Given that there were several accounts

1 at Stephens.

2 Q So several accounts at Stephens, First Community
3 and the other brokerage, that is the universe
4 places from which gifts would derive?

5 A That's correct.

6 MR. SOWELL: They're all on that thumb drive
7 that is Exhibit No. 8. They're all there. The
8 issue is that Mr. Brooker has not had sufficient
9 time to review all of those, but we are willing to
10 accept Mr. DuRant's numbers with the exception of
11 this difference, distinction, whatever, of
12 \$24,000?

13 THE COURT: Power of attorney? When he
14 began?

15 BY MR. SOWELL:

16 Q Okay. When did you get the power? I think it was
17 the same time that you got the Trust created, was
18 it not?

19 A I believe it was the same date as the Trust was
20 signed I was given power of attorney.

21 Q October of 2007?

22 A October 16, 2007.

23 Q So you got the power of attorney then?

24 A I did.

25 Q When did you begin to exercise it?

1 A Well, I don't know if I can say I ever did rely on
2 that. It was on file with Stephens. And when I
3 asked for a withdrawal, I guess they might have
4 used that as evidence of my authority, but I was
5 actually just helping my mother by making these
6 gifts pursuant to her instructions in the Trust
7 Agreement. I was a signatory on her First
8 Community Bank checking account; she filled out
9 the card to do that, so. As far as acting as
10 power of attorney under the terms of the Power of
11 Attorney, I guess you could say I did, but I don't
12 think I actually needed to because I was carrying
13 out her wishes for any transaction I made.

14 Q Now, every time you made a gift to children, and
15 I'm talking about you, Ellen or Julia, were they
16 equal?

17 A Every time my mother would make a gift to a child,
18 yes, they would be equal with the exception of
19 some small birthday gifts. There were two
20 children each of Ellen and myself.

21 Q I'm talking about the gifts to the children:
22 Yourself, Julia, and Ellen. Anytime they were
23 made by your mother or by you through the POA,
24 were they equal?

25 A Yes.

1 MR. SOWELL: That's all I have.

2 THE COURT: Mr. Griffin, are you ready?

3 - - - - -

4 FURTHER EXAMINATION

5 BY MR. GRIFFIN:

6 Q To understand Defendant's Exhibit No. 7 that you
7 have in front of you, how did you create this
8 document?

9 A I started with Mr. DuRant's chart, his exhibits.
10 Went through that mainly, then I would cross check
11 that with the chart that's in exhibit on the
12 annual exclusion gifts that came from
13 Mr. Johnson's office to make sure.

14 Q Let me make sure we've got that. That's -- it's
15 attached to Defendant's Exhibit No. 4. Is that
16 the document?

17 A Yes, sir.

18 Q And that's -- and so Defendant's Exhibit No. 4,
19 had a total of annual exclusion gifts of 852,000.
20 Is that correct?

21 A Yes, sir.

22 Q And then Defendant's Exhibit No. 4, adds interest
23 on the 852,000 from the date of the annual
24 exclusion gifts up until April 16, 2015. Is that
25 right?

1 A I think so.

2 Q And what was the significance of April 16, 2015?

3 A That's when that was created by Steve Johnson's
4 office to my understanding.

5 Q And so when some representation is made that
6 Ms. Julia Brooker had the opportunity to accept
7 this proffer in May of 2016, she was not receiving
8 interest up until the end of May '16, it would've
9 only been through April 16, 2015, right?

10 A Correct.

11 Q And that's 18 months worth of interest at five
12 percent?

13 A Yes.

14 Q Now, the document you brought today after working
15 all day yesterday has total gift amount of
16 \$1,068,565. Is that right?

17 A Yes.

18 Q So that's, by my math, is a little over \$200,000
19 more?

20 A Correct.

21 Q Do you know where you found that \$200,000? I
22 mean, what's in that 200,000 number?

23 A The Judge instructed us, I don't know if it was a
24 ruling, that the tuition paid by my mother to
25 Hammond would be included in post-2007 gifts.

1 Q And that number's about 80,000, was it not?

2 A No. I don't --

3 Q Anyway, that's in Mr. DuRant's report. So in
4 addition to the Hammond tuition, was there
5 anything else that makes up the difference?

6 A There were the smaller birthday gifts from time to
7 time.

8 Q Did you find those in those investment statements
9 or were those in Mr. DuRant's report?

10 A I used Mr. DuRant's numbers. I found a lot of
11 them in the few checking accounts I was able to
12 get through First Community.

13 Q So, essentially, your basic gift amounts are --
14 materially match for this period of time. When
15 you did the interest calculation, to bring us up
16 to today, can you tell us how you did that?

17 A Yes, sir. If you look on the chart, I have a
18 number of days column labeled Number of Days to
19 5/31/2016, and Number of Days to Current Date.
20 For the annual exclusion gifts, I would use the
21 number of days to 5/31/2016. Of course, in both
22 cases, beginning with the date of the gift or
23 transfer itself. For the Hammond tuition payments
24 and deposits, I would use the number of days to
25 current date and multiply that by the daily

1 MR. SOWELL: There it is.

2 THE COURT: May I see it?

3 BY MR. SOWELL:

4 Q One more question, Mr. Brooker, make sure we're
5 straight on this. Bill Sellers who was engaged by
6 the estate to look into these stock accounts at
7 Stephens and the other place, he concluded there
8 were no missing shares. Is that correct?

9 A I think that's correct, yes, sir.

10 MR. SOWELL: Your Honor, we'll find out when
11 that was and submit a stipulation. We'll write it
12 up and send it to the Court for that date. Does
13 that suit you?

14 THE COURT: Well, I think it's a pertinent
15 piece of this that shuts the door on -- Let me
16 make sure everyone understands. I believe
17 Ms. Brooker's asking to see records to verify the
18 number she's being offered or that are being
19 discussed is valid.

20 MR. SOWELL: Understood.

21 THE COURT: If she wants to see them to
22 support and help her make a decision, that's good
23 sense, that's logical, that's a good
24 business-minded person. So I'm not going to stop
25 the interest until I see her questions being

1 resolved because I think seeing, asking for access
2 is relevant.

3 MR. SOWELL: Just remember, Mr. Brooker's
4 testimony is that she was given access to those
5 accounts.

6 THE COURT: Not until after August of '16.

7 MR. SOWELL: True.

8 THE COURT: Okay, well now we are moving from
9 May of 16, which I was led to believe was some
10 kind of drop dead timeframe to now August of '16.
11 And by his own testimony, October of '16.

12 BY MR. SOWELL:

13 Q May I ask this question? Mr. Brooker, do you know
14 approximately when Julia Brooker was given access
15 to those stock accounts that Dino had worked from?

16 A I do not.

17 Q Was it sometime in 2016?

18 THE COURT: It's after August of '16.

19 Q Sometime shortly after August of 2016 when she was
20 making inquiry?

21 A I don't recall.

22 MR. SOWELL: Thank you.

23 THE COURT: So, when in your mind,
24 Mr. Brooker, did she reject with finality your
25 offer of 525?

1 gifting, only after the Trust creation or from
2 some arbitrary timeframe that I haven't put my
3 mind around, but I think I heard at some point it
4 may have been sometime in 1997. Still don't know
5 that. That is something I'm, in my mind, still
6 having to decide. The third piece is how it's
7 calculated. Is it the larger of the two gifting
8 pots as Mr. Johnson suggests, and by pots, I mean
9 Ellen's family, Beach's family. Is it the average
10 of the two? The two divided by -- the two added
11 and divided by two? Or is it the two added
12 together, always plus interest, but the two added
13 together without a division into two, without an
14 average. That's still in play. So your
15 suggestion is that he has not presented evidence
16 on two and three of my concept of what I'm
17 deciding?

18 MS. DURANT: Yes, Your Honor, I think you
19 described that very well, the three issues.

20 THE COURT: Thank you very much. And you're
21 saying, suggesting that I should shut the door on
22 this and leave it to Mr. Brooker's interpretation
23 only, that the rest of the litigation should be
24 ended?

25 MS. DURANT: Yes, Your Honor, that you should

1 base it on Mr. Brooker's testimony, Steve
2 Johnson's testimony, and the four corners of the
3 document itself.

4 THE COURT: While I respect your argument,
5 and at the end of the day, you may win on certain
6 pieces of that, I think I still must hear a little
7 bit more information with regard to the timeframe
8 on the interest, which I think is in play most
9 definitely. And I need Mr. DuRant's testimony.
10 So to the extent that helps at all, overruled.

11 MS. DURANT: Thank you, Your Honor.

12 MR. GRIFFIN: George is trying to -- he's
13 feverishly working, so we may --

14 THE COURT: I want to hear from your client.
15 She's got to give me testimony about this interest
16 offer timeframe.

17 MR. GRIFFIN: Sure.

18 THE COURT: I think, and you can all disagree
19 with me, I think everyone was so nervous about her
20 getting on the witness stand and the dead man's
21 statute, that you may have missed an opportunity
22 to get her to deal with this.

23 MR. GRIFFIN: Okay.

24 THE COURT: So she needs to testify at a
25 minimum about that. Ms. Brooker, come around.

1 THE COURT: I think your question was, and
2 it's legitimate, what efforts did she personally
3 make to determine what gifts her mother had made
4 that met this provision.

5 MR. GRIFFIN: Yes.

6 BY MR. GRIFFIN:

7 Q I guess, let's just start here. You see this
8 document?

9 A Yes.

10 Q At some point in time, did you get a copy of this
11 document?

12 A Yes.

13 Q Did you agree with the numbers on this document?

14 A No.

15 Q Why did you not agree with the numbers on this
16 document? And when I say "this document," I'm
17 talking about Defendant's Exhibit No. 1. And
18 don't tell me what your mother said.

19 A Can I tell you what Steve said?

20 Q Tell us what Steve said, yes.

21 A Okay. The family had two meetings with Steve.
22 One after my mother died and one prior to my
23 mother dying. He brought us in and talked about
24 that mother was going to exaggerate some gifts,
25 give more gifts, and that what she was going to do

1 is catch me up at the end.

2 MS. DURANT: Again, Your Honor --

3 Q That's what Steve said, not your mother.

4 A That's what Steve said.

5 MS. DURANT: She said -- and then she said,

6 "my mother" --

7 THE COURT: That's already been testified by

8 Mr. Johnson.

9 MS. DURANT: I'm just really, Your Honor, I'm
10 just preserving the record.

11 THE COURT: And I hear you, but I heard her
12 say that's what Mr. Johnson said to her at the
13 family meeting. Did you hear her say that's what
14 her mother said?

15 MS. DURANT: I heard that Mr. Johnson said my
16 mother said she wants to catch up.

17 MR. GRIFFIN: That's certainly not precluded
18 by the dead man's statute.

19 THE COURT: I am hearing that Mr. Johnson has
20 already testified and told Julia at the very
21 family meeting he testified about that it was the
22 intention to catch her up at her mother's death.

23 MS. DURANT: Your Honor, Mr. Sowell brings up
24 a good point. Mr. Johnson is or was Ms. Janet
25 Brooker's lawyer, so he is just repeating what his

1 client said. So I think that also falls on the
2 teeth of the dead man's statute.

3 THE COURT: I'm going to disagree on the
4 concept that number one, he's already testified to
5 that himself, and at a family meeting, he is
6 sharing this information. He had a family
7 meeting, which means you have on some level a
8 waiver of the attorney-client privilege as to the
9 issues he's talking about at the family meeting
10 that he had with the family. The deceased
11 Mrs. Brooker was there. So overruled.

12 BY MR. GRIFFIN:

13 Q In the meeting after your mother died, what was
14 discussed?

15 A The lifetime gifts and that the lifetime gifts, I
16 was gonna be equalized with the lifetime gifts
17 that were given to my brother and sister.

18 Q Your brother and sisters' children?

19 A Children, family. Brother and sister's family.
20 Children and family.

21 Q Then when you got this document at some point in
22 time, you said you didn't disagree with it, but
23 you didn't agree with it. What were the parts you
24 didn't agree with?

25 A The year that the gifts began.

1 Q And you believe it should go back farther?

2 A That's what I was led to believe with the
3 discussions or our meetings with Steve. That it
4 was all lifetime gifts to families.

5 Q So that was a dispute that you had. And assume
6 Judge McCulloch determines that this language only
7 applies from the gifts made in contemplation of
8 the Trust and then from the Trust forward, that
9 these gifts on this page, did you get any backup
10 documentation to support these numbers?

11 A It took a while.

12 Q Tell me how you tried to get backup documentation?

13 A Well, how I tried to?

14 Q Yeah.

15 A Well, I was asking Beach. Beach, first of all,
16 called me and said he was ready to settle and, you
17 know, the equalization clause was gonna be
18 \$300,000.

19 Q 300,000 was his first number?

20 A Yes, first offer. And I said something's not
21 right here, where did you come up with this money?
22 And he said that's what we're going to give you.

23 Q Did he give you any further explanation?

24 A No further explanation, no documentation, nothing.

25 So that's when I started meeting with Steve, Bill

1 Sellers, and then finally I ended up hiring David
2 Siddons.

3 Q So you started out, your offer under equalization
4 was 300 some-thousand dollars?

5 A 300,000 even.

6 Q So then you had to hire a lawyer?

7 A Uh-huh.

8 Q And that was David Siddons?

9 A Uh-huh.

10 Q Did you seek to get records at that point in time?

11 A Yeah, we tried. We got some, but they were coming
12 in sporadically. One page, then another page.

13 And one record, Dino said he didn't have because
14 that's the merger of Smith Barney. I got an email
15 merger Smith Barney -- well, how did it go -- with
16 that merger in 2010. And there was no statement
17 produced. David discovered, he said what is this
18 240,000, and that was on that particular
19 statement, the one produced. And then Dino
20 finally produced the last page with the 240,000 in
21 it.

22 Q And so the 240,000 is the 529 contributions?

23 A Uh-huh. David found that on some of the gift
24 taxes.

25 Q So you had to hire a lawyer; he found the 240?

1 A Right.

2 Q Up until that point did you know about the 240?

3 A No, sir.

4 Q And so then, eventually, the 240 gets put into
5 this document, correct?

6 A Yes.

7 Q Does that take it from 300 to five-something?

8 A 540, I guess.

9 Q Right. And then there was another -- Okay. Did
10 you ever get all the Stephens and Smith Barney --

11 THE COURT: Hey, hey, hey. I don't think
12 that's proper. He's a potential witness going
13 back up on the stand. Come back over here.

14 MR. SOWELL: You were talking to me?

15 THE COURT: Yeah.

16 MR. SOWELL: I just wanted to be sure.

17 THE COURT: Okay.

18 BY MR. GRIFFIN:

19 Q Do you know if you ever got all of the statements?

20 A Probably not. Probably not from the backups.

21 Beach and Ellen destroyed them.

22 Q How do you know they destroyed the statements?

23 A I watched them do it.

24 Q When did they destroy the statements?

25 A When we were cleaning mom's house out. She saved

1 every statement and they took them and bagged them
2 and threw them away, burned them. I assume they
3 burned them. Ellen said she could take them to
4 her house and burn them.

5 Q Was this after your mother died?

6 A Uh-huh.

7 Q Were you there?

8 A I was there.

9 Q Did you ask them not to destroy the statements?

10 A At the time, I didn't know what was going on. I
11 mean, you know, we were cleaning out. But I was
12 going through while I'm doing all the clothes and
13 all this and they're in there just going through
14 all the records and books and statements and . . .

15 Q Did that raise suspicions in your mind later?

16 A Absolutely.

17 Q Once we were hired, did we send subpoenas out on
18 your behalf to try to get all these records?

19 A Yes.

20 Q Because we couldn't get them from any other
21 source?

22 A I was not successful getting them by asking them
23 for -- I went to Ellen one time and I got an email
24 on that that I asked her to, I wanted to see the
25 records, and she told me not to give her a pity

1 party.

2 Q Not to give you a pity party.

3 A Not to give her a pity party.

4 Q Then after you hired us, did we introduce you to
5 Georgia DuRant over there?

6 A Right.

7 Q And has he been working to try to piece all this
8 together for you?

9 A He has.

10 Q And George can testify, have you spent over
11 \$60,000 with George trying to get to the bottom of
12 this?

13 A Yes, sir. And more with David Siddons and Bill
14 Sellers.

15 Q Before we filed this lawsuit, the most they
16 suggested that you were entitled to was \$525,000?

17 A Yes, sir.

18 Q Did you know when you got this that the Hammond
19 tuition was not included?

20 A No. I was under the understanding Hammond tuition
21 was included.

22 Q The Hammond tuition was included in that 525?

23 A Uh-huh.

24 Q It was only after you had to spend substantial
25 sums of money, you learned it wasn't included,

1 right?

2 A I don't -- I still think it should be.

3 Q Oh, no, it should be. I'm just saying -- when you
4 were handed this --

5 A Oh, it wasn't included.

6 Q Yeah, you weren't aware that it did not include
7 Hammond tuition.

8 A Right.

9 Q And those were one of the questions you had?

10 A Uh-huh.

11 THE COURT: Can you say what this is.

12 MR. GRIFFIN: Defendant's Exhibit No. 1,
13 which is the chart showing \$525,000.

14 THE COURT: It's clearly missing on there.
15 There's no entry for Hammond tuition, that's
16 clearly all taxable gift amounts.

17 BY MR. GRIFFIN:

18 Q So it doesn't show up there. Why did you think it
19 was included?

20 A Well, I can't say. I guess from conversations and
21 meeting with Steve Johnson.

22 Q That you were entitled to be caught up for Hammond
23 tuition?

24 A Uh-huh. That that was part of gifting program.

25 Q So today, after your brother's done some work

1 yesterday, had come up with this Exhibit No. 7,
2 which shows offering -- well, it shows 561,827,
3 which would be half of the total gifts and
4 interest and payment -- interest through May 2016
5 for the 525, and then the balance of 744,634. Has
6 anyone ever offered you \$744,000 to -- for your
7 rights under equalization provision?

8 A I mean, that's the new number.

9 Q Right.

10 A I don't, I don't -- I can't say.

11 Q Until today, have you ever -- well, still haven't
12 been offered it, but today, has anyone ever -- up
13 till today, has anyone ever offered you anything
14 more than --?

15 A I can't say, but I think this was the highest
16 number that was offered.

17 Q Was it offered in the form of a check? Were you
18 ever given a check?

19 A No, I was never given any money.

20 Q Did you understand that if you had accepted
21 whatever's on that sheet that you would waive any
22 rights to any more money?

23 A That's what I was understanding, yes.

24 MR. GRIFFIN: Is there anything else you'd
25 like for me to ask her, Judge McCulloch?

1 your witness.

2 MS. DURANT: That's fine.

3 - - - - -

4 FURTHER EXAMINATION

5 BY MS. DURANT:

6 Q Ms. Brooker, isn't it true that Bill Sellers is
7 your accountant today?

8 A Yes, he is.

9 Q And isn't it true that you have confidence in
10 Mr. Sellers?

11 A I can't answer that.

12 Q Do you remember being deposed by Mr. Sowell?

13 A Oh, yeah.

14 Q On September 1, 2017?

15 A I remember being deposed, but a lot has happened
16 since that date.

17 Q Do you remember -- do you want to read your answer
18 to Mr. Sowell about having confidence in
19 Mr. Sellers?

20 A No. I did at that time, yes. I mean . . .

21 Q Do you think Mr. Sellers is an honest man?

22 A A lot has changed since that date.

23 Q Ms. Brooker, didn't you and your mother -- or
24 didn't you take a bunch of trips with your mother?

25 A Yes, I did.

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1 Q Didn't she pay for the flights and hotels?

2 A For me, yes.

3 Q Weren't those trips to Peru and the Galapagos
4 Islands?

5 A One of them, yes.

6 Q Wasn't one of those trips to Japan, Bali, Hong
7 Kong and Indonesia?

8 A They were.

9 Q Wasn't there another trip to China and Beijing?

10 A There were.

11 Q And wasn't there another trip to Spain?

12 A I paid for that one.

13 Q Wasn't there another trip to France?

14 A Ellen went on that one, too.

15 Q But your mother paid for it, correct?

16 A Yeah, she paid for her, too.

17 Q And another trip to Africa, and you had some
18 safaris in Kenya?

19 A That was one trip.

20 Q But your mother paid for that trip?

21 A She got me there. That's about all I'm going to
22 say. But she gave trips to the other family
23 members, too.

24 MS. DURANT: No further questions, Your
25 Honor.

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FURTHER EXAMINATION

BY MR. GRIFFIN:

Q What trips did she give to the other family members?

A She gave my brother and his family a trip to Disney World. She gave my sister a trip to, with us, Ellen didn't go at the same time, but she gave a Paris trip to France. She also went with us to Hawaii. Mom gave Beach's children and Ellen's children and Ellen a trip out west to the Grand Canyon and Yellowstone and the forest and all the national forests. Those are just some of them I know.

Q Did she treat everyone roughly evenly when it came to giving trips?

A For my understanding, yeah.

MR. GRIFFIN: That's all I have.

THE COURT: What a lovely mom. Step down. You're all fortunate.

THE WITNESS: Yes, we are.

MR. GRIFFIN: I don't know where Mr. DuRant is. Can I check with him?

[Off the Record]

MR. GRIFFIN: Speaking with Mr. DuRant, he

1 I don't want to go. Can he have this, please? Do

2 I need to make a copy of this for you?

3 [Off the Record]

4 THE COURT: Mr. DuRant, just help me a

5 second; I really am just needing some help.

6

7 - - - - -

8 FURTHER EXAMINATION (George DuRant)

9 BY THE COURT:

10 Q So Mr. Brooker, his first entry date is
11 September 26, '07, which is capturing some of the
12 things -- well, hold on. I also need
13 Mr. Johnson's. Can he have this, please. Defense
14 1, Plaintiff 6, and Defense 7. Defense 1,
15 Petitioner's 6. So what I see, Mr. DuRant, is
16 that the September 26 entry of 24,000 is the first
17 two entries of Mr. Brooker, these two 12 numbers.
18 Are you with me so far?

19 A I am.

20 Q Then the next entry of Mr. Brooker is the four
21 60,000s, which is your 240. On your after
22 October 15, 2007 numbers, you've added at the
23 bottom the 240?

24 A That's right.

25 Q But you didn't yet include the 24. Which I want

1 you to do. Did y'all follow me on that?

2 MS. DURANT: Your Honor, are you talking
3 about the 24, the two 9/26/07 entries?

4 THE COURT: Yes.

5 MS. DURANT: Okay, thank you.

6 BY THE WITNESS:

7 A Your Honor, you want me to add that on this?

8 Q Yes, sir.

9 THE COURT: Let Mr. Brooker come sit beside
10 somebody that's got these numbers.

11 MS. DURANT: I think I've got them all.

12 THE COURT: Come sit beside Ms. DuRant. So
13 the 24 is included in Mr. Brooker's, but it wasn't
14 included in his add-on earlier. So I wanted to
15 add the 24 into his calculations. It's going to
16 get funky.

17 MS. DURANT: Uh-oh.

18 THE COURT: There are gonna be some findings
19 on what's to happen, so if you want to capture it.

20 MR. SOWELL: I have delegated Ms. DuRant.

21 THE COURT: Well, she's also trying to hold
22 numbers, so somebody over there with a pad and
23 pen. Ready?

24 BY THE WITNESS:

25 A I've done that.

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1 Q So as I see it, Mr. Brooker included the 240 and
2 the 24 in his calculation initially that this 525
3 number should go to his sister Julia. You with me
4 so far?

5 A I am.

6 Q So in the concept of when interest on this
7 particular amount of money should or shouldn't end
8 as Mr. Griffin has argued, that interest
9 calculation of the number 525 and what it includes
10 is going to matter. And then, of course,
11 everything else. And by everything else, I mean
12 everything else of your number. So backing out
13 the 240 and the 24 from a certain pot of money for
14 interest and the 525 number for a certain pot of
15 interest. And I might be saying it in a way that
16 that's not how you're actually going to have to
17 calculate it. But that's my concept. I see that
18 this 525 number and the communications and the
19 testimony so far ends at a certain date. In
20 question was initially May, and now I'm taking
21 that all the way to the end of August. That is
22 going to be one of the findings. While there is
23 no specific testimony of when she said no, that's
24 as close as it's going to get, because I know she
25 got these numbers, she's told me that. She

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1 deserved to get bank statements, I agree with her.
2 I believe she got all the information she could
3 have possibly gotten if she wanted to get it. I'm
4 ending it at the end of August. So that will be
5 one of the findings.

6 MR. SOWELL: August 31?

7 THE COURT: August 31.

8

9 BY THE WITNESS:

10 A 2016?

11 Q Yes, sir. Everything else that is in your number
12 is through today.

13 A So would that be the same as saying if I accrued
14 interest at five percent on everything, and then
15 did a credit for interest on \$525,528 from
16 September 1, 2016 through today, that would be the
17 easy way to do it, as I understand what you're
18 saying.

19 Q Yes.

20 A I believe I've got that calculation. Did you get
21 that back to me?

22 MR. GRIFFIN: Yes.

23 [Off record discussion]

24 MS. DURANT: These two \$12,000, they should
25 be segregated for each family. One is for Ellen

1 and one is for Beach. Only one should go towards
2 Mr. DuRant's analysis, is what I'm understanding.

3 THE COURT: Well, then you can make the same
4 argument all the way down. That's not correct.
5 Then we're gonna divide 240 when you divide, if
6 you divide.

7 MR. GRIFFIN: Correct.

8 MS. DURANT: Can we just lodge that
9 objection?

10 THE COURT: I'm not even sure I understand
11 what you're saying. Say it a different way so I
12 can understand it, what you're objecting to.

13 MS. DURANT: My understanding is what you're
14 instructing or asking Mr. DuRant to do, is to add
15 24,000 into his figure and also all the future
16 scholars money.

17 THE COURT: Well, just to say it again,
18 because I don't know if that's what -- exactly
19 like that. In Mr. Brooker's offer to his sister
20 in this document that supports it, 24,000 and 240
21 are included that were not included initially in
22 Mr. DuRant's after October 15, '07 numbers on this
23 graph. Which is a summary of this other chart.
24 The bottom on the handwritten, he starts adding
25 the 240. He never added the 24. What I am asking

1 him to do is, because Mr. Brooker included the 24
2 and the 240 in his offer number to his sister, to
3 back that out of the calculation of interest. I
4 think it's when you divide if you divide.

5 MR. GRIFFIN: I think if she sees this. So
6 that's the gross number and that's cutting it in
7 half, and that's the credit for the interest.

8 THE COURT: These numbers --

9 MR. GRIFFIN: So he cuts it in half.

10 THE COURT: -- don't change based on who got
11 a higher family amount. Not on this chart.

12 MS. DURANT: I'm with you. I think what
13 Mr. Brooker is saying is that, if I could -- is
14 that on his initial offer, the 24,000 and 240 were
15 ultimately divided in half.

16 THE COURT: Right, I got it.

17 MS. DURANT: Okay.

18 THE COURT: The reason they were easily
19 divided in half is because no family was different
20 on this chart.

21 MR. GRIFFIN: I'm going have to reprimand
22 Mr. DuRant, he came out a little lower than
23 Mr. Brooker.

24 THE COURT: What are you talking about, Mr.
25 Griffin?

1 MR. GRIFFIN: I don't know what I'm talking
2 about really.

3 THE COURT: Did he just give you the
4 calculation that I just asked him to do?

5 MR. GRIFFIN: Uh-huh, I'm giving it to you.

6 THE COURT: That's what this is?

7 MR. GRIFFIN: Yes.

8 THE COURT: Thank you.

9 MR. GRIFFIN: That's why I'm going to
10 reprimand him. Here's this sheet.

11 BY THE COURT:

12 Q Help me out. Who created this? This is your
13 typing?

14 A Yes, Your Honor.

15 Q I'm a little lost, to be honest.

16 A May I come up and show you, Your Honor?

17 Q Yes, and the attorneys need to come too. It's
18 confusing when somebody's breathing down your neck
19 it's even harder to calculate. Being asked to
20 calculate on the witness stand is most
21 complicated.

22 A Let me go check that.

23 Q You want to just take a moment and let's just go
24 off the record.

25 [Off the Record]

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1 THE COURT: Mr. DuRant, have you had enough
2 time.

3 MR. DURANT: I have.

4 THE COURT: Do y'all have copies of this?

5 MR. GRIFFIN: Yes, we do.

6 THE COURT: I'll just let you lead us through
7 it.

8 BY THE WITNESS:

9 A Okay, I'm looking at what was Plaintiff's six, and
10 at the bottom I've added the September 26, 2007
11 24,000 transfer. And I've also added the interest
12 on that of \$13,643.84 for a total addition of
13 \$37,643.84, which brings my total of interest and
14 gifts since October 15, 2007, plus the additional
15 24,000, \$1,528,398.97. Now, the second page is
16 I've computed a credit on the interest using the
17 \$525,528.08 amount shown on Defendant's number
18 one. I've computed that interest credit from
19 August 31, 2016, through February 5, 2019, 888
20 days, five percent annual interest for a total of
21 \$63,927.25. I've subtracted that 63,000 from my
22 total interest and gifts, Plaintiff's six,
23 \$1,528,398.97 minus \$63,927.25 is \$1,464,471.72.
24 One half of that amount is \$732,235.86.

25 THE COURT: Do you want to ask him any --

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ROA 521

1 MR. GRIFFIN: No, Your Honor.

2 MS. DURANT: No, Your Honor.

3 THE COURT: Based on my directives to him,
4 you believe in his calculation; I certainly do.

5 MR. GRIFFIN: Yeah.

6 THE COURT: Do you want to direct him to do
7 it any other way? I know you want to direct him
8 to do it legally a different way.

9 MR. GRIFFIN: I'd point out this number is a
10 little lower than what Mr. Brooker has brought to
11 court. Mr. DuRant can't really reconcile it here
12 and now, but. So his number's about 12 grand
13 lower than what Mr. Brooker brought.

14 THE WITNESS: I rely on my numbers.

15 THE COURT: I believe Mr. DuRant's number.

16 MR. GRIFFIN: We'll take the higher number if
17 it comes down to equity and all.

18 THE COURT: I will recognize that he has
19 additionally done the calculation on your concept
20 of things.

21 MR. GRIFFIN: Right.

22 THE COURT: So if you want to make that an
23 additional exhibit.

24 MR. GRIFFIN: I think's it's fine we'll just
25 keep it Plaintiff's six.

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1 THE COURT: This certainly needs to be --

2 MR. GRIFFIN: Sure. Let's mark that.

3 THE COURT: This yellow paper. So if you'll
4 get both of these into evidence.

5 MR. GRIFFIN: Yeah, we'll mark them
6 separately.

7 THE COURT: Don't you have them in your hand?

8 MR. GRIFFIN: I have copies.

9 THE COURT: Right.

10 MR. GRIFFIN: So let's make this the next
11 exhibit.

12 (Whereupon, Duplicate P-Exhibit No. 6
13 was introduced as Petitioner's Exhibit
14 No. 16.)

15 (Whereupon, Handwritten Calculation was
16 introduced as Petitioner's Exhibit No.
17 17.)

18 MR. GRIFFIN: So the revised Plaintiff's six
19 is now Plaintiff's 16, and this handwritten
20 calculation will be Plaintiff's 17.

21 THE COURT: Questions?

22 MS. DURANT: No, Your Honor.

23 THE COURT: Questions?

24 MR. GRIFFIN: No, your Honor.

25 THE COURT: Thank you so much.

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ROA 523

1 MR. DURANT: Thank you.

2 MR. SOWELL: No questions. I did want to
3 say, though, since he's testified subsequent to
4 our motion for a directed verdict, that we would
5 renew our motion for directed verdict on the
6 ground that the only reasonable inference to be
7 drawn from all the evidence and testimony is that
8 our construction and interpretation of the Trust
9 document paragraph two is the only reasonable
10 construction.

11 MR. GRIFFIN: Your Honor, there's -- you
12 can't have extrinsic evidence to alter the plain
13 terms of the agreement. I understand there may be
14 some ambiguity in what lifetime gifts mean and
15 when they began, and I understand you allowed
16 evidence on that. But to read in to the language
17 of that equalization clause the mathematical
18 formula espoused by Mr. Johnson is rewriting the
19 whole clause. I mean it clearly says you
20 determine the amount of gifts for the issue of
21 Ellen Corontzes and Beach Brooker as well as their
22 spouses, then to the amount specified from the
23 date of the gift you add five percent. And then
24 it says the sum of (a) and (b) above shall be
25 distributed. You can't rewrite that. They wrote

1 it. And the issue is what did Mrs. Brooker intend
2 when she signed it? And there's been no
3 testimony. There's testimony what Mr. Johnson
4 intended when he wrote it, but you can't read this
5 and in any way glean that this intent here is you
6 take the greater of these two pots and you add
7 five percent and you compare the two and that's
8 what she gets. Now, it says equalization
9 distribution. And I think it's important to look
10 at it in the whole context. And as Mr. DuRant did
11 the lifetime gifts, we know that before the date
12 of this agreement, depending on how you do the
13 240, but it's pretty much equal. Before it was
14 either 700,000 or 900,000, depending if you do the
15 529. Before the date of this. After the date,
16 it's 800, we now know it's over a million. But
17 what's interesting is before and after they're
18 pretty much close to the same. And so you do get
19 to equalization if you sum (a) and (b). If you
20 take into account lifetime gifts, not just gifts
21 given after the date of this. And so the question
22 is what does Mrs. Brooker intend? And the only
23 thing we can say is she signed this document, she
24 had to read it like the rest of us. And she had
25 to know that before the date of this agreement,

1 that she'd given away some 800 to 900,000, not to
2 the brothers and sisters, but to the spouses and
3 grandchildren. And that you do get equal in this
4 case.

5 MR. SOWELL: Nothing further from me.

6 THE COURT: All right. I'm under advisement,
7 thank y'all.

8 MR. SOWELL: Thank you.

9 MR. GRIFFIN: Your Honor, I will submit a fee
10 affidavit and cost affidavit.

11 THE COURT: You need to do that.

12 - - - - -

13 (Whereupon, there being no further
14 testimony, the proceeding concluded at
15 4:42 p.m.)

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Barbara Hammond

From: Bess DuRant <bdurant@sowelldurant.com>
Sent: Wednesday, February 06, 2019 11:06 AM
To: Barbara Hammond
Subject: Fwd: 10:30 Hearing Preparation

Court #1
EXHIBIT NO. _____
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.

Sent from my iPhone

Begin forwarded message:

From: MATTHEW BROCK <BROCK.MATTHEW@richlandcountysc.gov>
Date: February 6, 2019 at 9:55:54 AM EST
To: "Jim Griffin" <JGriffin@griffindavislaw.com>, "Maggie Fox" <MFox@griffindavislaw.com>, "bsowell@sowelldurant.com" <bsowell@sowelldurant.com>, Bess DuRant <bdurant@sowelldurant.com>
Subject: 10:30 Hearing Preparation

Dear Attorneys,

In preparation for the 10:30 hearing, it is imperative that we all are working under the same definition of what "any lifetime gifts" would be. Judge McCulloch sees it as Mr. Brooker's fiduciary duty, given the directives in the trust and as the Decedent's agent under any power of attorney he may have had, to review all records of his mother, Mrs. Brooker, and to review all accounts, including bank accounts, investment accounts, or any other assets held, looking for transfers she made from 2007 to her death. This is necessary to, and the Judge expects to see, a chart that documents any transfers from the Trustee or Settlor to all spouses and grandchildren. Also, please provide to the Judge all account statements in support of these investigations.

Thank you so much in advance.

Matthew Brock
Judicial Law Clerk
Richland County Probate Court
Brock.matthew@richlandcountysc.gov
8035761989

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TRUST AGREEMENT

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Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustees. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

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 the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any 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 II

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.

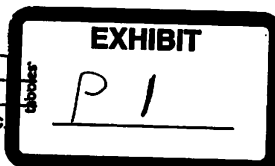
(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort 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.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. 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.

Trust Agreement of Janet B. Brooker

EXHIBIT NO. 1
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.



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ARTICLE IV

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 personal representatives, 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 Trust Estate 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 personal representatives of the Settlor's estate. Written statements by the personal representatives 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 Trust Estate.

ARTICLE V

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

(1) **General Distribution of Personal and Household Effects With a Mandatory Memorandum.** All the Settlor's 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, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of 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 the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are 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 the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee 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 the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

(3) **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 VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beachum

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

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 the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as 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 the Settlor's daughter, JULIA B. BROOKER.

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as 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 the Settlor's daughter, ELLEN B. CORONTZES.

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(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; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) Trustee Accountings and Settlement. The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) Trustee Accountings. If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) Settlement of Trustee Accounting. During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) Settlement of Trustee Accounting by Beneficiaries. The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) Settlement of Trustee Accounting Upon Termination of Trust. Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

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 or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

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 collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) 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.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) 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.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) 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 on credit, at public or private sale, 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.

(7) 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.

(8) 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.

(9) To sell or exercise stock subscription or conversion rights.

(10) 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.

(11) 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.

(12) To borrow money with or without security 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.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) 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 public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(16) 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.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, 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 by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

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

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) 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.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, 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.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) 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.

(29) 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.

(30) 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.

(31) 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 personal representatives 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 personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) 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 Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) 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.

(35) 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.

(36) 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.

(37) If the Trustee shall act as the Personal Representative 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 in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, 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 Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

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 personal representatives. 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 XI

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.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand (\$50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

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

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **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 XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, 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 XV

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 XVI

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 XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

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

WITNESSES:

W. S. Steffens
Barbara J. Steffens

Janet Brooks Brooker
JANET B. BROOKER

SETTLOR
Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

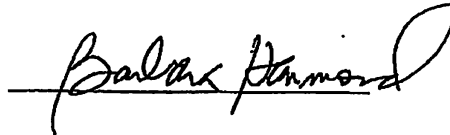
INDIVIDUAL TRUSTEE

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

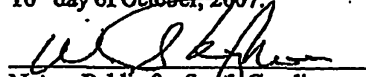
)
) PROBATE
)

Personally appeared the undersigned witness and made oath that she 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

16th day of October, 2007.


Notary Public for South Carolina

My Commission expires: 2/24/2013

SCHEDULE "A"

List of Assets

Janet B. Brooker
JANET B. BROOKER

SETTLOR
Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE



- Salomon Smith Barney account number 607-61224-12 for the period September 1999 through September 2010. This account was closed during September 2010 by transfer of remaining assets to Stephens account number 137607881. This was Janet Brooker's IRA account. No distributions were made to a subject beneficiary from this account during the period reviewed.
- Salomon Smith Barney account number 607-81026-10 for the period December 1998 through November 2010. Substantially all of the assets in this account were transferred during August 2010 to Stephens account number 137616296. This was a personal investment account of Janet Brooker from which she wrote checks and made transfers to and for the benefit of the subject beneficiaries.
- Salomon Smith Barney account number 607-10172-11 for the period December 1998 through September 2007 when substantially all assets were transferred to Salomon Smith Barney account number 607-81026-01.
- Salomon Smith Barney account number 607-81027-19 for the period December 1998 through June 2002 when substantially all of the assets were transferred to other Salomon Smith Barney accounts including those of the subject beneficiaries. This account was designated as Janet Brooker's "Special Account."
- Stephens account number 137616296 for the period August 6, 2010 (when opened with the transfer of substantially all assets held in the Salomon Smith Barney account number 607-81026-10) through June 2015. Substantially all of the assets held in this account were transferred to Stephens account number 322500645 during May 2015 subsequent to Janet Brooker's death.
- Stephens account number 322500645 for the (when opened with the transfer of period beginning May 29, 2015 through January 2018. This account is owned by the Janet B. Brooker Irrevocable Trust under Trust dated October 16, 2007.
- Stephens account number 137607881 for the period beginning September 16, 2010 (when opened with the transfer of substantially all assets held in the Salomon Smith Barney account number 607-61224-12) through August 11, 2015 (when the account was closed by transfers to IRA accounts for Beacham, Julia and Ellen).
- Stephens account number 208048369 for the period beginning May 21, 2015 through January 2018. This is the Estate of Janet B. Brooker account.
- First Community Bank account number __0729 for the period April 2000 through January 31, 2018 when the account was closed. This was Mrs. Brooker's savings account.
- First Community Bank account number __1536 for the period May 12, 2015 through January 31, 2018. This is the Estate of Janet Brooker account.
- First Community Bank account number __1063 for the period December 23, 2002 through May 22, 2015 when the account was closed. This account was a personal account primarily used by Mrs. Brooker to pay living expenses.
- First Community Bank account number __8788 for the period January 31, 2008 through May 22, 2015 when the account was closed. This was Mrs. Brooker's money market account; transfers out were only made to First Community account number __1063.


 EXHIBIT NO. #3
 WITNESS: _____
 DATE _____
 THOMPSON COURT REPORTING INC.

JULIA BROOKER 00635

ROA 543

- Documents produced by William Sellars – SELLARS1-1492.
- Documents produced by W. Steven Johnson – T&J0001-4946.
- Deposition transcripts of Julia B. Brooker on September 1, 2017; Ellen B. Corontzes on January 24, 2018; Beacham O. Brooker, Jr., on January 24, 2018; W. Steven Johnson on January 12, 2018; and William Sellars on January 11, 2-18.
- Copy of the Petition in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "George W. DuRant".

George W. DuRant

JULIA BROOKER 00636

ROA 544

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
	6/1/92	191 sh. Martin Marietta	Arthur B. Corontzes	9,979.75	9,495	12,980.51	SELLARS	10	03W-101125	
	1/8/93	146 sh. Martin Marietta	Arthur B. Corontzes	9,891.00	9,274	12,565.63	SELLARS	104		
	1/10/94	230 sh. Martin Marietta	Arthur B. Corontzes	9,975.00	8,907	12,170.87	SELLARS	127		
	1/10/95	217 sh. Martin Marietta	Arthur B. Corontzes	9,982.00	8,542	11,680.31	SELLARS	164		
	1/11/96	130 sh. Lockheed Martin	Arthur B. Corontzes	9,880.00	8,176	11,065.60	SELLARS	174		
	1/16/97	96 sh. Lockheed	Arthur B. Corontzes	8,436.48	7,805	9,020.10	SELLARS	194		
	1/16/97	100 sh. First Community	Arthur B. Corontzes	1,100.00	7,805	1,176.10	SELLARS	194		
	1/15/98	98 sh. Lockheed Martin	Arthur B. Corontzes	9,793.88	7,441	9,983.05	SELLARS	354		
	1/4/99	215 sh Amsouth	Arthur B. Corontzes	9,675.00	7,087	9,392.70	SELLARS	400		
	1/18/00	607-81040-01	Arthur B. Corontzes	9,500.00	6,708	8,729.59	MORGAN ST	5012	SB607-81027-19	Sellars 436
	1/11/01	607-81040-01	Arthur B. Corontzes	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS 469
1031	4/25/01	Arthur B. Corontzes	Arthur B. Corontzes	110.00	6,245	94.10	MORGAN ST	1511	SB607-81026-10	
	4/17/02	607-81040-01	Arthur B. Corontzes	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS 518
1233	4/17/04	Arthur B. Corontzes	Arthur B. Corontzes	114.00	5,157	80.53	MORGAN ST	4448	SB607-10172-11	
472	12/25/04	Arthur B. Corontzes	Arthur B. Corontzes	50.00	4,905	33.60	First Com Ban	323		1063
473	12/25/04	Arthur B. Corontzes	Arthur B. Corontzes	100.00	4,905	67.19	First Com Ban	323		1063
1295	12/24/05	Arthur B. Corontzes	Arthur B. Corontzes	100.00	4,541	62.21	MORGAN ST	2577	SB607-81026-10	
1234	4/15/06	Arthur B. Corontzes	Arthur B. Corontzes	115.00	4,429	69.77	MORGAN ST	4520	SB607-10172-11	
1337	4/17/06	Arthur B. Corontzes	Arthur B. Corontzes	116.00	4,427	70.35	MORGAN ST	2646	SB607-81026-10	
1162	12/26/06	Arthur B. Corontzes	Arthur B. Corontzes	350.00	4,174	200.12	First Com Ban	402		1063
1182	4/26/07	Arthur B. Corontzes	Arthur B. Corontzes	117.00	4,053	64.96	First Com Ban	390		1063
	10/1/07	Future Scholar	Arthur B. Corontzes	60,000.00	3,895	32,013.70	MORGAN ST	3070	SB607-81026-10	SELLARS 567
1633	2/28/08	Arthur B. Corontzes	Arthur B. Corontzes	190.00	3,745	97.47	MORGAN ST	3249	SB607-81026-10	
226	5/1/08	Arthur B. Corontzes	Arthur B. Corontzes	118.00	3,682	59.52	First Com Ban	429		1063
	12/31/08	Cash	Arthur B. Corontzes	12,000.00	3,438	5,651.51	SELLARS	668		
	1/8/09	607-81040-01	Arthur B. Corontzes	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10	
114	4/9/09	Arthur B. Corontzes	Arthur B. Corontzes	119.00	3,339	54.43	First Com Ban	475		1063
211	12/24/09	Arthur B. Corontzes	Arthur B. Corontzes	200.00	3,080	84.38	First Com Ban	559		1063
	1/6/10	607-81040-01	Arthur B. Corontzes	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10	
	1/6/10	607-81040-01	Arthur B. Corontzes	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10	
302	4/12/10	Arthur B. Corontzes	Arthur B. Corontzes	120.00	2,971	48.84	First Com Ban	545		1063
	1/5/11	Gift to A/C 114517817 A B Corontzes	Arthur B. Corontzes	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
343	5/9/11	Arthur Corontzes	Arthur B. Corontzes	121.00	2,579	42.75	GWD	174		1063
	1/5/12	125 sh JP Morgan Chase & Co. Arthur B. Corontzes	Arthur B. Corontzes	4,460.00	2,338	1,428.42	STEPHENS	382	137616296	
	1/5/12	200 sh Intel Arthur B. Corontzes	Arthur B. Corontzes	5,080.00	2,338	1,626.99	STEPHENS	382	137616296	
	1/5/12	65 sh Progress Energy Inc. Arthur B. Corontzes	Arthur B. Corontzes	3,531.45	2,338	1,131.03	STEPHENS	381	137616296	
	1/2/13	Arthur Corontzes	Arthur B. Corontzes	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	2/8/13	Arthur Corontzes	Arthur B. Corontzes	1,000.00	1,938	265.48	STEPHENS	652	137616296	
	1/3/14	Arthur Corontzes	Arthur B. Corontzes	14,000.00	1,609	3,085.75	STEPHENS	863	137616296	
	1/2/15	Arthur Corontzes	Arthur B. Corontzes	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	
		AVG HAMMOND / GRANDCHILD	Arthur B. Corontzes	109,361.37		68,361.44				
		Arthur B. Corontzes Total		384,926.33		251,954.57				
	8/10/93	125 sh. Martin Marietta	Beacham O. Corontzes	10,000.00	9,060	12,410.96	SELLARS	105		
	1/10/94	230 sh. Martin Marietta	Beacham O. Corontzes	9,975.00	8,907	12,170.87	SELLARS	127		
	1/10/95	217 sh. Martin Marietta	Beacham O. Corontzes	9,982.00	8,542	11,680.31	SELLARS	164		
	1/11/96	130 sh. Lockheed Martin	Beacham O. Corontzes	9,880.00	8,176	11,065.60	SELLARS	174		

APPENDIX 1

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DETAILED LISTING OF LIFETIME GIFTS AND INTEREST

JULIA BROOKER 00637

ROA 545

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
	1/16/97	96 sh. Lockheed	Beacham O. Corontzes	8,436.48	7,805	9,020.10	SELLARS	193		
	1/16/97	100 sh. First Community	Beacham O. Corontzes	1,100.00	7,805	1,176.10	SELLARS	193		
	1/15/98	98 sh. Lockheed Martin	Beacham O. Corontzes	9,793.88	7,441	9,983.05	SELLARS	353		
	1/4/99	215 sh. Amsouth	Beacham O. Corontzes	9,675.00	7,087	9,392.70	SELLARS	400		
	1/18/00	607-81033-01	Beacham O. Corontzes	9,500.00	6,708	8,729.59	MORGAN ST	5012	SB607-81027-19	SELLARS 436
	1/11/01	607-81033-01	Beacham O. Corontzes	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS 469
1080	7/5/01	Beacham Owens Corontzes	Beacham O. Corontzes	100.00	6,174	84.58	MORGAN ST	1595	SB607-81026-10	
	4/17/02	607-81033-01	Beacham O. Corontzes	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS 518
1080	7/6/03	Beach I Corontzer	Beacham O. Corontzes	100.00	5,443	74.56	MORGAN ST	1978	SB607-81026-10	
1081	7/6/06	Beacham O Corontzes	Beacham O. Corontzes	113.00	4,347	67.29	First Com Bar	344	1063	
1211	7/25/07	Beacham O Corontzes	Beacham O. Corontzes	114.00	3,963	61.89	First Com Bar	381	1063	
	10/1/07	Future Scholar	Beacham O. Corontzes	60,000.00	3,895	32,013.70	MORGAN ST	3069	SB607-81026-10	SELLARS 566
1658	7/13/08	Beacham Coroutzes	Beacham O. Corontzes	115.00	3,609	56.85	MORGAN ST	3418	SB607-81026-10	
	12/31/08	Cash	Beacham O. Corontzes	12,000.00	3,438	5,651.51	SELLARS	667		
1690	1/6/09	Beacham O. Corontzes	Beacham O. Corontzes	100.00	3,432	47.01	MORGAN ST	3614	SB607-81026-10	
	1/8/09	607-81033-01	Beacham O. Corontzes	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10	
147	7/2/09	Beacham O Corontzes	Beacham O. Corontzes	116.00	3,255	51.72	First Com Bar	464	1063	
212	12/24/09	Beacham O Corontzes	Beacham O. Corontzes	200.00	3,080	84.38	First Com Bar	559	1063	
	1/6/10	607-81033-01	Beacham O. Corontzes	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10	
	1/6/10	607-81033-01	Beacham O. Corontzes	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10	
310	7/5/10	Beacham O Corontzes	Beacham O. Corontzes	117.00	2,887	46.27	First Com Bar	533	1063	
	1/5/11	Gift to A/C 138770708 B O Corontzes	Beacham O. Corontzes	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
349	7/5/11	Beach Corontzes	Beacham O. Corontzes	118.00	2,522	40.77	GWD	176	1063	
	1/5/12	125 sh JP Morgan Chase & Co. Beacham	Beacham O. Corontzes	4,460.00	2,338	1,428.42	STEPHENS	382	137616296	
	1/5/12	200 sh Intel Beacham Corontzes TT	Beacham O. Corontzes	5,080.00	2,338	1,626.99	STEPHENS	382	137616296	
	1/5/12	65 sh Progress Energy Inc. Beacham Co	Beacham O. Corontzes	3,531.45	2,338	1,131.03	STEPHENS	381	137616296	
	1/2/13	Beach Corontzes	Beacham O. Corontzes	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	2/8/13	Beach Corontzes	Beacham O. Corontzes	1,000.00	1,938	265.48	STEPHENS	651	137616296	
	1/3/14	Beach Corontzes	Beacham O. Corontzes	14,000.00	1,609	3,085.75	STEPHENS	862	137616296	
	1/2/15	Beach Corontzes	Beacham O. Corontzes	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	
		AVG HAMMOND / GRANDCHILD	Beacham O. Corontzes	109,361.37		68,361.44				
		Beacham O. Corontzes Total		374,208.58		238,304.49				
1094	10/8/01	Elizabeth K. Brooker	Beth Brooker	3,400.00	6,079	2,831.32	MORGAN ST	1595	SB607-81026-10	
	9/26/07	Beth Brooker	Beth Brooker	12,000.00	3,900	6,410.96	MORGAN ST	3011	SB607-81026-10	SELLARS 563
	1/9/08	Beth Brooker	Beth Brooker	12,000.00	3,795	6,238.36	MORGAN ST	3190	SB607-81026-10	
	12/31/08	Cash	Beth Brooker	12,000.00	3,438	5,651.51	SELLARS	664		
	12/31/08	Cash	Beth Brooker	12,000.00	3,438	5,651.51	SELLARS	667		
	1/8/09	Beth Brooker	Beth Brooker	13,000.00	3,430	6,108.22	MORGAN ST	3585	SB607-81026-10	
	1/6/10	Beth Brooker	Beth Brooker	13,000.00	3,067	5,461.78	MORGAN ST	3885	SB607-81026-10	
	1/5/11	Gift to A/C 207459752 E K Brooker Tr	Beth Brooker	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
	1/5/12	Elizabeth K. Brooker	Beth Brooker	13,000.00	2,338	4,163.56	STEPHENS	379	137616296	
	1/2/13	Beth Brooker	Beth Brooker	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	1/10/13	Beth Brooker	Beth Brooker	13,000.00	1,967	3,502.88	STEPHENS	625	137616296	
	2/12/13	Beth Brooker	Beth Brooker	1,000.00	1,934	264.93	STEPHENS	652	137616296	
	1/3/14	Beth Brooker	Beth Brooker	14,000.00	1,609	3,085.75	STEPHENS	863	137616296	
	1/2/15	Beth Brooker	Beth Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	

APPENDIX 1

PAGE 2

DETAILED LISTING OF LIFETIME GIFTS AND INTEREST

JULIA BROOKER 00638

ROA 546

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
			Beth Brooker Total	158,400.00		60,089.12				
	12/31/95	Debt forgiveness on 6/28/95 note	Dino Corontzes	9,883.00	8,187	11,083.85	SELLARS	163		
	9/26/07	607-81034-01	Dino Corontzes	12,000.00	3,900	6,410.96	MORGAN ST	3011	SB607-81026-10	SELLARS 564
	1/9/08	607-81034-01	Dino Corontzes	12,000.00	3,795	6,238.36	MORGAN ST	3190	SB607-81026-10	
	12/31/08	Cash	Dino Corontzes	12,000.00	3,438	5,651.51	SELLARS	664		
	1/8/09	Dino Corontzes	Dino Corontzes	13,000.00	3,430	6,108.22	MORGAN ST	3585	SB607-81026-10	
158	7/18/09	Dino Corontzes	Dino Corontzes	43.23	3,239	19.18	First Com Bar	465	1063	
	1/6/10	607-81034-01	Dino Corontzes	13,000.00	3,067	5,461.78	MORGAN ST	3885	SB607-81026-10	
	1/5/11	Gift to A/C 160600418 Dino Corontzes	Dino Corontzes	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
	1/5/12	Gift to Dino A. Corontzes	Dino Corontzes	13,000.00	2,338	4,163.56	STEPHENS	379	137616296	
	1/2/13	Dino Corontzes	Dino Corontzes	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	2/8/13	Dino Corontzes	Dino Corontzes	1,000.00	1,938	265.48	STEPHENS	652	137616296	
	1/3/14	Dino Corontzes	Dino Corontzes	14,000.00	1,609	3,085.75	STEPHENS	862	137616296	
	1/2/15	Dino Corontzes	Dino Corontzes	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	
			Dino Corontzes Total	139,926.23		59,207.01				
	6/1/92	191 sh. Martin Marietta	Elizabeth K. Brooker	9,979.75	9,495	12,980.51	SELLARS	10	03W-101125	
	1/8/93	146 sh. Martin Marietta	Elizabeth K. Brooker	9,891.00	9,274	12,565.63	SELLARS	104		
	1/10/94	230 sh. Martin Marietta	Elizabeth K. Brooker	9,975.00	8,907	12,170.87	SELLARS	127		
	1/10/95	217 sh. Martin Marietta	Elizabeth K. Brooker	9,982.00	8,542	11,680.31	SELLARS	164		
	1/11/96	130 sh. Lockheed Martin	Elizabeth K. Brooker	9,880.00	8,176	11,065.60	SELLARS	174		
	1/16/97	96 sh. Lockheed	Elizabeth K. Brooker	8,436.48	7,805	9,020.10	SELLARS	193		
	1/16/97	100 sh. First Community	Elizabeth K. Brooker	1,100.00	7,805	1,176.10	SELLARS	193		
	1/15/98	98 sh. Lockheed Martin	Elizabeth K. Brooker	9,793.88	7,441	9,983.05	SELLARS	353		
	1/4/99	215 sh Amsouth	Elizabeth K. Brooker	9,675.00	7,087	9,392.70	SELLARS	400		
	1/18/00	607-81025-01	Elizabeth K. Brooker	9,500.00	6,708	8,729.59	MORGAN ST	5011	SB607-81027-19	SELLARS 436
	1/11/01	607-81025-01	Elizabeth K. Brooker	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS 469
	4/17/02	607-81025-01	Elizabeth K. Brooker	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS 518
108	6/27/06	Elizabeth Brooker	Elizabeth K. Brooker	115.00	4,356	68.62	First Com Bar	344	1063	
	10/1/07	Future Scholar	Elizabeth K. Brooker	60,000.00	3,895	32,013.70	MORGAN ST	3069	SB607-81026-10	SELLARS 567
	1/8/09	607-81025-01	Elizabeth K. Brooker	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10	
144	6/23/09	Elizabeth Brooker	Elizabeth K. Brooker	118.00	3,264	52.76	First Com Bar	464	1063	
175	7/5/09	Elizabeth Brooker	Elizabeth K. Brooker	100.00	3,252	44.55	First Com Bar	378	1063	
	1/6/10	607-81025-01	Elizabeth K. Brooker	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10	
	1/6/10	607-81025-01	Elizabeth K. Brooker	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10	
	1/5/11	Elizabeth K. Brooker	Elizabeth K. Brooker	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
	1/5/12	125 sh JP Morgan Chase & Co. Elizabeth	Elizabeth K. Brooker	4,460.00	2,338	1,428.42	STEPHENS	382	137616296	
	1/5/12	200 sh Intel Elizabeth K. Brooker TR	Elizabeth K. Brooker	5,080.00	2,338	1,626.99	STEPHENS	382	137616296	
	1/5/12	65 sh Progress Energy Inc. Elizabeth K.	Elizabeth K. Brooker	3,531.45	2,338	1,131.03	STEPHENS	381	137616296	
	1/2/13	Elizabeth Brooker	Elizabeth K. Brooker	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	2/8/13	Elizabeth Brooker	Elizabeth K. Brooker	1,000.00	1,938	265.48	STEPHENS	651	137616296	
	1/3/14	Elizabeth Brooker	Elizabeth K. Brooker	14,000.00	1,609	3,085.75	STEPHENS	863	137616296	
	1/2/15	Elizabeth Brooker	Elizabeth K. Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	
		AVG HAMMOND / GRANDCHILD	Elizabeth K. Brooker	109,361.37		68,361.44				
			Elizabeth K. Brooker Total	371,219.33		245,338.77				
	8/10/93	125 sh. Martin Marietta	Grace H. Brooker	10,000.00	9,060	12,410.96	SELLARS	105		
	1/10/94	230 sh. Martin Marietta	Grace H. Brooker	9,975.00	8,907	12,170.87	SELLARS	127		

APPENDIX 1

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DETAILED LISTING OF LIFETIME GIFTS AND INTEREST

JULIA BROOKER 00639

ROA 547

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
	1/10/95	217 sh. Martin Marietta	Grace H. Brooker	9,982.00	8,542	11,680.31	SELLARS	164		
	1/11/96	130 sh. Lockheed Martin	Grace H. Brooker	9,880.00	8,176	11,065.60	SELLARS	174		
	1/16/97	96 sh. Lockheed	Grace H. Brooker	8,436.48	7,805	9,020.10	SELLARS	193		
	1/16/97	100 sh. First Community	Grace H. Brooker	1,100.00	7,805	1,176.10	SELLARS	193		
	1/15/98	98 sh. Lockheed Martin	Grace H. Brooker	9,793.88	7,441	9,983.05	SELLARS	353		
	1/4/99	215 sh Amsouth	Grace H. Brooker	9,675.00	7,087	9,392.70	SELLARS	400		
	1/18/00	607-81032-01	Grace H. Brooker	9,500.00	6,708	8,729.59	MORGAN ST	5011	SB607-81027-19	SELLARS 436
	1/11/01	607-81023-01	Grace H. Brooker	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS 469
	4/17/02	607-81032-01	Grace H. Brooker	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS 518
1219	7/25/03	Grace H. Brooker	Grace H. Brooker	100.00	5,424	74.30	MORGAN ST	4702	SB607-10172-11	
1288	7/25/05	Grace H. Brooker	Grace H. Brooker	112.00	4,693	72.00	MORGAN ST	2478	SB607-81026-10	
1086	7/26/06	Grace Brooker	Grace H. Brooker	113.00	4,327	66.98	First Com Ban	340	1063	
	10/1/07	Future Scholar	Grace H. Brooker	60,000.00	3,895	32,013.70	MORGAN ST	3070	SB607-81026-10	SELLARS 566
1659	7/13/08	Gradi Brooker	Grace H. Brooker	115.00	3,609	56.85	MORGAN ST	3362	SB607-81026-10	
	12/31/08	Cash	Grace H. Brooker	12,000.00	3,438	5,651.51	SELLARS	666		
	1/8/09	607-81032-01	Grace H. Brooker	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10	
162	7/24/09	Grace Brooker	Grace H. Brooker	116.00	3,233	51.37	First Com Ban	461	1063	
	1/6/10	607-81032-01	Grace H. Brooker	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10	
	1/6/10	607-81032-01	Grace H. Brooker	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10	
313	7/9/10	Grace Brooker	Grace H. Brooker	117.00	2,883	46.21	First Com Ban	533	1063	
	1/5/11	Gift to A/C 253004244 G H Brooker TR	Grace H. Brooker	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
	1/5/12	125 sh JP Morgan Chase & Co. Grace H	Grace H. Brooker	4,460.00	2,338	1,428.42	STEPHENS	382	137616296	
	1/5/12	200 sh Intel Grace H. Brooker TR	Grace H. Brooker	5,080.00	2,338	1,626.99	STEPHENS	382	137616296	
	1/5/12	65 sh Progress Energy Inc. Grace H. Bro	Grace H. Brooker	3,531.45	2,338	1,131.03	STEPHENS	381	137616296	
	1/2/13	Grace Brooker	Grace H. Brooker	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	2/8/13	Grace Brooker	Grace H. Brooker	1,000.00	1,938	265.48	STEPHENS	651	137616296	
	1/3/14	Grace Brooker	Grace H. Brooker	14,000.00	1,609	3,085.75	STEPHENS	863	137616296	
	1/2/15	Grace Brooker	Grace H. Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	
		AVG HAMMOND / GRANDCHILD	Grace H. Brooker	109,361.37		68,361.44				
			Grace H. Brooker Total	373,688.58		238,056.88				
			Grand Total	1,802,369.06		1,092,950.85				

APPENDIX 1

PAGE 4

DETAILED LISTING OF LIFETIME GIFTS AND INTEREST

JULIA BROOKER 00640

ROA 548

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
1153	3/4/00	Hammond School	Average (4)	1,000.00	6,662	912.60	MORGAN ST 4147	SB607-10172-11		
1154	6/5/00	Hammond School	Average (4)	25,800.00	6,569	23,216.47	MORGAN ST 4171	SB607-10172-11	SELLARS	456
1034	5/30/01	Hammond School	Average (4)	28,900.00	6,210	24,584.79	MORGAN ST 1512	SB607-81026-10	SELLARS	503-506
1119	1/28/02	Hammond School	Average (4)	100.00	5,967	81.74	MORGAN ST 1679	SB607-81026-10		
1124	3/2/02	Hammond School	Average (4)	2,000.00	5,934	1,625.75	MORGAN ST 1679	SB607-81026-10		
1145	5/24/02	Hammond School	Average (4)	31,500.00	5,851	25,247.47	MORGAN ST 1715	SB607-81026-10		
1169	8/26/02	Hammond School	Average (4)	17.00	5,757	13.41	MORGAN ST 1806	SB607-81026-10		
1207	2/12/03	Hammond School	Average (4)	2,000.00	5,587	1,530.68	MORGAN ST 1887	SB607-81026-10		
1061	6/23/03	Hammond School	Average (4)	33,440.00	5,456	24,992.96	MORGAN ST 1941	SB607-81026-10		
1231	2/9/04	Hammond School	Average (4)	2,000.00	5,225	1,431.51	MORGAN ST 2105	SB607-81026-10		
1238	3/17/04	Hammond Parent Assoc	Average (4)	200.00	5,188	142.14	MORGAN ST 2148	SB607-81026-10		
1245	5/26/04	Hammond School	Average (4)	37,205.00	5,118	26,084.27	MORGAN ST 2169	SB607-81026-10		
1313	2/17/05	Hammond School	Average (4)	2,000.00	4,851	1,329.04	MORGAN ST 2355	SB607-81026-10		
955	4/13/05	Hammond School	Average (4)	200.00	4,796	131.40	First Com Bar 314		1063	
1324	5/23/05	Hammond School	Average (4)	40,963.00	4,756	26,687.68	MORGAN ST 2416	SB607-81026-10		
1294	11/18/05	Hammond Auction	Average (4)	200.00	4,577	125.40	MORGAN ST 2538	SB607-81026-10		
1328	1/13/06	Hammond School	Average (4)	100.00	4,521	61.93	MORGAN ST 2577	SB607-81026-10		
1330	2/21/06	Hammond School	Average (4)	2,000.00	4,482	1,227.95	MORGAN ST 2623	SB607-81026-10		
1339	5/8/06	Hammond School	Average (4)	11,620.00	4,406	7,013.39	MORGAN ST 2667	SB607-81026-10		
1341	5/8/06	Hammond School	Average (4)	11,115.00	4,406	6,708.59	MORGAN ST 2668	SB607-81026-10		
1342	5/8/06	Hammond School	Average (4)	11,620.00	4,406	7,013.39	MORGAN ST 2668	SB607-81026-10		
1343	5/8/06	Hammond School	Average (4)	11,115.00	4,406	6,708.59	MORGAN ST 2668	SB607-81026-10		
1140	11/1/06	Hammond School	Average (4)	200.00	4,229	115.86	First Com Bar 330		1063	
1356	2/6/07	Hammond School	Average (4)	4,000.00	4,132	2,264.11	MORGAN ST 2850	SB607-81026-10		
1235	5/14/07	Hammond School	Average (4)	48,030.49	4,035	26,548.36	MORGAN ST 4538	SB607-10172-11		
1371	6/21/07	Hammond School	Average (4)	166.00	3,997	90.89	MORGAN ST 2930	SB607-81026-10		
1631	2/27/08	Hammond School	Average (4)	1,000.00	3,746	513.15	MORGAN ST 3249	SB607-81026-10		
1635	3/11/08	Hammond School	Average (4)	2,000.00	3,733	1,022.74	MORGAN ST 3249	SB607-81026-10		
1648	5/26/08	Hammond School	Average (4)	38,250.00	3,657	19,161.68	MORGAN ST 3334	SB607-81026-10		
1693	2/2/09	Hammond School	Average (4)	1,000.00	3,405	466.44	MORGAN ST 3614	SB607-81026-10		
1699	3/14/09	Hammond School	Average (4)	2,000.00	3,365	921.92	MORGAN ST 3639	SB607-81026-10		
1620	6/8/09	Hammond School	Average (4)	13,225.00	3,279	5,940.38	MORGAN ST 3691	SB607-81026-10		
142	6/13/09	Hammond School	Average (4)	13,403.00	3,274	6,011.15	First Com Bar 469		1063	
142	6/15/09	Hammond School	Average (4)	13,225.00	3,272	5,927.70	First Com Bar 468		1063	
248	1/20/10	Hammond School	Average (4)	1,000.00	3,053	418.22	First Com Bar 554		1063	
220	3/2/10	Hammond School	Average (4)	1,000.00	3,012	412.60	First Com Bar 550		1063	
	5/24/10	Hammond School	Average (4)	27,606.00	2,929	11,076.43	First Com Bar 535		1063	
421	4/7/11	Hammond School	Average (4)	1,000.00	2,611	357.67	GWD 173		1063	
346	6/7/11	Hammond School	Average (4)	15,245.00	2,550	5,325.31	GWD 175		1063	
		TOTAL HAMMOND		437,445.49		273,445.75				
		AVG HAMMOND / GRANDCHILD		109,361.37		68,361.44				

APPENDIX 2

PAGE 1

DETAILED LISTING OF LIFETIME GIFTS AND INTEREST - HAMMOND

JULIA BROOKER 00641

ROA 549

	Gifts	Interest	Total
Gifts made prior to October 16, 2007			
Spouse & issue of Ellen B. Corontzes:			
Dino Corontzes	21,883.00	18,244.23	40,127.23
Arthur B. Corontzes	245,744.33	207,598.60	453,342.93
Beacham O. Corontzes	235,128.58	193,645.35	428,773.93
Totals - spouse & issue of Ellen B. Corontzes	502,755.92	419,488.18	922,244.09
Spouse & issue of Beacham O. Brooker, Jr.:			
Beth Brooker	15,400.00	9,769.67	25,169.67
Elizabeth K. Brooker	244,687.33	206,888.19	451,575.53
Grace H. Brooker	235,026.58	193,566.82	428,593.40
Totals - spouse & issue of Beacham O. Brooker, Jr.	495,113.92	410,224.69	905,338.60
TOTAL GIFTS PRIOR TO OCTOBER 16, 2007	997,869.83	829,712.87	1,827,582.70
daily interest after February 5, 2019		136.69	
Gifts made after October 15, 2007			
Spouse & issue of Ellen B. Corontzes:			
Dino Corontzes	118,043.23	45,754.77	163,798.00
Arthur B. Corontzes	139,182.00	53,793.13	192,975.13
Beacham O. Corontzes	139,080.00	53,729.25	192,809.25
Totals - spouse & issue of Ellen B. Corontzes	396,305.23	153,277.15	549,582.38
Spouse & issue of Beacham O. Brooker, Jr.:			
Beth Brooker	143,000.00	55,744.11	198,744.11
Elizabeth K. Brooker	126,532.00	47,418.32	173,950.32
Grace H. Brooker	138,662.00	53,542.36	192,204.36
Totals - spouse & issue of Beacham O. Brooker, Jr.	408,194.00	156,704.79	564,898.79
TOTAL GIFTS AFTER OCTOBER 15, 2007	804,499.23	309,981.94	1,114,481.17
daily interest after February 5, 2019		110.21	
GRAND TOTAL LIFETIME GIFTS	1,802,369.06	1,139,694.81	2,942,063.87
daily interest after February 5, 2019		246.90	

(interest computed at 5% per annum from the date of gift to February 5, 2019)




 EXHIBIT NO: _____

 WITNESS: _____

 DATE: _____

 THOMPSON COURT REPORTING INC.

JULIA BROOKER 00736

ROA 550

Todd & Johnson, L.L.P.

Post Office Box 11262

Columbia, SC 29211

January 04, 2008

COPY

Mrs. Janet B. Brooker
1705 Graeme Drive
Columbia SC 29206


EXHIBIT NO. 7
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.

In Reference To: Our File No. 637-1
Invoice # 34547

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
12/4/2007 WSJ Review of lease and QPRT; Review of deed; Interoffice conference with paralegal;	0.80 250.00/hr	201.11
CKO Revise QPRT and rental agreement. Draft deed conveying property to QPRT.	1.45 120.00/hr	174.00
12/5/2007 WSJ Revisions to the deed; Interoffice conference with paralegal;	0.21 250.00/hr	52.71
CKO Made changes to proofed drafts; print and prepare originals for execution.	0.49 120.00/hr	58.20
12/6/2007 WSJ Office conference with Beech Brooker and his mother to sign QPRT, deed and lease agreement; Office conference with Ellen Corontez; Office conference with Julie Brooker;	0.53 250.00/hr	131.88
For professional services rendered	3.48	\$617.90
Additional Charges :		
12/5/2007 CKO Originals		7.00
12/7/2007 BJH Richland County Register of Deeds		10.20
Total additional charges		\$17.20
Total amount of this bill		\$635.10
Previous balance		\$3,292.33

T&J_02380

ROA 551

Mrs. Janet B. Brooker



Page 2

	<u>Amount</u>
Accounts receivable transactions	
12/17/2007 Payment - thank you. Check No. 1601	<u>(\$3,292.33)</u>
Total payments and adjustments	<u>(\$3,292.33)</u>
Balance due	<u>\$635.10</u>

If you have questions regarding the amount of your invoice or need a further explanation of services rendered, please call and speak with your attorney. If you would like to set up payment options, please call and speak with Mary Rogers, Billing Administrator. Full payment is anticipated when invoices are presented, however, payment options and partial payments are welcomed and encouraged if you are unable to remit the full amount of your invoice. We appreciate and want to hear from you when you have concerns. Telephone: 803-252-1500/Fax 803-252-1375

(PLEASE RETURN ONE COPY OF THIS STATEMENT WITH YOUR REMITTANCE. THANK YOU.)

T&J_02381

ROA 552

1/3/2008
9:30 AM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 7

Nickname Brooker, Janet | Steve's client
Full Name Mrs. Janet B. Brooker
Address 1705 Graeme Drive
Columbia SC 29206

Phone 1
Phone 3
In Ref To Our File No. 637-1
Fees Arrg. By billing value on each slip
Expense Arrg. By billing value on each slip
Tax Profile Exempt
Last bill 11/30/2007
Last charge 12/7/2007
Last payment 12/17/2007

Phone 2
Phone 4

Amount \$3,292.33

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
12/4/2007 87197	WSJ Legal Services Review of lease and QPRT; Review of deed; Interoffice conference with paralegal;	250.00	0.80	201.11	Billable
12/4/2007 87483	CKO P'legal Service Revise QPRT and rental agreement. Draft deed conveying property to QPRT.	120.00	1.45	174.00	Billable
12/5/2007 87248	WSJ Legal Services Revisions to the deed of distribution; Interoffice conference with paralegal;	250.00	0.21	52.71	Billable
12/5/2007 87493	CKO P'legal Service Made changes to proofed drafts; print and prepare originals for execution.	120.00	0.49	58.20	Billable
12/6/2007 87270	WSJ Legal Services Office conference with Beech Brooker and his mother to sign QPRT, deed and lease agreement; Office conference with Ellen Corontez; Office conference with Julie Brooker;	250.00	0.53	131.88	Billable
12/7/2007 87639	B.J.H. P'legal Service Write check to advance funds for recording fees;	~~75.00~~	~~0.10~~	~~7.50~~	Billable

TOTAL Billable Fees 3.58 \$625.40

Date ID	Attorney Expense	Price Markup %	Quantity	Amount	Total
12/5/2007 87494	CKO \$Copies Originals	0.25	28.000	7.00	Billable

T&J_02382

ROA 553

1/3/2008
9:30 AM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 8

Brooker, Janet: Mrs. Janet B. Brooker (continued)

Date ID	Attorney Expense	Price Markup %	Quantity	Amount	Total
12/7/2007 87617	BJH \$Cost Advanced Richland County Register of Deeds	10.20	1.000	10.20	Billable
TOTAL Billable Costs					\$17.20

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$625.40	
Total of Fees (Time Charges)		\$625.40
Costs Bill Arrangement: Slips By billing value on each slip.		
Total of billable expense slips	\$17.20	
Total of Costs (Expense Charges)		\$17.20
Total new charges		\$642.60
Previous Balance		
90 Days	\$418.96	
30 Days	\$2,873.37	
Total Previous Balance		\$3,292.33
Accounts Receivables		
DateID Type Description		
12/17/2007 PAY Payment - thank you. Check No. 1601	(\$3,292.33)	
35754		
Total Accounts Receivable		(\$3,292.33)
New Balance		
Current	\$642.60	
Total New Balance		\$642.60

T&J_02383

ROA 554

Todd & Johnson, L.L.P.**Post Office Box 11262
Columbia, SC 29211****November 30, 2007****COPY****Mrs. Janet B. Brooker
1705 Graeme Drive
Columbia SC 29206****In Reference To: Our File No. 637-1
Invoice # 34352****Professional Services**

		<u>Hrs/Rate</u>	<u>Amount</u>
11/5/2007	BR Interoffice conference with paralegal to discuss drafting issues.	0.35 225.00/hr	78.75
	BR Proof, revise and edit QPRT. Return with revisions.	1.59 225.00/hr	357.75
	BR Proof, revise and edit Lease Agreement. Return with corrections and changes.	0.90 225.00/hr	202.50
	CKO Draft QPRT and residential lease.	2.27 120.00/hr	272.40
11/28/2007	WSJ Voice mail message sent to Beach Brooker; Review of QPRT document and lease of condominium to Janet by children;	1.02 250.00/hr	255.63
11/29/2007	WSJ Telephone conference with Beach Brooker to set signing for the QPRT and property at Debordieu;	0.06 250.00/hr	14.10
	For professional services rendered	6.19	\$1,181.13
	Previous balance		\$2,111.20
	Balance due		<u>\$3,292.33</u>

If you have questions regarding the amount of your invoice or need a further explanation of services rendered, please call and speak with your attorney. If you would like to set up payment options, please call and speak with Mary Rogers, Billing Administrator. Full payment is anticipated when invoices are presented, however, payment options and partial payments are welcomed and encouraged if you are unable to remit the full amount of your invoice. We appreciate and

T&J_02384**ROA 555**

Mrs. Janet B. Brooker

COPY

Page 2

want to hear from you when you have concerns. Telephone: 803-252-1500/Fax 803-252-1375

(PLEASE RETURN ONE COPY OF THIS STATEMENT WITH YOUR REMITTANCE. THANK YOU.)

Current	30 Days	60 Days	90 Days	120+ Days
\$2,873.37	\$418.96	\$0.00	\$0.00	\$0.00

T&J_02385

ROA 556

11/29/2007
8:42 PM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 17

Nickname Brooker, Janet | Steve's client
Full Name Mrs. Janet B. Brooker
Address 1705 Graeme Drive
Columbia SC 29206

Phone 1
Phone 3
In Ref To Our File No. 637-1
Fees Arrg. By billing value on each slip
Expense Arrg. By billing value on each slip
Tax Profile Exempt
Last bill 11/5/2007
Last charge 11/29/2007
Last payment 2/7/2007

Phone 2
Phone 4

Amount \$246.78

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
11/5/2007 86383	BR3 Legal Services Interoffice conference with paralegal to discuss drafting issues.	225.00	0.35	78.75	Billable
11/5/2007 86384	BR3 Legal Services Proof, revise and edit QPRT. Return with revisions.	225.00	1.59	357.75	Billable
11/5/2007 86385	BR3 Legal Services Proof, revise and edit Lease Agreement. Return with corrections and changes.	225.00	0.90	202.50	Billable
11/5/2007 86773	CKO Legal Service Draft QPRT and residential lease.	120.00	2.27	272.40	Billable
11/28/2007 86762	WSJ Legal Services Voice mail message sent to Beach Brooker; Review of QPRT document and lease of condominium to Janet by children;	250.00	1.02	255.63	Billable
11/29/2007 86890	WSJ Legal Services Telephone conference with Beach Brooker to set signing for the QPRT and property at Debordieu;	250.00	0.06	14.10	Billable

TOTAL	Billable Fees	6.19	\$1,181.13
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Total of billable expense slips	\$0.00
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T&J_02386

ROA 557

1/29/2007
5:42 PM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 18

Brooker, Janet: Mrs. Janet B. Brooker (continued)

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$1,181.13	
Total of Fees (Time Charges)		\$1,181.13
Total of Costs (Expense Charges)		\$0.00
Total new charges		\$1,181.13
Previous Balance		
30 Days	\$418.96	
Current	\$1,692.24	
Total Previous Balance		\$2,111.20
New Balance		
30 Days	\$418.96	
Current	\$2,873.37	
Total New Balance		\$3,292.33
Total Overdue: \$418.96		

T&J_02387

ROA 558

REVISED INVOICE

Todd & Johnson, L.L.P.

Post Office Box 11262
Columbia, SC 29211

November 05, 2007

Mrs. Janet B. Brooker
1705 Graeme Drive
Columbia SC 29206

In Reference To: Our File No. 637-1
Invoice # 34245

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
10/1/2007	WSJ Telephone conference with client's son and son-in-law;	0.18 250.00/hr	44.58
	CKO Draft new General Durable Power of Attorney, revocation of old General Durable Power of Attorney and codicil.	0.94 120.00/hr	112.80
10/4/2007	WSJ Telephone conference with Bill Sellars;	0.14 250.00/hr	36.04
10/15/2007	WSJ Preparation of client's Revocable Trust and Pour Over Will; Telephone conference with client's son;	3.01 250.00/hr	753.40
	BR Interoffice conference with Steve Johnson to discuss equalization provision. Proof, revise and edit same.	0.25 225.00/hr	56.25
10/16/2007	WSJ Revisions made to client's estate planning documents; Office conference with client to sign her estate planning documents;	1.01 250.00/hr	253.61
10/19/2007	WSJ Telephone conference with Bill Sellars; Attempt telephone conference with Beach Brooker;	0.52 250.00/hr	129.58
10/22/2007	WSJ Telephone conference with Beach Brooker and Bill Sellars; Review of file prior to conference call;	0.48 250.00/hr	119.44
10/31/2007	BR Interoffice conference with Steve Johnson. Discuss Qualified Personal Residence Trust for her residence. Research discounts. Interoffice conference with paralegal to begin work on trust and to prepare rough draft of leaseback agreement.	0.63 225.00/hr	141.75
	WSJ Review of appraisal on personal residence; Interoffice conference with Bill Reynolds to discuss lease and QPRT;	0.18 250.00/hr	44.79

T&J_02388

ROA 559

REVISED INVOICE

Mrs. Janet B. Brooker

Page 2

	<u>Hours</u>	<u>Amount</u>
For professional services rendered	7.34	\$1,692.24
Previous balance		\$418.96
Balance due		<u>\$2,111.20</u>

If you have questions regarding the amount of your invoice or need a further explanation of services rendered, please call and speak with your attorney. If you would like to set up payment options, please call and speak with Mary Rogers, Billing Administrator. Full payment is anticipated when invoices are presented, however, payment options and partial payments are welcomed and encouraged if you are unable to remit the full amount of your invoice. We appreciate and want to hear from you when you have concerns. **Telephone: 803-252-1500/Fax 803-252-1375**

(PLEASE RETURN ONE COPY OF THIS STATEMENT WITH YOUR REMITTANCE. THANK YOU.)

<u>Current</u>	<u>30 Days</u>	<u>60 Days</u>	<u>90 Days</u>	<u>120+ Days</u>
\$1,692.24	\$418.96	\$0.00	\$0.00	\$0.00

T&J_02389

ROA 560

1/5/2007
9:04 AM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 5

Nickname Brooker, Janet | Steve's client
Full Name Mrs. Janet B. Brooker
Address 1705 Graeme Drive
Columbia SC 29206

Phone 1
Phone 3
In Ref To Our File No. 637-1
Fees Arrg. By billing value on each slip
Expense Arrg. By billing value on each slip
Tax Profile Exempt
Last bill 10/3/2007
Last charge 10/31/2007
Last payment 2/7/2007

Amount \$246.78

Go/ Add'l time
Revise/finalize

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
10/1/2007 85321	WSJ Legal Services Telephone conference with client's son and son-in-law;	250.00	0.18	44.58	Billable
10/1/2007 85514	CKO P'legal Service Draft new General Durable Power of Attorney, revocation of old General Durable Power of Attorney and codicil.	120.00	0.94	112.80	Billable
10/4/2007 85551	WSJ Legal Services Telephone conference with Bill Sellars;	250.00	0.14	36.04	Billable
10/15/2007 85722	WSJ Legal Services Preparation of client's Revocable Trust and Pour Over Will; Telephone conference with client's son;	250.00	3.01	753.40	Billable
10/15/2007 85729	BR3 Legal Services Interoffice conference with Steve Johnson to discuss equalization provision. Proof, revise and edit same.	225.00	0.25	56.25	Billable
10/16/2007 85764	WSJ Legal Services Revisions made to client's estate planning documents; Office conference with client to sign her estate planning documents;	250.00	1.01	253.61	Billable
10/19/2007 85820	WSJ Legal Services Telephone conference with Bill Sellars; Attempt telephone conference with Beach Brooker;	250.00	0.52	129.58	Billable
10/22/2007 85839	WSJ Legal Services Telephone conference with Beach Brooker and Bill Sellars; Review of file prior to conference call;	250.00	0.48	119.44	Billable
10/31/2007 85994	BR3 Legal Services Interoffice conference with Steve Johnson. Discuss Qualified Personal	225.00	0.63	141.75	Billable

T&J_02390

ROA 561

1/5/2007
9:04 AM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 6

Brooker, Janet: Mrs. Janet B. Brooker (continued)

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
	Residence Trust for her residence. Research discounts. Interoffice conference with paralegal to begin work on trust and to prepare rough draft of leaseback agreement.				
10/31/2007 86039	WSJ Legal Services	250.00	0.18	44.79	Billable
	Review of appraisal on personal residence; Interoffice conference with Bill Reynolds to discuss lease and QPRT;				
TOTAL	Billable Fees		7.34	\$1,692.24	
Total of billable expense slips					\$0.00

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$1,692.24	
Total of Fees (Time Charges)		\$1,692.24
Total of Costs (Expense Charges)		\$0.00
Total new charges		\$1,692.24
Previous Balance 30 Days	\$418.96	
Total Previous Balance		\$418.96
New Balance 30 Days	\$418.96	
Current	\$1,692.24	
Total New Balance		\$2,111.20

Total Overdue: \$418.96

T&J_02391

ROA 562

Todd & Johnson, L.L.P.
Post Office Box 11262
Columbia, SC 29211

October 29, 2007

COPY

Mrs. Janet B. Brooker
1705 Graeme Drive
Columbia SC 29206

In Reference To: Our File No. 637-1
Invoice # 34125

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
10/1/2007	WSJ Telephone conference with client's son and son-in-law;	0.18 250.00/hr	44.58
	CKO Draft new General Durable Power of Attorney, revocation of old General Durable Power of Attorney and codicil.	0.94 120.00/hr	112.80
10/4/2007	WSJ Telephone conference with Bill Sellars;	0.14 250.00/hr	36.04
10/15/2007	WSJ Preparation of client's Revocable Trust and Pour Over Will; Telephone conference with client's son;	3.01 250.00/hr	753.40
	BR Interoffice conference with Steve Johnson to discuss equalization provision. Proof, revise and edit same.	0.25 225.00/hr	56.25
10/16/2007	WSJ Revisions made to client's estate planning documents; Office conference with client to sign her estate planning documents;	1.01 250.00/hr	253.61
10/19/2007	WSJ Telephone conference with Bill Sellars; Attempt telephone conference with Beach Brooker;	0.52 250.00/hr	129.58
10/22/2007	WSJ Telephone conference with Beach Brooker and Bill Sellers; Review of file prior to conference call;	0.48 250.00/hr	119.44
	For professional services rendered	6.53	\$1,505.70
	Previous balance		\$418.96
	Balance due		<u>\$1,924.66</u>

T&J_02392

ROA 563

J/30/2007
3:54 PM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 2

Nickname
Full Name
Address
Phone 1
Phone 3
In Ref To
Fees Arrg.
Expense Arrg.
Tax Profile
Last bill
Last charge
Last payment

Brooker, Janet | Steve's client
Mrs. Janet B. Brooker
1705 Graeme Drive
Columbia SC 29206
Our File No. 637-1
By billing value on each slip
By billing value on each slip
Exempt
10/3/2007
10/22/2007
2/7/2007

Phone 2
Phone 4

Amount \$246.78

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
10/1/2007 85321	WSJ Legal Services Telephone conference with client's son and son-in-law;	250.00	0.18	44.58	Billable
10/1/2007 85514	CKO P'legal Service Draft new General Durable Power of Attorney, revocation of old General Durable Power of Attorney and codicil.	120.00	0.94	112.80	Billable
10/4/2007 85551	WSJ Legal Services Telephone conference with Bill Sellers;	250.00	0.14	36.04	Billable
10/15/2007 85722	WSJ Legal Services Preparation of client's Revocable Trust and Pour Over Will; Telephone conference with client's son;	250.00	3.01	753.40	Billable
10/15/2007 85729	BR3 Legal Services Interoffice conference with Steve Johnson to discuss equalization provision. Proof, revise and edit same.	225.00	0.25	56.25	Billable
10/16/2007 85764	WSJ Legal Services Revisions made to client's estate planning documents; Office conference with client to sign her estate planning documents;	250.00	1.01	253.61	Billable
10/19/2007 85820	WSJ Legal Services Telephone conference with Bill Sellers; Attempt telephone conference with Beach Brooker;	250.00	0.52	129.58	Billable
10/22/2007 85839	WSJ Legal Services Telephone conference with Beach Brooker and Bill Sellers; Review of file prior to conference call;	250.00	0.48	119.44	Billable

T&J_02393

ROA 564

J/30/2007
3:54 PM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 3

Brooker, Janet: Mrs. Janet B. Brooker (continued)

		Amount	Total
TOTAL	Billable Fees	6.53	\$1,505.70
Total of billable expense slips			\$0.00

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$1,505.70	\$1,505.70
Total of Fees (Time Charges)		\$1,505.70
Total of Costs (Expense Charges)		\$0.00
Total new charges		\$1,505.70
Previous Balance		
Current	\$418.96	
Total Previous Balance		\$418.96
New Balance		
Current	\$1,924.66	
Total New Balance		\$1,924.66

T&J_02394

ROA 565

Todd & Johnson, L.L.P.

Post Office Box 11262
Columbia, SC 29211

October 03, 2007

Mrs. Janet B. Brooker
1705 Graeme Drive
Columbia SC 29206

In Reference To: Our File No. 637-1
Invoice # 34029

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
9/6/2007 WSJ Telephone conference with Beech Brooker to discuss his mother's possible gifts;	0.16 250.00/hr	40.49
9/25/2007 WSJ Office conference with family to discuss gifts of assets to children;	1.51 250.00/hr	378.47
For professional services rendered	1.67	\$418.96
Balance due		\$418.96

If you have questions regarding the amount of your invoice or need a further explanation of services rendered, please call and speak with your attorney. If you would like to set up payment options, please call and speak with Mary Rogers, Billing Administrator. Full payment is anticipated when invoices are presented, however, payment options and partial payments are welcomed and encouraged if you are unable to remit the full amount of your invoice. We appreciate and want to hear from you when you have concerns. Telephone: 803-252-1500/Fax 803-252-1375

(PLEASE RETURN ONE COPY OF THIS STATEMENT WITH YOUR REMITTANCE. THANK YOU.)

T&J_02395

ROA 566

0/2/2007
12:31 AM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 16

Nickname Brooker, Janet | Steve's client
Full Name Mrs. Janet B. Brooker
Address 1705 Graeme Drive
Columbia SC 29206

Phone 1
Phone 3
In Ref To Our File No. 637-1
Fees Arrg. By billing value on each slip
Expense Arrg. By billing value on each slip
Tax Profile Exempt
Last bill 6/1/2007
Last charge 9/25/2007
Last payment 2/7/2007

Phone 2
Phone 4

Amount \$246.78

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
9/6/2007 84782	WSJ Legal Services Telephone conference with Beech Brooker to discuss his mother's possible gifts;	250.00	0.16	40.49	Billable
9/25/2007 85016	WSJ Legal Services Office conference with family to discuss gifts of assets to children;	250.00	1.51	378.47	Billable
TOTAL Billable Fees			1.67	\$418.96	

Total of billable expense slips \$0.00

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$418.96	
Total of Fees (Time Charges)		\$418.96
Total of Costs (Expense Charges)		\$0.00
Total new charges		\$418.96
New Balance Current	\$418.96	
Total New Balance		\$418.96

T&J_02396

ROA 567

Todd & Johnson, L.L.P.

**Post Office Box 11262
Columbia, SC 29211**

COPY

February 01, 2007

Mrs. Janet B. Brooker
1705 Graeme Drive
Columbia SC 29206

In Reference To: Our File No. 637-1
Invoice # 32610

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
1/17/2007 WSJ Telephone conference with Beech Brooker; Telephone conference with Janet and Beech; Review of file;	0.25 250.00/hr	63.47
CKO Input client information into computer; draft estate planning documents and address research.	0.45 120.00/hr	54.00
1/19/2007 WSJ To client's house to have Health Care Power of Attorney signed;	0.52 250.00/hr	129.31
For professional services rendered	1.22	\$246.78
Balance due		\$246.78

If you have questions regarding the amount of your invoice, please call and speak with your attorney. If you would like to set up payment options, please call and speak with Mary Rogers, Billing Administrator. If you are unable to remit full payment, partial payments are welcomed and encouraged. We always appreciate hearing from you when you have concerns. Telephone: 803-252-1500/Fax 803-252-1375

(PLEASE RETURN ONE COPY OF THIS STATEMENT WITH YOUR REMITTANCE. THANK YOU.)

T&J_02397

ROA 568

1/31/2007
10:33 PM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 16

Nickname Brooker, Janet | 926
Full Name Mrs. Janet B. Brooker
Address 1705 Graeme Drive
Columbia, SC 29206

Phone 1
Phone 3
In Ref To Our File No. 637-1
Fees Arrg. By billing value on each slip
Expense Arrg. By billing value on each slip
Tax Profile Exempt
Last bill 2/5/2003
Last charge 1/19/2007
Last payment 10/17/2002

Phone 2
Phone 4

Amount \$25.00

Date ID	Attorney Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
1/17/2007 77944	WSJ Legal Services Telephone conference with Beech Brooker; Telephone conference with Janet and Beech; Review of file;	250.00	0.25	62.50	Billable
1/17/2007 78302	CKO P'legal Service Input client information into computer; draft estate planning documents and address research.	120.00	0.45	54.00	Billable
1/19/2007 77999	WSJ Legal Services To client's house to have Health Care Power of Attorney signed;	250.00	0.52	130.00	Billable
TOTAL Billable Fees			1.22	\$246.50	
Total of billable expense slips				\$0.00	

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips By billing value on each slip.		
Total of billable time slips	\$246.50	
Total of Fees (Time Charges)		\$246.50
Total of Costs (Expense Charges)		\$0.00
Total new charges		\$246.50
New Balance Current	\$246.50	

T&J_02398

ROA 569

1/31/2007
10:33 PM

Todd & Johnson, L.L.P.
Pre-bill Worksheet

Page 17

Brooker, Janet: Mrs. Janet B. Brooker (continued)

Total New Balance

Amount	Total
	\$246.50

T&J_02399

ROA 570

① 20 Codicil - with equalization. provision

② Annual gifts of \$2,000 in 2007 & 2008

③ Trust pay - per Fairview - College & Private school. - being done.

④ 529 plan. -> \$60,000. ->

⑤ - 7LX - Cook into dining, Lakeview
Bonnell St.

⑥ - PART on hand. -> 3,500

⑦ 300,000 of the 1,000,000 exemption.

Trust
in care
5%
appraisal - die

Yes on this

Gift not to trust.

Office 737-2240 - B.
758-1624 - O

P #8
EXHIBIT NO. #8
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.

→ LS - 100 + share.

aggressive position and

gains -

equalization clause.

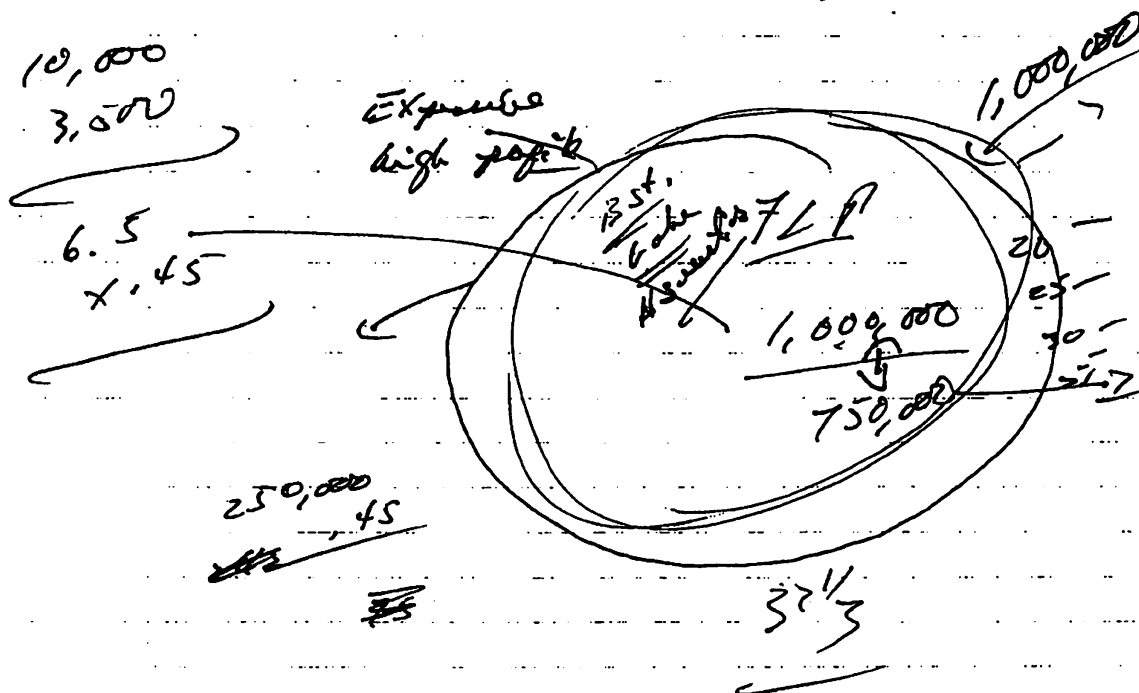
PRT Trust.

Bill Sellers -

(U) -

Non - Lockheed Martin.

my
Notes
due



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

**FIRST CODICIL TO
LAST WILL AND TESTAMENT OF
JANET BLOOM BROOKER**

I, **Janet Bloom Brooker**, executed my Last Will and Testament on October 31, 1988. I do hereby make, publish and declare this to be the First Codicil to my said Last Will and Testament.

FIRST:

I do hereby revoke Item IV of my said Last Will and Testament in its entirety and substitute in lieu thereof a new Item with the same number which Item shall read as follows:

ITEM IV

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, as follows:

(1) I give, devise and bequeath such amount as shall be necessary to equalize for gifts given to any child of mine during my life. Thus, to the extent that I have not equalized for such gifts during my lifetime, I direct that at the time of my death my Personal Representative determine what gifts I made and whether I accomplished equalization and if not then I direct my Personal Representative to make equalizing gifts to my children or to such child's issue, per stirpes. Such equalization shall be made for the value of the gift given at the time such gift was made with no interest thereon. My Personal Representative's best faith effort to determine the value shall be final and binding upon any beneficiaries hereunder.

(2) I give, devise and bequeath all the remainder thereof in approximately equal shares to such of my children, **Beacham Owens Brooker, Jr., Julia Barnes Brooker and Ellen Montague Brooker** as shall survive me; provided, however, the issue surviving me of a predeceased child of mine shall take, per stirpes, the share such child would have taken had such child survived me.

SECOND:

I hereby republish and reaffirm my said Last Will and Testament as herein modified, amended and supplemented by this First Codicil and self-proving page, intending that it make my Last Will and Testament and this Codicil self-proving, as if the same were set out here in full and do incorporate the same by this reference thereto, and do hereby republish and declare my said Last Will and Testament as amended, modified and supplemented as my Last Will and Testament.

 EXHIBIT NO: 
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.

-1-

I, **Janet Bloom Brooker**, the Testatrix, sign my name to this instrument this 16th day of October, 2007, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my First Codicil 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 (18) years of age or older, of sound mind, and under no constraint or undue influence.

_____(SEAL)
JANET BLOOM BROOKER

We, W. Steven Johnson and _____, 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 First Codicil 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 hereby signs this First Codicil as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Subscribed, sworn to and acknowledged before me by **Janet Bloom Brooker**, the Testatrix, and subscribed and sworn to before me by _____, the witness, this 16th day of October , 2007.

_____(SEAL)
Notary Public, State of South Carolina
My Commission Expires: 02/24/2013

P EXHIBIT NO. #10
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.



T&J_00136

ROA 575

W. STEVEN JOHNSON
wsj@toddandjohnson.com
Certified Specialist Estate Planning

WILLIAM M. REYNOLDS III
wmr@toddandjohnson.com
Certified Specialist Estate Planning

TIMOTHY C. THOMPSON
tst@toddandjohnson.com
Certified Specialist In Taxation Law

DAWN D. CLARK
dclark@toddandjohnson.com
Certified Specialist In Taxation Law
Charleston Office

LAW OFFICES OF

TODD & JOHNSON, L.L.P.

POST OFFICE BOX 11262
COLUMBIA, SOUTH CAROLINA 29211

609 SIMS AVENUE
COLUMBIA, SOUTH CAROLINA 29203
TELEPHONE 803-252-1500
FAX 803-252-1375

126 SEVEN FARMS ROAD, SUITE 150
CHARLESTON, SOUTH CAROLINA 29492
TELEPHONE 843-849-1500
FAX 843-849-9300

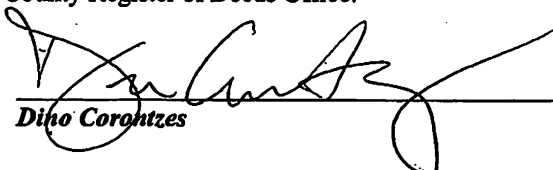
ALBERT C. TODD III
1950-2005

Receipt

Received this 24 day of October, 2007, the following **Original** Estate Planning Documents for **Janet Bloom Brooker**;

1. Trust Agreement dated October 16, 2007;
2. Last Will and Testament dated October 16, 2007;
3. Revocation of a 10/31/88 General Durable Power of Attorney dated October 16, 2007;
4. Assignment of Personal & Household Effects dated October 16, 2007.

Also enclosed is a **Copy** of the General Durable Power of Attorney, the original of this document is being recorded with the Richland County Register of Deeds Office.


Diho Corantzes

T&J_00137

ROA 576

TRUST AGREEMENT

FILE COPY

Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustee. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

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 the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any 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 II

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.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. 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 IV

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 personal representatives, 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 Trust Estate 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 personal representatives of the Settlor's estate. Written statements by the personal representatives 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 Trust Estate.

ARTICLE V

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

(1) General Distribution of Personal and Household Effects With a Mandatory Memorandum. All the Settlor's 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, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of 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 the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are 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 the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee 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 the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(3) **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 VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beacham

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

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 the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as 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 the Settlor's daughter, **JULIA B. BROOKER**.

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as 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 the Settlor's daughter, **ELLEN B. CORONTZES**.

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(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; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) Trustee Accountings and Settlement. The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) Trustee Accountings. If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) Settlement of Trustee Accounting. During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) Settlement of Trustee Accounting by Beneficiaries. The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) Settlement of Trustee Accounting Upon Termination of Trust. Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

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 or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

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 collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) 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.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) 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.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) 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 on credit, at public or private sale, 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.

(7) 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.

(8) 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.

(9) To sell or exercise stock subscription or conversion rights.

(10) 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.

(11) 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.

(12) To borrow money with or without security 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.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) 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 public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(16) 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.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, 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 by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

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

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) 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.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, 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.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) 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.

(29) 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.

(30) 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.

(31) 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 personal representatives 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 personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) 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 Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) 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.

(35) 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.

(36) 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.

(37) If the Trustee shall act as the Personal Representative 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 in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, 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 Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

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 personal representatives. 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 XI

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.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand (\$50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

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

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(**(3) 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 XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, 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 XV

(**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 XVI

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 XVII

(**Spendthrift Provision.** Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

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

WITNESSES:

W. S. [Signature]
Barbara [Signature]

Janet B. Brooker [Signature]
JANET B. BROOKER

SETTLOR
Janet Brooker [Signature]
Beacham O. Brooker, Jr. [Signature]
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

STATE OF SOUTH CAROLINA

)

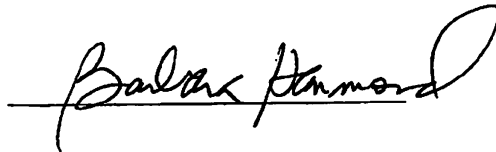
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PROBATE

COUNTY OF RICHLAND

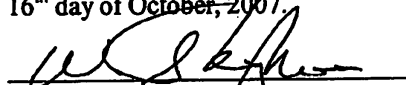
)

Personally appeared the undersigned witness and made oath that she 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

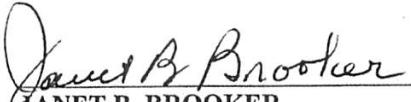
16th day of October, 2007.

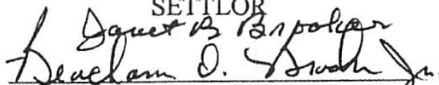

Notary Public for South Carolina

My Commission expires: 2/24/2013

SCHEDULE "A"

List of Assets


JANET B. BROOKER

SETTLOR

BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE



COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

**GENERAL DURABLE
 POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS that as principal (the "Principal") I, Janet Bloom Brooker, a resident of the state and county aforesaid, have made, constituted and appointed and by these presents do make, constitute and appoint my son, Beecham O. Brooker, Jr., as my true and lawful attorney ("Attorney") acting on my behalf, for the purposes hereinafter set forth.

Subject to the limitations set forth in this paragraph, I have also made, constituted and appointed and by these presents do make, constitute and appoint my daughter, Julia B. Brooker, and my daughter, Ellen B. Corontzes, as my true and lawful attorney for the purposes hereinafter set forth. So long as the limitations described below shall apply to Julia B. Brooker and Ellen B. Corontzes, they shall be referred to herein as "Standby Attorney". The term "Attorney" as used herein shall apply to any Standby Attorney at such time as the limitations described below no longer apply.

(a) The limitations referred to above upon the authority of my Standby Attorney to act hereunder are as follows:

(i) In no event is Julia B. Brooker authorized to act hereunder so long as Beecham O. Brooker, Jr. is living, competent to act and has not resigned nor been removed.

(ii) In no event is Ellen B. Corontzes authorized to act hereunder so long as Beecham O. Brooker, Jr. or Julia B. Brooker is living, competent to act and has not resigned nor been removed.

(b) The limitations upon the authority of a Standby Attorney to act shall not apply if such Standby Attorney has executed and delivered an affidavit setting forth that the limitations described above upon such Standby Attorney's authority to act do not then apply. Upon the execution and delivery of such an affidavit by a Standby Attorney, such Standby Attorney shall be authorized to act as Attorney and no person acting in reliance upon such affidavit shall incur liability to me or to my estate.

(c) A named Attorney is subject to removal as provided in Article II, Paragraph D, hereof.

Book 1368-495

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Fee:\$27.00 County Tax:\$0.00

Power of Attorney
 State Tax:\$0.00

2007094552 Richard W. Rodden
 Richland County R00

State of South Carolina
 I certify that this is a true and correct copy
 Dated 02-25-14
 Richard W. Rodden
 Richland County

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T&J_00153

ROA 592

(d) For purposes of making gifts to my acting Attorney under Article I, Section F, since my acting Attorney is prohibited from making gifts to himself or herself, I specifically authorize my Standby Attorney (notwithstanding that their "Standby Attorney" status still applies for all other purposes herein) to make any transfers, checks, deeds, instructions, withdrawals, and to take any other action necessary to make gifts to my acting Attorney. In acting under the authority of this paragraph to make gifts to my acting Attorney, my Standby Attorney shall evidence Attorney's authority to act by executing the affidavit referred to in Paragraph (b) above.

ARTICLE I

Empowerment of Attorney

Attorney is authorized in Attorney's absolute discretion from time to time and at any time with respect to my property, real or personal, at any time owned or held by me and without authorization of any court and in addition to any other rights, powers or authority granted by any other provision of this Power of Attorney or by statute or general rules of law (and regardless of whether I am mentally incompetent or physically or mentally disabled or incapable of managing my property and income), with full power of substitution, as follows:

A. Powers in General

To do and perform all and every act, deed, matter, and thing whatsoever in and about my estate, property and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person, if personally present, the specifically enumerated powers described below being in aid and exemplification of the full, complete, and general power herein granted and not in limitation or definition thereof.

B. Powers Relating to Management of Assets

1. To buy, receive, lease as lessor, accept or otherwise acquire; to sell, convey, mortgage, grant options upon, hypothecate, pledge, transfer, exchange, quit-claim, or otherwise encumber or dispose of; or to contract or agree for the acquisition, disposal, or encumbrance of any property whatsoever or any custody, possession, interest, or right therein, for cash or credit and upon such terms, considerations and conditions as Attorney shall think proper; and no person dealing with Attorney shall be bound to see to the application of any monies paid;

2. To take, hold, possess, invest or otherwise manage any or all of my property or any interest therein; to eject, remove or relieve tenants or other persons from, and recover possession of, such property by all lawful means; and to maintain, protect, preserve, insure, remove, store, transport, repair, build on, raze, rebuild, alter, modify, or improve the same or any part thereof, and/or to lease any property, real or personal for me or my benefit, as lessee,

JAB (2)

with or without option to renew; to collect, receive and receipt for rents, issues and profits of my property;

3. To make, endorse, accept, receive, sign, seal, execute, acknowledge, and deliver deeds, assignments, agreements, certificates, endorsements, hypothecations, checks, notes, mortgages, vouchers, receipts; consents, waivers, releases, undertakings, satisfactions, acknowledgments and such other documents or instruments in writing of whatever kind and nature as may be necessary, convenient, or proper in the premises;

4. 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;

5. To invest and reinvest all or any part of my property 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, 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 or annuity contracts without being limited by any statute or rules of law concerning investments by fiduciaries;

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

7. To transfer all of my stock and/or securities to Attorney, as agent (with the beneficial ownership thereof remaining in me) if necessary or convenient in order to exercise the powers with respect to such stock and/or securities granted herein;

8. To sell or exercise stock subscription or conversion rights;

9. To refrain from voting or to vote shares of stock owned by me 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 my property;

10. To participate in any plan of reorganization or consolidation or merger involving any company or companies with respect to stock or other securities which I own 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 Attorney 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 Attorney may deem advisable in connection therewith;

11. To purchase, maintain, surrender, collect, or cancel (a) life insurance or annuities of any kind on my life or the life of any one in whom I have an insurable interest, (b) liability insurance protecting me and my estate against third party claims (c) hospital insurance, medical insurance, Medicare supplemental insurance, custodial care insurance, and disability income insurance for me or any of my dependents and (d) casualty insurance insuring assets of mine against loss or damage due to fire, theft, or other commonly insured risk; to pay all insurance premiums, to select any options under such policies, to increase coverage under any such policy, to borrow against any such policy, to pursue all insurance claims on my behalf, to adjust insurance losses, and the foregoing powers shall apply to private and public plans, including but not limited to Medicare, Medicaid, SSI and Worker's Compensation;

12. To represent me in all tax matters; to prepare, sign, and file federal, state, and local income, gift and other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns, claims for refunds, requests for extensions of time, to file returns and pay taxes due, to file extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies or courts; to collect and make such disposition of refunds as my Attorney shall deem appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service or any other authority; to exercise any election I may have under federal, state or local tax law; to allocate any generation-skipping tax exemption to which I am entitled, and generally to represent me or obtain professional representation for me in all tax matters and proceedings of all kinds and for all periods before all officers of the Internal Revenue Service and state and local authorities and in any and all courts, to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants to represent or assist me in connection with any and all tax matters involving or in any way related to me or any property in which I have or may have an interest or responsibility; and on my behalf to execute IRS Form 2848 and appoint my Attorney or any suitable person selected by my Attorney as my representative before the Internal Revenue Service.

C. Powers Relating to Management of Assets and/or Custody of Person

1. To prepare, execute and file joint or separate income and other tax returns and amended returns and declarations of estimated tax for any year or years; to prepare, execute and file gift tax returns made by me or by Attorney on my behalf for any year or years; to consent to any gift and to utilize any gift splitting provision; to utilize or make any tax election; and to

prepare, sign and file claims for refund of any tax and other governmental reports, applications, requests, and documents;

2. To deposit in my name and for my account, with any bank, banker or trust company or any building or savings and loan association or any other banking or similar institution, all moneys to which I am entitled or which may come into Attorney's hands as such attorney-in-fact, and all bills of exchange, drafts, checks, promissory notes and other securities for money payable belonging to me, and for that purpose to sign my name and endorse each and every such instrument for deposit or collection; and from time to time, or at any time, to withdraw any or all moneys deposited to my credit at any bank, banker or trust company or any building or savings and loan association or any other banking or similar institution having moneys belonging to me, and, in connection therewith, to draw checks or to make withdrawals in my name; to make, do, execute, acknowledge and deliver, for and upon my behalf and in my name, all such checks, notes and contracts;

3. To endorse, receive, and collect checks payable to my order drawn on the Treasurer or other fiscal officer or depository of the United States, or any sovereign state or authority, or any political subdivision or instrumentality thereof, or any private person, firm, corporation, or partnership;

4. To have access at any time or times to any safe deposit box rented by me, wheresoever located, and to remove the original of this General Durable Power of Attorney and all or any other part of the contents thereof, and to surrender or relinquish said safe deposit box, and any institution in which any such safe deposit box may be located shall not incur any liability to me or my estate as a result of permitting Attorney to exercise this power; and this power is exercisable without (i) any contact with or notice to me, my spouse or any interested persons to my estate; (ii) any prior court order or authorization; (iii) any knowledge of any prior determination as to my mental or physical capacity or incapacity; (iv) any knowledge as to my whereabouts regardless of whether my whereabouts are known or unknown; or (v) any other inquiry. My intention is for this authorization to meet the requirements of S.C. Code Annotated Section 34-19-120 so as to allow Attorney complete access to any safe deposit box rented by me;

5. To make, do, and transact all and every kind of business of any nature or kind whatsoever, including the receipt, recovery, collection, payment, compromise, settlement, and adjustment of all accounts, legacies, bequests, interests, dividends, annuities, demands, debts, taxes, and obligations, or any rebate, refund, or discount thereon, which may now or hereafter be due, owing, or payable by me or to me;

6. To institute, prosecute, defend, abandon, compromise, arbitrate, and dispose of legal, equitable, or administrative hearings, actions, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in litigation involving me, my property or any interests of mine;

7. To borrow money and to encumber, mortgage or pledge any and all of my property in connection with the exercise of any power vested in Attorney;

8. To deal with Attorney in Attorney's individual, or any fiduciary, capacity, 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;

9. To employ and dismiss and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, real estate agents and/or brokers, and other assistants and advisors deemed by Attorney needful for the proper administration of my property, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such agent or professional representative were selected and retained with reasonable care;

10. To apply for, settle, deposit and expend for my benefit any cash, rights or entitlements due me from any governmental agency or body, such as Supplemental Social Security Medicaid, Medicare, and Social Security Disability Insurance and for the purposes of receiving social security benefits, Attorney is hereby appointed my "Representative Payee"; 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, and to compromise claims and grant discharges in regard to the matters described herein;

11. To apply for a Certificate of Title upon, and endorse and transfer title thereto, any automobile, truck, pickup, van, motorcycle or other motor vehicle, and to represent in such transfer assignment that the title to said motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment;

12. To insure my property against damage or loss and Attorney against liability with respect to third persons;

13. To pay and adjust debts incurred by me or by Attorney in connection with any power authorized hereunder;

14. To elect to take any elective share due me from my deceased spouse, if appropriate; to retain any property which I have the right to elect to retain; to file petitions pertaining to the election, and to take all other actions that Attorney deems appropriate in order to effectuate the election, and if any such actions by Attorney require the approval of any court, to seek such approval;

15. To withdraw and/or receive the income or corpus of any trust over which I have a right of receipt or withdrawal; to request and receive the income or corpus of any trust with respect to which the trustee thereof has the discretionary power to make distributions to or

on my behalf, and to execute and deliver to such trustee or trustees a receipt and release or similar document for the income or corpus so received;

16. To renounce or resign any fiduciary position to which I have been or may be appointed, including but not limited to Personal Representative, trustee, guardian or attorney-in-fact, to file an accounting with a court of competent jurisdiction or to otherwise settle such matters in the manner as Attorney shall deem appropriate;

17. To renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession; to release or abandon any property or interest in property or powers which I may now or hereafter own, including any interests in or rights over trusts, including the right to alter, amend, revoke or terminate. In exercising such discretion, Attorney shall consider any reduction in estate or inheritance taxes that may be due upon my death, and the effect of such renunciation or disclaimer upon persons interested in my estate and persons who would receive the renounced or disclaimed property; provided, however, that Attorney shall make no disclaimer that is expressly prohibited by other provisions of this instrument.

D. Powers Relating to Custody of Person

1. To be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164. I authorize any physician, health-care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any insurance company and the Medical Information Bureau Inc. or other health-care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given Attorney shall supersede any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The authority given Attorney has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health-care provider.

2. To establish where I shall reside, including the exact physical location, and the city, county, and state of residence and, if necessary, to make all necessary arrangements for me at any hospital, convalescent institution, nursing home or similar establishment, to have and exercise all rights on my behalf which I may have and possess at such residence or institution and to report such address as my official address to the United States Post Office and any other

[Handwritten signature]

person, firm, corporation or governmental agency as may be necessary, desirable, convenient or appropriate;

3. To employ, dismiss and compensate medical personnel including physicians, surgeons, dentists, medical specialists, nurses, and paramedical assistants deemed by Attorney needful for the proper care, custody and control of my person and to do so without liability for any neglect, omission, misconduct or default of any such physician or other medical personnel, provided such physician or other medical personnel were selected and retained with reasonable care;

4. To authorize any and all kinds of medical procedures and treatment including but not limited to medication, therapy, surgical procedures, and dental care, and to consent to all such treatment, medication or procedures where such consent is required; to obtain the use of medical equipment, devices or other equipment and devices deemed by Attorney needful for proper care, custody and control of my person and to do so without liability for any neglect, omission, misconduct or fault with respect to such medical treatment or other matters authorized herein;

5. To purchase, dispose of and abandon clothing, food, medicine, household and personal effects of all kinds;

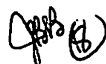
6. To arrange for transportation and travel for me for any purpose, including for medical treatment or recreation;

7. To make advance arrangements for funeral services including but not limited to purchase of a burial plot and marker and such other and related arrangements for services, flowers, ministerial services, transportation and other necessary, related, convenient or appropriate goods and services as my Attorney shall deem advisable or appropriate under the circumstances;

8. To apply for, elect, deposit and utilize on my behalf all benefits payable by any governmental body or agency, state, federal, county, city or other and to obtain, make claim upon, collect and dispose of insurance and insurance proceeds for my care, custody, and control;

9. To house (or provide for housing), support and maintain any animals which I own and to contract for and pay the expenses of proper veterinary care and treatment for such animals, or if the care and maintenance of such animals shall become unreasonably expensive in Attorney's opinion to dispose of such animals;

10. To employ, dismiss and compensate a Geriatric Care Manager deemed by Attorney necessary to conduct an assessment of my physical and psychological condition, and of the strengths and weaknesses of my living conditions, to develop an appropriate Geriatric Care Plan for me, to act as my advocate, to locate an appropriate service provider or qualified



individual who will perform necessary Care Plan functions, and to assist me with activities of daily living and to do so without liability for any neglect, omission, misconduct, or default of any such Care Manager or provider, provided such Care Manager or provider were selected and retained with reasonable care.

E. Powers Relating to Transfers in Trust

1. To convey, assign and transfer to the Trustee under a Revocable Trust Agreement (the "Trust") with me as Settlor, dated before or after the execution of this Power of Attorney, all or any part of my property and income of every kind and description, real, personal, intangible or mixed, wherever located, and whether acquired before or after the execution of this Power of Attorney, said property and income to be held, administered and distributed in accordance with the terms of the Trust;

2. To assign to the Trust presently and prospectively (or designate Trustee as beneficiary of) the proceeds of any policies of insurance which I may now or hereafter become entitled to receive, including but not limited to insurance proceeds payable by reason of my disability, the said proceeds to be held, administered and distributed in accordance with the terms of the Trust;

3. To execute documents and papers, including deeds of my interests in real property, bills of sale of my personalty, assignments of my intangibles (including my Certificates of Deposit), to make and/or endorse my checks, make savings withdrawals from my savings accounts, enter my safe deposit box and remove all or any part of the contents thereof which, together with any other and further acts or things necessary, appropriate or incidental thereto, shall be necessary or appropriate in order to make the transfers described above in paragraphs 1 and 2 of this Section E;

4. No transfer to fund my Revocable Trust may be made, however, if removing such property from passing under my Last Will and Testament and causing it to pass under such Trust Agreement would cause it to pass to different beneficiaries because it was referred to in a specific devise or bequest under my said Will.

F. Powers Regarding Gifts

1. Annual Exclusion Gifts. To continue making gifts designed to qualify for the annual exclusion from taxable gifts for federal gift tax purposes and to direct the Trustee of any trust of which I am Settlor to make withdrawals to fund such gifts and to direct any agent of mine holding assets as Custodian to make gift transfers and to use any of my own assets, real or personal, to fund such gifts, and to sign any and all documentation necessary for the accomplishment of gifts, it being my intention that my Attorney have full and complete authority to make or direct others to make such transfers as shall be necessary to continue the program of making annual exclusion gifts which I have begun and directed myself. Such gifts shall be equal

to the amount of the annual exclusion and/or the exclusion allowed for certain educational or medical expenses or such other amount less than that as my Attorney shall direct and may be made to any one or more of those people to whom I have made annual exclusion gifts either prior to or after the time of signing this Power of Attorney. If my spouse agrees to treat such gifts as split gifts then they may equal one annual exclusion gift from each of us. If a person is added to a class of people (for example, birth of a child or grandchild), and most or all of the other members of such class have been gift recipients in the past, then the new member of such class shall be deemed a potential gift recipient. Subject to the limitations expressed herein, Attorney shall have complete authority to determine the amount and recipients of such gifts for the accomplishment of the continuation of my gift program unless Attorney shall determine it in my best interest that such gifts not be made. I do not consider it necessary for my Attorney to make a determination as to whether the continuance of my gift program is not in my best interest until such time as the total of my assets that will be taxable for federal estate tax purposes equal less than such amount as my Attorney shall determine is the amount of assets that I can pass to my beneficiaries free of federal estate taxes according to the law then in effect. Attorney shall exercise its authority in a fiduciary manner and Attorney shall not have any power hereunder which would be deemed a general power of appointment for federal estate or gift tax purposes. An Attorney may not make or direct gifts to himself or herself, Attorney's estate, Attorney's creditors, or the creditors of Attorney's estate, but may make or direct such gifts to another Attorney or Standby Attorney acting hereunder. Any agent holding assets of mine which makes transfers pursuant to the authority given Attorney under the terms of this paragraph shall be held harmless by my Estate for any question concerning the authority granted herein and gifts made by direction of my Attorney.

2. Taxable Gifts. If my personally directed gifting program involved making taxable gifts to purposely use all or a significant portion of my federal unified credit, and if there is tax legislation that becomes effective after the date of execution of this Power of Attorney that increases the amount that may be gifted without resulting in a gift tax becoming payable, then my Attorney may make taxable gifts to use up more of my original federal unified credit and as well any additional credit given by changes in the federal tax laws. Such taxable gifts may only be made to those beneficiaries who would qualify to receive annual exclusion gifts as provided in Paragraph 1. above and the authorizations, powers and not inconsistent limitations referred to in Paragraph 1. above shall also apply to such taxable gifts.

3. Lifetime Advancements of Testamentary Gifts. To advance specific gifts, devises or distributions directed in my Last Will & Testament or Revocable Trust Agreement and to make advance gifts of charitable bequests and devises and charitable distributions directed in my Will or Revocable Trust Agreement, if making such advancements to individual beneficiaries would qualify such gifts as annual exclusion gifts (with or without gift-splitting with my spouse, if available) thus resulting in lower estate taxes in the settlement of my estate and if making such advancements to charitable beneficiaries would result in an income tax charitable deduction that would otherwise be lost if such distributions were made by my Trustee or Personal Representative after the time of my death. My Attorney may execute any and all documents

necessary to declare in a contemporaneous writing that such gift is to be treated as a full or partial satisfaction of the devise, bequest or other distribution otherwise directed in my Will or Trust Agreement and my Attorney shall have such authority as shall be necessary or appropriate to discuss with and receive from the devisee or donee an acknowledgment in writing that such gift is in satisfaction or partial satisfaction of a devise, bequest or distribution otherwise directed in my estate planning documents that would not otherwise be made until after the time of my death. For purposes of calculating the value of such satisfaction or partial satisfaction, any property given pursuant to the terms of this power of Attorney during my lifetime shall be valued at the time the donee comes into possession or enjoyment of such property. It is my intention that this paragraph may be used after such time as I become incapacitated with a reasonable expectation that I am terminally ill in order to fully or partially satisfy distributions that would otherwise be directed after my death in my estate planning documents in order to save estate or income taxes by doing so. Distributions made under the authority of this paragraph by my Attorney in good faith and pursuant to the terms of the document my Attorney believes is my proper Last Will and Testament and/or proper Trust Agreement shall not be subject to question by my family or beneficiaries if such distributions were made in a reasonable good faith reliance upon the documents believed to be the appropriate documents, even if they subsequently turn out not to have been the appropriate estate planning documents.

4. Charitable Gifts. To ascertain the amounts normally given by me on a yearly basis or pledged to be given or indicated intentions to complete or make a single gift or series of gifts, and to make such charitable gifts and devises as I was accustomed to making, based upon my Attorney's ascertainment of my accustomed manner of giving and such pledges and intention and obligations as may be ascertained in Attorney's review of my personal financial records. It is my intention that such regular tithes, offerings, gifts and other charitable transfers as I am accustomed to making be continued after my incapacity and only discontinued by Attorney in such situation that Attorney determines that my own assets, income and estate that are available for my care and support are insufficient for the likely expenses of my support and maintenance until the time of my expected demise.

ARTICLE II

Termination, Amendment, Resignation and Removal

A. Power not Affected by Principal's Incapacity

This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate. It is my intent that the authority conferred herein shall be exercisable notwithstanding my physical disability or mental incompetence.

B. Termination

This power of attorney shall remain in full force and effect until the earlier of the following events: (i) Attorney has resigned as provided herein; (ii) I have revoked this General Durable Power of Attorney by written instrument recorded in the public records of the county aforesaid, or (iii) a conservator shall have been appointed for me by a court of competent jurisdiction. This power of attorney may be amended by me at any time and from time to time but such amendment shall not be effective as to third persons dealing with Attorney without notice of such amendment unless such amendment shall have been recorded in the public records of the county aforesaid.

C. Resignation

In the event that Attorney shall become unable or unwilling to serve or continue to serve, then Attorney may resign by delivering to me in writing a Copy of Attorney's resignation and recording the original in the public records of the county aforesaid. Upon such resignation and recording, Attorney shall thereupon be divested of all authority under this General Durable Power of Attorney.

D. Removal

Any person named herein as Attorney may be removed by written instrument executed by me and recorded in the public records of the county aforesaid.

ARTICLE III

Incidental Powers and Binding Effect

In connection with the exercise of the powers herein described, Attorney is fully authorized and empowered to perform any other acts or things necessary, appropriate, or incidental thereto on my behalf, with the same validity and effect as if I were personally present, competent, and personally exercised the powers myself. All acts lawfully done by Attorney hereunder during any period of disability or mental incompetence shall have the same effect and inure to the benefit of and bind me and my heirs, devisees, legatees and personal representatives as if I were mentally competent and not disabled. The powers herein conferred may be exercised by Attorney alone and the signature or act of Attorney on my behalf may be accepted by third persons as fully authorized by me and with the same force and effect as if done under my hand and seal and as if I were present in person, acting on my own behalf and competent. No person who may act in reliance upon the representations of Attorney for the scope of authority granted to Attorney shall incur any liability to me or to my estate as a result of permitting Attorney to exercise any power, nor shall any person dealing with Attorney be responsible to determine or insure the proper application of funds or property.

ARTICLE IVMiscellaneousA. Exculpation

Attorney, Attorney's heirs, successors and assigns are hereby released and forever discharged from any and all liability upon any claim or demand of any nature whatsoever by me, my heirs or assigns, the beneficiaries under my will or under any trust which I have created or shall hereafter create or any person whomsoever on account of any failure of Attorney to act pursuant to this Power of Attorney.

B. Definitions

Whenever the word "Attorney" or any modifying or substituted pronoun therefor is used in this Power of Attorney, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof.

C. Severability

If any part of any provision of this Power of Attorney shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Power of Attorney.

D. Compensation

Attorney shall be entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by Attorney on my behalf pursuant to any provision of this Power of Attorney and shall also be entitled to reasonable compensation for services rendered hereunder.

E. Restrictions

Notwithstanding any provision herein to the contrary, Attorney shall not satisfy the legal obligations of Attorney out of any property subject to this Power of Attorney, nor may Attorney exercise this power in favor of Attorney, Attorney's estate, Attorney's creditors or the creditors of Attorney's estate.

F. Reservations

Notwithstanding any provision hereto to the contrary, Attorney shall have no power or authority whatever with respect to (a) any policy of insurance owned by me on the life of Attorney, and (b) any trust created by Attorney as to which I am a trustee.

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G. Construction

It is my intention that no property subject to this power shall be includable in the gross estate (for federal or South Carolina estate tax purposes) of Attorney under the Internal Revenue Code of 1986, as amended, or any other applicable section, if any, of federal and/or South Carolina law.

H. No Disruption of Estate Plan

If it becomes necessary for Attorney to liquidate my assets in order to provide support for me, or if liquidation or conversion of assets becomes necessary for any other reason, whether specified in this instrument or otherwise, or such liquidation is deemed by Attorney to be appropriate or convenient, I direct that Attorney, to the extent reasonably possible, avoid disrupting the dispositive provisions of any estate plan of mine known to Attorney, whether or not such estate plan is embodied in a Will, a Trust, non-probate property, or otherwise. For example, if I own stocks or property that are specifically bequeathed to someone in my Will, I would want them to be the last sold for my care. If it is necessary to disrupt the dispositive provisions of such plan, then Attorney is directed to use Attorney's best efforts to restore the dispositive provisions of such plan as and when the opportunity to do so is available to Attorney. Attorney shall make reasonable efforts to obtain and review my estate plan and any person having knowledge thereof or possession of any documents implementing such estate plan is authorized to make disclosure thereof to Attorney, and to furnish Attorney with copies of such documents.

I. Health Care Power of Attorney and Living Will

If I execute a South Carolina statutory Health Care Power of Attorney, Declaration of a Desire for a Natural Death (Living Will) or other similar advance healthcare directive, then any provision therein that conflicts with any power given herein shall take precedence over and thus supersede any authority given in this Power of Attorney.

J. Revocation of Prior Powers of Attorney

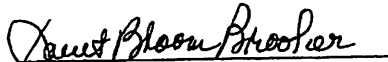
I hereby specifically revoke any previous General Power of Attorney regardless of the state in which it was given and regardless of whether it was previously recorded or not. I specifically do not revoke any previously given Health Care Power of Attorney.

K. Appointment of Guardian, Constructional Preferences

I have selected the people I have named herein with the utmost thought and care. If any action is brought for the appointment of a Guardian or a Conservator, I wish to state in the clearest and most firm manner possible that I do not wish for a Guardian or a Conservator to be appointed on my behalf under any circumstances and I request that any court asked to appoint a

Guardian or a Conservator specifically take into account my strongly held and strongly stated preference that my Power of Attorney be allowed to continue to act on my behalf as authorized herein.

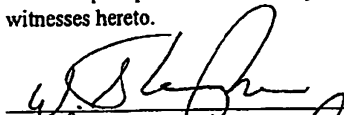
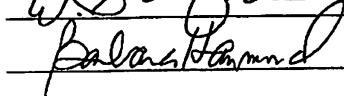
IN WITNESS WHEREOF, as Principal, I have executed this Durable Power of Attorney as of this 16th day of October, 2007, and I have directed that photographic copies of this power be made which shall have the same force and effect as an original.


JANET BLOOM BROOKER, Principal

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ATTESTATION

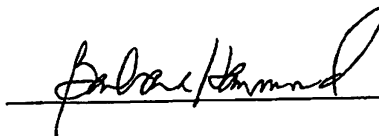
The foregoing General Durable Power of Attorney was this 16th day of October, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

 of Columbia, S.C.
 of Elgin SC

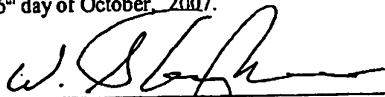
(STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

Personally appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within General Durable Power of Attorney and that deponent, with the other witnesses whose names are subscribed above, witnessed the execution thereof.



SWORN to before me this
16th day of October, 2007.



(L.S.)

Notary Public for South Carolina
My Commission Expires: 02/24/2013

Richland County Register of Deeds

John T. Hopkins II



Todd & Johnson, L.L.P.
609 Sims Avenue
Columbia, South Carolina 29205
(803) 252-1500
W. Steven Johnson

Current Estate Planning Documents for
Janet Bloom Brooker

- | | | |
|----|---|------------------|
| 1) | Trust Agreement | October 16, 2007 |
| 2) | Irrevocable Trust Agreement | June 30, 1992 |
| 3) | Last Will and Testament | October 16, 2007 |
| 4) | General Durable Power of Attorney
Book 1368 Page 495 | October 16, 2007 |
| 5) | Revocation of 10/31/88 General
Durable Power of Attorney | October 16, 2007 |
| 6) | Health Care Power of Attorney | January 19, 2007 |
| 7) | Living Will or (Declaration of
a Desire for a Natural Death) | N/A |
| 8) | Assignment of Personal
& Household Effects | October 16, 2007 |
| 9) | Deeds | |

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FILE COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) IRREVOCABLE TRUST
) AGREEMENT OF
) JANET BLOOM BROOKER

This Trust, dated the 30 day of June, 1992, between Janet Bloom Brooker (hereinafter referred to as the "Grantor") and Beacham Owens Brooker, Jr., Julia Barnes Brooker and Ellen Brooker Corontzes, as Co-Trustees, hereinafter referred to as the "Trustee". References hereinafter to the "Trustee" shall refer collectively to all of the Co-Trustees named herein. This Trust shall be known as the "JANET BLOOM BROOKER PERSONAL RESIDENCE TRUST".

ARTICLE I

Recitals

1. The Grantor intends that this trust constitute a "qualified personal residence trust" within the meaning of Section 2702(a)(3)(A)(ii) of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 25.2702-5.

2. The Grantor deeds to the Trustees the personal residence located at DeBordieu Colony, Georgetown County, South Carolina. A copy of the deed is annexed as part of Schedule "A".

3. The Trustees agree to hold the residence and any other or additional property which is a part of this trust, including any accumulated income (the "Trust Estate"), according to the terms of this trust instrument.

ARTICLE II

Definitions

1.01 For purposes of this trust, the following terms shall have the following meanings:

(A) "Code" - the Internal Revenue Code of 1986, as it may be amended from time to time. All references to a section or chapter of the Code shall be deemed to refer as well to any subsequent provision of law enacted in its place.

(B) "SCPC" - the South Carolina Probate Code, as it may be amended from time to time. All references to a section or chapter of the SCPC shall be deemed to refer as well to any subsequent provision of law enacted in its place.

(C) "Personal residence" - the meaning ascribed to it in Treas. Reg. Section 25.2702-5(c)(2).

(D) "Treas. Reg. Section 25.2702-5" - all references in this Trust to Treas. Reg. Section 25.2702-5 shall be deemed to refer as well to any rulings, notices or other administrative pronouncements that may be issued under it.

(E) "Trustees" or "Trustee" and all pronouns referring Trustees or Trustee - the Trustees or Trustee (including successors) serving under this trust at any time, construed in the masculine, feminine or neuter, singular or plural, whichever construction is consistent with the facts prevailing at any given time.

ARTICLE III

Irrevocability

3.01 This Trust is irrevocable. The Grantor waives any and all rights and powers, whether alone or in conjunction with others, and regardless of when and from what source the Grantor may have acquired those rights or powers, to alter, amend, revoke or terminate this trust.

ARTICLE IV

Term of Trust: Conversion to Grantor Retained Annuity Trust

4.01 Term of Trust. The trust shall be held and administered under Section 5.01 of Article Fifth until the first to occur of (i) the expiration of a term of ten (10) years from the date of this Indenture (the "Fixed Term") or (ii) the death of the Grantor (the earlier date referred to as the "Trust Term"), and then the Trust Estate, as it is then constituted, shall be disposed of under the provisions of Section 5.02 of Article Fifth.

4.02 Conversion to Grantor Retained Annuity Trust. Notwithstanding the provisions of Section 4.01 of this Article if, during the Trust Term:

(A) The residence held by the Trustees ceases to be a personal residence because of a change in use, then, within thirty (30) days after the change in use, the Trust Estate, as it is then constituted, shall be transferred to the Trustees to be held, administered and disposed of under Article Sixth. However, any cessation of use as a personal residence shall be deemed to occur only if and when it is deemed to occur under Treas. Reg. Section 25.2702-5(c)(7).

(B) The residence held by the Trustees is sold, or damaged or destroyed, then any sales or insurance proceeds held by the Trustees after the earlier of (i) the date that is two (2) years after the date of sale, or damage to or destruction of, the residence, as the case may be or (ii) the date a new residence is acquired by the Trustees or the date replacement of or repairs to the residence are completed, as the case may be, shall, within thirty (30) days after, be transferred to the Trustees to be held, administered and disposed of as a separate share of this trust under Article Sixth.

(C) The residence held by the Trustees is damaged or destroyed so that it is unusable as a residence and, if a new residence is not acquired by the Trustees or replacement of or repairs to the residence are not completed within two (2) years after the damage or destruction, then, within thirty (30) days after, the Trust Estate, as it is then constituted, shall be transferred to the Trustees to be held, administered and disposed of under Article Sixth.

ARTICLE V

Personal Residence Trust

All property directed under Section 4.01 of Article Fourth to be disposed of under this Article Fifth shall be paid as follows:

5.01 During Trust Term. During the Trust Term, the Grantor shall have the right to the exclusive use, possession and enjoyment of any personal residence held by the Trustees, without rent or other charge. In addition, during the Trust Term, the Trustees shall pay or apply any net income at the end of each calendar quarter to or for the benefit of the Grantor.

5.02 Upon Expiration of Trust Term. Upon expiration of the Trust Term, the Assets held under this Article Fifth shall be disposed of as follows:

(1) Grantor Does Not Survive Fixed Term. If the Grantor dies prior to the expiration of the Fixed Term, upon the Grantor's death the Trust shall terminate and the balance of the Trust shall be paid to the Grantor's executors or administrators, to be disposed of as part of the Grantor's estate.

(2) Grantor Survives Fixed Term. If the Grantor survives the Fixed Term, the Trustees shall pay to the Grantor any undistributed net income and the balance of the trust shall be disposed of as follows:

(a) Distribution to Children. The Trust shall terminate upon the expiration of the Fixed Term and the

Trustees shall pay the balance of the Trust, as it is then constituted, in three (3) equal shares to the Grantor's children, Beacham Owens Brooker, Jr., Julia Barnes Brooker, and Ellen Brooker Corontzes; provided, however, if a said child of the Grantor is not then living, then such child's then living issue shall take, per stripes, the share their parent would have taken had such parent then been living.

(b) Distribution of Cash Held for Expenses. Notwithstanding any other provision of paragraph "2" of this Section 5.02, if the Grantor survives the Fixed Term, upon the expiration of the Fixed Term the Trustees shall pay to the Grantor any portion of the trust which consists of cash held under Section 7.02A of Article Seventh for the payment of expenses, to the extent that cash is not used to pay trust expenses due and payable on the date of expiration of the Fixed Term (including expenses directly related to termination).

ARTICLE VI

Grantor Retained Annuity Trust

All property directed under Section 4.02 of Article Fourth to be held, administered and disposed under this Article Sixth shall be held for the following uses and purposes:

6.01 During Trust Term.

1. Payments and Source of Payments. In each taxable year of the trust beginning with the Cessation Date (as defined in paragraph "2" of this Section 6.01) and ending on the last day of the Trust Term, the Trustees shall pay to the Grantor the amount (the "Annuity Amount") set forth in paragraph "3" of this Section 6.01. The Annuity Amount shall be paid in equal quarterly installments, from the income of the Trust Estate, and, to the extent that the income is not sufficient, from the principal of the Trust Estate.

2. Cessation Date. The Cessation Date shall be the date of sale of the residence, the date of damage to or destruction of the residence, or the date on which the residence ceases to be used as a personal residence, as the case may be. Notwithstanding the preceding sentence, the Trustees may defer payment of the Annuity Amount otherwise payable after the Cessation Date until the date that is thirty (30) days after the trust assets are converted to a qualified annuity interest under Section 4.02 of Article Fourth ("Conversion Date"); provided that any deferred payment must bear interest from the Cessation Date at a rate not less than the Code Section 7520 rate in effect on the Cessation Date. The Trustees may reduce aggregate deferred annuity payments by the amount of income, if any, actually distributed by the trust to the Grantor during the deferral period.

3. Annuity Amount. If, under Section 4.02A or Section 4.02C of Article Fourth, the entire Trust Estate becomes subject to this Article Sixth, then the Annuity Amount shall be an amount equal to (i) the lesser of the value for Federal gift tax purposes of all interests retained by the Grantor in the residence transferred to this trust as of the date of this trust instrument (i.e., \$ 258,036) or the value of the Trust Estate as of the Conversion Date divided by (ii) the annuity factor for the original Fixed Term of the trust determined under Section 7520 of the Code as of the date of this Trust instrument (i.e. 8.4). If under Section 4.02B of Article Fourth, only a portion of the sales or insurance proceeds received by the Trustees on account of the sale or damage to or destruction of a personal residence becomes subject to this Article Sixth, then the Annuity Amount shall be the amount determined immediately above, multiplied by a fraction, the numerator of which is the excess of the fair market value of the Trust Estate on the Conversion Date over the amount (including acquisition costs) reinvested in the new residence or expended for repairs to the existing residence, and the denominator of which is the fair market value of the Trust Estate on the Conversion Date.

4. Incorrect Determinations. For purposes of determining the Annuity Amount, the value of the property transferred by the Grantor to the Trustees shall be its fair market value for Federal gift tax purposes. If the fair market value of this property is incorrectly determined, then within a reasonable period after the value is finally determined for Federal gift tax purposes, the Trustees shall pay to the Grantor (in the case of an undervaluation) or shall receive from the Grantor (in the case of an overvaluation) an amount equal to the difference between the annuity amounts properly payable and the annuity amounts actually paid.

(5) Proration. The Trustees shall prorate the Annuity Amount on a daily basis for a short first taxable year and for the short taxable year that payment of the Annuity Amount terminates.

(6) Undistributed Income. Any income in excess of the Annuity Amount shall be added to the principal of the Trust Estate.

6.02 Upon Expiration of Trust Term. Upon expiration of the Trust Term, the trust assets, as they are then constituted, shall be disposed of as follows:

(1) Grantor Does Not Survive Fixed Term. If the Grantor dies before the expiration of the Fixed Term, upon the Grantor's death the trust shall terminate and the Trustees shall distribute to the Grantor's executors or administrators, to be disposed of as part of the Grantor's estate, a fractional share of the trust assets having a numerator equal to the amount of the

trust assets includable in the Grantor's gross estate for Federal estate tax purposes and a denominator equal to the value of the trust assets as determined in the Grantor's Federal estate tax proceeding. The Trustees shall distribute the balance, if any, of the trust assets to the Grantor's children, Beacham Owens Brooker, Jr., Julia Barnes Brooker and Ellen Brooker Corontzes; provided, however, if a said child of the Grantor is not then living, then such child's then living issue shall take, per stripes, the share their parent would of taken had such parent been then living.

(2) Grantor Survives Fixed Term. If the Grantor survives the Fixed Term, upon the expiration of the Fixed Term, the Trust shall terminate and the Trustees shall pay the balance of the Trust, as it is then constituted, to the Grantor's children, Beacham Owens Brooker, Jr., Julia Barnes Brooker and Ellen Brooker Corontzes; provided however, if a said child of the Grantor is not then living, then such child's then living issue shall take, per stripes, the share their parent would of taken had such parent been then living.

ARTICLE VII

Trust Assets

7.01 Personal Residence. Except as otherwise provided in Section 7.02 of this Article, the Trustees are prohibited during the Trust Term from holding any asset in the trust administered under Article Fifth other than one (1) residence (or an undivided interest in one (1) residence) to be used as a personal residence of the Grantor. The preceding sentence shall not apply to the annuity trust administered under Article Sixth.

7.02 Other Transfers. To the extent permitted by Treas. Reg. Section 25.2702-5(c)(5)(ii):

A. Cash for Expenses and Improvements. The Trustees may hold cash as part of the Trust Estate but not in excess of the amount required for the payment of trust expenses (including mortgage payments and other expenses included in mortgage payments) already incurred or reasonably expected to be incurred within six (6) months after the receipt of the cash by the Trustees, and for improvements to the personal residence to be paid for within six (6) months after the receipt of the cash by the trustees.

B. Proceeds of Sale. The Trustees may hold the proceeds from the sale of the personal residence (including the income on the proceeds).

C. Insurance and Insurance Proceeds. The Trustees may hold one or more policies of insurance on the

residence. In addition, the Trustees may hold insurance proceeds paid to the Trustees as a result of damage to, destruction of, or involuntary conversion (within the meaning of Code Section 1033) of, the personal residence.

7.03 Distribution of Excess Cash. The Trustees shall distribute to the Grantor at the end of each calendar quarter any portion of the Trust Estate which consists of cash in excess of the amount permitted to be held by the Trustees under Section 7.02A of this Article for expenses and improvements.

ARTICLE VIII

No Commutation

8.01 The interest of the Grantor in any trust created under this instrument shall not be commuted.

ARTICLE IX

No Distribution to Others

9.01 The Trustees shall not pay over or apply any portion of the income or principal of the Trust Estate to or for the benefit of any person other than the Grantor before expiration of the Trust Term; provided, however, that this sentence shall not be construed to prevent the payment by the Trustees of expenses properly chargeable to the Trust Estate (e.g., expenses for improvements to the personal residence).

ARTICLE X

Purposes: Construction

10.01 The Grantor intends by this Indenture to create a qualified personal trust within in the meaning of Section 2702(a)(3)(A)(ii) of the Code and Treas. Reg. Section 25.2702-5. Accordingly, the provisions of this Indenture shall be construed and this trust shall be administered solely in accordance with this intent and in a manner consistent with that section of the Code and those regulations and any revenue rulings, revenue procedures, notices or other administrative pronouncements that may be issued by the Internal Revenue Service for qualified personal residence trusts. Should the provisions of this trust instrument be inconsistent or in conflict with that Code section, the regulations, any successor section or regulations, or any revenue rulings, revenue procedures, notices or other administrative pronouncements in effect or issued from time to time, then that Code section, the regulations, successor section or regulations, or rulings, procedures, notices or administrative pronouncements shall be deemed to override and supersede the provisions which are set forth in this trust instrument. If that Code section or the

regulations, or any successor section or regulations, or any ruling, procedure, notice or other administrative pronouncement issued on qualified personal residence trusts at any time requires that agreements creating a trust to hold a personal residence contain provisions that are not expressly set forth in this trust instrument, those provisions shall be incorporated into this trust instrument by reference and shall be deemed to be a part of this trust instrument to the same extent as though they had been expressly set forth in this trust instrument.

ARTICLE XI

Waiver of Right to Payments in Discharge of Grantor's Income Tax Liability

11.01 The Grantor realizes that the Grantor may be taxed both on gains realized by the trust(s) created under this instrument and on trust income that is not distributed to the Grantor (from the trust administered under Article Sixth), and waives any right under the SCPC and any other similar law to be reimbursed for the income taxes (whether Federal, State or otherwise) on that gain or income.

ARTICLE XII

Grantor's Power to Substitute Assets of Equivalent Value

12.01 At any time during the Trust Term, the Grantor shall have the power, in a non-fiduciary capacity, to reacquire any or all of the principal of any trust by substituting other assets of equivalent value. Notwithstanding the preceding sentence, during the Trust Term with respect to the trust being administered under Article Fifth, this power shall be limited to reacquire any personal residence held in the trust by substituting another personal residence of equivalent value. This power shall be exercised by written notice to the Trustees who shall promptly comply with the notice.

ARTICLE XIII

Right to Purchase Residence From Trust

13.01 At any time during the Trust term, the Grantor shall have the right to purchase any residence held by the Trustees under this trust. The purchase shall be upon the terms and conditions that the Grantor and the Trustees agree upon, provided that the purchase price shall be the residence's then fair market value. The determination of the Grantor and the Trustees shall be binding and conclusive upon all persons who may in any way be affected by their determination. The Trustees may continue to hold any promissory note and/or collateral received by the Trustees

to secure any purchase money loan made by the Trustees to the Grantor, and the Trustees shall be under no liability to any person interested in the Trust Estate for any loss resulting to the Trust Estate from the inability of the Trustees to collect any purchase money loan made to the Grantor. Any sales proceeds held by the Trustees after the earlier of (i) the date of sale to the Grantor or (ii) the date a new residence is acquired by the Trustees shall, within thirty (30) days thereafter, be transferred to the Trustees to be held, administered and disposed of under Article Sixth.

ARTICLE XIV

Spendthrift Protection

14.01 All payments of income or principal made to any of the beneficiaries named in this trust shall be paid by the Trustees directly and only to the beneficiary. The Trustees are not to recognize any sale, transfer, pledge, mortgage, hypothecation, order or assignment or other encumbrance by any beneficiary of, or by way of anticipation of, the whole or any part of the trust income or principal. The principal or income of this trust shall not be subject in any manner to transfer by operation of law except as specifically provided in this trust instrument, and shall be exempt from the claim of creditors or other claimants, and any orders, decrees, levies, attachments, garnishments and executions, and other legal and equitable processes or proceedings to the fullest extent permissible by law.

14.02 If any attempt is made at any time by a beneficiary to alienate, to sell, to transfer, to assign, to pledge, to mortgage or otherwise encumber the whole or any part of the principal or income reserved to the beneficiary, or if any creditor, claimant or person having a claim or demand of any character against the beneficiary levies an attachment upon, garnishes or otherwise attempts to subject all or any portion of the principal or income to the satisfaction of the beneficiary's debts or other obligations, in that event and then and thereafter the rights of the beneficiary to trust principal or income before the termination of this trust shall cease and terminate. In that event, the Trustees may deem necessary for the maintenance and support of the beneficiary in his or her accustomed manner of living. However, the Trustees shall not be compelled to pay to or for the benefit of the beneficiary any part of the principal or income that would have been payable to the beneficiary before the termination of his rights under this trust but for the attempted sale, transfer, assignment, pledge, mortgage, levy, garnishment or other encumbrance, or alienation and any amount not paid to or applied for the beneficiary shall be accumulated and retained in this trust. After the satisfaction, cancellation or release or withdrawal of any instrument of sale, transfer, assignment, pledge, mortgage or other encumbrance or alienation or of any order, decree, levy, attachment, garnishment, execution or other claim or

demand, the Trustees shall pay and deliver to the beneficiary any such accumulation.

14.03 The provisions of this Article are expressly subordinate to the overriding provisions of Section 6.01(1) of Article Sixth and Section 5.01 of Article Fifth.

ARTICLE XV

Trustee's Powers and Rights

15.01 Powers. In the administration of any property, real or personal, at any time forming a part of the Trust Estate, including any accumulated income, the Trustees shall have the following rights and powers, in addition to and not by way of limitation of the powers provided by Section 62-7-704 of the SCPC and other provisions of law, subject to any conditions or limitations stated elsewhere in this trust instrument, to be exercised in their absolute discretion:

A. Residence. To hold and retain any residence without regard to diversification of the Trust Estate.

B. Repairs. To make all repairs, alterations and improvements as they may deem advisable to any residence held under this trust.

C. Insurance. To purchase any type or kind of insurance that they may deem advisable to protect any residence held under this trust.

D. Compliance. To comply with all building codes, zoning and licensing requirements, and other Federal, State and local requirements for any residence held under this trust.

E. Condemnation. To act on behalf of this trust in any eminent domain proceedings for the condemnation of any residence held under this trust and, if they deem it advisable, to employ independent real estate experts for appraisal and testimony in connection with any eminent domain proceedings.

F. Casualty. For any residence held under this trust which is damaged or destroyed, whether by fire, storm or otherwise, to repair or rebuild the residence in the manner that they may determine, using the proceeds of any insurance which may become available as a result of the damage or destruction, or, to the extent that the insurance is not sufficient, the principal held under this trust.

G. Mortgage. To mortgage any residence held under this trust in the amount, on the conditions, and at the rates of interest, that they deem advisable.

H. Borrowing. To borrow money from any party, including the Grantor or the Trustees, to protect, preserve or improve any property held under this trust, or to pay the Annuity Amount, whenever in their judgment it is considered advisable; to execute promissory notes or other obligations for the borrowed amounts, and to secure the payment of the borrowed amounts by mortgage on, security interest in, or pledge of any property held under this trust.

I. Sale. To sell (for cash or deferred payment with or without security), to exchange, to partition or to otherwise dispose of any property which may at any time form part of the Trust Estate at the times and upon the terms and without court order that they deem advisable, and to make, execute and deliver any and all deeds, conveyances, bills of sale and other instruments necessary or proper in connection with this paragraph.

J. Investments. To invest and reinvest the Trust Estate in any kind of property, whether or not the investments are of the character permissible for investments by fiduciaries under applicable law, and without regard to the effect that the investment or reinvestment may have upon the diversification of the investments.

K. Claims. To compromise, submit to arbitration, abandon or otherwise adjust any claims against or in favor of this trust, and to commence or defend any litigation relating to this trust or the property of the trust that they deem advisable at the sole expense of the Trust Estate.

L. Expenses. To discharge all taxes, insurance premiums, operating expenses, overhead and other charges imposed upon or incurred in connection with the Trust Estate and properly incident to its care, preservations and management, and all other reasonable and necessary costs and charges incident to the administration of this trust, including not limited to the employment of any custodian, attorney, accountant, or any other agent or fiduciary to assist and advise the Trustees in the administration of the trust, and to rely on the advice, and to pay reasonable compensation for all professional services out of the principal of the Trust Estate.

M. Loans. To lend money to any person or persons, entity or entities, including the Grantor, upon the terms and in the ways and with the security that they deem advisable in the best interest of the beneficiaries under this trust.

N. Allocations. To determine the allocation of receipts and apportionment of expenses between principal and income of the Trust Estate in accordance with South Carolina law, and to pay from the income or principal of the Trust Estate, as the case may be, the expenses properly chargeable to the income or principal of the Trust Estate and permitted by Treas. Reg. Section 25.2702-5.

O. Voting. To vote on all securities of the Trust Estate, and to become a party to any agreements deemed advisable by them in connection with the securities.

P. Administration. To do any and all acts, to exercise any and all rights, to enter into any and all proceedings, contracts (including contracts containing guarantees, warranties, representations and indemnifications of any kind or nature), and other instruments (whether or not specified above and including but not limited to the preparation and filing of any and all documents and instruments and the payment of any and all expenses in that connection) necessary or proper in their opinion in the administration of this trust, as fully as if they were the absolute owners of the trust property.

15.02 Taxes. If the Trust Estate or any part of it is chargeable with any claim for estate, legacy, succession, transfer, inheritance or similar tax or duty (the "taxes") by reason of the death of any person, the Trustees may pay the taxes to the executors or administrators of the estate of that person or directly to any collector of the taxes and may subject themselves and this trust to the jurisdiction of any court within or without the State of South Carolina in order to determine or apportion the taxes, irrespective of the domicile of that person at his or her death. This paragraph shall not be deemed of itself to create any liability for any taxes or any part of any taxes.

15.03 Third Party Reliance. No person dealing with the Trustees shall be bound to see to the application or disposition of cash or other property transferred to them or to inquire into the authority for or propriety of any action by the Trustees.

15.04 Professional Advice. The Trustees are specifically authorized to rely, without liability except for their own actual fraud or willful wrongdoing, on the advice of investment counsel or other appropriate advisors (including any firm with which any of the Trustees may be affiliated). They may, under a contract or contracts with an investment counsel or other appropriate advisor, delegate all or a portion of their investment powers to an investment counsel or other appropriate advisor (notwithstanding any law or rule of law making trustees' powers non-delegable or any other law), and, if they do so, they shall not be liable for losses incurred by reason of that delegation or incurred

in acting or refraining from acting in reliance on the advice of the investment counsel or other appropriate advisor.

15.05 Tax Law Restriction. Notwithstanding anything in this trust instrument to the contrary, no rights or powers stated in this trust instrument or accorded to trustees generally under law shall be construed to enable or to empower the Trustees, the Grantor, any person or entity serving as Trustee who may in any way be deemed to be the agent of the Grantor, to perform any act or omission that would subject all or any portion of the Trust Estate to inclusion in the Grantor's estate for Federal estate tax purposes or that would be inconsistent with the treatment of this trust as a qualified personal residence trust within the meaning of Section 2702(a)(3)(A)(ii) of the Code and Treas. Reg. Section 25.2702-5. This paragraph shall be construed as a precedent (and not as a subsequent) limitation or condition.

ARTICLE XVI

Accounting, Records, Tax Returns

16.01 The Trustees shall not be required to file any accounting with any public official. The Trustees shall, however, maintain complete and accurate records concerning any trust created under this trust instrument. Moreover, each year the Trustees shall furnish an annual accounting of each trust's condition, including receipts and disbursements to the Grantor. This required accounting may be satisfied by a copy of the trust's Federal income tax return.

ARTICLE XVII

Resignation or Death of Co-Trustees

17.01 Successor Trustees. Any of the Co-Trustees named herein may resign such Co-Trustee's trusteeship by delivering a written notice of such resignation to such other Co-Trustee(s) serving hereunder at least Sixty (60) days prior to the effective date thereof. Upon the resignation or death of a Co-Trustee named herein, the remaining Co-Trustee(s) named herein shall become the Co-Trustees (or sole Trustee upon the death or resignation of two of the Co-Trustees originally named herein) of the trust created hereunder and shall be vested with all the rights, powers and duties, authority and responsibility conferred upon the Co-Trustees originally named herein. If all of the Co-Trustees originally named herein shall resign or die during their trusteeship, the successor Trustee shall be such individual or bank and trust company as the Grantor's then living children shall designate or if none of the Grantor's children are then living, then such individual or bank and trust company as a majority of the Grantor's grandchildren shall designate. Such successor Trustee shall be

vested with all the rights, powers and Co-Trustees originally named herein.

17.02 Powers and Limitation. All powers, authority and discretion conferred upon the Trustees by this trust instrument shall pass to and be exercisable by each successor Trustee. No Trustee shall participate in a decision to use the property of the trust in any manner as to discharge any obligation of the Trustee including but not limited to any obligation of support.

ARTICLE XVIII

Trustee Bond

18.01 With the exception of any Trustee appointed by any court, no Trustee shall be required to file or furnish any bond or other security.

ARTICLE XIX

Action by Trustees

19.01 Abstention. Any Trustee, at any time or from time to time, may decline to participate in any one or more decisions to be made by the Trustees by instrument in writing signed by that Trustee and mailed or personally delivered to the Co-Trustees.

19.02 Majority and Delegation. Except as otherwise provided by this trust instrument or by law, any decision of the Trustees may be made by a majority of the Trustees who are not precluded by law or this trust instrument from making the decision and who have not declined to participate in the decision. Ministerial duties of the Trustees (such as signing of checks, execution of brokerage transactions relating to securities or commodities, and the like) may be executed by any one Trustee.

ARTICLE XX

Applicable Law

20.01 This trust instrument is entered into in the State of South Carolina, and all questions pertaining to its construction, validity or administration shall be determined and controlled by the laws of South Carolina.

ARTICLE XXI

Miscellaneous

21.01 All captions and headings used in this trust instrument are for reference purposes only and have no legal significance whatsoever. As used in this trust instrument, the singular and plural are interchangeable and each gender includes the other gender where the context requires it.

IN WITNESS WHEREOF, the Grantor and Co-Trustees have set their hands and affixed their seals in acceptance of this Trust.

WITNESSES:

Katherine J. Blumer

Janet Bloom Brooker
JANET BLOOM BROOKER, GRANTOR

Katherine J. Blumer

Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR., CO-TRUSTEE

Katherine J. Blumer

Julia Barnes Brooker
JULIA BARNES BROOKER, CO-TRUSTEE

Sicilie L. McMahon
Katherine J. Blumer

Ellen Brooker Corontzes
ELLEN BROOKER CORONTZES, CO-TRUSTEE

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

P R O B A T E

PERSONALLY appeared the undersigned witness and made oath that she saw the within named Grantor sign, seal and as Grantor's act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Katherine J. Blumer

SWORN to before me this

30th day of June, 1992.

[Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: 8/17/2000

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

P R O B A T E

PERSONALLY appeared the undersigned witness and made oath that she saw the within named Co-Trustee, Beacham Owens Brooker, Jr. sign, seal and as Trustee's act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Katherine J. Bluman

SWORN to before me this

30th day of June, 1992.

James B. [Signature]
Notary Public for South Carolina

(L.S.)

My Commission Expires: 8/17/2000

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

P R O B A T E

PERSONALLY appeared the undersigned witness and made oath that she saw the within named Co-Trustee, Julia Barnes Brooker sign, seal and as Trustee's act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Katherine J. Blumer

SWORN to before me this

30th day of June, 1992.

James B. [Signature] (L.S.)
Notary Public for South Carolina

My Commission Expires: 8/17/2000

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

P R O B A T E

PERSONALLY appeared the undersigned witness and made oath that she saw the within named Co-Trustee, Ellen Brooker Corontzes sign, seal and as Trustee's act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Katherine J. Blumer

SWORN to before me this

1st day of July, 1992.

Belle L. McMahon (L.S.)
Notary Public for South Carolina

My Commission Expires: 8-11-96

SCHEDULE "A"

JANET BLOOM BROOKER, GRANTOR

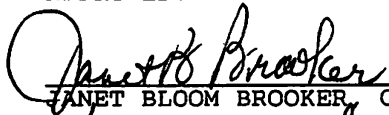
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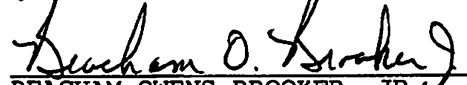
BEACHAM OWENS BROOKER, JR., JULIA BARNES BROOKER and ELLEN
BROOKER CORONTZES, CO-TRUSTEES

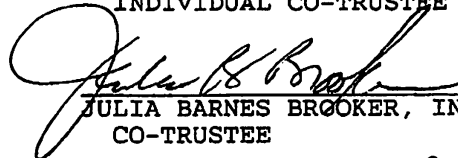
Under Trust Agreement Dated:

See Attached Deed

APPROVED:


JANET BLOOM BROOKER, GRANTOR


BEACHAM OWENS BROOKER, JR.,
INDIVIDUAL CO-TRUSTEE


JULIA BARNES BROOKER, INDIVIDUAL
CO-TRUSTEE


ELLEN BROOKER CORONTZES, INDIVIDUAL
CO-TRUSTEE

Janet Brooker Estate - needed information

1. Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in May of 1997. The amount of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia.
2. Have the amount paid to Dunbar. Were there any amounts for flowers, pastor, singer, gravemarker, etc? How about expenses for food?
3. Clarification on which amounts paid were owed at her death and if owed when she died, we can deduct on the 706. I have deducted what I thought was owed as a debt at her death but nothing for the month after her death.
4. Think she have a lock box at First Community Bank, and just need to know whose name besides hers was on it.
5. Still need the value of the **personal property** she owned.
6. Have Ellen's tax ID for her family trust but not Beach's.


EXHIBIT NO. _____
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.

T&J_01017

ROA 629



Julia Brooker <jbrooker2@gmail.com>

Fwd: Re: estate of Janet Brooker

2 messages

brooker <b_brooker@bellsouth.net>

Wed, Aug 31, 2016 at 12:32 PM

To: jbrooker2@gmail.com, Ellen Corontzes <ecorontzes@sc.rr.com>

I don't think this got through to you on Monday.

----- Forwarded Message -----

Subject:Re: estate of Janet Brooker**Date:**Mon, 29 Aug 2016 14:13:21 -0400**From:**brooker <b_brooker@bellsouth.net>**To:**W. Steve Johnson <WSJ@toddandjohnson.com>**CC:**David Sidons (dstaxlaw@bellsouth.net)' <dstaxlaw@bellsouth.net>

P #12
EXHIBIT NO.
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.

Indeed good news. Julie is demanding "access" to the estate's accounts at Stephens Inc. before she will agree to "proceed." I am not certain what this means or what her concerns are which have never been articulated to me in full. I am enclosing monthly statements from Stephens which is all the information that we get from them. As you know the critical issue at this time is the disposition of the residence at Graeme Drive which is a major cost to the estate and a liability in that it is not being maintained. David, can you help? We need 1) an agreement on the equalization distribution, 2) a contract and closing date on 2/3 share of 1705 Graeme Drive from Ellen and me to Julie.

On 8/29/2016 11:43 AM, W. Steve Johnson wrote:

Beach,

Attached to this email is an estate tax closing letter which means we can now proceed to close the estate.

As you may guess, this is very good news.

Steve Johnson**Todd & Johnson, LLP****PO Box 11262****Columbia, SC 29211****(803) 252-1500**

Amount due per Beach Broker \$ 525,528.08

Date of Trial 2/5/19

Interest Credit Date 8/31/16

Days 888

Interest Rate 5%

Interest on \$525,528.08 @ 5% for 888 days \$ 63,927.25

Total per Revised P# 6 \$ 1,528,398.97

Interest Credit 63,927.25

Adjusted Balance \$ 1,464,471.72

1/2 Adjusted Balance \$ 732,235.86

P #17
EXHIBIT NO.

WITNESS:

DATE

THOMPSON COURT REPORTING INC.

Janet B. Brooker Estate
Gifts made from 2007 through 2015

		Gifts	Interest	Total
09/26/07	\$12,000 X 2	24,000.00		
Interest	Interest from 9/26/07 to 4/16/15		9,070.68	33070.68
10/01/07	\$60,000 X 4	240,000.00		
Interest	Interest from 10/1/07 to 4/16/15		90,542.47	330,542.47
01/09/08	\$12,000 X 2	24,000.00		
Interest	Interest from 1/5/08 to 4/16/15		8,725.48	32,725.48
01/08/09	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/09 to 4/16/15		24,457.81	102,457.81
01/05/10	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/10 to 4/16/15		20,589.86	98,589.86
01/05/11	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/11 to 4/16/15		16,689.86	94,689.86
01/05/12	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/12 to 4/16/15		12,789.86	90,789.86
01/02/13	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/13 to 4/16/15		9,596.71	93,596.71
01/02/14	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/14 to 4/16/15		5,396.71	89,396.71
01/02/15	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/15 to 4/16/15		1,196.71	85,196.71
Total Gifts and Interest		852,000.00	199,056.15	1,051,056.15

One half given is Ellen's family **525,528.07**

One half given is Beach's family **525,528.08**

Amount due to Julia to equalize **525,528.08**

D #1
 EXHIBIT NO: _____
 WITNESS: _____
 DATE: _____
 THOMPSON COURT REPORTING INC.

D EXHIBIT NO. #2
WITNESS: _____
DATE: _____
THOMPSON COURT REPORTING INC.

FILED

2017 MAR 17 AM 11:45
FILED
CLERK OF COURT
RICHLAND COUNTY, SOUTH CAROLINA
JUDGE: J. H. McCLURE
PROSE: J. H. McCLURE
JURY: J. H. McCLURE

**LAST WILL AND TESTAMENT
OF
JANET B. BROOKER**

Introductory Clause. I, JANET B. BROOKER, a resident of and domiciled in the County of Richland 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 have three living children: ELLEN B. CORONTIZES, JULIA B. BROOKER, and BEACHAM O. BROOKER, JR.

ITEM I

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 are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there are 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 children surviving me in approximately equal shares; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative 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 Personal Representative.

ITEM II

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 **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee under that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007. 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 III

Alternate Provision to Incorporate Trust by Reference if Pour-Over is Invalid. In the event for any reason the bequest and devise above is ineffective and invalid, then I hereby give, devise and bequeath 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 **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee to be held, administered and distributed in accordance with the provisions of that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007, which Trust Agreement including any amendments thereto made before my death is hereby incorporated by reference and made a part hereof the same as if the entire Trust Agreement were set forth herein. If for any reason **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** are unable or unwilling to serve then I hereby nominate, constitute and appoint as successor or substitute Trustee such Trustee or Trustees as are set forth in the above referenced Trust Agreement.

ITEM IV

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

(1) **Naming an Individual Personal Representative.** I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my son, **BEACHAM O. BROOKER, JR.** and direct that he shall serve without bond.

(2) **Naming Individual Successor or Substitute Personal Representative.** If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **JULIA B. BROOKER.**

(3) **Final Succession If Individual Successor Personal Representative Cannot Act.** If my individual successor Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **ELLEN B. CORONTZES**.

(4) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM V

Definition of Personal Representative. Whenever the word "Personal Representative" 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 Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VI

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative 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 Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative 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 Personal Representative 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 Personal Representative 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 Personal Representative 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 Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. 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 personal representatives. Whenever my Personal Representative 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 Personal Representative in such of the following ways as my Personal Representative 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 Personal Representative 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 Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM VIII

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative 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 Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative 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 Personal Representative 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. If my estate plan includes a revocable trust agreement and it contains directions to my Personal Representative, I direct my Personal Representative 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, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For

purposes of this my last will and testament the anti-lapse statute shall not apply as I have named successor takers where it is my intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Will, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **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, 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. 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

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 XII

Direction to Pay Debts with Discretionary Refinancing by Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative 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 Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM XIII

I direct that:

(1) **Direction to Pay All Taxes from Residuary Estate.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of my residuary estate and shall not be charged to or

[Handwritten signature]

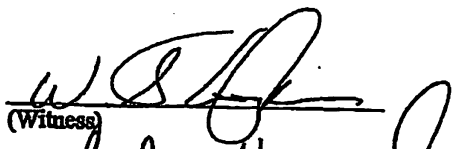
against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

(2) **Apportion Taxes on Nonprobate Property.** All such taxes in respect to any property or interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however, there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable deduction. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate for such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

Testimonium, Attestation and Self-Proving Affidavit. I, JANET B. BROOKER, the Testatrix, sign my name to this instrument this the 16th day of October, 2007, 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.


JANET B. BROOKER

We, W. Steven Johnson and Barbara Hammond, 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, 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.

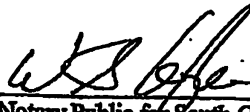

(Witness)


(Witness)

The State of South Carolina

County of Richland

Subscribed, sworn to, and acknowledged before me by JANET B. BROOKER, the Testatrix, and subscribed and sworn to before me by Barbara Hammond, witness, this the 16th day of October, 2007.

 (Seal)
Notary Public for South Carolina

My Commission Expires: 2/24/2013

TRUST AGREEMENT

FILED
MAR 17 AM 11:46
FILE COPY

Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustees. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

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 the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any 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 II

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.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. 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 IV

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 personal representatives, 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 Trust Estate 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 personal representatives of the Settlor's estate. Written statements by the personal representatives 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 Trust Estate.

ARTICLE V

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

(1) **General Distribution of Personal and Household Effects With a Mandatory Memorandum.** All the Settlor's 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, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of 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 the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are 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 the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee 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 the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

(3) **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 VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beachum

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

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 the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as 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 the Settlor's daughter, **JULIA B. BROOKER**.

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as 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 the Settlor's daughter, **ELLEN B. CORONTZES**.

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(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; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) **Trustee Accountings and Settlement.** The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) **Trustee Accountings.** If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) **Settlement of Trustee Accounting.** During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) **Settlement of Trustee Accounting by Beneficiaries.** The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) **Settlement of Trustee Accounting Upon Termination of Trust.** Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

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 or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

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 collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) 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.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) 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.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) 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 on credit, at public or private sale, 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.

(7) 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.

(8) 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.

(9) To sell or exercise stock subscription or conversion rights.

(10) 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.

(11) 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.

(12) To borrow money with or without security 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.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) 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 public or private easements to private or public use without consideration, including by way of example qualified conservation and facade easements.

(16) 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.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, 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 by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

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

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) 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.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, 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.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) 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.

(29) 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.

(30) 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.

(31) 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 personal representatives 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 personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) 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 Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) 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.

(35) 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.

(36) 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.

(37) If the Trustee shall act as the Personal Representative 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 in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, 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 Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

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 personal representatives. 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 XI

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.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand (\$50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

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

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **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 XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, 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 XV

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 XVI

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 XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

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

WITNESSES:

W. S. [Signature]
Barbara [Signature]

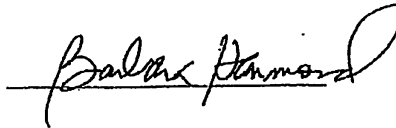
Janet Brooke Brooker
JANET B. BROOKER

SETTLOR
Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) PROBATE

Personally appeared the undersigned witness and made oath that she 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

16th day of October, 2007.


Notary Public for South Carolina

My Commission expires: 2/24/2013

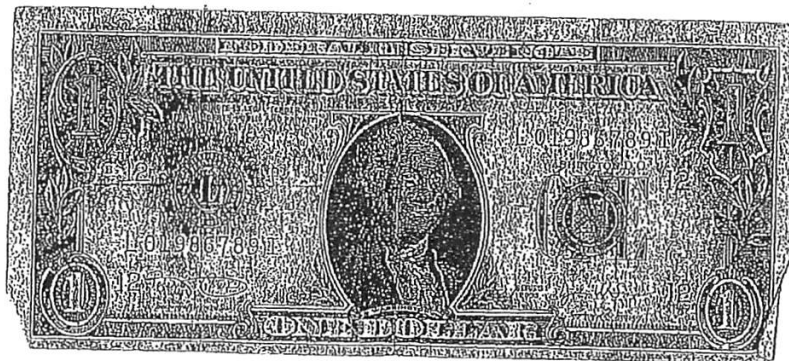
SCHEDULE "A"

List of Assets

Janet B. Brooker
JANET B. BROOKER

SETTLOR
Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE



To: Julia Brooker; David Siddons
Cc: Beach Brooker (b brooker@bellsouth.net)
Subject: RE: Brooker Estate

Julie,

I am on my way out of town for a vacation and will not return until September 21st but wanted to respond to you prior to leaving. As to the house, can't we go ahead and close this transaction? I think the price has been agreed upon by the three of you. There are two primary benefits to getting this matter closed. First, if you intend to use this property as your primary residence, the Richland County real estate taxes are going to go down significantly. Second, Beach is concerned the insurance on the house is going to be cancelled due to the fact that the house is vacant. A third benefit is that it brings closure to this particular issue and moves us that further toward a settlement.

As to the Lockheed Martin dividends, such dividends are being deposited into two accounts at Stephens. One account is the estate account and the second account is a trust account. I believe you have those statements and it would be relatively easy to track the dividends. If you do not have all the statements you need since your Mom's death, please let me know.

I have given David a schedule of gifts from 2008 forward and I believe you have the statements documenting those gifts. If I am mistaken, please let me know and I will try to reconstruct such. As I remember there was maybe 1 year when you Mom's account was at Smith-Barney that we were unable to retrieve the statements. Smith Barney was purchased and the statements were just not available. Again, all of this is from my recollection and if I am not right, please let me know.

As to the gifts before 2008, about all I can offer is to go back through my files and reconstruct trusts created for grandchildren. This would, of course, be subject to Beach's approval. My question would be how far back do you want to go? From the birth of the oldest grandchild? I am confident that there may have been gifts before 2008 that did not come through my office and, of course, I would have no knowledge about such gifts. Whatever I come up with prior to 2008 will be obviously incomplete. We are at an impasse on the equalization of gifts prior to 2008 but we have made what I consider to be a careful search of gifts from and after 2008. I do not have a recommendation as to the gifts before 2008.

Thanks and I look forward to hearing from you or David.

Steve Johnson
Todd & Johnson, LLP
PO Box 11262

EXHIBIT NO. #3
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.



W. Steve Johnson

From: David Siddons <dstaxlaw@bellsouth.net>
Sent: Wednesday, February 24, 2016 3:13 PM
To: W. Steve Johnson
Subject: Re: Brooker

Thanks

David W. Siddons
246 Stoneridge Drive
Columbia, SC 29210
803-798-2878(o)
803-799-1812(f)
803-260-5654(c)
dstaxlaw@bellsouth.net

On Feb 24, 2016, at 2:33 PM, W. Steve Johnson <WSJ@toddandjohnson.com> wrote:

David,

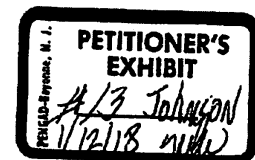
Attached are the revised calculations for the equalization due Julie pursuant to her mother's trust. I have the brokerage statements from 2007 that support these calculations except for 2010 as such statement was not available from Smith Barney probably due to the purchase of such firm. I will give the statements to you and Julie tomorrow as it was a little too much to scan and email.

Thanks.

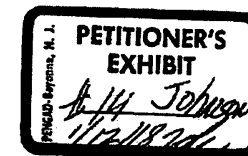
Steve Johnson
Todd & Johnson, LLP
PO Box 11262
Columbia, SC 29211
(803) 252-1500
wsj@toddandjohnson.com

D #4
EXHIBIT NO. _____
WITNESS: _____
DATE _____
THOMPSON COURT REPORTING INC.

<Gifts made during lifetime.2-23-16.xls>



Gifts made from 2007 through 2015		Gifts	Interest	Total
09/26/07	\$12,000 X 2	24,000.00		
Interest	Interest from 9/26/07 to 4/16/15		9,070.68	33,070.68
10/01/07	\$60,000 X 4	240,000.00		
Interest	Interest from 10/1/07 to 4/16/15		90,542.47	330,542.47
01/09/08	\$12,000 X 2	24,000.00		
Interest	Interest from 1/5/08 to 4/16/15		8,725.48	32,725.48
01/08/09	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/09 to 4/16/15		24,457.81	102,457.81
01/05/10	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/10 to 4/16/15		20,589.86	98,589.86
01/05/11	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/11 to 4/16/15		16,689.86	94,689.86
01/05/12	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/12 to 4/16/15		12,789.86	90,789.86
01/02/13	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/13 to 4/16/15		9,596.71	93,596.71
01/02/14	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/14 to 4/16/15		5,396.71	89,396.71
01/02/15	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/15 to 4/16/15		1,196.71	85,196.71
Total Gifts and Interest		852,000.00	199,056.15	1,051,056.15
Janet B. Brooker Estate				
One half given is Ellen's family			525,528.07	
One half given is Beach's family			525,528.08	
Amount due to Julia to equalize			525,528.08	



Gifts made from 2007 through 2015

Gifts

Interest

Total

D EXHIBIT NO. #7
WITNESS: _____
DATE: _____
THOMPSON COURT REPORTING INC.

Janet B. Brooker Lifetime Gifts to Grandchildren and Children's Spouses
Beginning:
Date of Death:

9/26/2007
4/16/2015

2/7/2019

Daily Interest 0.00 0.05

Date	Recipient and Description	Amount	Source	Amt for Equalization	No. Days to DOD	No. Days to 5/31/2016	No. Days to Current date	Interest	Total
9/26/2007	Beth Brooker Annual Exclusion, \$12,000.00	12,000.00	Morgan Stanley	-	2759	3170	4152	-	-
9/26/2007	Dino Corontzes Annual Exclusion, \$12,000.00	12,000.00	Morgan Stanley	12,000	2759	3170	4152	5,210.96	17,210.96
10/1/2007	Funding of Future Scholar 529 Plan (Arthur)	60,000.00	Morgan Stanley	60,000	2754	3165	4147	26,013.70	86,013.70
10/1/2007	Funding of Future Scholar 529 Plan (Beach)	60,000.00	Morgan Stanley	60,000	2754	3165	4147	26,013.70	86,013.70
10/1/2007	Funding of Future Scholar 529 Plan (Elizabeth)	60,000.00	Morgan Stanley	-	2754	3165	4147	-	-
10/1/2007	Funding of Future Scholar 529 Plan (Grace)	60,000.00	Morgan Stanley	-	2754	3165	4147	-	-
1/9/2008	Beth Brooker Annual Exclusion, \$12,000.00	12,000.00	Morgan Stanley	-	2654	3065	4047	-	-
1/9/2008	Dino Corontzes Annual Exclusion, \$12,000.00	12,000.00	Morgan Stanley	12,000	2654	3065	4047	5,038.36	17,038.36
2/27/2008	Hammond School deposit 1 child (Beach)	1,000.00	Morgan Stanley	-	2605	3016	3998	-	-
2/28/2008	Arthur B. Corontzes	190.00	Morgan Stanley	-	2604	3015	3997	-	-
3/11/2008	Hammond School deposit 2 children	2,000.00	Morgan Stanley	2,000	2592	3003	3985	1,091.78	3,091.78
5/1/2008	Arthur B. Corontzes birthday	118.00	First Community	-	2541	2952	3934	-	-
5/26/2008	Hammond School tuition 3 children (E,B&G)	38,250.00	Morgan Stanley	25,500	2516	2927	3909	13,654.73	39,154.73
6/15/2009	Hammond School tuition 1 child (Grace)	13,225.00	First Community	-	2131	2542	3524	-	-
7/13/2008	Beacham O. Corontzes birthday	115.00	Morgan Stanley	-	2468	2879	3861	-	-
12/31/2008	Arthur B. Corontzes Annual Exclusion \$12,000	12,000.00	Sellars?	12,000	2297	2708	3690	4,451.51	16,451.51
12/31/2008	Beacham O. Corontzes Annual Exclusion \$12,000	12,000.00	Sellars?	12,000	2297	2708	3690	4,451.51	16,451.51
12/31/2008	Beth Brooker Annual Exclusion, \$12,000.00	12,000.00	Morgan Stanley	-	2297	2708	3690	-	-
12/31/2008	Dino Corontzes Annual Exclusion, \$12,000.00	12,000.00	Morgan Stanley	12,000	2297	2708	3690	4,451.51	16,451.51
12/31/2008	Elizabeth Brooker Annual Exclusion \$12,000	12,000.00	Sellars?	-	2297	2708	3690	-	-
12/31/2008	Grace Brooker Annual Exclusion \$12,000	12,000.00	Sellars?	-	2297	2708	3690	-	-
1/6/2009	Beacham O. Corontzes	100.00	Morgan Stanley	-	2291	2702	3684	-	-
1/8/2009	Arthur B. Corontzes Annual Exclusion \$12,774.60	12,774.60	Morgan Stanley	12,775	2289	2700	3682	4,724.85	17,499.45
1/8/2009	Beacham O. Corontzes Annual Exclusion \$12,774.60	12,774.60	Morgan Stanley	12,775	2289	2700	3682	4,724.85	17,499.45
1/8/2009	Beth Brooker Annual Exclusion, \$13,000.00	13,000.00	Morgan Stanley	13,000	2289	2700	3682	4,808.22	17,808.22
1/8/2009	Dino Corontzes Annual Exclusion, \$13,000.00	13,000.00	Morgan Stanley	13,000	2289	2700	3682	4,808.22	17,808.22
1/8/2009	Elizabeth Brooker Annual Exclusion, \$12,774.60	12,774.60	Morgan Stanley	-	2289	2700	3682	-	-
1/8/2009	Grace Brooker Annual Exclusion, \$12,774.60	12,774.60	Morgan Stanley	-	2289	2700	3682	-	-
2/2/2009	Hammond School deposit 1 child (Beach)	1,000.00	Morgan Stanley	-	2264	2675	3657	-	-
3/14/2009	Hammond School deposit 2 children	2,000.00	Morgan Stanley	2,000	2224	2635	3617	990.96	2,990.96
4/9/2009	Arthur B. Corontzes birthday	119.00	First Community	-	2198	2609	3591	-	-
6/8/2009	Hammond School tuition 1 child (Beach)	13,225.00	Morgan Stanley	-	2138	2549	3531	-	-
6/15/2009	Hammond School tuition 1 child (Grace)	13,225.00	Morgan Stanley	13,225	2131	2544	3526	6,384.23	19,609.23
6/13/2009	Hammond School tuition 1 child (Elizabeth)	13,403.00	First Community	13,403	2133	2544	3526	6,473.83	19,876.83
6/23/2009	Elizabeth Brooker birthday	118.00	First Community	-	2123	2534	3516	-	-
7/2/2009	Beacham O. Corontzes birthday	115.00	Morgan Stanley	-	2114	2525	3507	-	-
7/5/2009	Elizabeth Brooker	100.00	First Community	-	2111	2522	3504	-	-
7/24/2009	Grace Brooker birthday	116.00	First Community	-	2092	2503	3485	-	-
12/24/2009	Arthur B. Corontzes	200.00	First Community	-	1939	2350	3332	-	-
12/24/2009	Beacham O. Corontzes	200.00	First Community	-	1939	2350	3332	-	-
1/6/2010	Arthur B. Corontzes 607-81040-01	6,598.79	Morgan Stanley	6,599	1926	2337	3319	2,112.52	8,711.31

1/6/2010 Arthur B. Corontzes 607-81040-01	6,380.66	Morgan Stanley	6,381	1926	2337	3319	2,042.69	8,423.35
1/6/2010 Beacham O. Corontzes 607-81033-01	6,598.79	Morgan Stanley	6,599	1926	2337	3319	2,112.52	8,711.31
1/6/2010 Beacham O. Corontzes 607-81033-01	6,380.66	Morgan Stanley	6,381	1926	2337	3319	2,042.69	8,423.35
1/6/2010 Beth Brooker Annual Exclusion, \$13,000.00	13,000.00	Morgan Stanley	-	1926	2337	3319	-	-
1/6/2010 Dino Corontzes Annual Exclusion, \$13,000.00	13,000.00	Morgan Stanley	13,000	1926	2337	3319	4,161.78	17,161.78
1/6/2010 Elizabeth Brooker 607-81025-01	6,598.79	Morgan Stanley	-	1926	2337	3319	-	-
1/6/2010 Elizabeth Brooker 607-81025-01	6,380.66	Morgan Stanley	-	1926	2337	3319	-	-
1/6/2010 Grace Brooker 607-81032-01	6,598.79	Morgan Stanley	-	1926	2337	3319	-	-
1/6/2010 Grace Brooker 607-81032-01	6,380.66	Morgan Stanley	-	1926	2337	3319	-	-
1/20/2010 Hammond School deposit 1 child (Beach)	1,000.00	First Community	1,000	1912	2323	3305	452.74	1,452.74
3/2/2010 Hammond School deposit 1 child (Grace)	1,000.00	First Community	-	1871	2282	3264	-	-
4/12/2010 Arthur B. Corontzes	120.00	First Community	-	1830	2241	3223	-	-
5/24/2010 Hammond School tuition 2 children (Grace & Beach)	27,606.00	First Community	13,803	1788	2199	3181	6,014.70	19,817.70
7/5/2010 Beacham O. Corontzes birthday	117.00	First Community	-	1746	2157	3139	-	-
7/9/2010 Grace Brooker birthday	117.00	First Community	-	1742	2153	3135	-	-
1/5/2011 Arthur B. Corontzes 114517817	13,000.00	Stephens	13,000	1562	1973	2955	3,513.56	16,513.56
1/5/2011 Beacham O. Corontzes 138770708	13,000.00	Stephens	13,000	1562	1973	2955	3,513.56	16,513.56
1/5/2011 Beth Brooker Annual Exclusion, \$13,000.00	13,000.00	Stephens	-	1562	1973	2955	-	-
1/5/2011 Dino Corontzes Annual Exclusion, \$13,000.00	13,000.00	Stephens	13,000	1562	1973	2955	3,513.56	16,513.56
1/5/2011 Elizabeth Brooker Annual Exclusion	13,000.00	Stephens	-	1562	1973	2955	-	-
1/5/2011 Grace Brooker Annual Exclusion \$13,000	13,000.00	Stephens	-	1562	1973	2955	-	-
4/7/2011 Hammond School deposit 1 child (Grace)	1,000.00	GWD	1,000	1470	1881	2863	392.19	1,392.19
5/9/2011 Arthur B. Corontzes birthday	121.00	GWD	-	1438	1849	2831	-	-
6/7/2011 Hammond School tuition 1 child (Grace)	15,245.00	GWD	15,245	1409	1820	2802	5,851.57	21,096.57
1/5/2012 Arthur B. Corontzes 125 Sh JP Morgan Chase	4,460.00	Stephens	4,460	1197	1608	2590	982.42	5,442.42
1/5/2012 Arthur B. Corontzes 200 sh Intel	5,080.00	Stephens	5,080	1197	1608	2590	1,118.99	6,198.99
1/5/2012 Arthur B. Corontzes 75 sh Progress Energy	3,531.45	Stephens	3,531	1197	1608	2590	777.89	4,309.34
1/5/2012 Beacham O. Corontzes 125 Sh JP Morgan Chase	4,460.00	Stephens	4,460	1197	1608	2590	982.42	5,442.42
1/5/2012 Beacham O. Corontzes 200 sh Intel	5,080.00	Stephens	5,080	1197	1608	2590	1,118.99	6,198.99
1/5/2012 Beacham O. Corontzes 75 sh Progress Energy	3,531.45	Stephens	3,531	1197	1608	2590	777.89	4,309.34
1/5/2012 Beacham O. Corontzes birthday	118.00	GWD	-	1197	1608	2590	-	-
1/5/2012 Beth Brooker Annual Exclusion, \$13,000.00	13,000.00	Stephens	-	1197	1608	2590	-	-
1/5/2012 Dino Corontzes Annual Exclusion, \$13,000.00	13,000.00	Stephens	13,000	1197	1608	2590	2,863.56	15,863.56
1/5/2012 Elizabeth Brooker 125 Sh JP Morgan Chase	4,460.00	Stephens	-	1197	1608	2590	-	-
1/5/2012 Elizabeth Brooker 200 sh Intel	5,080.00	Stephens	-	1197	1608	2590	-	-
1/5/2012 Elizabeth Brooker 75 sh Progress Energy	3,531.45	Stephens	-	1197	1608	2590	-	-
1/5/2012 Grace Brooker 125 Sh JP Morgan Chase	4,460.00	Stephens	-	1197	1608	2590	-	-
1/5/2012 Grace Brooker 200 sh Intel	5,080.00	Stephens	-	1197	1608	2590	-	-
1/5/2012 Grace Brooker 75 sh Progress Energy	3,531.45	Stephens	-	1197	1608	2590	-	-
1/2/2013 Arthur B. Corontzes Annual Exclusion \$13,000 cash	13,000.00	Stephens	13,000	834	1245	2227	2,217.12	15,217.12
1/2/2013 Beacham O. Corontzes Annual Exclusion \$13,000 cash	13,000.00	Stephens	13,000	834	1245	2227	2,217.12	15,217.12
1/2/2013 Beth Brooker Annual Exclusion, \$13,000.00	13,000.00	Stephens	-	834	1245	2227	-	-
1/2/2013 Dino Corontzes Annual Exclusion, \$13,000.00	13,000.00	Stephens	13,000	834	1245	2227	2,217.12	15,217.12
1/2/2013 Elizabeth Brooker Annual Exclusion \$13,000 cash	13,000.00	Stephens	-	834	1245	2227	-	-
1/2/2013 Grace Brooker Annual Exclusion \$13,000 cash	13,000.00	Stephens	-	834	1245	2227	-	-
2/8/2013 Arthur B. Corontzes \$1,000 cash	1,000.00	Stephens	1,000	797	1208	2190	165.48	1,165.48
2/8/2013 Beacham O. Corontzes \$1,000 cash	1,000.00	Stephens	1,000	797	1208	2190	165.48	1,165.48

2/8/2013 Elizabeth Brooker \$1,000 cash	1,000.00	Stephens	-	797	1208	2190	-	
2/8/2013 Grace Brooker \$1,000 cash	1,000.00	Stephens	1,000	797	1208	2190	165.48	1,165.48
2/12/2013 Beth Brooker Annual Exclusion, \$1,000	1,000.00	Stephens	-	793	1204	2186	-	
2/12/2013 Dino Corontzes Annual Exclusion, \$1,000	1,000.00	Stephens	-	793	1204	2186	-	
1/3/2014 Arthur B. Corontzes Annual Exclusion \$14,000 cash	14,000.00	Stephens	14,000	468	879	1861	1,685.75	15,685.75
1/3/2014 Beacham O. Corontzes Annual Exclusion \$14,000 cash	14,000.00	Stephens	14,000	468	879	1861	1,685.75	15,685.75
1/3/2014 Beth Brooker Annual Exclusion \$14,000 cash	14,000.00	Stephens	-	468	879	1861	-	
1/3/2014 Dino Corontzes Annual Exclusion \$14,000 cash	14,000.00	Stephens	14,000	468	879	1861	1,685.75	15,685.75
1/3/2014 Elizabeth Brooker Annual Exclusion \$14,000 cash	14,000.00	Stephens	-	468	879	1861	-	
1/3/2014 Grace Brooker Annual Exclusion \$14,000 cash	14,000.00	Stephens	-	468	879	1861	-	
1/2/2015 Arthur B. Corontzes Annual Exclusion \$14,000 cash	14,000.00	Stephens	14,000	104	515	1497	987.67	14,987.67
1/2/2015 Beacham O. Corontzes Annual Exclusion \$14,000 cash	14,000.00	Stephens	14,000	104	515	1497	987.67	14,987.67
1/2/2015 Beth Brooker Annual Exclusion \$14,000 cash	14,000.00	Stephens	-	104	515	1497	-	
1/2/2015 Dino Corontzes Annual Exclusion \$14,000 cash	14,000.00	Stephens	14,000	104	515	1497	987.67	14,987.67
1/2/2015 Elizabeth Brooker Annual Exclusion \$14,000 cash	14,000.00	Stephens	-	104	515	1497	-	
1/2/2015 Grace Brooker Annual Exclusion \$14,000 cash	14,000.00	Stephens	-	104	515	1497	-	
Totals	1,068,565.00		561,827				182,807.23	744,634

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED
Oct 29 2021
SC Court of Appeals

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330

Case No. 2019-CP-40-03582

Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Appellants

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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October 29, 2021

Attorneys for Appellants

ROA 662

RECEIVED

Nov 08 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

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Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Appellants

FINAL BRIEF OF APPELLANTS

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INTRODUCTION

This is a case about a mother trying to treat her three children equally in her estate planning, while trying to decrease the estate's tax liability due to soaring values of her largest asset, Lockheed Martin stock. The mother is Janet Brooker ("Janet"), and the three children are Beacham Brooker Jr. ("Beach"), Ellen Corontzes ("Ellen"), and Julia Brooker ("Julia"). The estate plan ("Trust Agreement") and the estate planner (W. Steven Johnson, Esquire) state that she intended for all of her children to be treated equally as possible through this new estate plan, just as they have been treated in the past. The major change in the estate plan was the spouses of the children and the grandchildren of the mother were now going to receive large gifts that fell under the annual gift tax exclusion. In other words, the mother was now going to include spouses and grandchildren in her estate plan (when prior she had been giving only to her children in equal shares) because she needed to engage in an aggressive gifting system. She wanted to include other recipients of her wealth to lessen the value of her estate, but not to the detriment of any of her three children.

To ensure that no child was disadvantaged, she stated that her unmarried, childless daughter, Julia, would receive an equalization distribution to make her whole as a result of this new, aggressive gifting program. The Trust Agreement provided that "from the date of the trust forward" Julia was to receive her share of funds that she would have received if she had children. To reach this result, the trustee (Beach) was to take all gifts to the spouses and grandchildren given under this new aggressive gifting program, total them, divide them in half (one half representing Beach's share for his wife and children and the other half representing Ellen's share for her husband and children), then 5% interest was added. An example would look like the following:

Child	Gifts to Children from Date of Trust	Gifts to Spouse from Date of Trust	Gifts to Grandchildren from Date of Trust	Total of Julia's Equalization Distribution (less interest)	Total Gifts at Death of Mother	Total Gifts Received with Equalization Distribution
Beach	\$1MM	\$100,000	\$200,000		\$1.3MM	\$1.3MM
Ellen	\$1MM	\$100,000	\$200,000		\$1.3MM	\$1.3MM
Julia	\$1MM	\$0	\$0	\$300,000	\$1MM	\$1.3MM

This methodology was drafted by W. Steven Johnson, Esquire (“Mr. Johnson”) and was agreed to by the mother. But Julia objected. In contravention of the import and intent of the aggressive gifting program, Julia claims she is entitled to a calculation including all payments (regardless of whether they were gifts) conveyed to spouses or grandchildren. This could include a \$10 payment to a grandchild for cutting the grass or a \$20 birthday present to a spouse. Julia claims she is entitled to a credit for a portion of those payments. Stated simply, every penny conveyed to any spouse or grandchild must be accounted for and credit for such pennies must be given to Julia, even though she may have received the same penny.

This argument stretches the limits of credulity. The Trust Agreement, itself, unambiguously conveys the mother’s intent that every child is to be treated equally and that once the aggressive gifting started – i.e. the date of the trust – Beach was to account for each of the gifts to the spouses and grandchildren so that Julia would not be made disadvantaged because of the aggressive gifting program. Contrary to Julia’s argument, Beach, as Trustee, cannot look behind his mother and determine each and every gift she gave her children’s spouses and her grandchildren. If she wanted to “catch up” Julia from years prior, she simply could have written her a check at the time she signed the trust, rather than imposing that substantial burden on her son, Beach. Contrary to her intent, she would have disadvantaged Beach by making him account for decades of gifts of which he had no personal knowledge.

Even if the Trust Agreement is ambiguous, the sole testimony that this Court can consider is that of the estate planner, Mr. Johnson, because all other testimony is barred by the Dead Man's Statute. Mr. Johnson, clearly and unequivocally, states that Janet, the mother, did not want Julia to be disadvantaged by the aggressive gifting programs and that all gifts from the date of the trust forward were to be accounted for Julia's benefit. At no time did he or Janet ever discuss looking backwards (years before the execution of the trust) with respect to disadvantaging or catching up Julia. All discussion was prospective, not retrospective.

The facts and the law support only two logical avenues. First, the Trust Agreement is unambiguous and only gifts from the date of the trust forward are to be considered in the equalizing distribution to Julia because of this language "from the date of this language forward." Or, if the Trust Agreement is ambiguous, the Court is constrained solely to the Trust Agreement and the testimony of Mr. Johnson, who testifies that the Trust Agreement was to catch up Julia only for gifts conveyed during the aggressive gifting program, which began with the execution of the Trust. Regardless of the intellectual avenue selected by the Court, the result is the same: calculation of the equalization distribution begins on the date of the execution of the Trust and Julia cannot look past this date in an attempt to grab as much money as she can.

STATEMENT OF ISSUES

- I. Did the Circuit Court err in ruling the Trust Agreement was ambiguous and that the Mother intended for Lifetime Gifts to include gifts that predate the Trust Agreement, dated October 16, 2007?
- II. Did the Circuit Court violate the Dead Man's Statute by relying on testimony other than that of W. Steven Johnson, the estate planner, and his law partner William Reynolds, who reviewed the Trust Agreement, and by failing to consider the totality of Johnson's testimony?
- III. Did the Circuit Court err in affirming the award of attorney's fees and professional fees to Julia Brooker?

STATEMENT OF THE CASE

In the present matter, Beach and Ellen are appealing the order of the Circuit Court, dated March 22, 2021 (ROA 6-15), which affirmed three orders of the Probate Court: (1) the Order Calculating Equalization Distribution of Lifetime Gifts dated June 20, 2019 (ROA 31-40), (2) the Order Allowing Attorney's Fees dated August 5, 2019 (ROA 29-30), and (3) the Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCF dated October 28, 2019. (ROA 23-28).

These appeals originated from a Petition for Declaratory Relief filed in Richland County Probate Court filed on March 17, 2017 by Julia against Beach, in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen, individually as a Beneficiary of the Janet B. Brooker Trust. (ROA 100-129). The petition sought relief based on the interpretation of the Trust Agreement signed by Janet, the parties' mother. Beach and Ellen filed their Answer on May 17, 2017, denying that Julia is entitled to the relief requested and stating that their interpretation of the Trust Agreement is correct. (ROA 130-135).

On August 3, 2018, both parties filed Motions for Summary Judgment. (ROA 136-223). The Probate Court heard the Motions for Summary Judgment on October 16, 2018. On October 24, 2018, the Probate Court issued its Order Denying the Motions for Summary Judgment. (ROA 41).

On February 4, 2019, Beach and Ellen filed a Motion in Limine requesting an order limiting the testimony of Julia and her expert George W. DuRant based on the Dead Man's Statute. (ROA 224-237). The Probate Court heard the motion once the trial began on February 5, 2018 and warned the parties to be mindful of the Dead Man's Statute.

On February 5, 2019, the matter was tried non-jury before the Probate Court and evidence and the proceeding concluded on February 7, 2019. At the trial, Julia offered her own testimony and that of her expert George DuRant to support her case. Beach and Ellen offered the testimony of Beach, Mr. Johnson, and Mr. Reynolds.

On February 28, 2019, Julia filed an Affidavit in Support of Award of Attorney's Fees and Reimbursement of Expenses. (ROA 328-334). On April 10, 2019, Beach and Ellen filed a Memorandum in Opposition to the Fee Affidavit. (ROA 335-340). A hearing on the Affidavit for Attorneys' Fees was held on May 22, 2019.

On June 20, 2019, the Probate Court issued its Order Calculating Equalization Distribution of Lifetime Gifts in favor of Julia, ordering that Julia was entitled to \$1,471,031.94, as of February 5, 2019 as her equalization distribution. (ROA 31-40). Beach and Ellen appealed this Order on July 1, 2019 (Appeal Case No. 2017-CP-40-03582) (ROA 377-388). In addition to the Appeal, Beach and Ellen filed a Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCF in the Probate Court (ROA 341-376) and Motion for Limited Remand in the Circuit Court on the same date, July 1, 2019. (ROA 42-94).

On August 5, 2019, the Probate Court issued its Order Allowing Attorney Fees in favor of Julia, in which it ordered Julia's attorney's and professional fees in the amount of \$170,666.28 to be paid out of the Janet B. Brooker Trust. (ROA 29-30). Beach and Ellen appealed this order on August 13, 2019 (Appeal Case No. 2019-CP-40-04463) (ROA 389-392).

On August 27, 2019, the Circuit Court entered the Consent Order for Limited Remand and to Stay. (ROA 19-22). On October 28, 2019, the Probate Court denied the motion for reconsideration via Order Regarding Motion for Reconsideration and to Alter or Amend Under

Rules 52 and 59(e), SCRCP. (ROA 23-28). Beach and Ellen appealed this Order on November 5, 2019 (Appeal Case No. 2019-CP-40-06229) (ROA 393-400).

On November 13, 2019, the Parties filed a Consent Motion to consolidate the three appeals (ROA 95-99). By Order dated November 19, 2019, the Order Consolidated the Appeals under Civil Action Number 2019-CP-40-03582. (ROA 16-18). The notices of appeal were timely filed and served on July 2, 2019, August 13, 2019, and November 5, 2019. (ROA 377-400).

The Circuit Court, sitting in an appellate capacity, heard argument for this appeal on March 3, 2021. On March 22, 2021, the Circuit Court issued its Order affirming the rulings of the Probate Court (ROA 6-150). In response, Beach and Ellen timely filed a notice of appeal with this Court on March 26, 2021.

STATEMENT OF FACTS

I. THE EQUALIZATION DISTRIBUTION LANGUAGE AND CALCULATION.

Janet had three children: Beach, Ellen, and Julia. At all times and by all accounts, she treated them equally. This is true even when Beach and Ellen started their own families and Julia had none. This had not been an issue until Janet began to consider the aggressive gifting program, which would start gifting beyond the immediate family of Janet and her children to Janet, her children, their spouses, and her children's children. Janet recognized that this gifting schedule could place Julia in an unfair position where Beach's and Ellen's respective families were receiving more than Julia. To address this issue, she requested that Mr. Johnson make Julia whole for the gifts made under the aggressive gifting plan. Mr. Johnson resolved the issue with the equalization distribution language in the Trust Agreement, which provides, in pertinent part, as follows:

(2) Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.

The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward, the Trustee shall determine the date and amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(Trust Agreement, Art. V, § 2 (emphasis added in underline; bold text in original), ROA 642) The plain language of the Trust Agreement provides that “[f]rom the date of this trust forward,” the Trustee Beach shall determine the amount of the gifts made to the children and spouses of Beach and Ellen. Once that figure is calculated, interest is added and the distribution is to be offered to Julia, and this was accomplished and communicated to Julia in February 24, 2016. (ROA 447:14 – 448:11; ROA 656-657). In sum, Mr. Johnson drafted this language to make sure Julia was made whole from the aggressive gifting plan which began in October 2007.

After the execution of the Trust Agreement, each year, as soon as the new tax year began, Beach would cause Dino Corontzes, who handled Janet's accounts at Smith Barney and later Stephens, Inc., to transfer stock or cash in the amount of the annual federal gift tax exclusion to the family members mentioned above in addition to the three children. (ROA 472:14 – 473:24).

During the period between 2007 and the date of death in 2015, the annual exclusion amount increased by law from \$12,000 per gift to \$13,000, then \$14,000. (*Id.*)

After Janet's death, Beach began calculations for the equalization share to be paid to Julia. Beach multiplied the amount of the annual gift exclusion each year by six, included \$240,000 (\$60,000 per child) funding for 529 "Future Scholar" accounts, and \$24,000 given to the spouses of Beacham and Ellen in 2007. (ROA 472:14 – 473:6; See ROA 632). He then divided that sum by two to reflect the gift total to each family and added 5% interest from the date of each gift to the present. (ROA 451:14 – 452:4). The resulting amount, \$525,528 was proffered to Julia through her then attorney, David Siddons, via email on February 24, 2016. (ROA 446 & 447:14 – 448:11; ROA 656).

At the trial, Julia called two witnesses, Julia and George DuRant. DuRant testified from a ledger he had created based upon brokerage and bank statements of Janet. (ROA 419:11-22). He testified that he simply collected all transfers to the spouses of Beacham Brooker and Ellen Corontzes and to their children. (ROA 420:6 – 421:16). No attempt was made to determine whether those transfers were paired with identical gifts to Julia (ROA 426:11-24) or whether they were gifts at all. (ROA 428:6 – 431:14, ROA 655).

After the close of testimony, the Probate Court made certain determinations and asked the parties for their calculations of the equalization amount based upon those determinations. (ROA 514-526). First, the Probate Court determined that tuition paid on behalf of the grandchildren after September 2007 should be added to the equalization principal along with the \$240,000 future scholar contribution and the \$24,000 gift to spouses immediately preceding the Trust date. (ROA 514-515). Then the Probate Court directed that interest on the "annual exclusion" gifts should accrue from the date of those gifts only through the date Julia refused the proffer of those amounts

to her (August 31, 2016), interest on the school tuition to run to the present date. (ROA 514-517). As a result, Julia's calculation was \$732,235.86, approximately \$12,000 lower than Beach's calculation. (ROA 521:9 – 522:13 & ROA 631). The Court then took the matter under advisement. (ROA 526).

The Court published its Order Calculating Equalization Distribution of Lifetime Gifts on June 20, 2018. (Order, Probate Court, June 20, 2019). (ROA 31-40). In it, the Probate Court acknowledged that it indicated at the hearing that only post-Trust gifts were being considered. However, it stated that those decisions were now amended after full review, and gifts prior to the Trust were to be included. (Order, Probate Court, June 20, 2019, p. 5.) (ROA 35). In its Order, the Probate Court adopted Julia's argument finding Janet intended to compensate Julia for all gifts to spouses and grandchildren made during her life and awarded Julia \$1,471,031.94 (ROA 40).

Appellants moved to Reconsider the Order on July 1, 2019, arguing 1) that the Probate Court did not expressly rule that the Trust was ambiguous as a predicate to the use of extrinsic or parole evidence to interpret it; 2) that the Settlor's intent as testified by her attorney Johnson was ignored by the Probate Court and the Probate Court's interpretation rendered the phrase "[f]rom the date of this Trust forward..." meaningless; and 3) the Probate Court erroneously relied on the testimony of Julia Brooker in violation of the Dead Man's Statute. (ROA 341-376). That motion was denied in the October 28, 2019 Order. (ROA 23-28). The Circuit Court appeal followed, and it affirmed the Probate Court Order. (ROA 6-15).

II. THE TESTIMONY OF W. STEVEN JOHNSON, ESQUIRE

Mr. Johnson is no neophyte, nor he is a general practitioner. He is a certified specialist in estate planning and probate by the South Carolina Supreme Court. (ROA 437:3-14). He is one of the founding members of Todd & Johnson, one of the top estate planning firms in the State. (ROA

436:11 – 437:14). Al Todd has passed away, but Mr. Johnson has continued practicing at Todd & Johnson since 1980 and with William “Bill” Reynolds for at least fifteen years. (*Id.*) Julia’s own expert praised Mr. Johnson with the following testimony: “I have great respect for Steve Johnson. I’ve relied on him all my career just about since 1986; he’s a top lawyer, and I don’t dispute a word he says.” (ROA 427:18-21). Mr. Johnson began working with the Brooker family when Janet’s husband died in 1990 in helping the Brooker family with the administration of Mr. Brooker’s estate. (ROA 437:15-23). Mr. Johnson also helped Janet in setting up trusts for her grandchildren, establishing a qualified personal residence trust (“QPRT”) for her residence and vacation home, and setting up generation-skipping trusts for Janet’s three children and other devices. (ROA 437:23 – 438:7). He was no stranger to Janet or her family when he met with them about the aggressive gifting plan or resulting estate planning documents, which included the equalization distribution.

Once the Brookers discovered Janet’s estate would be large, Janet came to Mr. Johnson to revise her estate planning. (ROA 438:10 – 439:13). A family meeting with Janet, all three children, and Mr. Johnson happened on September 25, 2007 to discuss, among other things, the aggressive gifting plan. (ROA 434:21 – 435:9 & 440:8 – 441:21). When Janet raised the issue that gifts to spouses may disadvantage Julia, Mr. Johnson discussed the possibility of an equalization distribution. (ROA 442:5 – 443:14). After the meeting, Mr. Johnson drafted the Last Will and Testament and the Trust Agreement. (ROA 440:2-7). Importantly, there was never a discussion about an equalization of retrospective gifts before, during, or after the execution until this lawsuit. (ROA 441:23 – 442:4). The only conversation with Janet was related to prospective gifts. (ROA 442:2-4). As testified to by Mr. Johnson, “[w]e never had a discussion about retroactive gifts so the discussion, **the whole discussion** centered around gifts going forward. Q: Was there ever any

discussion whatsoever about gifts going backward? A: **No.**” (ROA 444:5-13 (emphasis added)). In fact, he has a “specific recollection of discussing with [Janet] the terms of the equalization provision” in which he said, “***we’ll catch Julie up at death for gifts made from the Trust Agreement forward so that she won’t be prejudiced.***” (ROA 463:8-16 (emphasis added)).

On the other hand, “[t]he subject [of previous gifts] never came up; we never discussed it.” (ROA 458:23 – 459:1). He testified as to the following:

My interpretation or my instructions of Mrs. Brooker’s intent was to look at gifts that were given to Ellen’s family and to look at gifts that were given to Beach’s family from 2007, not looking back looking forward, to determine which was the larger number to add five percent to it and to distribute that much to Julie as an equalizing distribution. So she would not be disadvantaged; she would receive at least as much as of the higher amount that was either going to Ellen’s side of the family or to Beach’s side of the family.

(ROA 448:23 – 449:10). Mr. Johnson tried to make Julia whole with forward looking gifts with other estate planning documents that did not work for one reason or another. He tried a codicil “with an equalization provision for the gifts that were going to be given to Julie from that date forward.” (ROA 456:18 – 457:4). But the codicil software would not allow him to modify the equalization language to make it capture only prospective gifts. (ROA 460:25 – 461:10). Mr. Johnson, consistent with his client’s wishes, consistently aimed to equalize Julia. After all, “[t]he whole conversation with Janet was about prospective gifts, not retrospective gifts.” (ROA 465:14-15).

Mr. Johnson testified “Janet, you know, was only going from 2007 forward.” .” (ROA 466:10-11). If Janet had brought up gifts prior to 2007, Mr. Johnson testified he would have told Janet the following:

I would have said to her let’s equalize it right this minute, let’s make a gift to her right this minute, let’s give her – let’s make a gift to Julie right now if she’s been so disadvantaged. We’re trying to reduce the size of your estate, let’s give her an amount right now that will make her equal.

(ROA 466:16-23). This advice makes sense not only from a tax perspective: the need to reduce the tax estate, but also from a common sense perspective: Janet was in the best position to know the gifts she make to the various children and their families. She would have the knowledge in 2007 and could easily make that distribution, rather than waiting for her death and placing such a burden on the trustee to calculate all gifts, little of which he would have personal knowledge.

Mr. Johnson also sought another lawyer to ensure that he was properly reflecting Janet's intent. He asked Bill Reynolds, his law partner, to review it, which Mr. Reynolds did for fifteen minutes. (ROA 462:13-20; 478:22-482:5). Mr. Reynolds concluded the equalization distribution language properly captured Janet's intent. (ROA 478:22 – 482:5). As testified to by Mr. Reynolds,

There was never any discussion about retrospective or looking back. I think, at least in my experience, if you look back, you gotta start somewhere. And if they had decided to look back, Steve [Johnson] would have asked Mrs. Brooker what the gifts you've given thus far; let's start with an amount or let's write a check to even up Julia. But that was never part of the discussion between Steve and I.

(ROA 480:22 – 481:6).

The testimony of Mr. Johnson and Mr. Reynolds establish that Janet intended only for post-trust gifts to be included in the equalization distribution. Their testimony is bolstered by the language in the Trust Agreement itself, which provides that “[f]rom the date of the trust forward [October 16, 2007]” the value of the gifts to Beach's and Ellen's children and spouses should be calculated, interest added, and equalization amount distributed to Julia. (ROA 579). This was nearly accomplished except that Julia disagreed with the equalization amount. This litigation and subsequent appeals followed. The sole competent evidence provides that the equalization distribution should be calculated only from post-trust, not pre- and post-trust gifts. The Probate Court's ruling to the contrary (and the Circuit Court's affirmance) should be overturned, and judgment should be entered in favor of Beach and Ellen.

STANDARD OF REVIEW

A proceeding in probate court may be at law or in equity, depending on the nature of the action. *In re Estate of Holden*, 343 S.C. 267, 278, 539 S.E.2d 703, 709 (2000). “Whether the action is one at law or in equity is determined by the nature of the pleadings and the character of the relief sought.” *Id.* An action to construe or interpret a trust is equitable in nature. *Waddell v. Kahdy*, 309 S.C. 1, 4-5, 419 S.E.2d 783, 785-86 (1992) (stating “[i]t is firmly recognized as a rule and principle of law in this State that all possible trusts, *whether express or implied*, are within the jurisdiction of the chancellor . . . if [t]here is *an element* of trust in this case, *which, wherever it exists*, always confers jurisdiction in equity.” (alterations and emphasis in original)).

“In an action in equity, tried by a judge alone without reference, on appeal the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence.” *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004). “It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases where the appellant satisfies this court that the finding is against the preponderance of the evidence. *Id.* (quoting *Crowder v. Crowder*, 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965)). This standard of review is called de novo, which “literally means ‘anew.’” Jean Hoefer Toal, et.al., *Appellate Practice in South Carolina* 224 (3d ed. 2016) (quoting *Black’s Law Dictionary* 368 (8th ed. 2005); see also *Nutt Corp. v. Howell Road, LLC*, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011) (“We review factual findings and legal conclusions in an equitable action de novo.”).

De novo review is the “broadest form of appellate review, as it ‘permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court’s findings.’” *Id.*

(quoting *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011)). “De novo review permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court’s findings.” *ZAN, LLC v. Ripley Cove, LLC*, 406 S.C. 404, 412, 751 S.E.2d 664, 669 (Ct. App. 2013) (quoting *Lewis*, 392 S.C. at 390, 709 S.E.2d at 654-55).

When applying this standard to the present matter, this Court should reverse the lower court for incorrect applications of the law, in addition to several unsupportable factual findings. A de novo analysis of the underlying facts and law shows that the Probate Court erred and judgment should be entered in favor of Beach and Ellen.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN AFFIRMING THE RULING THE TRUST AGREEMENT WAS AMBIGUOUS AND THAT JANET THE SETTLOR INTENDED FOR LIFETIME GIFTS TO PREDATE THE TRUST AGREEMENT, DATED OCTOBER 16, 2007.

A cardinal rule of contract or trust interpretation is that the choice and use of words in a document must mean something. 17A CJS *Contracts* §399-400 (“Without violating the plain language of the instrument or the parties’ clear purpose, all parts of a contract must be taken into consideration and be given effect and assumed to have been inserted for a purpose. All words are to be given effect when consistent with the parties’ intent and are to be made to operate according to that intent.”). The interpretation of the equalization clause by the Probate Court, affirmed by the Circuit Court, renders the phrase “[f]rom the date of this trust forward” nugatory. More specifically, the Probate Court stated that its holding that the language merely indicated the beginning of the Trustee’s duties is supported by the rules of contract interpretation which differ from the rules of statutory construction, the former standing for the proposition that interpretation of testamentary trusts must be reasonably supported by a plain reading of the document as a whole. Respectfully, the Probate Court’s reading of the law is erroneous.

The Trust Agreement contains numerous duties of the Trustee which are to occur or may occur at varying times after the establishment of the Trust and the appointment of the Trustee. These are both *inter vivos* and post mortem and continuing and one-time duties. The only enumerated duty that is prefaced by the words, “From the date of this Trust forward” is that clause requiring the Trustee to calculate lifetime gifts at the Settlor’s death. That the Probate Court’s reading of this clause would cause the above phrase to be meaningless, superfluous, or surplusage, can be seen by striking it and reading the instruction beginning with “[T]he trustee shall determine the date and the amount” The equalization clause would then read like every other clause imposing duties on the Trustee, i.e. “The Trustee shall.” Thus, the Probate Court’s holding that the “From the date of this Trust forward,” as denoting only the date that began the duties of the Trustee is redundant to his designation as Trustee in the first instance and simple surplusage. This is disfavored by the rules of contract interpretation.

By including the words “From the date of this Trust forward,” Janet meant future gifts. This phrase must be given some meaning. The Probate Court’s holding that this language is redundant of Trustee’s appointment causes that term to be meaningless, superfluous, useless, and inexplicable and should be reversed.

II. THE CIRCUIT COURT ERRED IN AFFIRMING THE PROBATE COURT’S VIOLATION OF THE DEAD MAN’S STATUTE BY NOT LIMITING TESTIMONY TO W. STEVEN JOHNSON AND WILLIAM REYNOLDS AND IGNORING THE TOTALITY OF JOHNSON’S TESTIMONY.

If the Trust Agreement is ambiguous, the only admissible and competent testimony regarding the Settlor’s intent, as a matter of law, is the testimony of Mr. Johnson, the Settlor’s estate planner, and Mr. Reynolds, the law partner of Mr. Johnson who examined the equalization distribution language to ensure it conveyed the Settlor’s intent. There was no competent evidence presented to support the Probate Court’s finding that it was the settlor Janet’s intent that the

equalization distribution include gifts made prior to the creation of the Trust and establishment of the equalization clause in the Trust Agreement. Neither of Julia's witnesses presented any evidence or testimony that Janet intended that gifts made prior to the date of the Trust, October 16, 2007, be included in the Trustee's calculation of the equalization payment to Julia at her death.

The Circuit Court looked to the Probate Court's reliance on the reference to two provisions in the Trust Agreement where the term "equal shares" appears—in providing for the distribution of household and personal effects and for the final distribution among the children, both at death.¹ Secondly, the Circuit Court noted that the Probate Court did cite the testimony of Mr. Johnson, that Janet did not want Julia to be disadvantaged by gifts to grandchildren and spouses, and thus, the provision was to be made to "catch up" Julia for such gifts. Finally, the Circuit Court referenced the Probate Court's reliance on a draft codicil that made no distinction between gifts made before or after the Trust was created that was prepared by Mr. Johnson's paralegal and internal office memorandum on the equalization issue.²

¹ No one disputes that Julia should not be treated equally with her siblings.

² Mr. Johnson easily explained why the draft codicil and internal office memorandum had no bearing on the issue at hand. Regarding the codicil, he testified that he thought maybe he could simply add an amendment to the existing estate plan by doing a codicil with an equalization provision. (ROA 456:18 – 457:4). He then testified that his paralegal created the draft codicil from a form and that he had no way to edit it. (ROA 460:25 – 461:10). "And when I got [the draft codicil] from my paralegal, my thought process was this is totally inadequate, this is totally inadequate. So then I went to my software and I drafted the pour-over will and the Trust Agreement with the equalization provision in it." (ROA 461:5-10). Importantly, the fact that Janet did not sign the codicil is evidence in and of itself that the codicil did not reflect her intent.

Regarding the internal memorandum, Mr. Johnson stated the date referenced in it was written by his paralegal, who was "simply mistaken" about the date, and he later corrected her. (ROA 468:14 – 469:2). Neither the draft codicil which was never presented to Janet nor the internal memorandum which simply included an error later corrected can render Mr. Johnson's testimony not credible, which the Probate Court has done. Mr. Johnson never swayed from his testimony that Janet's intent was to include only post-Trust gifts in the equalization distribution.

However, both the Circuit Court and Probate Court ignored the import and totality of Mr. Johnson's testimony which clearly supports the intent of the settlor Janet to only "catch up" Julia for the accelerated gifting program that began under the Trust from its date forward. Specifically, Mr. Johnson testified that all discussions with Janet regarding the accelerated gifting strategy and the equalization upon death regarded prospective gifts not those made retrospectively. Mr. Johnson testified concerning a meeting attended by all family members on September 25, 2007:

Q. What was discussed at that meeting?

A. That we would accelerate the gifts that Mrs. Brooker was going to make; that we were going to make gifts not only to children and grandchildren, but that we would also make gifts to in-laws. As an estate planner, you know, I was primarily relying on Internal Revenue Code Section 2503 and Code Section 529. And I talked with Mrs. Brooker at that time about the avenues that would be available to her to make gifts to the children, the grandchildren, and the spouses of the children. And when I mentioned to her about making gifts to the spouses –

(ROA 440:15 – 441:2). Further:

Q. All right. Now, was there ever any discussion with Janet Brooker about an equalization for retrospective gifts?

A. No.

Q. Was the only conversation with her related to prospective gifts?

A. Yes.

Q. Now, when you drafted the Trust Agreement and specifically paragraph 2(a) (b) and (c)), which is denominated equalizing distribution to the Settlor's daughter

Julia B. Brooker, was that intended by Mrs. Brooker and by you to state that this equalization was only to be made going forward as indicated by paragraph (a)'s language, "From the date of the trust forward"?

A. That is correct[.]

(ROA 441:23 – 442:13).³ This testimony was wholly ignored⁴ by the Circuit Court and the Probate Court, resulting in severe prejudice to Beach and Ellen, especially considering Mr. Johnson is the sole competent witness as ***he was the only one present with Janet when she discussed her intent about the Trust and he is a disinterested witness under the Dead Man's Statute. See Hanahan v. Simpson***, 326 S.C. 140, 152, 485 S.E.2d 903, 910 (1997), *superseded by statute on unrelated grounds* (stating "testimony of the attorney preparing the will is generally held admissible on the ground that the attorney is not an 'interested person.'").

In sum, the only competent evidence regarding the settlor Janet's intent comes from Mr. Johnson and Mr. Reynolds, her estate planner and his partner, and the ambiguous Trust Agreement. Neither Julia nor Mr. DuRant can testify as to Janet's intent. Julia's testimony is rendered

³ At trial, there was no mention of any attempt by Janet during her lifetime to inform her son, the Trustee, of gifts she made prior to 2007, information uniquely within her knowledge. Logically, had her intent been to equalize Julia for gifts made to her siblings' families prior to the Trust, she could have accomplished that by simply writing a check to Julia before signing the Trust Agreement.

⁴ Other testimony that was wholly ignored was the testimony concerning certain expensive foreign trips that Janet took with Julia Brooker, in which Janet paid for both her and Julia. (ROA 511:23 – 512:22.) However, no offset was ever mentioned in the Court's Orders. Had Janet truly wanted to equalize distributions at death for pre-Trust gifting, those values would be included. Instead, Julia presented calculations based on bank records and brokerage statements of transfers only to the grandchildren and spouses (no setoffs for Julia's trips around the world) and only from the arbitrary date of June 1, 1992. (ROA 417:18 – 418:17, ROA 543-549). No explanation for that date was given.

incompetent by the Dead Man’s Statute, and Mr. DuRant is likewise incompetent to testify about the interpretation of the Trust or Janet’s intent. *See Hanahan*, 326 S.C. at 151, 485 S.E.2d at 909 (1997) (noting the Dead Man’s Statute, codified at S.C. Code Ann. § 19-11-20, serves to prohibit “any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest.”). Mr. Johnson, the key witness, was ***unequivocal*** that the gifts to be included in the calculation of the equalization distribution were to be gifts that postdated the creation of the Trust on October 16, 2007. There was no evidence before the Probate Court to contradict Mr. Johnson’s and Mr. Reynolds’ testimony. The Circuit Court and Probate Court erred in ruling that Mr. Johnson’s testimony supported the proposition that the equalization distribution should include pre-Trust gifts. To the contrary, he steadfastly testified that the gifts were only prospective. The Probate Court, and ultimately the Circuit Court, contorted his testimony and erred in not relying on the repeated testimony that Janet’s intent was to capture solely post-Trust gifts.⁵

III. THE CIRCUIT COURT ERRED IN AFFIRMING THE AWARD OF ATTORNEY’S AND PROFESSIONAL’S FEES TO JULIA BROOKER.

Because the Circuit Court and the Probate Court should have ruled in favor of Beach and Ellen, no award of attorney’s and professional’s fees to Julia should have been made. In this case, the Circuit Court affirmed the Probate Court’s award of attorney’s fees pursuant to section 62-7-1004, which provides that “[i]n a judicial proceeding involving the administration of a trust, the court, ***as justice and equity may require***, may award costs and expenses, including reasonable attorney’s fees” (Emphasis added.) “This section codifies the court’s historic authority to award costs and fees, including reasonable attorney’s fees, in judicial proceedings grounded in

⁵ Mr. Johnson’s testimony, as noted by the Probate Court, “is going to have the heavy weight.” (ROA 422:16-17).

equity.” S.C. Code Ann. § 62-7-1004 cmt. If the Circuit Court and the Probate Court erred in their analyses and ultimate findings and conclusion, justice and equity do not support an award of attorney’s fees and expenses to Julia.

Additionally, even if the Probate Court was correct with its orders, it did not find in favor of Julia, *in toto*. Typically, a court determines a prevailing party by evaluating the degree of success obtained. *See Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991) (holding one factor for attorney’s fee analysis is “beneficial results obtained.”). Julia pursued a claim that the total amount of gifts to Beach’s family and the total amount of gifts to Ellen’s family should simply be added and then interest applied, without dividing the sum by two to equalize Julia. Stated differently, Julia claimed the equalization provision stated that if Beach’s family received \$100 and Ellen’s family received \$100, then Julia should be entitled to \$200, plus the applicable interest. The proper calculation, however, was to divide the \$200 by two so that Julia would receive the equal share of \$100, just as Beach’s and Ellen’s families did. Julia was seeking a windfall from this interpretation, and her expert’s analysis focused on this point. But the Probate Court did not agree and found that the sum had to be divided by two to render the siblings equal. Julia did not prevail on this issue, and therefore, she should not be awarded attorney’s fees for this large issue in the case.

CONCLUSION

For the above-reasons, this Court should reverse the Circuit Court and enter judgment in favor of the Appellants.

[Signature Page Follows.]

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individually and as a Beneficiary of the Janet B.
Brooker Trust***

Columbia, South Carolina

November 8, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330

Case No. 2019-CP-40-03582

RECEIVED

Nov 08 2021

SC Court of Appeals

Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Appellants

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Appellants complies with Rule 211(b) SCACR.

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November 8, 2021

Attorneys for Appellants

RECEIVED

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

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Case No. 2019-CP-40-03582

Julia B. Brooker,

Respondent,

v.

Beacham O. Brooker, Jr., in his official
Capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,

Appellants.

RESPONDENT'S FINAL BRIEF

s/James M. Griffin

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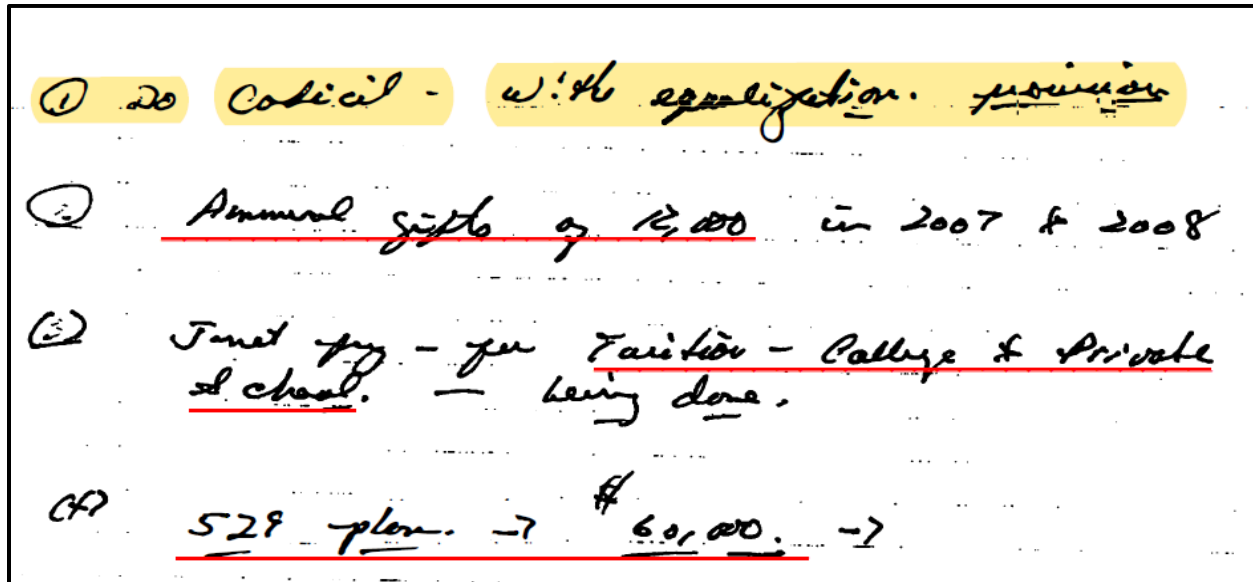
INTRODUCTION

Respondent Julia B. Brooker, by and through undersigned counsel, files her brief requesting the Court affirm the Circuit Court’s March 22, 2021 Order (“the Circuit Court Order”) that affirmed the following rulings of the Honorable Judge Amy McCulloch: (1) Order on the Equalization Provision found in Janet B. Brooker’s pour-over trust (“Equalization Order”) (2) Judge McCulloch’s Denial of Respondents’ Motion to Reconsider (“Reconsideration Order”), and (3) Judge McCulloch’s Order Awarding Attorney’s and Professional’s Fees (“Fee Order”) [collectively the Probate Court Orders]. The Court should affirm the Circuit Court Order because Judge McCulloch’s construction of the Equalization Provision found in the Janet B. Brooker Trust (the “Trust”) is supported by a plain reading of the Trust as a whole and by a preponderance of the evidence presented at the hearing on this matter. While Appellants take umbrage with a construction contrary to Mr. Steve Johnson’s testimony that Settlor intended for the Equalization Provision to apply only to post-Trust gifts, his testimony was not the only evidence probative of Janet B. Brooker’s (“Mother” or “Settlor”) intent. In fact, Johnson’s testimony was contradicted by his own calculations that included pre-Trust gifts, documentary evidence made by his firm contemporaneously with the execution of the Trust, as well as at the time of Settlor’s death to wit:

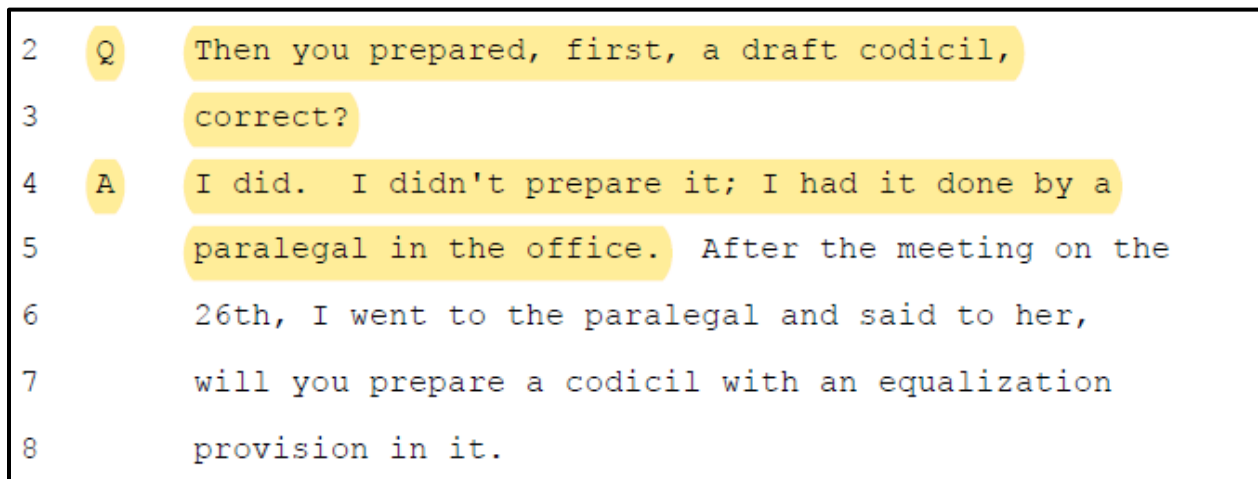
- In the Fall of 2007, Settlor requested Mr. Steve Johnson, Esq. assist her with her estate planning. As reflected in his time entry for billing, and based on the testimony at the evidentiary hearing, he met with Settlor and her Children (Appellants Beacham & Ellen & Respondent Julia) on September 25, 2007 “to discuss gifts of assets to children.” (Am. R. 567)

9/25/2007 WSJ	250.00	1.51	378.47	Billable
85016 Legal Services				
Office conference with family to discuss gifts of assets to children;				

- Notes made by Mr. Johnson during the meeting indicate a discussion of recent and future gifts to be made (annual gifts, tuition, & 529(c) plan contributions). They also reflect Mr. Johnson's understanding that Mother's intentions would be best achieved through preparation of a "codicil – with [an] equalization provision." (Am. R. 571-572).



- Mr. Johnson testified that following this family meeting and in accordance with his notes he had a codicil drafted. (Id. 459:2-8).



- Based on her discussion and instruction from Mr. Johnson following the meeting, the paralegal drafted a codicil that contained an equalizing provision for all lifetime gifts. (Am. R. 573-574).

(1) I give, devise and bequeath such amount as shall be necessary to equalize for gifts given to any child of mine during my life. Thus, to the extent that I have not equalized for such gifts during my lifetime, I direct that at the time of my death my Personal Representative determine what gifts I made and whether I accomplished equalization and if not then I direct my Personal Representative to make equalizing gifts to my children or to such child's issue, per stirpes. Such equalization shall be made for the value of the gift given at the time such gift was made with no interest thereon. My Personal Representative's best faith effort to determine the value shall be final and binding upon any beneficiaries hereunder.

- On October 15, 2007 – one day prior to Settlor executing her estate documents and nearly two and half weeks after the meeting and codicil had been drafted– Mr. Johnson spoke with Beacham and drafted the Trust with a new equalization provision. (Id. 564).

10/15/2007 WSJ	250.00	3.01	753.40	Billable
85722 Legal Services				
Preparation of client's Revocable Trust and Pour Over Will; Telephone conference with client's son;				

- The Equalization Provision in the Trust acknowledges the Settlor's history of making "lifetime gifts" and her intent that Respondent be made equal. (Id. 530).

(2) Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

- Following her death on April 16, 2015, the Children had a meeting with Mr. Johnson that included discussion of the lifetime gifts made by Settlor. Notes made by Mr. Johnson's paralegal illustrate her understanding that Mother intended for "lifetime gifts," as used in the Equalization Provision, to include those gifts made prior to the Trust. (Am. R. 629).

Janet Brooker Estate - needed information

1. **Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in May of 1997. The amount of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia.**

- In addition to this evidence, Mr. Johnson testified that:
 - Settlor did not want Julia disadvantaged because she was without a spouse and issue. (Id. 443:6-14).
 - He never asked Settlor if she intended to exclude pre-Trust gifts from the Equalization Provision. (Id. 458:17-459:1).
 - He was unaware Settlor had made approximately \$1 Million in gifts to the spouses and issue of Appellants Beacham and Ellen prior to the formation of the Trust. (Id. 466:7-13).
 - 529 scholarship account contributions made prior to the date of the Trust should be included in the calculations. (Id. 632).

This evidence, when read in conjunction with the entire record, supports the Circuit Court's affirmance of Judge McCulloch's construction of the Equalization Provision. *See Dorchester County Depart of Social Services v. Miller*, 477 S.E.2d 476 (Ct. App. 1996) (recognizing a trial judge's superior position in evaluating the credibility of witnesses).

Additionally, Judge McCulloch correctly granted Respondent's Motion for Fees after Respondent successfully made the case that pre-Trust gifts should be included in the equalizing distribution, that Respondent's fees were comparable to those incurred by Appellants, and because Appellants' fees were paid from the corpus of the Trust. While Appellants take issue with the Probate Court's award of attorneys' fees and professional fees in this matter, the record illustrates

that Beacham's conduct as Trustee following the death of Settlor prompted her retention of an attorney and her expert Mr. George DuRant.

- In his role as Trustee, Appellant Beacham initially offered Respondent \$300,000 to equalize. Respondent requested backup documentation from Beacham for this figure, but is not provided with the same so she retained counsel. Only then does Beacham include the 529 contributions Mr. Johnson testified were to be included in the Equalizing distribution. (Am. R. 632). Notably, the spreadsheet reflecting the calculation of the equalizing distribution presented to the Probate Court includes gifts prior to the date of the Trust. This is contrary to Mr. Johnson's testimony that the Equalizing provision should only include post-Trust gifts.

Gifts made from 2007 through 2015		Gifts	Interest	Total
09/26/07	\$12,000 X 2	24,000.00		
Interest	Interest from 9/26/07 to 4/16/15		9,070.68	33,070.68
10/01/07	\$60,000 X 4	240,000.00		
Interest	Interest from 10/1/07 to 4/16/15		90,542.47	330,542.47
01/09/08	\$12,000 X 2	24,000.00		
Interest	Interest from 1/5/08 to 4/16/15		8,725.48	32,725.48
01/08/09	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/09 to 4/16/15		24,457.81	102,457.81
01/05/10	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/10 to 4/16/15		20,589.86	98,589.86
01/05/11	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/11 to 4/16/15		16,689.86	94,689.86
01/05/12	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/12 to 4/16/15		12,789.86	90,789.86
01/02/13	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/13 to 4/16/15		9,596.71	93,596.71
01/02/14	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/14 to 4/16/15		5,396.71	89,396.71
01/02/15	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/15 to 4/16/15		1,196.71	85,196.71
Total Gifts and Interest		852,000.00	199,056.15	1,051,056.15
Janet B. Brooker Estate				
One half given is Ellen's family			525,528.07	
One half given is Beach's family			525,528.08	
Amount due to Julia to equalize			525,528.08	

- Julia again requested backup documentation for this figure, she was not provided the same, and then, through counsel, she filed the Petition beginning the present matter.
- In an effort to determine the amount of pre-Trust and post-Trust gifts, Respondent retained George DuRant to do a forensic accounting. Mr. DuRant identified every lifetime gift by reviewing over 10,000 pages of bank & brokerage account statements, and estate tax

returns. At the hearing, he presented Judge McCullough with an itemized spreadsheet of each gift identified, (Am. R. 543-549), as well as a summary chart (Id. 550).

	Gifts	Interest	Total
Gifts made prior to October 16, 2007			
Spouse & issue of Ellen B. Corontzes:			
Dino Corontzes	21,883.00	18,244.23	40,127.23
Arthur B. Corontzes	245,744.33	207,598.60	453,342.93
Beacham O. Corontzes	235,128.58	193,645.35	428,773.93
Totals - spouse & issue of Ellen B. Corontzes	502,755.92	419,488.18	922,244.09
Spouse & issue of Beacham O. Brooker, Jr.:			
Beth Brooker	15,400.00	9,769.67	25,169.67
Elizabeth K. Brooker	244,687.33	206,888.19	451,575.53
Grace H. Brooker	235,026.58	193,566.82	428,593.40
Totals - spouse & issue of Beacham O. Brooker, Jr.	495,113.92	410,224.69	905,338.60
TOTAL GIFTS PRIOR TO OCTOBER 16, 2007	997,869.83	829,712.87	1,827,582.70
daily interest after February 5, 2019		136.69	
Gifts made after October 15, 2007			
Spouse & issue of Ellen B. Corontzes:			
Dino Corontzes	118,043.23	45,754.77	163,798.00
Arthur B. Corontzes	139,182.00	53,793.13	192,975.13
Beacham O. Corontzes	139,080.00	53,729.25	192,809.25
Totals - spouse & issue of Ellen B. Corontzes	396,305.23	153,277.15	549,582.38
Spouse & issue of Beacham O. Brooker, Jr.:			
Beth Brooker	143,000.00	55,744.11	198,744.11
Elizabeth K. Brooker	126,532.00	47,418.32	173,950.32
Grace H. Brooker	138,662.00	53,542.36	192,204.36
Totals - spouse & issue of Beacham O. Brooker, Jr.	408,194.00	156,704.79	564,898.79
TOTAL GIFTS AFTER OCTOBER 15, 2007	804,499.23	309,981.94	1,114,481.17
daily interest after February 5, 2019		110.21	
GRAND TOTAL LIFETIME GIFTS	1,802,369.06	1,139,694.81	2,942,063.87
daily interest after February 5, 2019		246.90	
(interest computed at 5% per annum from the date of gift to February 5, 2019)			

Based on Mr. DuRant's calculations, and without evidence illustrating error in his calculations for post-Trust gifts or an alternate calculation of pre-Trust gifts, the Court based its award using the figures presented by Respondent. Not only were the fees and expenses incurred by Respondent necessary to arrive at an accurate accounting of Settlor's lifetime gifts, but notably, the Court found they very closely mirrored those incurred by Appellants and paid by the Estate for the same matter.

Accordingly, the Circuit Court Order affirming the Probate Orders should be affirmed.

STATEMENT OF ISSUES

1. Did the Circuit Court correctly affirm the Probate Court's ruling that Settlor intended for the Equalization Provision to account for lifetime gifts made prior to the October 16, 2007, Trust Agreement?
2. Did the Circuit Court err by affirming the Probate Court's construction of the Equalizing Provision to include lifetime gifts made by Settlor prior to the October 16, 2007, Trust Agreement in lieu of adopting the construction advocated by Mr. Johnson and Mr. Reynolds?
3. Did the Circuit Court correctly affirm the Probate Court's award of attorney's fees and professional's fees to Julia Brooker?

FACTS

Janet Bloom Brooker ("Settlor" or "Mother") was the mother of three children: Beacham Owens Brooker, Jr. ("Beacham"), Julia B. Brooker ("Julia" or "Respondent"), and Ellen Brooker Corontzes ("Ellen") [collectively the Children]. (Am. R. 411:18-23)¹. Respondent has never been married and has no children. (Id. 412:10-13). Beacham is married to Elizabeth Brooker ("Beth") and Ellen is married to Arthur Constantine Corontzes ("Dino"), [collectively "Spouses"]. (Id. 412:14-21; 413:14-21). Beacham and Ellen each have two children with their Spouses [individually "Grandchild"; collectively "Grandchildren"].

After the death of her husband in 1990, Mother began making lifetime gifts to her Children, their Spouses, and her Grandchildren. (Id. 543-550). In June 1992, Mother set up a qualified personal residential trust ("QPRT") and deeded her residence in DeBordieu, South Carolina to the Children equally. (Id. 609-628). In May 1997, as part of her estate planning and with the assistance of Mr. Steve Johnson, her estate planning attorney, Mother created a family generation skipping

¹ [Footnote has been omitted because it explained citation used in Initial Brief that is no longer applicable to Final Brief after insertion of citations to the Amended Record on Appeal.]

trust for each of the Children, for the benefit of their issue. (Am. R. 415:3-7; 438:4-7). She also paid for the Grandchildren's primary school tuition and contributed to 529(c) college plans for each of them. (Id. 475:11 - 476:13; 543-549; 656-658). Mother intended that such tuition payments and 529(c) contributions be gifts to her Grandchildren. *See* (Id. 450:6-8 (recognizing tuition gift amount could vary depending on college attended by Grandchild); 451:18-19 (referring to 529(c) contributions as gifts); 457:5-19; 543-549 (identifying 529(c) contributions as items found in the 2007 Gift Tax Return provided by Bill Sellars); 571-572 (illustrating discussion of tuition distributions and 529(c) account contributions during meeting about accelerated gift-giving)).

By the fall of 2007, Settlor had gifted the Spouses and the Grandchildren approximately \$1 Million (Id. 543-549 & 550). At that time, Mother requested Mr. Johnson again assist her with estate planning. Mr. Johnson held a meeting with Settlor and the Children on September 25, 2015, to "discuss gifts of assets to children." (Id. 567).² At this meeting, Mr. Johnson proposed a plan of accelerated gift-giving by Settlor to the Children and Grandchildren. (Id. 440:8-14). Settlor did not want to agree to a plan that would disadvantage Julia for not having a spouse or children. (Id. 443:6-14). Thus, it was agreed that Julia would be "caught-up", or equalized, for lifetime gifts at Mother's death. (Id. 501:15-502:4).³ Notes made contemporaneously by Mr. Johnson during the

² Notably, Mr. Johnson's time entry reads "discuss gifts of assets to children." This entry, presumably made by Mr. Johnson following his meeting, is not qualified as "future gifting" or "acceleration of gifting," but rather refers to "gifts" signaling distributions that had already been made and could be made in the future. The codicil – drafted by a paralegal based on instructions given by Mr. Johnson regarding the desire of Mother at the family meeting – illustrates that Mr. Johnson understood "gifts" to include all lifetime gifts. A plain reading of the first and second sentence of Paragraph 1 of the codicil makes clear that "gifts" includes all gifts made "during [Mother's] lifetime" once "*given*" (Am. R. 573-574) (emphasis added).

³ At the hearing, Beacham and Mr. Johnson refuted that lifetime gifts, as used in the equalization provision, included gifts made prior to execution of the Trust. Mr. William Reynolds, a law partner of Mr. Johnson who did not attend the September 25, 2007 meeting or have discussions with Settlor regarding the same, testified in support of Beacham and Mr. Johnson's position. However, as discussed *supra*, this position is refuted by settlor's history of treating her

September 25, 2007, family meeting, indicate discussion of recent gifts made by Mother and those she intended to make, including the annual federal tax excluded gift and tuition for the Grandchildren.⁴ Based on this discussion, Mr. Johnson's notes indicate his understanding that Mother's intentions would be best achieved through preparation of a "codicil – with [an] equalization provision." (Am. R. 571-572).

Shortly after this family meeting discussing lifetime gifts, Mr. Johnson met with CKO, a paralegal at his firm, and instructed her to draft a codicil setting forth an equalization provision. (Id. 459:2-8). Based on this discussion, CKO drafted a codicil that states:

I give, devise and bequeath such amount as shall be necessary to equalize for gifts given to any child of mine during my life. Thus, to the extent that I have not equalized for such gifts *during my lifetime*, I direct that at the time of my death my Personal Representative determine what gifts I made and whether I accomplished equalization and if not then I direct my Personal Representative to make equalizing gifts to my children or to such child's issue, per stirpes.

(Id. 573-574) (emphasis added). This codicil contemplates an equalization provision that accounts for all gifts made during Mother's lifetime and is not limited to just those made following execution of the Trust.

On October 15, 2007 – one day prior to Mother executing her estate documents and nearly two weeks after the codicil had been drafted– Mr. Johnson discarded the codicil, drafted the Trust, and had a call with Beacham. (Id. 564). Thereafter, Mr. Johnson made additional edits to the Trust and Settlor executed the same, as well as a Power of Attorney in the presence of Beacham on October 16, 2007. (Am. R. 564; 577; 592-607).⁵ These documents appointed Beacham as

children equally, the plain language of the Trust agreement, and additional documentary evidence from Mr. Johnson's firm probative of Settlor's intent at the time the Trust was executed.

⁴ On October 1, 2007 – prior to execution of the Trust – Mother gifted \$60,000 into each Grandchild's 529(c) account. (Am. R. 543-549).

⁵ Between the time the codicil was drafted, October 1, 2007, and the execution of the Trust, October 16, 2007, Mr. Johnson has two phone calls with Beacham, one in which Dino, Ellen's

Personal Representative in Settlor's Will, Trustee of Settlor's Estate, and granted him Power of Attorney for Settlor.

The Trust divided Mother's estate into three categories for distribution: (1) personal and household effects; (2) Julia's Equalizing Distribution; and (3) the Trust Estate. (Id. 578-579). Mother instructed that her personal and household effects be distributed among her Children "in equal shares." (Id.).⁶ She also instructed that after distribution of her personal and household effects, as well as the amount due Julia under the Equalization Provision, the remainder of her estate be divided to her Children in "equal shares." (Id. 579). As to the amount due Julia under the Equalizing Provision, Mother expressed her intent as follows:

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

husband participated. Neither Mother nor Respondent were included in either call. (Am. R. 564 (documenting calls on 10/1/07 & 10/15/07)).

⁶ Settlor could have left written memoranda instructing that her personal and household effects be distributed in an unequal manner. *See* (Id. 578-579). Her election not to exercise this option is further evidence of her desire that all her Children be treated equally.

(Am. R. 579) (emphasis added).

Following execution of the Trust in October 2007, and “from [that] date forward” as instructed in subparagraph (2)(a) of the Equalization Provision, Beacham as Trustee was to determine the amount of the lifetime gifts to be made on behalf of Settlor. Once the trust was executed, Beacham, exercising his authority as Settlor’s Power of Attorney, continued to distribute tuition for the Grandchildren, as well as the annual federal tax excluded gifts to the Children, the Spouses, and the Grandchildren. (Id. 483:20-487:25). For purposes of the Equalizing Provision, distributions for tuition were considered lifetime gifts.

Following her death on April 16, 2015, (Id. 39), the Children had a meeting with Mr. Johnson that included discussion of the lifetime gifts made by Settlor. During this meeting, Johnson used the phrase “lifetime gifts” which Julia understood to mean all gifts made during Mother’s lifetime – not just those after execution of the Trust. (Id. 503:13-504:4). Additionally, notes made by Mr. Johnson’s paralegal Billie McMahan following Settlor’s death illustrate her understanding that Mother intended for “lifetime gifts,” as used in the Equalization Provision, to include those gifts made prior to the Trust. (Id. 629; 467:24-468:21). Specifically, the estate paralegal’s notes identified the following “needed information” for preparation of the estate tax return:

1. Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in May 1997. The amount of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia. (Id. 629).

In his role as Trustee, Beacham initially offered Respondent a distribution of approximately \$300,000 to satisfy the Estate’s obligation under the Equalization Provision. (Am. R. 504:15-505:5). This figure was corroborated by Mr. Johnson’s acknowledgement that his initial

calculation of the amount owed Julia was \$311,000. (Id. 467:13-19). Wanting to understand how Beacham calculated his initial offer, Julia asked for access to the backup documentation used to arrive at this figure. When she was unable to get this information from Beacham, Julia hired attorney David Siddons to help her get the same.⁷ (Id. 504:19-507:9). Attorney Siddons requested the information on Julia's behalf and only after receipt of some of the requested information, did Julia learn that each Grandchild received a \$60,000 gift into his/her 529(c) account – totaling a \$240,000 distribution - on October 1, 2007. (Id. 505:10-506:3; 543-549).

Subsequently, Mr. Johnson, as attorney for Beacham as Trustee, conveyed a new calculation of \$529,528 to Attorney Siddons as the correct amount owed Julia under the Equalizing Provision. (Id. 656-658).⁸ A spreadsheet prepared by Mr. Johnson and attached to an email dated February 24, 2016, reflects the gifts included in his calculation from 2007 to 2015. (Id. 444:14-20; 447:14-24; 474:2-12; 656-658). This is the most Mr. Johnson or Beacham ever suggested that Julia was entitled to under the Equalizing Provision prior to her filing her Petition for Declaratory Relief (“Petition”) on March 17, 2017. (Id. 508:15-17; 100-129). Moreover, she was never offered a check for this amount. (Id. 454:21-455:3; 477:6-12; 510:17-19).

Julia's decision to retain her present counsel and file the Petition was only made after she was repeatedly denied the underlying statements used to support the calculation proposed by Beacham. (Am. R. 507:17-508:3). As part of their representation of Julia, counsel issued subpoenas to various entities in an effort to obtain documentation needed to identify all lifetime

⁷ Until her death, Mother saved every account statement at her home. Following her passing, Beach and Ellen destroyed these documents when the Children were cleaning out her home. Thus, Julia was unable to rely on the same in examining whether the proposed distribution to her under the Equalizing Provision was fair. (Am. R 506:22-507:14).

⁸ Resps.’ Exhibits 1 and 4 contain the same spreadsheet. (Id. 632; 656-658).

gifts made by Settlor to her Children, the Spouses, and the Grandchildren.⁹ This information was then provided to Mr. George DuRant, a forensic accountant retained by Julia to determine the amount owed to her under the Equalization Provision of the Trust. Mr. DuRant relied upon this information to generate a detailed report identifying every lifetime gift made by Settlor to the Spouses and her Grandchildren. (Id. 543-549; 417:18-418:23 (documents reviewed and individual gift totals); 428:25-429:23 (review of estate tax returns); 432:10-25 (same)). Mr. DuRant also provided a summary chart that calculated gift totals, with interest, made to the Spouses and Grandchildren before and after execution of the Trust, as well as the total of all identified lifetime gifts. (Id. 550; 423:7-425:18). As evidenced by Mr. DuRant's summary chart, and before interest, Settlor made approximately \$1.8 Million dollars in lifetime gifts to the Spouses and Grandchildren from the time she began making gifts (following her husband's passing in 1990) until the date of her death in April 2015. (Id. 550).

Based on the plain language of the Trust, as well as the evidence before the Probate Court, including Mother's express desire that Julia not be disadvantaged because she did not have a spouse or children, Judge McCulloch held that "lifetime gifts" as used in the Equalization Provision meant all gifts made by Settlor during her lifetime. (Id. 39-40, ¶¶ 8-13). Accordingly, the Probate Court, using the figures provided by Mr. DuRant and following the formula set forth in subparts (a)-(c) of the Equalization Provision, found that Julia was entitled to an equalization distribution of \$1,471,031.94. (Am. R. 40 ¶¶ 14-18).¹⁰

⁹ It was only after retaining current counsel and obtaining backup documentation through subpoenas that Julia learned Hammond tuition was not included in the calculation set forth in Respondents' Exhibits 1 and 4. (Am. R. 508:18-509:10).

¹⁰ Appellants' note that Mr. DuRant "did not determine whether each transfer was a gift or not" and instead he "simply counted and identified each transfer as a 'gift.'" (App. Br. at 2, n1). However, Appellants waived any argument that the post-Trust gifts identified by Mr. DuRant were

Subsequently, Julia filed an affidavit in support of an award of attorney's and professional's fees. Appellants opposed such award, challenging the amount of the fees. (Id. 335-340). Following examination of the fees incurred by both parties, the Probate Court found them comparable. (Id. 29-30). The Probate Court granted Respondent's motion and directed the fees be paid from the corpus of the Trust.

I. THE CIRCUIT COURT CORRECTLY AFFIRMED THE PROBATE COURT'S FINDING THAT SETTLOR INTENDED FOR THE EQUALIZATION PROVISION TO ACCOUNT FOR LIFETIME GIFTS MADE PRIOR TO THE OCTOBER 16, 2007 TRUST AGREEMENT.¹¹

South Carolina case law dictates that interpretation of the language in a testamentary trust must be reasonably supported by a plain reading of the document as a whole. *See Epworth Children's Home v. Beasley*, 616 S.E.2d 710, 715 (S.C. 2005); *see Barnacle Broad., Inc. v. Baker Broad., Inc.*, 538 S.E.2d 672, 675 (S.C. Ct. App. 2000) ("The primary test as to the character of a contract is the intention of the parties, such intention to be gathered from the whole scope and effect of the language used."). The primary objective in construing the language of a trust is to

not in fact 'gifts' to be included in the Equalization Provision. Following the Probate Court's instruction to Beacham to review all records from September 2007-2015 (Am. R. 527), Appellants conceded that Mr. DuRant's calculation of lifetime gifts made post-Trust, including those smaller gifts identified by Mr. DuRant from the First Community records, was accurate (Id. 488:14-20; 489:24-496:17). Having conceded the post-Trust calculation was correct, it is unclear how Appellants now take issue with gifts included in the pre-Trust calculation done by Mr. DuRant; a calculation in which gifts were identified and totaled in the exact same manner as that utilized in his post-Trust calculation. (Id. 419:7-421:16) (explaining identification of all gifts on Pet. Ex. 3 (Id. 543-549)).

Finally, if Appellants took issue with Mr. DuRant's identification of gifts, they had eight months prior to the hearing to raise the same. Mr. DuRant provided his initial report and workpapers, as well as the underlying documents supporting the same with his initial report to Appellants in May 2018. (Id. 433:1-5). For Appellants to cry foul when they made no effort to compute a total for pre-Trust gifts before or during the hearing, when such information was readily available for them to do so, is disingenuous at best.

discern the settlor's intent. *See Epworth Children's Home*, 616 S.E.2d at 715 (S.C. 2005) (citing *Bowles v. Bradley*, 461 S.E.2d 811, 813 (S.C. 1995)). Additionally, the Court may consider all pertinent facts and circumstances surrounding the creation of the trust to ascertain the settlor's intent. *See Harper v. S.C. Tax Comm'n*, 226 S.E.2d 699, 701–02 (S.C. 1976); *Columbia East Assocs. v. Bi-Lo, Inc.*, 386 S.E.2d 259, 261–62 (S.C. Ct. App. 1989) (holding that when interpreting a contract, courts must endeavor to determine “the situation of the parties, as well as their purposes, at the time the contract was entered.”)

A review of the trust as a whole supports Judge McCulloch's ruling that the phrase “[f]rom the date of this trust forward” does not limit lifetime gifts to those made after the date of the Trust, but instead signals the beginning of Beacham's duties as Trustee. (Am. R. 26). As an initial matter, the phrase “equal shares” appears two times in Trust provisions other than the equalizing distribution. (Id. 579-580). The repetition of this phrase is evidence Mother intended that her Children receive equally under the Trust. (Id. 24-25). Moreover, Appellants admit that historically Settlor treated them equally. (App. Br. at 6).

Additionally, that Mother intended for this provision to apply to all lifetime gifts is evidenced by her acknowledgement in the first sentence of the applicable provision that she “*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children.” (Am. R. 579)) (emphasis added). If Settlor had intended otherwise, the Trust language would have been worded in the future tense, such as “Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts [*to be made*], [*that will be made*], [*that Settlor intends to make pursuant to the gifting program*] to such daughter's siblings' spouses or siblings' issue.”

However, such language does not exist. Instead, the Trust uses the past tense of the verb “make,” stating that “and equalizing distribution will be made to the Settlor’s said daughter pursuant to the terms of this paragraph for **lifetime gifts made** to such daughter’s siblings’ spouses or siblings’ issue.” As correctly held by Judge McCulloch, this phrase “is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her [express] desire for Julia to be treated the same.” (Am. R. 40, ¶13).

Moreover, the preponderance of the evidence presented at the hearing clearly illustrates that Mother’s intent was that all of her Children be treated equally, and thus, she intended for the Equalization Provision to include lifetime gifts made prior to the execution of the Trust Agreement on October 16, 2007. In support of this conclusion, the Probate Court properly relied on evidence that Settlor always treated her Children equally and her intent that Julia would not be disadvantaged for not having a spouse or issue. (Id. 39, ¶¶ 8-11). Indeed, Appellants concede that “at all times... [Settlor] treated them equally.” (App. Br. at 6). Mr. Johnson, who testified his conversations with Settlor only ever involved post-Trust gifts, admittedly was not aware there was approximately \$1 Million of gifting done by Mother prior to execution of the Trust. (Am. R. 466:7-13). Nor did Mother ever explicitly instruct Mr. Johnson that the Equalization Provision was not to include pre-Trust gifting to the Spouses and Grandchildren. (Id. 458:23-459:1). Finally, documents prepared by two estate paralegals working for Mr. Johnson on Mother’s estate illustrate an operating knowledge that pre-Trust gifts were to be included in the Equalizing Provision. (Id. 573-574 & 629).

Despite this evidence of Settlor’s intent, Appellants urge the Court to adopt an interpretation of the Equalization Provision that would limit lifetime gifts to those occurring after

the date of the Trust.¹² In support of this position, Appellants argue that the Probate Court's interpretation of the phrase "[f]rom the date of this trust forward" renders this language redundant and meaningless and such a result is "disfavored by the rules of contract interpretation." (App. Br. at 14-15). However, this position should be rejected because when interpreting a trust, rigid application of a rule of construction should not be used as a mere formalism when other indices of intent are present. *See Harper*, 267 S.C. at 150, 226 S.E.2d at 702; *see also Epworth Children's Home*, 616 S.E.2d at 715 (noting that "the rules of construction are of secondary importance to the need to ascertain what the testator meant by the terms used in the written instrument itself"); *Allison v. Wilson*, 411 S.E.2d 433, 435 (S.C. 1991). Thus, Judge McCulloch properly rejected Appellants' argument because it advocates a construction that prioritizes formality over effectuating a construction that comports with the clear evidence of Mother's intent that the equalization provision included all gifts made during her lifetime.

Finally, the fact that Judge McCullough's ruling does not result in a windfall to Beacham, Ellen, or Julia is further evidence that it accomplishes the Settlor's intent: that her Children be treated equally. At the evidentiary hearing, Respondent argued to the Probate Court that a plain reading of the Equalization Provision required a distribution to Julia equal to the sum of lifetime gifts to Beacham's and Ellen's spouses and grandchildren. However, in reading the document as a whole and examining the evidence before her, the Court rejected this construction because it

¹² Notably, Mr. Johnson and Beacham disagreed on whether Settlor intended for the 529(c) contributions and Hammond tuition to be included as lifetime gifts. This is true even though both were present at the family meeting on September 25, 2007 in which lifetime gifting of these items was discussed and is reflected in Mr. Johnson's notes. (Am. R. 571-272). It was Mr. Johnson's understanding both items constituted gifts under the Equalizing Provision (Id. 450:6-8; 451:18-19; 457:5-19). Beacham took the position that a strict reading of the Equalizing Provision would not include the 529(c) contributions (\$240,000) made on October 1, 2007 because they pre-dated the Trust and that distributions made for the Hammond tuition of Beach and Ellen's children did not constitute lifetime gifts. (Id. 475:8-477:1).

would result in a windfall to Julia. Similarly, the Probate Court rejected Appellants' position that pre-Trust gifts should not be included in the equalizing distribution, because it necessarily resulted in Beacham and Ellen each receiving a \$1 Million windfall. Instead, the Probate Court took the total amount of pre-Trust and post-Trust lifetime gifts to Beacham's and Ellen's spouses and children and divided that amount by two to arrive at what Julia's fair share should be when compared to what her siblings' families received. (Am. R. 40). This calculation by the Probate Court makes sure Julia is not "disadvantaged" for never marrying or having children and illustrates how the well-reasoned construction of the Probate Court effectuates the Settlor's intent. (Id. 402:18-404:6).

Based on Judge McCullough's well-reasoned rulings relying on the evidence above, the Circuit Court properly affirmed her ruling that the Settlor intended for lifetime gifts to predate the Trust. (Id. 10-12). Accordingly, the Circuit Court Order should be affirmed.

II. THE CIRCUIT COURT CORRECTLY AFFIRMED THE PROBATE COURT'S CONSTRUCTION OF THE EQUALIZING PROVISION TO INCLUDE LIFETIME GIFTS MADE BY SETTLOR PRIOR TO THE OCTOBER 16, 2007 TRUST AGREEMENT IN LIEU OF ADOPTING THE CONSTRUCTION ADVOCATED BY MR. JOHNSON AND MR. REYNOLDS.

Appellants incorrectly assert that there was no "competent evidence" presented during the hearing to support the Probate Court's finding that the Equalization Provision accounted for lifetime gifts made prior to October 16, 2007. (App. Br. at 15). Ignoring the plain language of the Trust and other evidence relied upon by Judge McCulloch, Appellants double-down on this unsubstantiated position and urge this Court to find that the only "competent evidence" that can be considered regarding Settlor's intent is that provided through the testimony of "Mr. Johnson and Mr. Reynolds... and the ambiguous Trust Agreement." (Id. at 18).

However, as correctly noted by the Circuit Court, while *de novo* review is the broadest form of appellate review, “it does not require the Appellate court to disregard the findings below or ignore the fact that the trial Judge is in a better position to assess the credibility of witnesses.” (Am. R. 10 (citing *Dorchester County Dept. of Soc. Servs.*, 477 S.E.2d 486)). To obtain reversal, Appellants were required to, but failed, to illustrate the Probate Court committed error. *Id.* As evidenced by the Circuit Court Order, this requires more than mere disagreement with the weight afforded Mr. Johnson’s and Mr. Reynold’s testimony. Accordingly, the Circuit Court correctly affirmed the Probate Court after finding Judge McCulloch did not admit evidence in violation of the Dead Man’s Statute and that the preponderance of the evidence before the Probate Court supported the Probate Court’s construction of the Equalizing Provision. (*Id.* 12-13).

A. Julia Brooker

Appellants argue Julia’s testimony at the evidentiary hearing “is rendered incompetent by the Dead Man’s Statute”, and thus, could not be relied on as evidence by Judge McCulloch in construing the Trust. (App. Br. at 18). This position is factually and legally inaccurate. Julia was not permitted to testify to any conversations she had with her mother about her mother’s intentions regarding the Equalizing Provision. Judge McCulloch, a probate court judge very much versed in the Dead’s Man Statute, S.C. Code. Ann. § 19-11-20, correctly precluded such testimony. Thus, the construction reached by the Probate Court necessarily did not rely on testimony given by Julia violating the Dead Man’s Statute because the same does not exist.

Julia was permitted to testify that Mr. Johnson told her in a family meeting that Mother intended to “catch her up at the end.” (Am. R. 501:15-502:1). However, this testimony does not violate the Dead Man’s Statute which “prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest.”

Brooks v. Kay, 530 S.E.2d 120, 124 (2000) (emphasis added). The Probate Court did not permit Julia to testify as to any conversations she had with Mother, the decedent, about the Equalizing Provision or Mother's intentions related thereto.

Instead, Julia was permitted to testify as to what she was told by Mr. Johnson. Julia testified that Mr. Johnson "talked about that [M]other was going to exaggerate [*sic*] gifts, and that what [M]other was going to do is catch me up at the end." (Am. R. 501:15-502:1). Following this testimony, Julia again confirmed that her understanding was based on what "Steve said." (Id. 502:3-4).¹³ Thus, the Probate Court correctly ruled that such testimony is not prohibited by the Dead Man's Statute, nor is it prohibited from the Probate Court's consideration based on a claim of attorney-client privilege. (Id. 502:23-503:11)).¹⁴

B. Steve Johnson

Appellants' recitation of Mr. Johnson's testimony notably excludes his admission that Mother never expressed a desire to him that lifetime gifts made prior to the Trust be excluded from the calculation of the Equalization Provision. (Id. 458:17-459:1). It also omits that Mr. Johnson

¹³ She then testified that "she was led to believe" in meetings with Mr. Johnson that the Equalizing Provision would include all lifetime gifts made to the Spouses and Grandchildren. (Am. R. 503:13-504:4). As to this testimony, Appellant objects claiming it is not clear that this understanding came from Mr. Johnson, and therefore, her testimony was improper. (App. Br. at 20). However, Julia testified that she arrived at this understanding in both meetings – including the meeting with Steve Johnson *after Settlor's death*. Thus, such understanding was necessarily not gleaned from a communication or transaction with Settlor. Appellants' contention is a red herring.

¹⁴ Notably, the Probate Court allowed Beacham to testify as to what gifts he made in furtherance of "carrying out [Settlor's] wishes." (Am. R. 493:1-13). His counsel, following this testimony, urged the Probate Court to adopt a construction based only on the testimony of Beacham, Mr. Johnson, and the four corners of the Trust. (Id. 499:20-500:3). Appellants cannot in good faith seek preclusion of Julia's testimony – which is independently corroborated – and at the same time urge the Court to adopt a construction based on Beacham's testimony about the "wishes" of Settlor. *See generally, Brooks*, 339 S.C. at 486, 530 S.E.2d at 124 (providing that the Dead Man's Statute will not exclude "testimony where the party asserting the statute 'opens the door' by offering testimony otherwise excludable").

was unaware that Settlor had made approximately \$1 Million dollars in gifts to the Spouses and Grandchildren prior to the date of Trust. (Am. R. 466:7-13).¹⁵ Given the historically equal treatment of her Children (Id. 415:16-416:5, 493:14-25; 513:4-17), there is simply no explanation, nor can Appellants point to evidence of the same, as to why Settlor's intent - that Julia not be disadvantaged because of gifts made to the Spouses and Grandchildren - would only begin upon execution of the Trust.

Moreover, Mr. Johnson's credibility was impeached by Respondent's counsel using Mr. Johnson's deposition testimony at the hearing. Mr. Johnson testified to having a specific recollection of discussing the Equalizing Provision with Settlor and telling Settlor that "we'll catch Julia up at death for gifts made from the Trust Agreement forward so she won't be prejudiced." (Id. 463:11-16). However, in testimony a year prior, Mr. Johnson did not disclose this now-specific memory in response to a question warranting the same if true. Nor could he recall if he used the phrase "lifetime gifts" in his conversations with Settlor. (Id. 464:2-465:7). That Mr. Johnson somehow developed this specific recollection during the year between his deposition (January 2018) and the hearing before the Probate Court (February 2019) is probative as to the weight the Probate Court should assign to his hearing testimony.

¹⁵ Respondents' take issue with the calculation of pre-Trust gifting arguing the pre-Trust gift calculation should have been offset by the gifts given to Julia during this time. (App. Br. 18, n4). As an initial matter, Appellants were given ample opportunity to present the Court with their own calculation but did not. Moreover, none of the gifts given to any of Settlor's children (Beach, Ellen, and Julia) were included in the \$1 Million total. Nor should they have been since the Equalization Provision was intended to make Respondent equal for those gifts given to the spouses and issue of Beach and Ellen. Finally, all parties are in agreement that Settlor treated her children equally during her lifetime. Thus, Appellants' argument on this point is without merit and should be dismissed when they did not avail themselves of the opportunity to present evidence refuting the same at the evidentiary hearing.

C. William Reynolds

Not surprisingly, Mr. Reynolds' testimony concerning Settlor's intent, mirrors that of his law partner, Mr. Johnson. Mr. Reynolds testified at the hearing that his discussions with Mr. Johnson about the Equalizing Provision did not include mention of retroactive gifts. (Am. R. 480:22-24). His understanding of Mother's intent does not arise from a conversation with Mother, but rather comes from a mere 15 minutes of involvement with her Trust, during which time he not only had a discussion with Mr. Johnson but also reviewed and made edits to the Trust. (Id. 479:10-20; 482:19-20; 561). The Probate Court is entitled to consider his testimony in light of his limited involvement and given his relationship with Mr. Johnson. That Appellants do not agree with the weight afforded to his testimony, nor that of Mr. Johnson, does not warrant reversal of the Probate Court's ruling.

D. Codicil and Paralegal's Notes

The codicil referenced in Mr. Johnson's notes during the family meeting on September 25, 2007 (Id. 571-572) corroborates Julia's testimony that the Equalization Provision was to include lifetime gifts made by Mother prior to execution of the Trust. Mr. Johnson admits the codicil he instructed his paralegal, CKO, to draft right after the September 25, 2007 meeting does not make a distinction between lifetime gifts made before and after creation of the Trust. (Id. 459:2-461:3). Rather it expresses Settlor's desire that an equalizing distribution be made to Respondent in an amount to equalize her for gifts made "during [Settlor's] life." (Id. 573-574).

Mr. Johnson attempts to discount the weight that should be afforded the codicil by stating it was drafted by a paralegal and upon receipt, he deemed it inadequate and went to his software to draft the Trust Agreement. As an initial matter, the codicil was drafted based on instructions Mr. Johnson gave to the paralegal right after the family meeting in which Julia says "lifetime gifts"

as used in the Equalizing Provision included those gifts made prior to execution of the Trust. (Am. R. 459:2-13). Additionally, per the time records of Mr. Johnson's firm, the codicil was drafted in its entirety on October 1, 2007 and the Trust on October 15, 2007. (Id. 564). Thus, any insinuation in Mr. Johnson's testimony that he reviewed the codicil when it was available from his paralegal on October 1, rejected the same, and promptly drafted the Trust is refuted by the two - week lapse of time between the creation dates of the documents.

Notes from a second paralegal working for Mr. Johnson on Settlor's estate matters, Ms. McMahan, also corroborate Julia's position that Settlor intended for the Equalizing Provision to include gifts made prior to October 16, 2007. (Id. 629). These notes, made after Settlor's death in 2015, are independent evidence that corroborate Julia's testimony that following her mother's death she was again told in a meeting with Mr. Johnson that lifetime gifts included those made before the execution of the Trust. (Id. 501:20-502:1; 503:13-20). Moreover, the notes contemplate going back to May 1997 – the month in which Mother established generation skipping family trusts for each of her Children. (Id. 415:3-7; 438:4-7). Such an estate scheme benefits her Children with issue - Beach and Ellen, not Julia. Thus, it would be logical for the paralegal to earmark this date when inventorying lifetime gifts as part of a calculation to make sure Julia was not disadvantaged for being unmarried and without issue.

In short, work product of two separate employees of Mr. Johnson, who unlike Mr. Reynolds spent more than 15 minutes on Mother's estate planning, illustrate a working understanding that Mother's intent was to include pre-Trust gifts in the Equalizing Provision. This documentary evidence, in addition to Mr. Johnson's ignorance of Settlor's extensive prior lifetime gifting, his testimony regarding Settlor's express desire that Julia not be disadvantaged, and testimonial and documentary evidence that Settlor treated her children equally during her lifetime

is all evidence which the Probate Court properly relied on when construing the Trust. Accordingly, the Circuit Court's affirmance of the Probate Court's interpretation of the Equalization Provision should be affirmed because it is based on a preponderance of the evidence presented at the hearing.

III. THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE PROBATE COURT'S AWARD OF ATTORNEY'S AND PROFESSIONAL'S FEES TO JULIA BROOKER.

“In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.” S.C. Code Ann. § 62-7-1004. Judge McCulloch correctly ruled that Respondent's attorney's and professional's fees should be paid from the corpus of the Trust because Respondent's construction of the Equalizing Provision was supported by a preponderance of the evidence and a reading of the plain language of the Trust as a whole. Such ruling is not only equitable given the Appellants' comparable fees were paid of out of the corpus of the Trust, but also just when examining the timeline of events leading up to and requiring Respondent's retention of these services.

Julia brought the present action only after Beacham failed to fully comply with her numerous requests for the documents underlying Mr. Johnson's calculation of the equalizing distribution. In fact, it was not until Julia retained counsel that Beacham increased his initial, undocumented, equalizing distribution calculation of \$300,000 to over \$500,000. (Am. R. 505:3-506:8). Such increase coincided with Attorney Siddons discovering a distribution of \$240,000 to the Grandchildren's 529(c) accounts following the September 25, 2007 family meeting. Even with Attorney Siddons' assistance, the email correspondence presented at the hearing illustrates that Julia still did not have all the documents she requested and should have been provided in August

of 2016 – over a year after Settlor’s passing. (*See, e.g.* Am. R. 630 (illustrating she still had not been provided with all account statements)).

It was not until Julia retained present counsel and filed the Petition that she was able to obtain much of the information she requested.¹⁶ Once she had the information, she then retained Mr. DuRant, a CPA, to review the records to identify all lifetime gifts made by Settlor. This exercise, for which Julia incurred over \$60,000 in fees, was necessary for Julia to evaluate Beacham’s calculations. As aptly recognized by the Probate Court, Julia’s unwillingness to agree to Beacham’s calculation until she was provided records to evaluate its validity was “logical” and the action of “a good business-minded person.” (Id. 497:14-498:2).

Moreover, despite Mr. DuRant providing his initial report and the underlying documents supporting the same to Appellants in May 2018, Beacham made no attempt to validate his calculations. Even putting aside pre-Trust lifetime gifts, it was not until the Probate Court ordered him as part of his fiduciary duty to prepare a spreadsheet of post-Trust lifetime gifts based upon his review of all of the account statements that he engaged in such exercise. (Id. 527). Julia should not be punished for seeking legal and professional services that were necessary because of Beacham’s dilatory behavior in providing her with records and his overall failure to fulfil his fiduciary responsibility to Julia as Trustee.

Appellants argue that Respondent’s award for fees should be reduced because the Probate Court did not adopt Respondent’s construction *in totem*. (App. Br. at 24). However, this argument is without merit because Respondent was successful on the central issue driving this case: whether pre-Trust gifts should be included in the Equalizing Provision. Almost all the testimony,

¹⁶ The attorney’s fees sought by Petitioner do not include those she incurred with Attorney Siddons.

documentary evidence, and briefing on the plain language of the Trust focused on whether the Equalizing Provision accounted for pre-Trust gifts. This issue is what accounts for Respondent's fees which are comparable to those incurred by Appellants in this matter. (Am. R. 30).¹⁷

Even though Appellants were not successful in depriving Julia of a distribution that included pre-Trust lifetime gifts to the Spouses and Grandchildren, their fees were nonetheless paid from the corpus of the Trust. Given Respondent's success on the central issue in this case, it would be patently unfair to require Respondent to personally pay for the fees she incurred. This is especially true, whereas here, the remainder of the trust estate will be distributed evenly between the Children after the equalizing distribution is made to Respondent and "having the Trust be responsible for some attorney's fees advantages some beneficiaries over others, reducing the amount of corpus left to be distributed to all beneficiaries." (Id. 30). Such a result is inequitable. Accordingly, equity demands that the Circuit Court's affirmance of the Probate Court's award of attorney's and professional's fees to Julia should be affirmed.

CONCLUSION

Based on the preponderance of the evidence presented at the hearing and in conjunction with the plain language of the Trust, the Circuit Court correctly affirmed the Probate Court's construction of the Equalization Provision. Additionally, given the inequity that would result from requiring Respondent to pay the fees she incurred when Appellants' fees were paid from the corpus

¹⁷ Following a hearing on the Motion for Attorney's and Professional's fees, in which Appellants objected to the amount of fees incurred by Respondent, Judge McCulloch instructed each party to submit detailed time entries to her for *in camera* review. The same were provided, and as evidenced in her Fees Order, were found to be comparable. If requested, Counsel will submit these time entries for *in camera* review by the Court.

of the Trust, the Circuit Court correctly affirmed the Probate Court's award of fees to Respondent. Accordingly, the Court should affirm the Circuit Court Order.

s/James M. Griffin

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November 8, 2021

RECEIVED

Nov 08 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330
Case No. 2019-CP-40-03582

Julia B. Brooker,

Respondent,

v.

Beacham O. Brooker, Jr., in his official
Capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Brief of Respondent complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Appellants

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INTRODUCTION

One point on which both parties agree is that the Settlor/Mother, Janet Brooker (“Janet” or “Settlor”), wanted her three children, Beacham Brooker (“Beach”), Ellen Corontzes (“Ellen”), and Julia Brooker (“Julia”), to be treated as equally as possible. Where the parties part is where Julia takes this conclusion to the extreme. She wants to be equalized for every transfer of money that Janet made to each grandchild or spouse – whether that be a birthday gift or payment for mowing Janet’s yard. This is true from the beginning of her siblings’ marriages in the late 1980s and the births of her nieces and nephews in the 1990s, even though Janet created the Trust twenty years later.

Under Julia’s interpretation, she would require Beach to do what George DuRant did to the tune of \$60,000, along with having the force of several subpoenas behind him, requiring various financial institutions to search their basements for 20-year-old documents. Surely, Janet did not want to impose this financial and time-consuming burden on her son Beach when she would have a good idea of how many gifts she gave each spouse and grandchild at the time she created the Trust in 2007. To do so would violate Janet’s tenet of treating every child as equally as possible – the one thing about which these siblings agree. Julia’s interpretation and resulting requirement of a forensic accounting greatly favor Julia and Ellen to the substantial detriment of Beach, who would have to spend months upon months collecting the necessary data and then either conducting the forensic accounting or hiring someone like George DuRant to do so at \$325 per hour, who subsequently spent 190.85 hours (totaling approximately \$60,000) deciphering where the money went. This was not Janet’s intent, which was expressed in her Trust Agreement and her conversations with her estate planner W. Steven Johnson, Esquire (“Mr. Johnson”).

Julia's arguments regarding the meaning of the equalization clause are based upon the Probate Court's decision relying on language (outside the equalization distribution) in the Trust Agreement, stating that the Settlor wanted all her children treated equally with each receiving "equal shares." But this argument ignores the fact that Janet Brooker previously had a will and trust with the same provisions and, under that plan, had attempted to treat her children equally. She had set up and funded trusts for the grandchildren, funded them with minimal contributions, and made tax advantaged payments¹ for the grandchildren's private school tuition. To compensate Julia, she paid for several expensive overseas trips for herself and Julia. Had she believed this was not adequate compensation, she would have paid Julia an equal share contemporaneously. Prior to the 2007 change in estate planning, she had never given federal gift tax annual exclusion gifts to non-blood relatives (the spouses of Beach and Ellen).²

What changed, and the reason for the full revision of the estate plan in 2007, was that, due to the increase in market value of the securities held, the total value of the estate exceeded the \$2 million exclusion from the Federal combined estate and gift tax of 55% of the estate's value. Thus, Beach Brooker and Janet Brooker requested the assistance of Todd & Johnson regarding strategies to reduce the potential amount of tax owed. Those strategies included a 529 plan for grandchildren college tuition, personal residence trusts on Janet's home and beach condo, a family LLC to which Janet contributed Lockheed Martin stock as part of her capital contribution, and, most importantly for present purposes, an accelerated annual gifting plan where she would gift up to the federal

¹ The Estate and Gift tax element emphasizes another inequity in the Probate Court's order. The equalization amounts the Court ordered are to be paid in post-tax dollars thus disregarding the fact that Julia benefit from the gifting program's tax savings of 55% of the amount of those gifts while Beach and Ellen do not.

² Janet did give the spouses the annual exclusion gift for 2007 days before the Trust was signed. But Janet made the gifts in contemplation of the aggressive gifting program and wanted to ensure she captured the 2007 tax exclusions.

annual gift tax exclusion (which increased over the period from \$12,000 to \$13,000 to \$14,000) to all available family members including the non-blood relative spouses of Beach and Ellen. Because Julia was not married and had no children, a provision was included that an equal amount of the aggregate gifts to each of Beach's and Ellen's families prior to death would be paid out to Julia from the estate post-mortem.³

Thus, the sole impetus for the equalization clause for Julia was the accelerated gifting program which did not pre-exist the 2007 estate plan revisions. The pre-2007 estate plan had no such clause. As Mr. Johnson testified when he spoke with Janet, the only gifts to be considered in the calculation of the equalization distribution are the gifts made after the Trust's execution in 2007. (ROA 441-442). Julia's interpretation of the Trust, the Probate Court's ignoring the testimony of Mr. Johnson or calling it into question, and the Probate Court's reliance on a codicil never executed or presented to Janet, *Julia's* interpretation (not Mr. Johnson's) of the notes of paralegals of Todd & Johnson all require this Court to look into the fallacies of the Circuit Court's Order affirming the Probate Court's Order. This Court should reverse the Circuit Court and enter judgment in favor of Beach and Ellen.

FACTUAL BACKGROUND

Prior to the 2007 estate plan amendments, Janet, the Settlor, had established trusts for each of her grandchildren at their birth and funded those trusts annually for a number of years through transfers of common stock. (ROA 414:1-9; 437:25 – 438:1). In addition, Settlor paid private school tuition for the grandchildren for a number of years. (ROA 457:6-9). In an attempt of fairness toward Julia, Settlor paid for a number of international trips for the two of them including China, Africa, Peru and the Galapagos Islands, and Europe. (ROA 511:23 – 512:23).

³ Equalization could not be achieved during Mrs. Brooker's lifetime because gifts to Julia would exceed the annual gift tax exclusion and be taxable.

Julia focuses on paltry documentary evidence in an effort to avoid the clear testimony of Mr. Johnson and his law partner, William Reynolds. More specifically, Julia focuses on (1) a draft of codicil by office staff that was never used or shown to Settlor, (2) notes purportedly taken by Mr. Johnson during the September 25, 2007 family meeting,⁴ and (3) notes from Mr. Johnson's paralegal that referred to gifts from 1997. As discussed in the brief in chief, Mr. Johnson testified that he was hoping the codicil would be a quick fix to address the equalization issue, but realized the software that generated the codicil would not allow him to accomplish Settlor's intent. (ROA 456:18 – 457:4; 460:25 – 461:10). There is no evidence that Settlor reviewed the codicil, much less executed it. In fact, her ignorance of the codicil and resulting failure to sign it is evidence, in and of itself, that the codicil does not reflect her intent. Second, the only references to equalization or lifetime gifts in Mr. Johnson's notes (ROA 571-572) is "(1) Do codicil – with equalization provision" on the first page and "equalization clause" on the second page. There is nothing regarding lifetime gifts or that Julia should receive gifts from the early 1990s. It is a stretch to say that anything beyond an equalization provision was discussed. Finally, Mr. Johnson's paralegal

⁴ In a footnote, Julia also suggests that because Mr. Johnson did not use "future gifting" or "acceleration of gifting" in a time entry in which he wrote "discuss gifts of assets to children" then Mr. Johnson must mean that he discussed more than "future gifts" which presumably was gifts made in the past. (Br. of Resp't at 8 n.2.) Julia is seeking perfection in a lawyer's description of his time spent. Quite frankly, Mr. Johnson's use of "discuss gifts of assets to children" does not mean that he spoke about any gifts other than the ones Janet was about to aggressively pursue. Julia's reliance on this time entry reflects her desperate attempt to bolster her factual record.

In fact, Julia's own brief suggests that Mr. Johnson was not talking about prior gifts. In her brief, Julia places emphasis on the fact that Mr. Johnson had no explicit knowledge of the alleged approximately \$900,000 worth of gifts. But this emphasis is without merit. His alleged lack of knowledge of the amount of "gifts" given by Settlor is of no moment. What is of moment is his explicit knowledge of her intent with respect to her estate plan and the equalization distribution. Julia is looking for meaning when none exists, other than the fact that Mr. Johnson discussed "gifts of assets to children."

was “simply mistaken” when she referenced another year for the collection of gifts, rather than 2007. (ROA 468:14 – 469:2).

None of this evidence is sufficient to establish that “lifetime gifts” meant to Settlor all of the gifts she ever gave to her grandchildren or her children’s spouses. Yet, the Probate Court (and the Circuit Court) erroneously concluded this evidence trumped the very language in the Trust Agreement and the unambiguous testimony of Mr. Johnson that Settlor intended for the trust to be prospective only, not retrospective. There is no evidence, much less a preponderance of the evidence, to support Julia’s version of her mother’s intent. The only competent evidence is (1) Mr. Johnson’s testimony, who drafted the estate documents and was well-aware of Settlor’s intent, (2) Mr. Reynolds’ testimony, who reviewed the equalization provision at issue and agreed with Mr. Johnson’s drafting to capture Settlor’s intent, and (3) the trust agreement, itself, which as testified to by both Mr. Johnson and Mr. Reynolds reveals Settlor’s intent to capture gifts after October 2007, in conjunction with the aggressive gift-gifting plan. The remaining evidence of a codicil that was never signed supports Appellants’ position that the equalization distribution was to be prospective, not retrospective. And the other evidence of the paralegals’ notes are mere references made mistakenly as testified to by Mr. Johnson.

Julia takes issue with Beach and Ellen’s treatment of George DuRant, Julia’s expert, in their brief in chief. Specifically, she argues that Beach and Ellen cannot complain about Mr. DuRant when they agreed to his numbers during the trial. Additionally, they cannot complain about the nature of the alleged “gift” – whether it was a true gift or simply a transfer of funds – when they agreed to Mr. DuRant’s calculations. First, the Probate Court informed the parties that it was going to rule in favor of Beach and Ellen with respect to the issue of lifetime gifts consisting of those only from 2007 forward, i.e. the gifts from the aggressive gifting plan. Consequently, there was no need to challenge Mr. DuRant’s calculations or characterization of gifts pre-2007,

which were much more varied and not consistent across the board like they were post-2007. The calculations to which Appellants agreed were those presented by both parties at the trial where the judge asked for the amount of post-2007 gifts with interest running to the date of the Trustee's tender to Julia. (ROA 516:6 – 517:5). Mr. DuRant presented \$732,235.86 (ROA 631) and the Trustee \$744,644 (ROA 659-661).

Second, Beach and Ellen's complaint against Mr. DuRant's work product is that he simply listed all transfers to the spouses and grandchildren without investigating whether it was a gift or if an equal offsetting gift was made to Julia. An example would be the entry of \$9,883 debt forgiveness to Dino Corontzes on December 31, 1995. This involved a financing scheme to acquire a building in Five Points where the Corontzeses decided for their own estate planning purposes to take title in Dino's name rather than Ellen's. The debt forgiveness by Settlor benefitted Julia's one-third share just as it did Beach's. No child was treated differently.

In sum, the testimony of Mr. Johnson, supported by Mr. Reynolds and the Trust Agreement, clearly provides that lifetime gifts were only prospective and consisted of those gifts from October 2007 forward. Their testimony and the Trust Agreement were the only competent testimony in front of the Probate Court regarding Settlor's intent. No competent evidence was before the Probate Court that supports Julia's position. This Court should reverse the Circuit Court that affirmed the Probate Court.

ARGUMENT

I. SETTLOR'S INTENT IS NOT FOUND IN JULIA'S INTERPRETATION OF THE TRUST.

Julia contends that she should be made whole from all the gifts given to Settlor's grandchildren and children's spouses from the day they became Settlor's grandchildren or children's spouses to the date of Settlor's death. From a common sense perspective, this

interpretation of Settlor's intent is nonsensical because Settlor could not have intended Julia to receive a "credit" in her column for every \$10 birthday gift given to each grandchild or every meal she may have bought for another sibling's family. Of course, Settlor wanted each child, including Beach and Ellen, to be treated equally, but within reason.

Julia looks to (1) the use of "equal shares" in the trust agreement, (2) the preamble to the equalization distribution clause which states that Settlor "previously made gifts" and the use of past tense in the equalization clause to indicate that pre-2007 gifts were to be used; and (3) the evidence at trial, including testimony that Julia was not to be disadvantaged and treated equally, that Mr. Johnson did not know about gifts worth approximately \$900,000 before 2007, and that Mr. Johnson's staff created documents with incorrect information as discussed above. But none of these reasons collectively trump the solid and consistent testimony of Mr. Johnson that the Settlor wanted lifetime gifts to be those made only after the creation of the Trust. And both sides agree that the Settlor's intent is of paramount concern. Mr. Johnson clearly and succinctly provided the Probate Court with what the Settlor's intent was – to equalize Julia with gifts from the Trust forward.

Regarding the "equal shares" argument and the preamble/use of past tense argument, Julia argues that case law demands that interpretation of a testamentary trust must be based on "a plain reading of the document as a whole." (Br. of Resp't at 14.) However, this statement of law is only one of the rules of statutory and contract construction. It is not particularly useful in this instance because the issue in this lawsuit involves only the interpretation of a single phrase in a single clause of the Trust, i.e. the language "[f]rom the date of this trust forward" in subparagraph (2)(a) of the equalization clause. With regard to this language, Julia contends that the repetition of the phrase "equal shares" appears twice other than in the equalization provision. Thus, the equalization must cover gifts prior to its creation. Julia overlooks that fact that the phrase "[f]rom the date of this

trust forward” does not appear throughout the document. Rather, significantly, it appears only once in the trust—in the equalization clause—indicating a differing timeline for that clause than other duties imposed by the trust on the Trustee. Moreover, Julia’s conclusion that Settlor intended that all her children receive equally under the Trust because she had historically treated them equally confirms Beach and Ellen’s argument. Settlor had always been fair in her gifting and included an equalization clause to make up for the accelerated gifting to grandchildren and non-blood relatives under the 2007 Trust. Those gifts and the equalization payment were to be made **under** and **from** the Trust which did not exist prior to 2007.

Next, Julia repeats an argument she has made throughout this litigation, that, in reference to the Trustee’s duties, use of the past tense of the verb “to make” indicates an intent to include all gifts made during Settlor’s lifetime. However, the trust language is referring to a duty to be performed **in the future** (after death) to compensate for actions done **in the past** (from 2007 until death). The past tense is appropriate and says nothing about the date from which gifts were to be calculated. That part of the instruction is contained in the phrase, “[f]rom the date of this trust forward.” That phrase must be given meaning. If Julia’s argument means it refers only to the beginning of the Trustee’s duties, then it causes those words to be redundant and superfluous and violates the rule of construction that, “A construction rendering a provision, term, or part meaningless, superfluous, surplusage, useless, inexplicable, or nugatory should be avoided.” 17A CJS, *Contracts*, §§399-400, pp. 289-91, and other authorities cited in Appellants’ main brief.

Julia tries to avoid the import of “[f]rom the date of this trust forward” by arguing that the Court should not be constrained by formal rules of construction when there is other evidence of the settlor’s intent. However, Julia forgets that the only competent evidence of the Settlor’s intent, besides the Trust Agreement itself, is the testimony of Mr. Johnson and Mr. Reynolds, which

undeniably provides that lifetime gifts were to be post-Trust and that Settlor had no desire to include pre-Trust gifts in the equalization distribution calculation.

II. Johnson's Testimony Is of Utmost Value.

Julia advances her opinion that Steve Johnson, the estate's attorney was confused about his client's intentions in revising her estate plan. Julia argues in the negative that Settlor never expressed to him a desire that pre-2007 gifts be excluded from the equalization calculation. (Br. of Resp't at 20.) The point is, however, that Settlor never said anything to the effect that, "I feel that I have been treating Julia unfairly and I want a clause causing the Trustee at my death to go back in time and determine the gifts I have given during my life to Beach's and Ellen's spouses and children." Logically, Janet, the Settlor and gift-giver, who long retained accountants and estate attorneys, was in a better position than the newly appointed Trustee to calculate those amounts. She could have simply written a check to Julia or transferred stock to make up the difference instead of placing the burden on the Trustee to do such investigation at an undetermined date in the future.

Additionally, Julia argues that Mr. Johnson testified that Settlor never expressed a desire that lifetime gifts made prior to the Trust be excluded from the calculation of the equalization provision. However, this attempt at a negative inference is clearly contradicted by Mr. Johnson's testimony at trial.

Q. Now, when you drafted the Trust Agreement and specifically paragraph 2(a) (b) and (c), which is denominated equalizing distribution to the Settlor's daughter Julia B. Brooker, was that intended by Mrs. Brooker and by you to state that this equalization was only to be made going forward as indicated by paragraph (a)'s language, "From the date of the trust forward"?

A. That is correct.

(ROA 442:5-13).

Finally, Julia again argues that certain internal memoranda and draft instruments obtained through discovery from attorney Steve Johnson's office are competent evidence of Janet Brooker's intent that the equalization clause apply to lifetime gifts preceding the 2007 trust. These documents include a draft of a codicil prepared by a non-lawyer paralegal identified as CKO and notes prepared by a second paralegal, Ms. McMahan. This argument must be rejected for at least two reasons: 1) the law firm's non-lawyer employees never met or corresponded with Settlor, the Settlor, and are not qualified to express her intentions in legal instruments; and 2) to the extent that their work product may contradict the plain language of the trust, that evidence is barred by the doctrine of merger.

Regarding the first reason, Mr. Johnson, a member of the bar of this State, is the only individual within his firm who may represent the wishes of his client, Janet. Employees of his office serve under his direction and he may freely accept or reject their advice. In this case, he obviously rejected it.

Second, South Carolina's well recognized merger doctrine precludes consideration of these erroneous drafts and notes. As expressed by this Court:

The doctrine of merger is founded upon the privilege, which parties always possess, of changing their contract obligations by further agreement prior to performance. [291 S.C. 311] The execution, delivery, and acceptance of a deed varying the terms of the antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed [citations omitted].

Shoney's Inc. v. Cooke, 291 S.C. 307, 310, 353 S.E.2d 300, 303 (Ct. App. 1986) (quoting *Charleston & Western Carolina Rwy. Co. v. Joyce*, 231 S.C. 493, 99 S.E.2d 187 (1957)). See also *Hughes v. Greenville Country Club*, 283 S.C. 448, 322 S.E.2d 827 (1984); *Wilson v. Landstrom*, 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1983). Thus, even if the codicil draft Julia obtained had

represented a negotiated instrument with the client, it was superseded by the trust instrument itself and merged into it.

In sum, the Court cannot ignore or discount the testimony of Steve Johnson. He was there, present with Settlor, when she discussed her intentions, and then he put them into writing, which Settlor signed, indicating her agreement with his words. He captured her intent. Considering the Probate Court found the Trust Agreement ambiguous, the only other avenues to determine Settlor's intent is Mr. Johnson, Settlor's estate planner, and his partner Bill Reynolds. Employee erroneous documents and notes do not change the clear testimony of Mr. Johnson and Mr. Reynolds.⁵ The weight of their testimony, along with the construction of the Trust Agreement, requires a reversal of the Probate Court.

III. The Broad Scope of the Dead Man's Statute Precludes Julia's Testimony Regarding Any Meetings With Settlor or Her Beliefs About Settlor's Intent.

Julia's testimony regarding what she was led to believe by either Settlor or Mr. Johnson as to what her mother's intent was with respect to the equalization distribution is incompetent because she is an interested witness subject to the Dead Man's Statute, S.C. Code Ann, § 19-11-20. Julia attempts to avoid the Dead Man's Statute by claiming that Mr. Johnson told her in a family meeting that her mother intended to "catch her up at the end." (Br. of Resp't at 19.) First, this alleged statement does not mean that "catch[ing] [Julia] up at the end" means that Julia is entitled to be caught up for every gift made to both spouses and four grandchildren. To believe this statement, as interpreted by Julia, is approaching the bounds of absurdity. In other words, under Julia's

⁵ Julia is asking this Court to put more weight behind a (1) codicil that was never presented to or signed by the Settlor and (2) notes of Todd & Johnson's paralegals, who did not appear before the Probate Court, over the testimony of Mr. Johnson, a dean of the South Carolina trust and estates bar. Stated simply, Julia wants this Court to believe that Mr. Johnson was not telling the truth on the witness stand and that the codicil and her own interpretation of the paralegals' notes tell the true story of what the Settlor's intent was. Mr. Johnson told the truth on the stand, and his employees' errors should not call into question his integrity.

interpretation, she would be entitled to be made whole for \$15 Settlor paid one of her grandchildren when they were 12 years old to wash her car, even though it was not a gift and of a de minimis value. Under Julia's interpretation, Beach is to credit her account in the amount of \$15 for this chore performed by her nephew or niece.

But more importantly, this discussion still falls into the teeth of the Dead Man's Statute. In contravention of South Carolina law, Julia narrowly construes the Dead Man's Statute to argue that discussions with Mr. Johnson and her mother are not a communication or a transaction with her mother, and therefore, not subject to the Dead Man's Statute. However, South Carolina courts broadly interpret the Dead Man's Statute, including the definition of "transaction" for purposes of the Dead Man's Statute. "'Transaction' is a very comprehensive term, meaning the carrying on or through of any matter or affair." *Merck v. Merck*, 89 S.C. 347, ___, 71 S.E. 969, 970 (1911). And "[t]he test of the interest of a witness in the event which disqualifies him, under statute, from testifying in his own behalf against the personal representative of a deceased person, is that he will either gain or lose by the direct legal operation and effect of the judgment." *Long v. Conroy*, 246 S.C. 225, 234, 143 S.E.2d 459, 463 (1965). The meeting with Mr. Johnson and Settlor is a transaction for purposes of the Dead Man's Statute. It is the carrying on of Settlor's estate. As stated by Julia, Mr. Johnson billed Settlor for this time to "discuss gifts of assets to children." (Br. of Resp't at 1.) This time entry is an excellent expression of the children, including Julia, carrying on their mother's estate by engaging in a "discuss[ion] of gifts of assets to [them]." Therefore, this is a transaction with the decedent about which none of the children can testify.

Recognizing this problem, Julia then pivots to argue that the conversation or transaction was really with Mr. Johnson, not her mother. But, Mr. Johnson is her mother's agent. Julia cannot hide from the Dead Man's Statute by claiming Mr. Johnson, not her mother, made these statements. Julia also cannot argue that she learned this information from Mr. Johnson after Settlor's death.

(Br. of Resp't at 19.) Curiously, Julia does not cite to any testimony in the record to support this statement, and even if true, Mr. Johnson was still acting as Settlor's agent. He was merely a mouthpiece of the deceased.

But even if Julia could avoid the Dead Man's Statute, her testimony is directly controverted by Mr. Johnson. His unwavering testimony consistently remains that Settlor was only looking prospectively and her definition of lifetime gifts, included only those post-Trust. He, not Julia, was there with Settlor when she was expressing her intent. He, not Julia, drafted the estate planning documents to capture this intent. He, not Julia, is a seasoned estate planning specialist who is well-versed in estate planning language that accounts for equalizing heirs. Because Julia may have misunderstood what her mother or Mr. Johnson told her is no match for Mr. Johnson's testimony, and her confusion cannot be the support for the Probate Court's finding that Settlor intended for the Trustee to capture every transfer of money from the early 1990s to the present. Stated differently, her misunderstanding does not inform the intent of Settlor or the meaning of the equalization distribution.

Finally, Julia argues that (1) Beach testified about what gifts he made to carry out Settlor's wishes and that (2) Julia's testimony mirrors Mr. Johnson's testimony that Settlor did not want Julia to be disadvantaged because she was not married with no children. (Br. of Resp't at 20.) First, Beach's testimony was sought by the Probate Court, and therefore, Julia cannot argue that Beach opened the door to any testimony barred by the Dead Man's Statute. In fact, the colloquy is as follows:

THE COURT: Do you want to ask [Beach] anymore questions?

MR. SOWELL: No.

THE COURT: Okay. Mr. Griffin?

MR. GRIFFIN: I'm in October 2016 emails, can I look through?

THE COURT: Yes. Here's some things that I am wanting to know. There are three entities that he or his mother banked with: Stephens, Morgan Stanley, and First Community.

MR. SOWELL: Correct.

THE COURT: No other banks? No other –

MR. SOWELL: As I understand it, that's the universe.

THE COURT: Well, that's for him to answer, right?

MR. SOWELL: I can ask him.

(ROA 491:6-22). The discussion referenced by Julia in her brief follows. (Br. of Resp't at 20.) There was no opening of the door to testimony by Beach. Also, there was no objection by Julia's counsel that the testimony violated the Dead Man's Statute. Beach was simply answering a line of questions that the Probate Court wanted clarified. Moreover, Julia claims the door was opened when Beach's lawyer asked for directed verdict by, as the Probate Court put it "leav[ing] it to Mr. Brooker's interpretation only [and] that the rest of the litigation should be ended." (ROA 499:22-24). But, Julia misses the very substantial point that the parties are here because she called Beach's interpretation into question. In her Petition, she lays out Beach's interpretation and says it is incorrect. In the same Petition, she lays out her own interpretation. This is the very dispute that is to be determined. It is no mystery what Beach and Ellen's interpretation is or what Julia's interpretation is. Rather, Julia conflates Beach and Ellen's request to adopt their interpretation as the correct interpretation with an evidentiary rule that renders interested witnesses incompetent.

Additionally, Julia argues that her testimony mirrors Mr. Johnson's about Settlor's desire not to disadvantage Julia, and therefore, should be allowed. Again, this testimony does not open the door. To the contrary, Mr. Johnson, as the estate planner, is an exception to the Dead Man's Statute. *Hanahan v. Simpson*, 326 S.C. 140, 152, 485 S.E.2d 903, 910 (1997), *superseded by*

statute on unrelated grounds (holding the “testimony of the attorney preparing the will is generally held admissible on the ground that the attorney is not an ‘interested person.’”). Mr. Johnson is allowed to testify; Julia is not. It matters not that some of her testimony mirrored Mr. Johnson’s testimony. She is an interested person as she undeniably “will either gain or lose by the direct legal operation and effect of the judgment.” *Long v. Conroy*, 246 S.C. 225, 234, 143 S.E.2d 459, 463 (1965). Julia is the textbook example of a witness rendered incompetent by the Dead Man’s Statute.

IV. The Award and Amount of Attorney’s and Professional Fees Are In Error.

Appellants rely on their argument in their brief in chief and maintain that Julia did not win the case, *in toto*, which could have led to a judgment worth several more millions of dollars. Justice and equity do not require Julia to receive all of her attorney’s fees and expert fees, especially when her conduct adds to the substantial fees accrued by her attorneys and expert.

CONCLUSION

For the above-stated reasons and for those stated in the Brief of Appellants, this Court should reverse the Circuit Court and Probate Court and enter judgment in favor of the Appellants.

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Columbia, South Carolina
November 8, 2021

Attorneys for Appellants

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Nov 08 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330

Case No. 2019-CP-40-03582

Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Appellants

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief of Appellants complies with
Rule 211(b) SCACR.

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November 8, 2021

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Julia B. Brooker, Respondent,

v.

Beacham O. Brooker, Jr., in his official capacity as
Trustee and individually as a Beneficiary of the Janet B.
Brooker Trust, and Ellen B. Corontzes individually and
as a Beneficiary of the Janet B. Brooker Trust,
Appellants.

Appellate Case No. 2021-000330

Appeal From Richland County
R. Kirk Griffin, Circuit Court Judge

Unpublished Opinion No. 2024-UP-167
Heard March 4, 2024 – Filed May 8, 2024

AFFIRMED

Thornwell F. Sowell, III and Bess Jones DuRant, both of
Sowell & DuRant, LLC, of Columbia, for Appellants.

James Mixon Griffin and Margaret Nicole Fox, both of
Griffin Humphries LLC, of Columbia, for Respondent.

PER CURIAM: This appeal concerns the proper construction of an estate planning document (the Trust). Beacham Brooker and Ellen Corontzes argue the circuit court erred in affirming the probate court. First, they argue the "equalization provision" within Janet B. Brooker's (Decedent) estate plan was not meant to include all lifetime gifts, particularly those predating the Trust. Second, they argue Julia Brooker is not entitled to an award of attorney's fees and costs. Third, they argue Julia's trial testimony violated the Dead Man's Statute. We respectfully disagree with each of these arguments. Therefore, we affirm.

When a "probate proceeding is equitable in nature, the [appellate] court . . . may make factual findings according to its own view of the preponderance of the evidence." *In re Howard*, 315 S.C. 356, 362, 434 S.E.2d 254, 257–58 (1993). "[A]n action to construe . . . a trust is equitable in nature" *Waddell v. Kahdy*, 309 S.C. 1, 5, 419 S.E.2d 783, 786 (1992). "However, an appellate court still affords a degree of deference to the trial court because it was in the best position to judge the witnesses' credibility." *In re Est. of Kay*, 423 S.C. 476, 480, 816 S.E.2d 542, 544–45 (2018); *see also Lewis v. Lewis*, 392 S.C. 381, 389, 709 S.E.2d 650, 654 (2011) ("The presence of *de novo* review and a willingness, after review, to defer to the fact finder should not be viewed as contradictory positions.").

For the reasons set forth below, we agree with the probate court's finding that the equalization clause is ambiguous. Therefore, it was proper for the probate court, and thus the circuit court on appeal, to consider extrinsic evidence to evaluate Decedent's intent. *See Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995) ("The primary consideration in construing a trust is to discern the settlor's intent."); *id.* ("[W]hen there is no defect on the face of a document but an uncertainty appears upon attempting to effectuate the document, then the document contains a latent ambiguity and parol evidence is admissible to determine the settlor's intent.").

The parties do not dispute the basic premise that Decedent intended to treat her children equally. There is also no dispute that the equalization provision was included in the Trust to equalize Julia, who has never been married and has no children, with her siblings and their respective spouses and children. Where the parties disagree, however, is in regard to the "lifetime gifts" language within the equalization provision. The probate court ultimately concluded that the equalization provision was meant to include all lifetime gifts, including gifts predating the Trust. This conclusion was largely founded on Decedent's intent to not disadvantage or treat Julia differently and on certain language in the equalization provision, mainly the phrase: "[Decedent] has previously given lifetime gifts and will continue." The probate court then found the total amount of Decedent's lifetime gifts to Beacham,

Ellen, their spouses, and their children should be divided by two, so that Julia would be equalized with the rest of her family but would not receive more than them.

We agree with the probate court's conclusion, which the circuit court affirmed, that Decedent's intent to treat Julia equally necessarily required including lifetime gifts that predated the Trust. The plain language of the equalization clause does not provide a clear answer, but equal means equal, and as we noted above, it is uncontested that Decedent intended to not only treat all of her children equally, but also to align Julia with the children and spouses of Beacham and Ellen. *See Bowles*, 319 S.C. at 380, 461 S.E.2d at 813 ("The primary consideration in construing a trust is to discern the settlor's intent."). Therefore, we affirm the probate court's interpretation of the equalization provision and the corresponding award to Julia.

Beacham and Ellen argue it was error to award attorney's fees and costs to Julia because (1) the courts should have ruled in Beacham and Ellen's favor and thus "no award of attorney's and professional's fees to Julia should have been made" and (2) "even if the [p]robate [c]ourt was correct with its orders, it did not find in favor of Julia, *in toto*." We disagree. In trust cases, the probate court may award fees "as justice and equity may require." S.C. Code Ann. § 62-7-1004 (2022). Here, the probate court issued fees after it ruled in Julia's favor. The court further reasoned that having Decedent's estate fund Beacham and Ellen's fees, but not Julia's fees, would amount to unequal treatment among the siblings. Because we find the award well supported by the record, we affirm. *See Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) ("[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services."); *id.* ("[O]n appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports [the court's analysis]."); *see also Deborah Dereede Living Tr. dated Dec. 18, 2013 v. Karp*, 427 S.C. 336, 346, 831 S.E.2d 435, 441 (Ct. App. 2019) ("We must affirm a trial court's fee award if any evidence supports it.").

We need not reach the argument that Julia's testimony violated the Dead Man's Statute because, even if it was error to admit the testimony, that error would be harmless. As the probate court astutely observed, the challenged portion of Julia's testimony was completely cumulative to other properly admitted testimony. *See Brooks v. Kay*, 339 S.C. 479, 487, 530 S.E.2d 120, 124 (2000) ("Where testimony in violation of the Dead Man's Statute is cumulative to other properly admitted testimony, the admission of the improper testimony may be held to be harmless.").

Additionally, the probate court was adamant that it did not rely on Julia's testimony in making its decision, and we do not find Julia's testimony material to our decision here. *Contra id.* at 487, 530 S.E.2d at 124 ("This testimony was central to both the trial court and Court of Appeals' decisions . . .").

Beacham and Ellen make additional arguments alleging the probate court gave improper weight to other evidence. They contend that "the only competent evidence regarding [Decedent]'s intent comes from . . . her estate planner and his partner, and the ambiguous Trust Agreement. Neither Julia nor [her financial expert] can testify as to [Decedent]'s intent." We understand the probate court's findings and conclusions to be largely driven by the estate planner's testimony that Decedent intended for her children to be treated equally and for Julia to not be disadvantaged. It is certainly true that the probate court ultimately disagreed with the estate planner's testimony about including pre-trust gifts in the equalization, but again, we understand this as being driven by the ambiguity in the equalization provision and the mathematical fact that it was not possible to treat Julia equally without accounting for the substantial pre-trust gifts Decedent made, particularly to her grandchildren.

Beacham and Ellen also argue Julia's financial expert was not competent to testify. We see no sound basis for concluding the probate court abused its discretion in admitting this testimony. *See R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000) ("The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law.").

For these reasons, the probate court and circuit court orders are

AFFIRMED.

GEATHERS, HEWITT, and VINSON, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330

Case No. 2019-CP-40-03582

Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Appellants

PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellants Beacham O. Brooker Jr., in his individual capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually and as a Beneficiary of the Janet B. Brooker Trust, by and through their undersigned counsel, respectfully petition this Court for a rehearing based on fact, points, and arguments overlooked or misapprehended as set forth herein.

In its Opinion, this Court correctly states that “the primary consideration in construing a trust is to discern the settlor’s intent.” (Op. at 2 (quoting *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995).) However, this Court did not correctly discern the settlor’s intent because it ignored (1) the language of “from the date of this trust forward” in the Trust and (2) the sole competent testimony – the testimony of W. Steven Johnson, Esquire, the estate planner for

the settlor. Thus, this Court did not engage in its primary directive, which is to discern the settlor's intent. The settlor ("Janet" or "Settlor") intended for the equalization provision to only include gifts "from the date of the Trust forward." Respectfully, this Court erred by concluding that the equalization provision is to account for gifts predating the Trust. Appellants ask this Court to reconsider its Opinion and reverse the probate and circuit courts.

I. The Court Overlooked the Meaning of "From the Date of This Trust Forward" in the Equalization Provision.

This Court did not address the key language in the Trust regarding the equalization provision. Notably, this Court did not address the import of the phrase "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" (R. 642.) (emphasis added)). This language must mean something.¹ 17A CJS, *Contracts*, §§399-400, pp. 289-91 ("A construction rendering a provision, term, or part meaningless, superfluous, surplusage, useless, inexplicable, or nugatory should be avoided."); *Babb v. Wade Hampton Golf Club, Inc.*, No. 1:21-CV-333-MOC-WCM, 2024 WL 189029, at *4 (W.D.N.C. Jan. 17, 2024) ("In contract construction, as in statutory interpretation, it is axiomatic . . . that each word is to be given meaning and effect.") (internal quotation marks omitted)). It means that Beacham O. Brooker Jr. ("Beach" or "Trustee") and Janet, until her death, were to start counting all tax-advantageous gifts

¹ It does not mean that Beach's duties as trustee began on that date. His duties as trustee arose when he and Janet signed the Trust. And it does not mean that Beach should start accounting for all gifts given to the grandchildren and spouses from the date of their births. Janet was well and alive in 2007 when the Trust was signed. It makes no common sense to have Beach calculate transfers before the Trust because Janet had that information.

Moreover, Janet was co-trustee from 2007 until her death in 2015. (R. 640-54.) She had just as much of a duty to calculate gifts, as Beach did. Because she had the knowledge of gifts she made, she would have been the one to calculate those gifts. She would be placing an undue burden on Beach to track down every transfer since the grandchildren's births. In other words, she would not be treating all of her children fairly by placing this substantial burden on Beach.

Janet made to her children's spouses and children from October 2007 forward (the date of the trust). It cannot be lost that one of the main reasons Janet entered into this new estate plan, including the Trust, was to substantially reduce her Estate because it was going to face severe tax consequences. (R. 438-41.) Thus, Beach and Janet, until her death, were to calculate all tax advantageous gifts from October 2007 forward to the non-blood members of the family (spouses) and the grandchildren. Since Julia did not have children or a spouse, she would be disadvantaged, which prompted the equalization provision.

This Court says, "[t]he plain language of the equalization clause does not provide a clear answer, but equal means equal, and as we noted above, it is uncontested that Decedent intended to not only treat all of her children equally, but also to align Julia with the children and spouses of Beacham and Ellen." (Op. at 3.) But what is not appreciated with respect to this statement is that Janet was keeping her children equalized by her own means before 2007. In other words, prior to 2007, Janet equalized gifts among her three children through various means. She made annual exclusion gifts to her grandchildren, but she paid for trips around the world for Julia. (R. 545-48 & 512.) Additionally, Janet could have equalized the children in other manners that she kept to herself. She expressed no concern about Julia being disadvantaged pre-trust; it was only when the spouses were going to start receiving gifts that Janet became concerned with Julia being disadvantaged, as discussed below.

Under this Court's construction of the equalization provision, Julia is being favored. She is getting credit for every birthday gift that Janet gave to her grandchildren. She is getting credit for every transfer of cash or stock to the grandchildren even if an equivalent gift was given to

Julia.² It is only when the non-blood members of the Brooker family started receiving gifts from Janet did Janet express a concern of Julia not being treated fairly. She resolved this concern by having Mr. Johnson draft an equalization provision that states that her Trustee Beach was to equalize Julia “from the date of the trust forward.” She did not intend for Beach to look backwards to calculate gifts before he became the trustee. It makes no common sense.

II. This Court Overlooked the Totality of W. Steven Johnson’s Testimony.

This Court affirmed that the Trust is ambiguous, and therefore, extrinsic evidence is permissible to evaluate Janet’s intent. (Op. at 2.) Mr. Johnson,³ the estate planning attorney who suggested the aggressive gift-giving program and drafted the estate plan with the equalization provision, is the sole source (other than the Trust, itself) of what Janet’s intent was. He had conversations with Janet about her intent, and then he drafted the estate plan to carry out her intent. Consideration of his testimony is crucial for this Court to follow the cardinal rule to determine the settlor’s intent. His testimony cannot be cherry-picked to establish that Janet wanted her children

² Notably, no gifts were given to spouses before 2007. The spreadsheet noting all gifts shows a loan forgiveness to Ellen’s spouse in 1995. (R. 547.) However, this was a gift to Ellen because the property securing the loan that was in her spouse’s name for estate planning purposes. Julia received the same loan forgiveness as Ellen did, although it was noted on the books as forgiveness for Ellen’s spouse. Thus, Julia is getting a credit for a gift to Ellen when Julia received the same gift.

³ Mr. Johnson is a certified specialist in estate planning and probate by the South Carolina Supreme Court. (R. 437.) He has been working with the Brooker family since he helped with the administration of Mr. Brooker’s estate in 1990. (R. 437-38.) Julia’s expert (George W. DuRant, CPA) testified about Mr. Johnson as follows: “I have great respect for Steve Johnson. I’ve relied on him all my career just about since 1986; he’s a top lawyer, and I don’t dispute a word he says.” (R. 427.)

to be treated equally, and then the balance of his testimony be ignored when he says that the equalization provision was only intended to capture gifts after the Trust was executed.⁴

The testimony of the drafting attorney is critical to understanding Janet's intent when the document is ambiguous. Courts have held that it is in error to ignore the testimony of the drafting attorney when consideration of that testimony would have clarified the ambiguity in the estate planning document. *See, e.g., In re Resler's Estate*, 278 P.2d 1, 6 (Cal. 1954) (holding the trial court erred in excluding testimony of the attorney who drafted the will regarding the decedent's intent "[a]s proof of such intention would determine the amount of the bequest under [the will]"); *In re Trust Created by Agreement Dated Dec. 20, 1961, ex rel. Johnson & Hoffman, Lienhard & Perry*, 944 A.2d 33, 40–45 (N.J. Super. Ct. App. Div. 2006) (affirming trial court's admission of testimony by drafting attorney, noting that "[a]s the drafter of the 1961 Trust, he was in a particularly favored position to understand the purpose of the 1961 Trust and the intent of the grantor[,]” and that “the exclusion of this testimony would have been error” as the drafting attorney “was in a unique position to provide information about the circumstances surrounding the drafting and execution of the instrument”).

At a minimum, the drafting attorney's testimony is significant to determine the testator's intent. *See, e.g., In re Estate of Deupree*, 54 P.3d 542, 546 (N.M. Ct. App. 2002) (“Of the evidence presented [as to testamentary intent], we find most significant the testimony of the attorney who

⁴ This Court states that “the probate court ultimately disagreed with the estate planner's testimony about including pre-trust gifts in the equalization” (Op. at 4.) This Court has *de novo* review of this matter. While *de novo* review does not necessarily preclude this Court from deferring to the probate court regarding witness credibility, *de novo* review also allows this Court to make factual findings in accord with its own view of the preponderance of evidence. *In re Howard*, 315 S.C. 356, 362, 434 S.E.2d 254, 257-58 (1993). When viewing Mr. Johnson's testimony on the whole, this Court respectfully should make its own factual findings regarding intent and that Mr. Johnson's credibility is unfaltering. Before and during this litigation, he has never wavered from his position on (1) the Settlor's intent and (2) the construction of the Trust.

drafted the trust instrument[,]” noting “[n]one of [the other] witnesses had firsthand knowledge of [decedent’s] intent in drafting the specific trust provisions in question”); *Schroeder v. Gebhard*, 825 So. 2d 442, 443 (Fla. Dist. Ct. App. 2002) (“While there was conflicting testimony at trial regarding [testator’s] intent to include all, or some of the adopted in and adopted out children in the trust in the event that [testator’s son] predeceased her, the most relevant testimony regarding her intentions and the trust drafting process came from Stalnaker, the attorney who drafted the trust agreement.”); *In re Segal*, Nos. 1 CA-CV 06-0101, 1 CA-CV 07-0157, 2008 WL 3919187, at *7 (Ariz. Ct. App. 2008) (noting the lower court “found the ‘only credible evidence’ regarding [decedent’s] intent came from the attorney who represented [decedent] and drafted the 1996 Trust Amendments”); *Danelczyk v. Tynek*, 616 A.2d 1311, 1314 (N.J. Super. Ct. App. Div. 1992) (affirming trial court’s interpretation of a will, noting the trial court’s finding that “the ‘most significant testimony’ revealing testator’s intent came from . . . the attorney who drafted the will”); *Trupp v. Naughton*, No. 320843, 2015 WL 3389414, at *1, 4 (Mich. Ct. App. May 26, 2015) (holding probate court did not err in relying on deposition testimony of drafting attorney to determine settlor’s intent and meaning of phrase in the trust); *Cf. In re Estate of Combee*, 583 So. 2d 708, 712 (Fla. Dist. Ct. App. 1991) (holding that for an estate to overcome a statutory presumption, it must show “a clear statement of a contrary intent by the deceased, or evidence of a contrary intent based upon testimony from the attorney who prepared the probated will, a bank employee or a person with special knowledge regarding the decedent’s estate plan”).

Against the backdrop of this long line of cases, Mr. Johnson’s testimony must be given significant weight. Mr. Johnson testified as follows:

- “At that point in time, there was a heightened awareness of the -- this was in ’07 -- of the need to make some gifts to accelerate her gifting program so that at her death the estate taxes would be somewhat lessened.” (R. 439)

- At a September 25, 2007 meeting with Mr. Johnson, Janet, and her children, all of the parties discussed “[t]hat we would accelerate the gifts that Mrs. Brooker was going to make; that we were going to make gifts not only to children and grandchildren, but that we would also make gifts to in-laws. As an estate planner, you know, I was primarily relying on Internal Revenue Code Section 2503 and Code Section 529. And I talked with Mrs. Brooker at that time about the avenues that would be available to her to make gifts to the children, the grandchildren, and the spouses of the children.” (R. 440-41)
- “You can make gifts to grandchildren and you can make gifts to spouses of children. And her [Janet’s] comment to me at that particular point in time was that, if I make gifts -- if I make gifts to Dino and ... Beach’s wife, that that will disadvantage Julie. She said, that will disadvantage Julie. And I said to her at that time, well, if you decide to go ahead and make those gifts, you can put a provision in the document that at your death will catch the -- will catch Julie up for the gifts going forward that have been made to the spouses of children. Also, we talked about accelerating the pace of the gifts to the children through what’s known as a 529 account.” (R. 264)
- “when I suggested to her that she could make annual gifts not only to children and grandchildren, she could make gifts to spouses of children, and she gave me some pushback at that time saying that would disadvantage Julie. And I said well, it will not disadvantage Julie if we catch Julie up at your death as to gifts that are going to be made to the grandchildren as well as the spouses.” (R. 443)
- “the whole discussion centered around gifts going forward.” (R. 444)
- “the whole conversation with Janet was about prospective gifts, not retrospective gifts. . . . It was going forward, not looking back.” (R. 183)
- “we’ll catch Julie up at death for gifts made from the Trust Agreement forward so that she won’t be prejudiced.” (R. 463)
- Janet didn’t have concern about Julia being disadvantaged because of gifting to grandchildren, but disadvantaged because of gifting to spouses (R. 266)
- Regarding the language of the Trust Agreement, Mr. Johnson testified “previously made lifetime gifts ... is qualified by Paragraph (a), which says from the date of this trust forward. You have to read the four corners of Paragraph 2 and it says from the date of the trust forward looking at the lifetime gifts.” (R. 184)
- If Janet brought up past gifts to Ellen or Beach and said Julia needs to be “equalized for that, I would have said to her let’s equalize it right his minute, let’s make a gift to her right this minute, let’s give her -- let’s make a gift to Julie right now if she’s been so disadvantaged. We’re trying to reduce the size of your estate, let’s give her an amount right now that will make her equal.” (R. 358)

In sum, the conversation with Janet was about prospective gifts. (R. 442.) Further, he testifies if Janet wanted to consider pre-trust gifts, he would have advised Janet to equalize Julia at the time he was drafting the estate plan. This Court expresses some concern over “the mathematical fact that it was not possible to treat Julia equally without accounting for the substantial pre-trust gifts Decedent made, particularly to her grandchildren.” (Op. at 4.) But respectfully, this concern is undercut by the fact that Janet never talked about these pre-trust gifts with Mr. Johnson. If she thought these pre-trust gifts were going to disadvantage Julia, she would have discussed her concerns with Mr. Johnson, but she did not. This is because Janet, by herself, was equalizing all gifts among her children. She paid for numerous trips around the world for Julia.⁵ (R. 511-12.)

Moreover, as Mr. Johnson testified, Janet was not concerned about the gifts to the grandchildren. Rather, she was concerned about the gifts to the spouses. (R. 264 & 266) Undisputably, she had been making annual exclusion gifts to her grandchildren before the Trust, and she was equalizing Julia, whether it be through the trips around the world or some other means. But, it speaks volumes that she did not express any concern to Mr. Johnson about pre-trust gifts. The logical conclusion is she was not worried about Julia being disadvantaged. This is especially true when the fact that she voiced no concern about pre-trust gifts is juxtaposed to the fact that she was concerned about post-trust gifts to “non-blood,” i.e. spouses, and the resulting disadvantage to Julia. The totality of Mr. Johnson’s testimony is compelling, explains any ambiguity in the Trust, and should be considered in its totality to understand fully Janet’s intent.

⁵ These experiences included trips to Peru, Galapagos Islands, Japan, Bali, Hong Kong, Indonesia, China, and Beijing, Spain, France (with Ellen Corontzes), Africa, and safari in Kenya. (R. 512)

CONCLUSION

The phrase “from the date of this trust forward” must mean something. Mr. Johnson amply explained what it means and the context surrounding the phrase. It means that Beach is to count all gifts given from the date of the Trust Agreement forward to calculate the equalization distribution. Mr. Johnson also testified, in detail, that at all times Janet was looking forward with respect to the gifts. She never mentioned the gifts looking backwards. The logical conclusion regarding this omission is that she was not worried about Julia not being treated equally with the gifts pre-dating the Trust. The use of “from the date of this trust forward” and Mr. Johnson’s testimony reveals Janet’s intent – only post-trust gifts are to be included. Respectfully, this Court should further review Mr. Johnson’s testimony to conclude that Janet’s intent was to include solely post-trust gifts in the equalization distribution.

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Brooker Trust***

Columbia, South Carolina
May 22, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330

Case No. 2019-CP-40-03582

Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Appellants

PROOF OF SERVICE

I certify that on May 22, 2024, I have caused the service of the PETITION FOR REHEARING on Respondent via electronic mail using the email address listed in the Attorney Information System for her attorneys of record at the addresses listed below:

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May 22, 2024

Amy Kelly

From: Amy Kelly
Sent: Wednesday, May 22, 2024 4:30 PM
To: jgriffin@griffinhumphries.com; mfox@griffinhumphries.com;
jharmon@griffinhumphries.com
Cc: Bess DuRant; Biff Sowell
Subject: Petition for Rehearing- Julia Brooker v. Beachman O. Brooker, Jr.- Appellate Case No. 2021-000330
Attachments: Brooker - Petition for Rehearing.pdf; Proof of Service- Petition for Rehearing.pdf

Dear Counsel:

Attached for service upon you is the Petition for Rehearing and the Proof of Service in the above matter. Service is made via email pursuant to the Supreme Court Order 2021-08-25-02 as amended May 6, 2022.

Thanks
Amy

Amy A. Kelly
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The South Carolina Court of Appeals

Julia B. Brooker, Respondent,

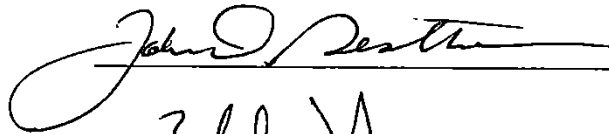
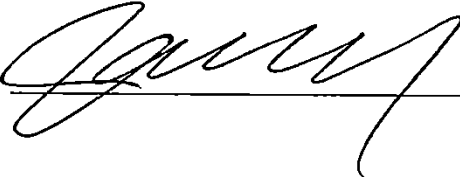
v.

Beacham O. Brooker, Jr., in his official capacity as
Trustee and individually as a Beneficiary of the Janet B.
Brooker Trust, and Ellen B. Corontzes individually and
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Appellants.

Appellate Case No. 2021-000330

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

FILED
Jun 07 2024

Bess Jones DuRant, Esquire
Thornwell F. Sowell, III, Esquire
James Mixon Griffin, Esquire
Margaret Nicole Fox, Esquire
The Honorable R. Kirk Griffin